VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 389-10-17 Wmcv

Boyd et al vs. State of Vermont

Decision on Motion for Summary Judgment

On October 27, 2017, Plaintiffs Sadie Boyd, then a 9th grader at Twin Valley High School in Whitingham, Madeleine Klein, a taxpayer from Whitingham, and the Town of Whitingham, jointly filed this declaratory judgment action, alleging that the State's education property taxation and education funding systems violate the Vermont Constitution's education clause, proportional contribution clause, and common benefits clause, and seeking declarations so stating and injunctive relief barring the State from applying these statutes to the Town of Whitingham, its schools, and its taxpayers.

On November 8, 2018, the State's motion for judgment on the pleadings in this matter was denied by Judge Robert Gerety, who found that it was possible that on the facts alleged in the complaint the plaintiffs might be able to establish a constitutional violation. Since that time, the parties have completed discovery in this matter. The court must therefore apply a different, less generous standard in reviewing the case now.

The State filed its motion for summary judgment on October 14, 2020. In this motion, the State argues that the plaintiffs cannot establish a causal connection between the State's taxation formulas and student performance in their schools; that the plaintiffs seek preferential treatment rather than equity for the students in their schools; that the statutes that the plaintiffs challenge are supported by a rational basis, or even a more strict standard of intermediate scrutiny; and that the Town of Whitingham does not have standing in this action because it does not pay or impose education related taxes, and is not a school district. The plaintiffs oppose all of these arguments.

Undisputed Material Facts

Under V.R.C.P. 56(a) the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Both parties are required to file statements of the facts that they assert are undisputed, and stating their opposition to the facts stated by the other party that they do dispute. V.R.C.P. 56(c)(1).

Based on the State's statement of undisputed material facts, the plaintiffs' opposition to the summary judgment motion incorporating their positions as to many of those facts, and their statement of disputed facts filed separately, the court finds that the following facts are both material and undisputed in this matter.

Plaintiff Sadie Boyd was a student at the Twin Valley Middle High School when this case was filed. She would have liked to have more options for courses to take while attending that school, particularly

in the fields of business, science, and career focused topics. She would prefer to take courses in person, rather than on-line. She would like to participate in sports for which there was no program at her school, including lacrosse and volleyball.

Twin Valley offers many fewer in-person on-site classes for its students than many larger schools in Vermont. Students at the Twin Valley Middle High School do have access to many courses online and through dual enrollment and early college class options at participating colleges.

Students at the Twin Valley school take college related tests (SAT, PSAT, and AP class tests) at lower rates than average for high schools in Vermont, and score lower than average Vermont students when they take those tests. The high school dropout rate for Twin Valley is generally somewhat higher than at other schools in the state.

No expert or other witness provided sworn statements or stated the opinion that the limited classes offered, limited sports, and relatively lower performance of students described above were caused by the State's educational taxation system.

The State sets homestead property tax rates using universal statewide formulas to address differences in property wealth across districts, so that voters in districts with the same spending per equalized pupil pay the same homestead property tax rate without regard to whether property values in each district are relatively high or relatively low. Before the State began using equalized pupil-based statewide formulas, wealthy districts could spend more per-pupil at lower tax rates than poorer districts. If a district spends more than 121% of the statewide average district education spending per equalized pupil increased by inflation through the fiscal year for which the amount is being determined, the amount above that percentage is treated as "excess spending." 32 V.S.A. § 5401(12)(B). Such excess spending is used to determine "education property tax spending adjustment" and "education income tax spending adjustment" for each school district. 32 V.S.A. § 5401(13)(A) & (B). The greater a district's "excess spending" as defined under this formula, the higher its education tax rates. A statewide education tax is imposed on all nonhomestead and homestead property. 32 V.S.A. § 5402(a).

The education tax rate for each municipality is determined in part based on the "excess spending" of the municipality in question as defined above. If a district spends more than 121% of the statewide average district education spending, its homestead property tax rate rises twice as fast as to all spending above that threshold. The legislative body of each municipality is required to bill property taxpayers as directed by the Commissioner of Taxes in accordance with the education tax rates.

As a whole, Vermont spends more of its total economic output, as measured by gross domestic product, on education than any other state in the country and has some of the highest overall levels of per-pupil spending in the country. There is little association between spending per pupil and academic achievement.

As plaintiff's expert has found, while Twin Valley spends $1,500 to $4,000 more, per pupil, than the average district in Vermont, its socioeconomic makeup puts it generally in the lower portion of the state, with the exception of home values, which are near or slightly above average. Because of this excess spending, the homestead tax rate for Whitingham is significantly increased under the statewide education tax standards described above. Twin Valley's school district spends well above 121% of the statewide average district education spending, and is penalized for doing so with increased taxes, under

the statutes describe above. The Town of Whitingham is required to collect those taxes from town property owners.

Seth Boyd, a school board member, attested that the reasons for the school districts high spending included student needs, demographics, special education costs, facility bond payments, and transportation costs, and that there is a need for students at Twin Valley to have more opportunities than the school provides.

The Town also complains that the high education taxes it is required to collect from its landowners by the State detract from its ability to impose local taxes to support infrastructure and services, because its citizens do not have the financial means to pay higher local taxes, after paying education taxes.

Madeleine Klein is a property owner in Jacksonville, Vermont, in the Town of Whitingham. She owns a home and 41 acres of land. Her homesite education taxes were $5,174 in 2017, $4,417 for 2016, $5,320 for 2015, $4,809 for 2014, $4,571 for 2013, $4,407 for 2012, $4,410 for 2011, $4,409 for 2010, $4,140 for 2009, $3,648 for 2008, $3,513 for 2007. Her property's assessed value was $241,800 in 2007 and 2008, $252,600 in 2009, $379,900 in 2010–2015, and $361,000 in 2016 and 2017. She struggles each year to pay her taxes.

According to data from the Vermont Agency of Education, in fiscal year 2018, Whitingham had 182.56 equalized pupils, $20,981.32 in "budgets per equalized pupil," and education spending of $19,982.75 per equalized pupil. This made them third in the state in amount of education spending per equalized pupil. Their Act 68 homestead equalized tax rate was therefore 2.0974. Twin Valley spent an average of more than $4,000 more per-pupil than the average of other Vermont districts with between 350 and 550 equalized pupils operating schools for all grades in that year.

Schools the size of Twin Valley do not have the benefit of some economies of scale that are available to larger schools, especially as to hiring and paying staff such as principals, nurses, librarians, and the like. They must have such expensive, highly trained staff available, even though they have many fewer students than larger schools. Twin Valley incurs higher costs for transportation than many schools due to geography and other factors.

Legal Conclusions

The plaintiffs argue that the State's education tax system, and in particular the treatment of schools' spending above 121% of the statewide average district spending level as "excess spending," which then subjects taxpayers to significantly higher taxes on all amounts above that level, is unconstitutional. They assert that this system has resulted in reduced educational opportunities for Sadie Boyd, that it has resulted in significantly higher taxes for Madeleine Klein, and that it has harmed the Town of Whitingham because it is required to collect these taxes and because the excessive level of taxes makes it difficult for the Town to assess local taxes for necessary local expenses.

The defendant argues correctly that the plaintiffs must establish that they have suffered some harm caused by the educational funding system in order to show that the statute is unconstitutional, and that they have failed to adduce any evidence of such harm. The plaintiffs disagree.

Harm to Students

The plaintiffs argue that the educational tax system outlined above harms the students of Twin Valley, including Plaintiff Sadie Boyd, by limiting her educational opportunities. It is undisputed that Twin Valley offers fewer in-person courses, and fewer sports programs than larger schools in Vermont. However, there are no expert opinions or other proof to show that these limitations are causally connected to the taxation system of which the plaintiffs complain.

Statutes are presumed to be constitutional. *Badgely v. Walton*, 2010 VT 68, ¶ 20, 188 Vt. 367. However, as the State argues, before a statute can be found unconstitutional, the court must find that the law does in fact cause disadvantages or harm to a portion of the community.

Here, the plaintiff alleges that Plaintiff Sadie Boyd and the other students of Twin Valley are denied educational opportunities as a result of the State's educational tax system. In assessing a motion for summary judgment, the court must review the evidence in the light most favorable to the non-moving party, and accord that party the benefit of all reasonable doubts and inferences. The court concludes that even giving the plaintiff the benefit of those doubts and inferences, the facts do not support that claim. Although Twin Valley offers fewer in-person courses and opportunities than larger schools, there is no specific evidence that this was caused by the taxation system, rather than by "unavoidable local differences." *Brigham v. State*, 166 Vt 246, 267 (1997).

The experts for both sides agree that virtually all Vermont schools spend more per pupil than average nationwide, and that *at the level of spending in Vermont, additional funds have virtually no measurable impact on student achievement or outcomes.* Thus, there is no evidence that even without the tax penalties to which the plaintiffs object, the additional funding that would be available for the schools would improve student outcomes and performance. Nor, in fact, is there any evidence that the removal of the excess spending penalties imposed on the school district would result in any increased opportunities for students. The court found nothing in the undisputed facts or even in the disputed facts that shows that but for the excess spending education tax penalties, Twin Valley would have offered the opportunities that Sadie Boyd sought for more in-person courses, AP courses, and sports.

The goal of the educational tax system of which the plaintiffs complain is to encourage all Vermont schools to limit per pupil funding to about the same level, in order to offer "reasonable educational equality of opportunity" to students throughout the state, as required under *Brigham*, 166 Vt. at 268. However, "[t]he Constitution does not…require exact equality of funding among school districts or prohibit minor disparities attributable to unavoidable local differences." *Id*. at 267.

> *[A]bsolute* equality of funding is neither a necessary nor a practical requirement to satisfy the constitutional command of equal educational opportunity…. [D]ifferences among school districts in terms of size, special educational needs, transportation costs, and other factors will invariably create unavoidable differences in per-pupil expenditures.

Id. at 268 (emphasis in original). Therefore, the Court in *Brigham* directed the Legislature "to make educational opportunity available on substantially equal terms," and the educational tax system to which the plaintiffs object was one of the tools created to achieve that goal. *Id*.

As the plaintiffs argue, the Vermont Supreme Court strongly hinted in *Brigham* that because education is a constitutional right, statutes that derogate students' rights to education should be subject to "searching scrutiny." *Id*. at. 265. However, the plaintiffs have not presented facts showing *any* direct connection between the statute about which they complain and the harm that they are alleging to the

students of Twin Valley. Rather, the undisputed facts suggest that the lack of programs and resources are directly related to the kinds of issues identified in *Brigham* as inevitably resulting in some inequality, i.e. to the school's size, location, transportation costs, and the like. Therefore, their challenge to the constitutionality of the statute withstands scrutiny under either a rational basis analysis or a more searching scrutiny. The State is therefore entitled to judgment as a matter of law on the claims of Plaintiff Sadie Boyd.

Damage to Taxpayers

The plaintiffs also allege that the State's educational taxation system requires taxpayer Plaintiff Madeleine Klein "to make a disproportionate contribution to the funding of education in Vermont" in violation of the proportional contribution clause of the Vermont Constitution. Complaint ¶ 62. The complaint alleges Klein pays more in education property taxes than similarly situated taxpayers in other municipalities. The State contends that a proportional contribution claim requires only that a statute survive a rational basis analysis. Plaintiffs do not contest that this is the standard.

The Vermont Supreme Court applies the rational basis test to challenges of legislative acts that change the tax burden on a class of taxpayers. *USGen New England, Inc. v. Town of Rockingham*, 2003 VT 102, ¶ 15, 176 Vt. 104.

> Under this test, distinctions will be found unconstitutional only if similar persons are treated differently on "wholly arbitrary and capricious grounds." If there is a rational basis for the distinctions, serving a legitimate policy objective, there is no equal protection violation. In applying this standard, we must look at any of the purposes that are conceivably behind the statute.

Alexander v. Town of Barton, 152 Vt. 148, 157 (1989) (quoting *Smith v. Town of St. Johnsbury,* 150 Vt. 351, 357 (1988)). Thus, rational basis analysis does not require that tax burdens be equal for all taxpayers. "This and other courts have consistently upheld the power of the state to divide different kinds of property into classes and assign them different tax burdens so long as the divisions and classifications are neither arbitrary nor capricious." *USGen New England, Inc.*, 2003 VT 102, ¶ 42 (Johnson, J., concurring). Put another way, "[t]he constitutional requirement of proportional contributions for the support of the government was not intended to restrict the State to methods of taxation that operate equally upon all its inhabitants." *Alexander v. Town of Barton*, 152 Vt. 148, 157 (1989) (quoting *Clark v. City of Burlington*, 101 Vt. 391, 405 (1928)).

Rather, the proportional contribution clause has two requirements for the imposition of taxes on its residents: "first, that any legislative classification of taxpayers bear a reasonable relation to the purpose for which it is established; and second, that the classification scheme be fairly and equitably applied among like classes of taxpayers." *In re Prop. of One Church St. City of Burlington*, 152 Vt. 260, 266 (1989). The burden, however, is on the taxpayer to establish that the system lacks a rational basis. "The state is not called upon to explain the reasons for taxing the members of the one class more heavily than it does the members of [another]. The burden is on the appellant who would strike the statute down, and not on the state which invokes the presumption of validity." *In re Prop. of One Church St. City of Burlington*, 152 Vt. at 270 (quoting *Concordia Fire Ins. Co. v. Illinois,* 292 U.S. 535, 558 (1934) (Cardozo, J., dissenting in part). Thus, the State's taxation system is presumed to be constitutional. *Schievella v. Dep't of Taxes*, 171 Vt. 591, 592 (2000).

If a taxpayer can show that the State "arbitrarily treated similarly situated taxpayers differently," a proportional contribution clause violation may be established. *Town of Castleton v. Parento*, 2009 VT 65, ¶ 10, 186 Vt. 616. In their argument, the plaintiffs rely primarily on *Brigham II*. In that case, the Supreme Court held that a complaint such as this one, making allegations that were, as Judge Gerety noted in his decision on the motion for judgment on the pleadings, "strikingly similar" to the allegations here, but at an earlier phase in the litigation, before discovery.

In *Brigham II*, taxpayers challenged Act 60's method of taxation for basically the same reason that Plaintiff Klein does, arguing that it imposed "a disproportionate burden upon the taxpayer in their towns compared to similarly situated taxpayers in other towns." *Brigham v. State*, 2005 VT 105, ¶ 1, 179 Vt. 525. Because *Brigham II* was decided at an earlier phase in the case and did not even consider whether the State's educational taxation system could satisfy the rational basis test, *Brigham II* is not relevant here.

However, the decision in *Schievella*, 171 Vt. 591, in which taxpayers challenged another aspect of the State's educational taxation system, the Homestead Property Tax Income Sensitivity Adjustment, which limited taxes on homestead property to 2% of income for taxpayers with household incomes less than $75,000 per year, is instructive here. The taxpayers in *Schievella* alleged this scheme arbitrarily distinguished between households with incomes above and below the $75,000 threshold and that the legislature failed to consider other factors impacting taxpayers' ability to pay the tax. *Schievella*, 171 Vt. at 593. The court concluded the taxation scheme was not irrational because the legislature had the latitude and discretion to provide tax relief "to those it saw as more in need." *Id*. at 594.

The court concludes again that in light of the goals of this system to which these plaintiffs object, to ensure "reasonable educational equality of opportunity" to students throughout the state, by imposing penalties on school systems that spend excessive sums on students, the State's system as applied to Plaintiff Klein does have a rational basis. The State is therefore entitled to judgment as a matter of law as to Plaintiff Madeleine Klein's proportional contribution claim.

Damage to Town, Standing & Capacity to Sue

The State argues the Plaintiff Town of Whitingham seeks to raise the rights of its students and taxpayers and does not have any claims in its own right.[1] It also contends the Town does not have the legal capacity to sue the State. In response, plaintiffs argue the Town is a proper plaintiff because (1) the State's unconstitutional tax harms the Town by depriving it of revenue; and (2) the State compels the Town to collect an unconstitutional tax from its property owners. The State replies that the Town

[1] The Town sues on its own behalf because municipalities generally do not have standing to sue on behalf of their individual citizens who may be harmed by state action. See, e.g., *City of S. Lake Tahoe v. California Tahoe Reg'l Plan. Agency*, 625 F.2d 231, 233–34 (9th Cir. 1980) (dismissing city's constitutional challenge to state law that allegedly took property without just compensation and violated right to travel guarantee); *City of New York v. Richardson*, 473 F.2d 923, 929 (2d Cir. 1973) (city and county cannot challenge validity of state's public assistance financing law under the Fourteenth Amendment); *Snelling v. Dep't of Transp.*, 366 A.2d 1298, 1301 (Pa. Commw. Ct. 1976) (Allentown did not have standing to raise environmental concerns on behalf of its citizens whose safety and health may be adversely impacted by a shopping mall development authorized by state agency).

did not make the revenue argument in the complaint and that the generalized allegation of harm to the Town is insufficient to establish standing.

It is true that plaintiffs do not allege in the complaint that the education tax deprives the Town of revenue. The complaint alleges the taxation and finance system compels the Town to collect an unconstitutional tax and provide unconstitutionally deficient education to its students.

However, the court concludes that the pleadings and evidence elicited in discovery were sufficient to provide the State with notice of the Town's claim that its own ability to collect revenues was harmed by the State's education tax system. The testimony of Whitingham's 30(b)(6) witness did include statements that the Town's high education taxes prevent it from levying taxes for other things, such as its sewer plants, town garage, roads, and parks. This is sufficient for the court to consider whether the Town has raised a viable claim based on its being deprived of revenue, even though it was not specifically referenced in the complaint.

The capacity to sue concerns a party's personal right to come to court or qualifications to litigate. *Town of Andover v. State*, 170 Vt. 552, 553 (1999). The general rule is that local governments cannot challenge state legislation; this is based on the idea that local governments are political subdivisions of the state and have only the power granted to them by the state. *City of New York v. State*, 86 N.Y.2d 286, 291 (1995). Vermont has recognized this rule, as well as its exception permitting a municipality to assert that compliance with a state law will force it to violate the constitution. *Town of Andover*, 170 Vt. at 553.A municipality may establish constitutional standing to challenge a state law when its operations are affected, or the issue is of great public concern. 17 E. McQuillin, The Law of Municipal Corporations § 49:2 (3d ed.).[2]

Here, the Town of Whitingham claims the state education tax and finance laws discussed above compel it to collect an unconstitutional tax from its residents. The Town argues that it may have some liability for the state's education taxation system because the statute, 32 V.S.A. § 5402(c), permits the Town to retain 0.225 of one percent of the total education tax it collects, when the Town timely remits payment to the State Treasurer.

Plaintiffs argue this Town income could be used by a taxpayer as a basis to sue the Town. The fact that the Town can receive this income incidental to the collection of state taxes from its residents does not, however, mean that the Town exercises any control over the State's educational tax system.

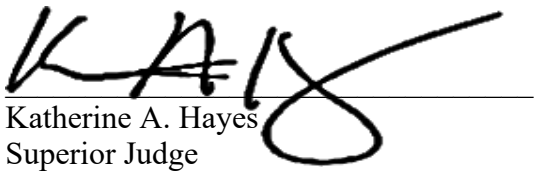
More to the point, however, because the court has found that the other plaintiffs have failed to establish legal grounds for their claims that the statute in question is unconstitutional, the Town's claims that it is being forced to collect an illegal tax is also without merit. Accordingly, taking the evidence in the

[2] "[S]tanding is rooted in constitutional principles requiring actual controversies between adverse litigants and is a jurisdictional prerequisite." *Wool v. Office of Prof'l Regulation*, 2020 VT 44, ¶ 10. Constitutional standing requires (1) injury in fact, (2) causation, and (3) redressibility. *Wool*, 2020 VT 44, ¶ 10. To establish standing, a party "must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law." *Bischoff v. Bletz*, 2008 VT 16, ¶ 15 (quotation omitted). The injury must be an "invasion of a legally protected interest." *Paige v. State*, 2018 VT 136, ¶ 9. Allegations of a generalized harm to the public will not suffice. *Id*. Moreover, the injury alleged "must be reasonably expected and not based on fear or anticipation." *Brod v. Agency of Natural Resources*, 2007 VT 87, ¶ 9, 182 Vt. 234.

light most favorable to the Town, and giving it the benefit of all reasonable doubts and inferences, the court concludes that the State is also entitled to summary judgment as to the claims of the Town.

Order

The State's motion for summary judgment is granted as to all claims of all of the plaintiffs. It is so ordered.



Katherine A. Hayes
Superior Judge
July 13, 2021