

**IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS
COUNTY DEPARTMENT, MISCELLANEOUS REMEDY DIVISION**

PAUL CARR and RON NEWELL,

Plaintiffs,

v.

DR. CHRISTOPHER KOCH, State
Superintendent of Education, the ILLINOIS
STATE BOARD OF EDUCATION, and
PATRICK J. QUINN, Governor of the State of
Illinois,

Defendants.

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) Case No.
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) Honorable
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COMPLAINT

Plaintiffs Paul Carr and Ron Newell, by their counsel Sidley Austin LLP and Alexander Polikoff, state as follows for their complaint against Defendants Dr. Christopher Koch, State Superintendent of Education; the Illinois State Board of Education; and Patrick J. Quinn, Governor of Illinois:

INTRODUCTION

1. This action arises from and challenges the State’s unequal education funding system and its method for distributing funds to local school districts.
2. The State’s education funding system has the effect of requiring taxpayers in school districts with low property values to pay property taxes to fund local public schools at a higher rate than similarly situated taxpayers—that is, taxpayers owning similarly valued real property—in school districts with high property values.

3. Each fiscal year, the State, by actions of the General Assembly and Governor, establishes a “Foundation Level” of financial support for each pupil in each district. The State’s education funding system “is designed to assure that, through a combination of State financial aid and required local resources, the financial support provided each pupil” in each district “equals or exceeds” the State-designated Foundation Level. 105 ILCS 5/18-8.05(A)(1).¹

4. In order to reach what the State has designated as the Foundation Level of per-pupil education funding, property-poor districts must impose on their taxpayers—at a minimum—a statutorily specified tax rate. Property-rich districts need not impose the specified tax rate, but can secure sufficient revenue to achieve the State-designated Foundation Level of per-pupil education funding by imposing a substantially lower tax rate.²

5. Not only are taxpayers in property-rich districts able to pay lower tax rates to achieve the Foundation Level of per-pupil education funding than taxpayers in property-poor districts, but many schools in property-rich districts also receive from the State an additional grant of per-pupil funding over and above the Foundation Level that is not provided to schools in property-poor districts. The state thus subsidizes property-rich districts’ ability to tax their citizens at a lower rate.

¹ As defined by the Governor’s Education Funding Advisory Board, the Foundation Level represents the minimum level of per pupil financial support that should be available to provide for the “basic education” of each pupil. Education Funding Advisory Board, *Illinois Education Funding Recommendations (2005)*, http://www.isbe.state.il.us/efab/pdf/final_report_4-05.pdf (last visited Mar. 12, 2010).

² In this Complaint, property-rich districts are defined as those districts with an equalized assessed property value per pupil (EAV/PP) that places them in the top third of all school districts within their respective school district category (i.e., K-8, High School and Unified), and property-poor districts are defined as those districts possessing an EAV/PP that places them in the bottom third of all school districts within their respective school district category. This definition is used to demonstrate the unequal treatment of similarly situated taxpayers in property-poor and property-rich school districts, and it does not signify that unequal treatment does not exist among similarly situated taxpayers in other school districts.

6. In short, the State education funding system imposes substantially greater burdens on taxpayers who reside in property-poor districts than it does on similarly situated taxpayers who reside in property-rich districts.

7. This unequal treatment is not rationally related to any legitimate legislative purpose. In *Committee For Educational Rights v. Edgar*, 174 Ill.2d 1, 672 N.E.2d 1178 (Ill. 1996), the Illinois Supreme Court found that disparities in education funding between school districts were rationally related to the legitimate legislative interest of maintaining local control of education. Since that decision was rendered, however, the Illinois General Assembly has greatly increased State control of Illinois public education by prescribing Statewide learning standards, by requiring uniform Statewide testing aligned to such standards, and by imposing penalties on local school districts for failure to meet such Statewide standards. As a result of such State-prescribed mandates, the State now exercises effective control over the core education functions of Illinois public schools. (See paragraphs 44-50.)

8. Because core education functions in Illinois public schools are no longer locally controlled, any rational basis for the unequal tax burdens created by the education funding system that may have existed at the time of the *Edgar* decision no longer exists. Those unequal tax burdens violate the Equal Protection Clause of the Constitution of the State of Illinois.

PARTIES

9. Plaintiff Paul Carr is a high school counselor who resides at 502 Winston Lane, Chicago Heights, Illinois, 60411. Mr. Carr owns property in Homewood-Flossmoor Consolidated High School District (CHSD) 233 and paid annual school property taxes on that property in 2006 at a rate of 4.10%.

10. Plaintiff Ron Newell is a retired school teacher who resides at 513 29th Street, Cairo, Illinois, 62914. Mr. Newell owns property in Cairo Unified School District 1, and paid annual school property taxes on that property in 2006 at a rate of 6.95%.

11. Defendant Dr. Christopher Koch is the Superintendent of Education for the State of Illinois. As Superintendent, Dr. Koch is the chief education officer for the Illinois State Board of Education. He is sued in his official capacity.

12. Defendant the Illinois State Board of Education (“ISBE”) is the State agency that sets educational policies, standards, and guidelines for Illinois public schools, and oversees and disburses State monies used to fund public education in Illinois.

13. Defendant Patrick J. Quinn is the Governor of the State of Illinois. He is charged with executing the laws of the State, and is responsible for developing and allocating the annual budget for the State, including the monies necessary to fund public education in Illinois. The Governor, with the consent of the State Senate, also appoints the members of the Illinois State Board of Education. He is sued in his official capacity.

JURISDICTION AND VENUE

14. This action arises under the Equal Protection Clause of the Constitution of the State of Illinois.

15. Venue is proper in this Court under 735 ILCS 5/2-103(a) of the Illinois Code of Civil Procedure because many of the actions taken by Defendants from which this action arise occurred in Sangamon County.

FACTS

Education Funding in Illinois.

16. The Equal Protection Clause of the Illinois Constitution provides that “No person ... shall be denied the equal protection of the laws.” Ill. Const., art. I, § 2. The Clause requires State government to treat similarly situated individuals in a similar manner.

17. Pursuant to its constitutional duty to establish “an efficient system of high quality public educational institutions and services,” which shall be free through the secondary level, the State provides funding for the system of public education in Illinois. Ill. Const. art. X, § 1.

18. Under the education funding system employed in Illinois, local property taxpayers pay the majority of the cost of the State’s constitutional education obligation. Since FY 1999, the State has implemented a funding system that requires almost 60 percent of public education dollars to be raised through local sources of funding. For the 2007-08 school year, local tax revenue accounted for 65 percent of Illinois education funding. Illinois Local Education Agency Retrieval Network, <http://webprod1.isbe.net/ilearn/ASP/index.asp> (last visited Mar. 12, 2010).

19. Each year, the State adopts a new appropriation for education funding based upon a formula designed to assist districts to achieve or exceed the state-designated Foundation Level of funding for each pupil in the school’s Average Daily Attendance.

20. In 2009, the Illinois General Assembly enacted Public Act 096-0045, § 18-8.05 (2009), which re-enacts the education funding system and establishes the new Foundation Level. The Foundation Level for the 2009-2010 school year is \$6,119 per pupil.

21. The State education code imposes sanctions on any school or school district whose students fail to achieve performance targets set by the State. Penalties for failure to achieve such performance targets include limiting a school’s or district’s control over its budget and spending, requiring the use of State-designed tutoring programs, and, in cases of multi-year

failure to meet such targets, actually assuming control over and imposing forced restructuring of the school or district. *See* 105 ILCS 5/2-3.25d-f.

22. The State provides General State Aid to each school district. The amount of General State Aid each school district receives is based on the property tax base from which that school district draws tax revenues. If the district's property values are so low that the district can not substantially reach the Foundation Level for each pupil in its schools by levying local property taxes at a statutorily specified rate, then the State will provide to the district an amount of General State Aid designed to enable the district to reach the Foundation Level.

23. Specifically, in determining a school district's General State Aid, the State Board of Education calculates a school district's "Available Local Resources" per pupil. The Board first determines a school district's local property tax revenue by multiplying the equalized assessed value of its local property by 2.3% for school districts consisting solely of elementary and middle schools (K-8 districts); 1.05% for school districts consisting solely of High Schools (High School districts); and 3.0% for school districts consisting of all schools from kindergarten through 12 (Unified districts). Any revenue from Corporate Personal Property Replacement Taxes distributed to each school district is added to the local property tax revenue as calculated above, the sum of which is then divided by the district's Average Daily Attendance to yield the "Available Local Resources" for each school district. 105 ILCS 5/18-8.05(D).

24. By statute, if a district's Available Local Resources per pupil, calculated by this method, is less than 93% of the per-pupil Foundation Level, the district receives General State Aid for each pupil in the district's Average Daily Attendance in an amount equal to the difference between the per-pupil Available Local Resources and the per-pupil Foundation Level. 105 ILCS 5/18-8.05(E)(2). Such districts are herein referred to as "Foundation Level districts."

25. If a district's Available Local Resources per pupil is between 93% and 175% of the Foundation Level, the district receives General State Aid determined on a sliding scale. The scale provides for a linear decrease from General State Aid equal to 7% of the Foundation Level per pupil for districts with Available Local Resources at the low end of the range, and 5% of the Foundation Level per pupil for districts with Available Local Resources at the high end of the range. 105 ILCS 5/18-8.05(E)(3). Such districts are herein referred to as "Alternative Formula districts."

26. If a district's Available Local Resources per pupil exceed 175% of the Foundation Level, the district receives a flat payment of \$218 per pupil in General State Aid. 105 ILCS 5/18-8.05(E)(4). Such districts are herein referred to as "Flat Grant districts."

27. In sum, General State Aid is provided to all districts in some amount, whether or not the district is able to reach or exceed Foundation Level funding by taxing at the statutorily specified percentage.

The Education Funding System Treats Similarly Situated Taxpayers Unequally.

28. In order for a Foundation Level district to achieve Foundation Level funding for its students, it is required to tax its citizens at a statutorily specified rate (2.30% for K-8 districts, 1.05% for High School districts, and 3.00% for Unified districts). If it imposes taxes at any lower rate, then its local property tax revenues will be insufficient, when combined with General State Aid, to reach the Foundation Level. Thus, to meet the Foundation Level of per-pupil funding for its students, such a district must impose the statutorily specified tax rate.

29. By contrast, a Flat Grant district need not tax itself at the statutorily specified rate to achieve Foundation Level funding for its students. By definition, Flat Grant districts obtain more than 175% of the Foundation Level by imposing taxes at the statutorily specified rates.

30. In other words, to achieve Foundation Level funding, Foundation Level districts are obligated by the operation of the State education funding system to impose local taxes at rates significantly higher than Flat Grant districts. Even so, the State provides an additional \$218 per pupil to Flat Grant districts whose local education funding sources alone exceed the Foundation Level.

31. The result of the State's education funding system is to require payment of substantially higher tax rates by residents of property-poor Foundation Level districts than by residents of property-rich Flat Grant districts in order to reach the Foundation Level.

32. The dissimilarity in the treatment of similarly situated taxpayers is illustrated by the latest available education funding data.³ In property-poor K-8 school districts, taxpayers paid a median property tax rate that was 23% higher than that paid by similarly situated taxpayers in property-rich K-8 districts. Yet, students in these property-poor districts received a median operating expenditure per pupil (OE/PP) that was 28% lower than that received by students in property-rich school districts.⁴ In other words, even though taxpayers in property-

³ The latest education funding data, available at <http://webprod1.isbe.net/ilearn/ASP/index.asp> (last visited Mar. 12, 2010), is published by the Illinois Local Education Agency Retrieval Network, an agency affiliated with the Illinois State Board of Education. The data, a portion of which is summarized in paragraphs 32-34, shows (among other things) the 2007-2008 operating expenditures per pupil as well as the 2006 local school district tax rate for each Illinois public school district.

⁴ Operating expenditures per pupil represent the gross operating cost of a school district (excluding summer school, adult education, bond principal retired, and capital expenditures) divided by the nine-month Average Daily Attendance for the regular school term. Illinois Local Education Agency Retrieval Network, <http://webprod1.isbe.net/ilearn/ASP/definitions.asp> (last visited Mar. 12, 2010).

poor K-8 districts paid substantially higher tax rates than similarly situated taxpayers in property-rich K-8 districts, their students received \$3,167 less in per pupil operating support than did the students in property-rich K-8 districts.

33. Such dissimilarity is present in Illinois High School districts as well. Taxpayers in property-poor High School districts paid a median tax rate that was 36% higher than that paid by similarly situated taxpayers in property-rich High School districts. Even so, high school students in property-poor districts received a median operating expenditure per pupil that was 36% lower than that received by students in property-rich High School districts.

34. Similarly, while property-poor Unified district taxpayers paid a median property tax rate that was 3% higher than that paid by taxpayers in property-rich Unified districts, their students were supported by a median operating expenditure per pupil that was 14% lower than that received by students in property-rich Unified districts.

35. Thus, the State's education funding system in effect requires taxpayers in property-poor (Foundation Level) districts to pay for the funding of their local public schools at a higher rate of taxation than similarly situated taxpayers in property-rich districts. Despite imposing higher tax rates, property-poor districts have less to spend per pupil to educate their students than do property-rich districts. Even so, the State continues to contribute an *additional* \$218 per pupil to property-rich Flat Grant districts, which already have lower tax rates and higher per-pupil funding than property-poor Foundation Level districts.

36. For example, Plaintiff Paul Carr is a property owner in Homewood-Flossmoor CHSD 233, a Foundation Level High School district located in Cook County with a 2006 equalized assessed property value per pupil (EAV/PP) of just under \$286,000. As a resident of

Homewood-Flossmoor CHSD 233, Mr. Carr's property was taxed at a rate of 4.10% in 2006 in order to generate instructional expenditures per pupil of \$7,292 in the '07-08 school year.⁵

37. In contrast to Plaintiff Paul Carr, a similarly situated property owner (that is, one owning property of the same assessed value) in New Trier Twp. HSD 203, a Flat Grant High School district located in Cook County with a 2006 equalized assessed property value per pupil of nearly \$1.2 million, was taxed at a rate of almost two and one-half times less (1.66%) in 2006. Even so, in '07-08, students in New Trier HSD 203 received \$3,349 more in instructional expenditures per pupil (\$10,641) than did students in Homewood-Flossmoor CHSD 233. In spite of these dissimilarities, under the current funding system in Illinois, New Trier HSD 203 continues to receive a \$218 per student grant from the State.

38. Plaintiff Ron Newell is a property owner in Cairo USD 1, a Foundation Level Unified district located in Alexander County with a 2006 EAV/PP of \$27,265. As a resident of Cairo USD 1, Mr. Newell's property was taxed at a rate of 6.95% in 2006 in order to generate instructional expenditures per student of \$6,192 in the '07-08 school year.

39. In contrast to Plaintiff Ron Newell, a similarly situated property owner (that is, one owning property of the same assessed value) in Scales Mound CUSD 211, a Flat Grant Unified district located in Jo Daviess County with a 2006 equalized assessed property value per pupil of over half-a-million dollars, was taxed at a rate (3.33%) that was less than half that paid by Plaintiff Newell in 2006. Even so, in '07-08, students in Scales Mound CUSD 211 received over \$2,400 more in instructional expenditures per pupil than did students in Cairo USD 1.

⁵ Instructional expenditures per pupil represent the direct cost a district devotes to teaching pupils (e.g., academic programs, teacher salaries, etc.) divided by the nine month Average Daily Attendance for the regular school term. Center for Tax and Budget Accountability, *Money Matters: How the Illinois School Funding System Creates Significant Educational Inequities that Impact Most Students in the State* (2008). The latest instructional expenditures per pupil data for each school district is published by the ISBE in its school district "report cards," which may be found at <http://webprod.isbe.net/ereportcard/publicsite/getsearchcriteria.aspx> (last visited Mar. 12, 2010).

No Rational Purpose is Served by the Education Funding System’s Unequal Treatment of Similarly Situated Taxpayers.

40. The State’s education funding system—by requiring taxpayers in property-poor Foundation Level districts to pay, at a minimum, statutorily specified tax rates in order to achieve the State-designated Foundation Level of per-pupil funding, while simultaneously paying \$218 to each property-rich Flat Grant district even though taxpayers in those districts need not pay the statutorily specified rate in order to achieve the Foundation Level—serves no rational purpose.

41. In *Committee For Educational Rights v. Edgar*, 174 Ill.2d 1, 672 N.E.2d 1178 (Ill. 1996), the Illinois Supreme Court held that disparity in funding between school districts was rationally related to the “legitimate state goal of promoting local control” of education. However since the decision in *Edgar*, by prescribing Statewide learning standards and Statewide testing aligned to such standards (described below), and by imposing severe penalties for a school district’s failure to achieve such standards, the State has assumed effective control over the core education functions of schools and has eliminated the ability of Foundation Level districts to choose to tax at a rate lower than the rate specified by statute and still achieve Foundation Level funding for their students. In order to achieve what the State has designated as the Foundation Level, Foundation Level districts must adhere to the statutorily specified rate. Alternative and Flat Grant districts, by contrast, can—with the help of State funding—tax at a lower rate while still achieving the Foundation Level.

42. In 1997, the Illinois State Board of Education (ISBE) promulgated the Illinois Learning Standards (ILS). The ILS “define what all students in all Illinois public schools should know and be able to do in the seven core areas as a result of their elementary and secondary

schooling.” Illinois State Board of Education, <http://www.isbe.state.il.us/ils/> (last visited Mar. 12, 2010).

43. The ILS specify what students are expected to learn across seven learning areas, including precise descriptions of the content students in five grade-level groupings must learn in English Language Arts, Mathematics, Science, Social Science, Fine Arts, Foreign Languages, and Physical Development and Health. *Id.*

44. For example, to meet State history standards by late elementary school, a student must be able to “[i]dentify major causes of the American Revolution and describe the consequences of the Revolution through the early national period, including the roles of George Washington, Thomas Jefferson and Benjamin Franklin.” To meet State science standards, a junior high student must be able to “[i]dentify and classify biotic and abiotic factors in an environment that affect population density, habitat and placement of organisms in an energy pyramid.” To meet State social sciences standards, a late high school student must be able to “[a]nalyze ways in which federalism protects individual rights and promotes the common good and how at times has made it possible for states to protect and deny rights for certain groups.” *Id.*

45. The State measures school performance in Illinois based on the results of mandatory standardized tests, specifically the Illinois Standard Achievement Test (“ISAT”) for elementary schools, and the Prairie State Achievement Exam (“PSAE”) for high schools. The tests were created to align directly with the Learning Standards and to hold students and schools accountable to them. Illinois State Board of Education, *Questions and Answers About the Standards*, http://www.isbe.state.il.us/ils/pdf/standards_qa.pdf (last visited Mar. 12, 2010). As

discussed below, schools and school districts are subject to severe penalties for poor student performance on these tests.

46. The ISAT and the PSAE were created and implemented around the turn of the millennium. Before that time, the State employed the Illinois Goal Assessment Program test or IGAP. The IGAP was not coupled with a set of detailed standards and, moreover, its scores were simply used to estimate whether students met State goals, which, unlike the ILS, were broadly defined. As opposed to the IGAP, the two modern State-mandated tests, the ISAT and the PSAE, are aligned to a set of highly-detailed standards—an arrangement that has imposed profound changes on the learning curricula set by Illinois schools and school districts.

47. Under a new law signed by Governor Quinn in early 2010, the Performance Evaluation Reform Act of 2010, the ILS and the statewide mandatory tests will assume even more control over the core educational functions of local school districts in the near future by requiring every Illinois school district to incorporate student performance on mandatory statewide testing as a significant factor in teacher and principal evaluations.

48. In addition, the federal government has further diminished the capacity for local control of education by enacting the No Child Left Behind Act (“NCLB”). Effective January 8, 2002, NCLB requires states to establish and enforce statewide learning standards and to achieve Adequate Yearly Progress (“AYP”) towards these standards, as measured by federally-approved standardized tests. *See* 20 U.S.C. § 6311. Illinois’ system of standards and standardized tests, and its calculation of AYP have been approved by the federal government as complying with NCLB.

49. Under the NCLB-approved system of standards and tests in Illinois, schools face serious penalties for failure to meet State-prescribed student performance targets on the ISAT

and PSAE. If a school's students do not meet such State performance targets, the State may impose a series of penalties, including limiting a school's or district's control over its budget and spending, requiring the use of State-designed tutoring programs, and, in cases of multi-year failure to meet targets, assuming control over and imposing forced restructuring upon the school or district. 105 ILCS 5/2-3.25d-f.

50. Under this system of highly detailed State learning standards, mandatory tests aligned to learning standards, specification of what students must learn in each subject area across five grade-level groupings, plus severe penalties imposed upon schools and districts for failure to comply, individual schools and school districts in Illinois no longer exercise "local control" over the core education functions of schools. The State has abandoned local control of schools in favor of centralized decision-making by the ISBE. Moreover, as a result of this centralized regime, property-poor districts do not have a choice when it comes to tax rates—they are forced to maintain high rates to meet State-prescribed mandates and avoid State-prescribed penalties. As a consequence, the State's continuing reliance on an education funding system that imposes substantially greater burdens on taxpayers who reside in property-poor districts than it does on similarly situated taxpayers who reside in property-rich districts violates the Equal Protection Clause of the Constitution of the State of Illinois.

CAUSE OF ACTION

51. Plaintiffs incorporate the allegations set forth in paragraphs 1 through 50 as if fully set forth herein.

52. The Equal Protection Clause of the Illinois Constitution provides that "No person ... shall be denied the equal protection of the laws." Ill. Const., art. I, § 2.

53. This Clause requires that the State treat similarly situated individuals in a similar manner, and that any discrimination among similarly situated individuals be rationally related to a legitimate state interest.

54. Because the education funding system in Illinois is not rationally related to a legitimate state interest in treating taxpayers in property-poor school districts differently than similarly situated taxpayers in property-rich districts, it violates the Equal Protection Clause of the Illinois Constitution.

PRAYER FOR RELIEF

55. WHEREFORE, Plaintiffs respectfully request that the Court enter an order:
- a. Declaring that the Illinois education funding system, Pub. Act. 096-0045, § 18-8.05 (2009); 105 ILCS 5/18-8.05, is in violation of the Equal Protection Clause of the Illinois Constitution, Article I, Section 2;
 - b. Awarding Plaintiffs their attorneys' fees and costs of this suit; and
 - c. Granting such other relief as the Court deems just and equitable.

Respectfully submitted,

March 24, 2010

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