



State of Connecticut

SENATOR LEONARD A. FASANO

SENATE MINORITY LEADER

34TH DISTRICT

SUITE 3400
LEGISLATIVE OFFICE BUILDING
HARTFORD, CONNECTICUT 06106-1591
www.SenatorFasano.com

HARTFORD: (860) 240-8800
TOLL FREE: (800) 842-1421
FAX: (860) 240-8306
Len.Fasano@cga.ct.gov

September 13, 2016

The Honorable George Jepsen
Attorney General, State of CT
55 Elm Street
Hartford, CT 06106

Dear Attorney General *George* Jepsen:

I am writing to express my concerns regarding Superior Court Judge Thomas Moukawsher's September 7, 2016 decision in Connecticut Coalition for Justice in Education Funding, Inc. v. Jodi Rell.

Judge Moukawsher's decision can only be characterized as overreaching by an activist judge. His decision reads more like a legislative agenda or white paper on education policy than a judicial finding.

Interestingly, the court never ruled that the statutory Education Cost Sharing (ECS) formula itself is unconstitutional or that the state's overall education funding levels are constitutionally insufficient. Rather, the court found that the Democrat controlled general assembly, over the last few years, has ignored the state ECS formula and manipulated education funding for political purposes. Whether to buy votes for unpopular state budgets or to appease certain powerful committee chairs, they have "mov[ed] money from poor towns to rich ones." The result is an irrational, arbitrary, and fundamentally unfair system that "makes a mockery of the state's constitutional duty to provide adequate educational opportunities to all students."

However, the court used these discreet, recent, unjustifiable and arbitrary actions by the majority party to then reach into areas well outside its jurisdiction, including but not limited to student testing, teacher evaluations, teacher contracts and teacher compensation. While the challenges and flaws in the current system with regard to each of these issues are serious and require the full attention of policy makers and stakeholders, for a judge to opine on the possible solutions and order the legislature to undertake sweeping education reform that comports with his own policy analysis is breathtaking in its hubris. In doing so, he completely ignores the separation of powers and intrudes upon the policy making authority of the legislature.

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The decision is flawed in many ways, and I would request your office take any and all steps necessary to make sure that this ruling doesn't become final. These steps may include a number of procedural filings and eventually an appeal, if necessary, to avoid a final judgment.

The issues that an appeal should raise include the following.

First and foremost, I believe the court lacks jurisdiction over the legislature. Neither the State of Connecticut nor the general assembly was a party to the action. Even if they were parties, separation of powers prohibits this court from forcing the legislature to act.

Second, the judge's decision is rooted not in the ECS formula being unconstitutional, but in the actions by the Democrats in power to evade the statutory directive for their own political purposes. Unfortunately, there is nothing in the judge's order, nor can there be, to stop a future legislature from evading the statute no matter what formula is adopted. I agree with the judge that what currently happens under Democrat leadership in the legislature is not right. However, I don't believe his ruling clearly addresses whether or not the core education cost sharing formula, the one the Democrats have set aside and ignored, could be a remedy to the issues presented in this ruling. Just because democrats are not following the formula, does not mean the formula is not rationally related to the education. Perhaps part of the solution could be to simply enforce the policies the Democrats have ignored for many years.

I also agree with Judge Moukawsher that the problems we see in our schools are not necessarily tied to a lack of funding. Rather, funding is not getting where it needs to go in our schools to make the most impact. We certainly do need to enact state policies that will drive money down into the classrooms to best support our students and teachers. I also firmly believe in expanding curriculums to work in partnership with local businesses seeking graduates with specific skill sets. We need to focus on core education as well as specific trades and skills so that young graduates are as ready for the workforce as they are for a college classroom. Not every student will take the SATs or go to college. Connecticut needs to do more to ensure that these young people have the skills they need to take advantage of job opportunities right out of high school.

All of that being said, the directives included in this ruling are a prime example of judicial activism, which I have always felt is improper. No matter how much I agree with the intellectual argument of a ruling, the courts are not responsible for policy – that is the role of the legislature. To go so far as to order additional testing and question teacher evaluations is completely beyond the authority of the Judicial Branch.

It seems to me that Judge Moukawsher is using the mistakes of the Democrat majority, and the mess of a system caused by the democratic majority, as a justification for judicial overreaching. These types of policy changes are ideas that must originate in the legislature and through the legislative process which includes the voices of all stakeholders - from teachers, to parents, to

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unions, to administrators. Instead, this ruling attempts to identify the needs of the state through a single individual giving very specific instruction to the legislature.

I believe that the complete inability of the Democrats to follow a system that is based on rational reasoning is cause for grave concern and much needed change. However, Judge Moukawsher's ruling attempts to use that obvious mismanagement to make specific demands that go beyond his power. To order the general assembly to undertake a complete overhaul of the state's education system and policy within 180 days is not the role of the Judicial Branch. Our children deserve to get solutions that are well thought out and fully vetted from start to finish. This ruling is too restrictive and goes too far in attempting to dictate solutions that I believe must instead originate through a public discourse and open legislative process.

I can assure you that Senate Republicans recognize the problem with how Democrats have funded education and rewarded certain towns over others to the detriment of cities and poor areas. We also have many bright ideas to improve education for children throughout our state and restore predictability and reliability to the state budget, which will benefit our children's futures immensely. I hope that our state will not attempt to rush into fulfilling unreasonable and unjustifiable judicial demands without a robust legislative process to ensure the best solutions for our state are thoroughly vetted.

I hope that all these matters will be reviewed by your office as you consider appealing this ruling or taking the necessary procedural steps to ensure that this ruling doesn't become final.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Leonard Fasano', with a long horizontal flourish extending to the right.

Leonard Fasano
Senate Minority Leader