



**TO:** Interested legislators  
**FROM:** Robert Gensburg, attorney, and lead lawyer in *Brigham v. State*  
**DATE:** April 12, 2010  
**SUBJECT:** Equity implications of certain “Challenges for Change” proposals

I wish to outline the testimony I gave recently to the House Education Committee concerning the way the committee was proposing to address Challenges for Change budget reductions. I told the committee that its proposal would violate the Vermont Supreme Court's 1997 decision in *Brigham v. State of Vermont*. The proposal was ultimately dropped in the House Education Committee's report submitted to and accepted by the House Appropriations Committee. However, I feel it is important to provide a written description of the logic behind my review so that constitutional requirements are kept in mind if other proposals are developed as Challenges for Change legislation moves forward.

*Brigham* recognized the core constitutional principle that "the state must ensure *substantial* equality of educational opportunity throughout Vermont," and that, in order to satisfy this requirement, all school children in all school districts must have "a substantially equal opportunity to have access to similar educational revenues." The *Brigham* plaintiffs focused on the Foundation Plan specifically, but any funding system that makes it financially more difficult for one school district to raise revenues than other school districts fails the constitutional test.

The Education Committee was considering a proposal that would direct all school districts to cut their budgets by 2% from FY 2010 levels. If a district failed to make the reduction, a painful financial penalty would be imposed on the district, although the Committee had not decided exactly what that penalty would be.

Using data from the Education Department's 2008 SASRS reports, I selected two towns with similar student populations (130.07 and 124.88 equalized pupils). Town 1's current expenditures were \$8,056 per equalized pupil, and Town 2's were \$16,327. The Committee's proposal would have had this effect:

In Town 1, the budget for current expenditures was \$1,047,844 (130.07 x \$8,056).<sup>1</sup> A 2% cut reduces the budget to \$1,026,887, and the per pupil expenditures to \$7,895. If Town 1 adopted a budget with per pupil expenditures greater than \$7,895, it would pay a penalty on the

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<sup>1</sup>I acknowledge that current expenditures are not the only component in a school budget. They do, however, make up the bulk of a district's expenditures, and are a useful tool for estimating the effects of the Committee's proposal. It will take a great deal of time to develop a more precise analysis of the effect of that proposal, and I did not have the time to do that.

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In Town 2, the budget for current expenditures was \$2,038,916. A 2% cut reduces its budget to \$1,998,137, or exactly \$16,000 per equalized pupil.

This means that Town 1 would pay a financial penalty if its per pupil expenditures exceeded \$7,895, and Town 2 could spend up to \$16,000 per pupil without any penalty. This is a big disparity based on real data. Town 1's schoolchildren would not have had "a substantially equal opportunity to have access to similar educational revenues" compared to those in Town 2 - it would cost quite a bit more per pupil in Town 1 to spend (for example) \$12,000 per pupil than it would in Town 2. This is exactly the same analysis we made and the Supreme Court accepted in the *Brigham* case. The Vermont Constitution prohibits this kind of funding disparity between districts.