

### Educational "Adequacy" and Michigan's Constitution

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#### Introduction

Political battle lines are forming, once again, over the proper level of funding for Michigan's public schools. This time, however, the battle could be decided not by the Governor or the Legislature, or by taxpayer and education coalitions. Instead, the future of education funding in Michigan could be decided by the courts in what is known as an adequacy lawsuit. Michigan's Constitution may invite such legal action with its generous language that assigns the State responsibility for public education in Michigan.

#### Constitutional Requirements for Michigan's Education System – Article VIII

Michigan's Constitution places a high priority on the state's duty to provide education to Michigan's children. Consistent with the purpose of a constitution, all of the articles that comprise the State Constitution are devoted to setting up Michigan's branches of government and system of law – except for one article. That exception, Article VIII, is devoted to education. Article VIII provides a broad outline of the State's commitment to and responsibility for Michigan's public school system.<sup>i</sup>

The first section of Article VIII explains the state's duty to promote education and the vital function education performs in our society. It states: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."<sup>ii</sup>

Michigan courts have echoed the importance that the Michigan's Constitution assigns to education. Through the years, the state's role has been described in various court cases as one that "encourages the cause of education"<sup>iii</sup> and that "provides, fosters and protects educational facilities for all."<sup>iv</sup> Moreover, a federal court has ruled that the Michigan Constitution requires the State to "actively foster a sound educational system."<sup>v</sup>

Section 2 of Article VIII goes on to obligate the Legislature to "maintain and support a system of free public elementary and secondary schools as defined by law."<sup>vi</sup> Thus, it is the task of the Michigan Legislature to sustain the public school system. The Constitution makes it clear that the Legislature must provide elementary and secondary schools at no cost to the state's children, but the specific character of the education that must be provided is left undefined.

#### What about Quality?

The theory of educational adequacy that might serve as the basis for a school finance lawsuit relies on the argument that state governments must provide sufficient funding for a public education of acceptable quality for all students. When it comes to the quality of education, however, the specificity and meaning assigned to the term "*quality*" varies by state, as does the language used to describe the educational systems that states must establish and maintain.

Typical state constitutional language concerning education defines the quality of the elementary and secondary schools that the state must make available to its students as "thorough," "efficient," "uniform," "free," "general" and/or "complete."<sup>vii</sup> This general terminology is consistent with the purpose of constitutions – to provide the overarching framework for law and government in the state.

Despite this lack of specificity on the issue of quality, many courts around the country have ruled that their state's government is required to provide an "adequate" education to the state's children. In fact, plaintiffs have won adequacy lawsuits in twenty-two of the twenty-seven states where such suits have been contested.<sup>viii</sup>

Similarly, Michigan's Constitution contains no specific mention of the level of quality of its educational system. Instead, the State is directed to maintain and support Michigan's *free* public elementary and secondary school system. Because Michigan's Constitution places such a high priority on the State's responsibility to encourage its educational system, however – affirming that education is necessary for good government and the happiness of mankind – it is possible that an adequacy suit in Michigan could succeed. Without explicit guidance on the level of educational quality Michigan's schools must provide all of their students, however, it may be difficult for a Michigan court to find a constitutional violation of the education article.

### What Does the Future Hold?

For many reasons, the school finance system in Michigan is nearing a flashpoint. Burgeoning health benefit and retirement costs, physical facilities deficits, persistent achievement gaps and mounting public pressure for change cannot go unaddressed for much longer. The success of adequacy lawsuits in forcing other states to address school finance issues makes the likelihood that an adequacy lawsuit will be filed in Michigan very high.

Are Michigan courts going to order the wholesale restructuring of the public education finance system? Probably not. The State Constitution guarantees "free" public education and assigns great importance to the public school system, but the absence of clear constitutional language addressing the quality of education weakens the case for adequacy considerably. Michigan courts could establish an entitlement to an adequate education, as courts in other states have done on the basis of similarly vague constitutional language, but they are more likely to leave decisions about the quality of education—and the funding required to provide a quality education—to the Executive and Legislative branches, where such decisions have traditionally been made.

It is only a matter of time before the adequacy movement reaches Michigan, but this does not mean a suit is either inevitable or the best course of action for reformers and the students they represent. The credible threat of such a suit should help to focus the attention of the Legislature and the Governor on the challenge and benefits of funding an adequate education for all Michigan students. In the end, though, it will be up to adequacy proponents to make and win their case in the court of public opinion, rather than relying on Michigan's Constitution to do it for them.

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<sup>i</sup> MICH. CONST. art. VIII.

<sup>ii</sup> MICH. CONST. art. VIII, §1.

<sup>iii</sup> Michigan Female Seminary v. Sec'y of State, 73 N.W. 131, 132 (Mich. 1897).

<sup>iv</sup> Dennis v. Wrigley, 141 N.W. 605, 625 (Mich. 1913).

<sup>v</sup> Berry v. Sch. Dist. of Benton Harbor, 467 F. Supp. 695, 705 (W.D. Mich. 1978).

<sup>vi</sup> MICH. CONST. art. VIII, § 2.

<sup>vii</sup> This language is taken from state constitutions in Arizona, Idaho, Kentucky, Maryland, New Jersey, Ohio, New York, North Carolina, South Carolina, Texas, Washington, West Virginia, and Wyoming.

<sup>viii</sup> States wherein courts have had a favorable adequacy decision include: Alabama, Alaska, Arkansas, Arizona, Idaho, Kansas, Kentucky, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, New Mexico, Ohio, South Carolina, Texas, Washington, West Virginia, and Wyoming. States in which adequacy claims have been rejected by the courts include: Florida, Illinois, Louisiana, Pennsylvania, and Rhode Island.