

Explanation Supporting Motion Against the So-Called “First-and-Last Dollar” Rule

Some observers of public education funding issues assert that the New Hampshire Supreme Court has mandated a so-called “first-and-last-dollar” rule. Under this alleged rule, if the state government develops total spending goals for local school districts, and calls these spending goals “adequacy,” then the entire cost of that “adequacy” must be paid for with state budget dollars. These observers assert that the Court has prohibited the use of even one local tax dollar to pay for this target “adequacy” cost. Hence, the so-called “first-and-last-dollar” rule.

Advocates for this mandate try to describe the rule in positive terms, saying things like “The State should pay the full cost of an adequate education for every child in the State, regardless of where they live.” But this simplistic summary masks the highly restrictive nature of the alleged rule.

What might this rule mean in New Hampshire? In school year 2019-2020, New Hampshire spent just over \$3.2 billion on K-12 public education, including all sources of funds – state budget, local taxes and federal aid. With 163,500 students, this amounts to approximately \$19,685 per pupil. This total spending level has ranked New Hampshire tenth highest in the nation, according to the U.S. Census Bureau’s 2018 Public Elementary-Secondary Education Finance Data. In comparison, our neighbor Massachusetts spends just over \$20,000 per pupil.

Today, New Hampshire finances this significant total spending through a mix of state, local and federal sources. Indeed, all states use the same sources, though in differing degrees. As shown in the accompanying table, New Hampshire stands out as having the lowest state, and highest local, shares. But all northeast states (other than Vermont) also rely substantially on local sources.

If one assumes that the total spending on public education in each state currently is defined as “adequate,” then under a stringent “first-and-last-dollar” rule, no state – not even Vermont – would satisfy the rule. Why? Because no state is using only state budget dollars to finance that total current spending.

Such a stringent interpretation would require the legislature to entirely upend New Hampshire’s funding system so radically that New Hampshire would move from the state with the greatest local share to the one with the lowest local share. No other state supreme court – except perhaps California, as noted below – has ever ordered such a restrictive mandate for state budget financing in any school finance case.

Subjecting New Hampshire to such a state budget finance mandate would be bad public school policy. States – especially New England states – have traditionally delegated taxing power to local governments for good reason. It facilitates the benefits of “local control.” But just as the words “The State must pay for every dollar of adequacy” offer an overly simplistic siren call,

Sources of Public School Funds (% Shares)				
Territory	State	Local	Federal	Total
District of Columbia.....	N/A	91.0	9.0	100.0
New Hampshire.....	31.3	63.4	5.3	100.0
Nebraska.....	32.8	60.0	7.2	100.0
Texas.....	33.7	56.1	10.2	100.0
South Dakota.....	34.3	52.1	13.6	100.0
Connecticut.....	37.8	58.0	4.2	100.0
Massachusetts.....	38.0	58.1	3.9	100.0
Pennsylvania.....	38.3	55.3	6.4	100.0
Maine.....	38.6	54.8	6.5	100.0
Florida.....	39.2	49.7	11.1	100.0
New York.....	39.6	56.1	4.3	100.0
Virginia.....	40.0	53.6	6.5	100.0
Ohio.....	40.2	53.2	6.6	100.0
Arizona.....	40.4	46.4	13.2	100.0
Rhode Island.....	40.8	52.4	6.8	100.0
Louisiana.....	41.0	47.0	12.0	100.0
Colorado.....	41.2	52.4	6.3	100.0
New Jersey.....	41.6	54.4	4.0	100.0
Missouri.....	41.7	50.4	7.9	100.0
Maryland.....	41.9	52.7	5.4	100.0
Illinois.....	42.0	51.8	6.2	100.0
Montana.....	43.1	44.4	12.5	100.0
Georgia.....	45.8	45.7	8.5	100.0
Oklahoma.....	46.1	43.4	10.5	100.0
Tennessee.....	46.4	42.5	11.0	100.0
United States.....	46.7	45.6	7.7	100.0
South Carolina.....	47.6	43.9	8.5	100.0
Mississippi.....	50.4	35.8	13.8	100.0
Utah.....	52.3	40.0	7.7	100.0
Oregon.....	53.1	39.8	7.1	100.0
Iowa.....	53.2	39.8	7.0	100.0
Wisconsin.....	54.3	39.0	6.7	100.0
Alabama.....	54.9	34.6	10.5	100.0
West Virginia.....	55.2	34.2	10.6	100.0
North Dakota.....	55.8	34.8	9.4	100.0
California.....	56.1	35.3	8.7	100.0
Kentucky.....	56.1	33.1	10.8	100.0
Wyoming.....	56.9	36.8	6.4	100.0
Michigan.....	58.4	33.6	8.0	100.0
North Carolina.....	61.5	27.7	10.8	100.0
Alaska.....	62.5	21.7	15.8	100.0
Indiana.....	62.8	29.7	7.5	100.0
Nevada.....	63.4	28.1	8.6	100.0
Delaware.....	63.4	30.1	6.4	100.0
Washington.....	64.1	29.7	6.2	100.0
Minnesota.....	65.2	29.7	5.1	100.0
Kansas.....	65.2	26.9	7.9	100.0
Idaho.....	65.5	24.9	9.6	100.0
New Mexico.....	67.5	19.1	13.4	100.0
Arkansas.....	76.0	13.4	10.6	100.0
Hawaii.....	89.9	1.9	8.3	100.0
Vermont.....	90.5	3.1	6.4	100.0

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the phrase “local control” also is often used without careful scrutiny.

“Local control” has two parts. First, it means that local governments are delegated the authority to make decisions about the content, method and cost of public education services for their residents. Second, it means that local governments are delegated the responsibility to vote up or down on taxes that are required to fund their education choices. The delegation of both *spending* and *taxing* powers ensures that local voters have “skin in the game” of developing important public goods like public education.

Yet, advocates of a rigid first-and-last-dollar rule promise a kind of “Holy Grail” – you can have the first prong of local control (decisions over content and spending) without the second prong (responsibility for raising local funding). They assert that the state budget will pour all the “adequacy” dollars into each local district, no strings attached, so that local government leaders can be cheered on as they spend these unfettered resources without bearing the pain of local taxpayer concerns. This alchemy is unrealistic for several reasons.

First, while the process of resolving the local tensions between spending desires and taxing constraints may be very challenging and controversial, it has at least one salutary effect – real and comprehensive engagement of the whole local community in the common enterprise of creating quality public schools. Eliminating a significant role for local taxation would undermine this very important public vesting process, and serve to separate local voters from the most important public asset in their communities – their local schools.

Second, the local government process – including both *spending* and *taxing* decisions – is, on average, more likely to result in higher spending on public education, as compared to the state budget process. This effect arises from two factors. When voters believe that their tax dollars will support something tangible that favorably impacts their home communities and their home values, they are more likely to vote yes. And, the local government process involves fewer special interests (generally, police, fire and schools) than the more complex state budget process (which involves many well represented and competitive special interests). Both these factors support maintaining a significant role for local government in public school finance systems, both *spending* and *taxing*.

Third, it is simply unrealistic to assume that state budget dollars would come with “no strings attached.” Instead, the state legislature and relevant executive branch agencies would impose increasingly onerous requirements as preconditions to state aid. This would lead to a correlative decline in the role of local school boards to govern their own affairs consistent with the needs and demands of local voters.

This important connection between local control (both *spending* and *taxing*) and higher quality public education opportunities is not just speculation. In [Education Week’s annual rankings of public education quality for 2020](#), four of the top five ranked states were from New England (Massachusetts, New Jersey, Connecticut, Vermont and New Hampshire) and three of these New England States have the substantial majority of their public school funding attributable to local sources. While correlation is not causation, the success of states that have substantial local revenues, like New Hampshire, cautions against adoption of a stringent “first-and-last-dollar” rule.

Further, there is evidence that states that have enforced a state-budget financed public school system have suffered significant adverse impacts on their schools, including declines in spending, quality and local vesting. According to [Dartmouth Professor William Fischel](#), in two decisions (*Serrano v. Priest I (1971) and II (1976)*), the California Supreme Court “required the legislature to assure that state plus local spending, excluding a few categories such as aid to handicapped students, should vary by no more than \$100 per pupil across

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districts.” Fischel argues that these judicial holdings, which essentially mandated a state-financed public school system with no material role for local property taxation, led to material declines in public school spending, quality and ultimately to the adoption of Proposition 13 which “gutted California’s property tax system in 1978.” (As Jesse Levin said during one of our Commission meetings, “Please don’t make the mistakes that we made in California.”)

I fully support the holding of *Claremont I* (1993) that the State has a constitutional duty to ensure that every educable child in New Hampshire has access to a constitutionally adequate public education. I do not know whether or not the Court went further to mandate a rigid “first-and-last-dollar” rule. (I *do* know that the Court has repeatedly said things like “[w]e recognize that local control plays a valuable role in public education.”)

While it may be beyond the Commission’s role to conduct a legal analysis of what the Supreme Court decisions may, or may not, mean, it certainly is well within its authority to make policy judgments on the proper role for local taxation within the broader public school system. For the reasons stated above, I believe that adopting a substantially state-budget financed public school system, as would be required by a stringent “first-and-last-dollar” mandate, would effectively end the link between local taxes and better local schools, and risk undermining the generally excellent state of New Hampshire’s public schools. As one member of the Commission, I believe that there should continue to be an important role for local taxation, as part of the “local control” engine that generates high quality, locally-governed public schools.

Further, I believe that the proper role for state budget dollars is, first and foremost, to provide support to those local school districts that have the least capacity to provide an opportunity for an adequate education. Given New Hampshire’s proven high quality and high spending, on average, this role does not require a wholesale substitution of state financing for local taxation. Rather, it requires the identification of districts with greatest need – perhaps as measured by property tax wealth, median income, student needs and other factors – and then a clear formula that directs state budget dollars to support those communities and the children and families who live there.

Motion:

Resolved, that the Commission to Study Public School Funding hereby finds that a wholesale substitution of state budget financing for local property taxation would be bad public policy and would risk undermining local support for public schools; and further, that future public policies should retain a material role for the local property tax to fund public education, as in other New England states; and further, that state budget resources should be aggressively directed to support local schools that are determined to have the least capacity to provide an opportunity for an adequate education for their students.