Testimony by Allen Gilbert, School Board Member, Worcester, on H. 39, March 13, 2019

By way of introduction: I've been a journalist, teacher, self-employed writing/communications consultant, and American Civil Liberties Union of Vermont executive director. I have spent 20 years on school boards, serving as chair of my local Worcester board, Washington Central Supervisory Union board chair, chair of the Finance Committee when I was on the U-32 high school board, and president of the Vermont School Boards Association. Worcester was a plaintiff in the *Brigham* case; after the decision, I helped found and served as executive director of Concerned Vermonters for Equal Education Opportunity, a group supporting Act 60 and equity goals. Since my retirement from the ACLU, I've been working on a book about equity in Vermont, specifically around education funding, marriage rights, and health care reform. I speak for myself today.

In researching school equity, I've been impressed by how Vermont, from its very beginnings as a state, set very high education goals. Our first constitution, in 1777, established a system that was to include at least one primary school in every town (basically grades 1-4), at least one grammar school in every county (basically grades 5-8, and eventually up to 12), and at least one state university. For a state that wasn't yet a state, in a wilderness whose land was being contested by two neighboring states, these were exceedingly lofty aspirations.

It should come as no surprise that over the years Vermonters have been challenged to turn these aspirations into realities. Glebe lands, for example, didn't produce the hoped-for revenue needed to fund schools, so the legislature turned to property taxes – first on a local basis, and then in 1890 on a hybrid local and state basis. County grammar schools were hard to site and fund, so local "academies" – a number of them private – sprang up. A voucher law in 1869 and a tuition law in 1906 led to the patchwork system we still have today in many parts of the state – "sending" districts tuitioning their students to private academies or to nearby public schools.

Along the long road to trying our best to educate the state's children, there has been much disagreement and not infrequent lawsuits. We have put ourselves through much grief and financial pain to carry out the state's centuries-old commitment to children. We should be immensely proud of the public capital that's been there to do this work.

During the last 25 years, we have been in a significant period of change regarding the funding and governance of our schools. The public discussions here at the legislature, among school boards, and on the community level, have often been difficult. Our latest discussions, around consolidation of school districts, have been no different. Circumstances vary for different towns and cities, for urban and rural areas, and for school districts that have quirky and even unique characteristics that distinguish them.

The districts in my supervisory union, the Washington Central Supervisory Union, have a history of thinking locally because much of our lives still center around the towns in which we live. We embrace change when there is evidence the change will result in financial savings for taxpayers and/or increased learning opportunities for students. We have been reluctant to pursue change when there is little or no evidence that these benefits will result. We have squeezed money and

efficiencies out of everything we could think of. We consolidated teacher contracts nearly 30 years ago. We consolidated transportation services 20 years ago. We have consolidated purchases of fuel, insurance policies, and have even tried to bulk-buy some staples, such as paper. We have tried alternative administrative structures, at one point cutting superintendent services to half time and contracting with the UVM School of Education to provide them. We submitted an Alternative Governance Structure proposal to the state Board of Education because we felt we have embraced the goals of Act 46 since our five towns joined together to build our regional high school, U-32, 50 years ago.

As we look at merger now, consolidation of districts' debt has emerged as a major issue for my town. Agency of Education figures submitted by the state as part of the *Athens* litigation estimate an extra annual property tax burden of $69 on Worcester taxpayers owning a $100,000 home, $138 on taxpayers owning a $200,000 home, and $207 on taxpayers owning a $300,000 home. (I note that no prebate amounts are reflected in these amounts.) People at my town meeting this year were perplexed when I mentioned these figures. We had just spent a half hour in the municipal portion of our meeting discussing how to pay for the repaving of one of the few local hard-surface roads in our town. What we'll pay in additional school taxes would go a substantial way towards a repaving project. Our resources are scant. An extra $40,000 or $50,000 matters. I believe there are solutions to addressing the assumption of debts issue.

An order issued Nov. 30 for merger of our six school districts by July 1 was, in the most favorable light, viewed as a tough challenge to meet. The filing of the *Athens* litigation added a further layer of uncertainty. That uncertainty continues. While a superior court judge's initial ruling in the case was against the plaintiffs, I'm reminded that the same was true in the *Brigham* case – the Superior Court ruled against the plaintiffs. The ruling was reversed on appeal to the Supreme Court. An appeal in the *Athens* case is likely no matter which side prevails initially.

I believe that a one-year merger delay for Washington Central, and other school systems in a similar situation, is appropriate. We need more time to work with our communities so they understand the changes that lie ahead. Community support of our work – done whether through individual boards or through a consolidated board – depends on an informed public understanding of our operations and challenges. It would help if this process were slowed down for a year.

Thank you for the opportunity to testify today.

Addition to testimony – sent via email March 15, 2009

Dear Sens. Baruth, Hardy, Ingram, McNeil, Parent, and Perchlik,

Thank you for the opportunity to testify before the Senate Education Committee on March 13, 2019 regarding H. 39, the school merger bill. I wanted to add information to my testimony to

further explain conflicting information on assumption of outstanding debts by a new union district.

I testified that finding an equitable way to deal with varying levels of debt of the merging member districts of Washington Central Supervisory Union has been a difficult and contentious challenge. I said that blocking the way was a prohibition in the state's Default Articles of Agreement against modifying the Articles' provision regarding assumption of debts and assets. I am attaching a copy of the relevant sections of the Default Articles, with the prohibition highlighted. The language is straightforward, and we have taken it on its face: "The substance of the following Articles cannot be amended by the electorate of the New Union District, the elected board of the New Union District, the Transitional Board, or the electorate or board of any Forming District, except as expressly authorized by the Vermont General Assembly"; included in the list of the un-amendable articles is Article 5, the debt assumption provision.

As Sen. Baruth pointed out, Judge Mello in his ruling of March 4, 2019, wrote that the debt provision of the Articles *can* be modified. On p. 21 of the ruling Judge Mello noted, "Thereafter, it appears Plaintiffs can look to 16 V.S.A. §§ 701a et seq. to elect new members and consider changes to the Default Articles of Agreement." And then on p. 24 of the ruling Judge Mello noted further, "As the State points out, the Default Articles of Agreement specifically permit newly merged members to examine and vote on redistribution of any transferred debt." I am attaching a copy of the relevant sections of the ruling, with these sentences highlighted.

It is this conflict between the Default Articles of Agreement presented to us by the state Agency of Education, and the opinion expressed by Judge Mello, that has left us confused. Normally, one would assume that the Judge's opinion prevails in a situation such as this and that therefore merged districts may consider redistribution of debt. It is to be hoped that Judge Mello's final ruling in the *Athens* litigation will lead to some sort of clarity on this issue.

If I may, I also wanted to mention that our superintendent was at a school meeting I attended last night, and he confirmed that the Worcester school building has been adequately maintained and is in fairly good shape. I had been asked Wednesday during testimony about the condition of the building.

Thank you for the time and attention you have given H. 39.

Sincerely,

Allen Gilbert

Attachment 1 – Articles of Agreement

The Washington Central Unified Union School District Articles of Agreement

Pursuant to the State Board of Education's final Statewide Plan dated November 28, 2018 and issued on this 30th day of November, 2018 as required and authorized by 2015 Acts and Resolves No. 46, Sec. 10(b), as amended ("Act 46"), the Washington Central Unified Union School District ("New Union District") is created to provide for the prekindergarten through grade 12 education of its resident students.

Article 5 – Finances

A. Indebtedness, Including Capital Debt

The New Union District shall assume all indebtedness that may exist on June 30, 2019, including capital debt and including both principal and interest, of the Forming Districts.

B. Operating Fund Surpluses

The New Union District shall assume all operating surpluses, deficits, and fund balances of the Forming Districts that may exist at the close of business on June 30, 2019. The New Union District shall apply any reserve fund for the fund's specific purpose, if identified, unless otherwise determined through appropriate legal procedures.

C. Transfer of Debt and Funds

The Forming Districts shall transfer the debt and funds specified in this Article to the New Union District on or before June 30, 2019 in accordance with procedures and timelines established by the New Union District Board.

Article 14 –Amendments

A. Authority to Amend Articles

i. The substance of the following Articles cannot be amended by the electorate of the New Union District, the elected board of the New Union

District, the Transitional Board, or the electorate or board of any Forming District, except as expressly authorized by the Vermont General Assembly:

a. Initial Paragraph (statement of creation)
b. Article 1, Paragraph (A) (identity of Forming Districts)
c. Article 5 (financial transfer to New Union District)
d. Article 6, Paragraph (A) (real property transfer to New Union District)
e. Article 7 (continuity of contractual obligations)
f. Article 8 (organizational meeting for the new district)
g. Article 9 (transitional board to warn special meetings and prepare first draft of FY2020 budget until first board is elected)
h. Article 10, Paragraph (D) (swearing in and assumption of duties)
i. Article 10, Paragraph (E) (preparation and presentation of FY20 budget)
j. Article 12 (initial board must prepare for full operations)
k. Article 13 (dissolution of Forming Districts; SU)
l. This Article 14, Paragraph (A)(i)
m. Article 14, Paragraph (B) (processes by which articles are amended)

Attachment 2 – Judge's Ruling

From Page 21 of Judge Mello's ruling March 4, 2019

Under Article 9D of the Default Articles of Agreement, the transitional board is to prepare a first draft of a proposed budget for the permanent elected board, warn a meeting to elect the permanent board, and warn a meeting for voters to consider any committee proposed amendments to the Default Articles of Agreement. The Board is authorized to establish this transitional board and authorize preliminary action is specially authorized by 2017 Vt. Laws No. 49 § 8 (amending 2015 Vt. Laws No. 46 § 10(d)). Thereafter, it appears Plaintiffs can look to 16 V.S.A. §§ 701a et. Seq. to elect new members and consider changes to the Default Articles of Agreement.

From Page 24 of Judge Mello's ruling March 4, 2019

Whether or not the Board's Final Order is implemented, Plaintiffs will incur expenses association with governance, town meetings, the voting of board members, and the like; spending money under these circumstances is hardly an occurrence related to Act 46. Moreover, any alleged effect on residents' taxation in a particular town, at this point, is unclear. As the State points out, the Default Articles of Agreement specifically permit newly merged members to examine and vote on redistribution of any transferred debt.