Dear Rep. Kornheiser:

I wanted to express my concerns about the current proposed “Yield Bill” under review in House Ways & Means. I believe it may not meet the requirements of the *Brigham* decision. My letter expands on comments I made before the committee on March 28.

The term “equity” is often used in different contexts meaning different things. The equity sought by the plaintiffs in the *Brigham* case was financial equity — equal access to school funds. The Foundation Formula in place when the *Brigham* lawsuit was filed had tried to smooth out the effects of local resource disparities by promising every school district enough money to provide students with a basic education at a reasonable tax rate. If a town wanted to provide more than a basic education, it could do so at its own expense, relying on its own local tax base. This was unfair, the *Brigham* plaintiffs argued. Property-rich towns could raise additional funds more easily than property-poor towns.

In its unanimous decision in the *Brigham* case, the Vermont Supreme Court said that the provision of public education was a state responsibility and that the Vermont Constitution’s Common Benefits clause (Article 7) required that it be provided on an equal basis. The court recognized that “money is clearly not the only variable affecting educational opportunity, but it is one that government can effectively equalize” and that “there is no reasonable doubt that substantial funding differences significantly affect opportunities to learn.” The justices stated bluntly:

> *The distribution of a resource as precious as educational opportunity may not have as its determining force the mere fortuity of a child's residence. It requires no particular constitutional expertise to recognize the capriciousness of such a system.*

The court noted an example of unacceptable disparities. The two towns of Stannard and Sherburne (the latter renamed Killington in 1999) had nearly identical spending per pupil. Yet in Stannard, property taxes on a house valued at $85,000 were $2,040; in Sherburne, taxes on a house of equal value were $247.

An important determination in the *Brigham* decision was the court’s view that each town should be able to decide for itself how much it would spend on its pupils’ education. This determination was the court’s acknowledgment of the importance of local control of school budgets.

> *Equal opportunity does not necessarily require precisely equal per-capita expenditures, nor does it necessarily prohibit cities and towns from spending more on education if they choose, but it does not allow a system in which educational opportunity is necessarily a function of district wealth.*

Re-establishment of a system providing a basic state grant per pupil, which towns could augment with local funds should they choose, would violate the *Brigham* mandate. Such a plan would re-create “*a system in which educational opportunity is necessarily a function of district wealth.”* A legal challenge to such a system would be certain.

Under current law, the decision would be obvious – the system would be deemed deficient. The Supreme Court would acknowledge that the legislature is free to establish funding systems different from what was established through Act 60, but it cannot establish a system that would advantage one town over another in accessing school funds.

There is a truism, however, that a right is never permanently won. We have seen recently how courts have overturned important precedents, removing a right assumed permanent. Were that to happen with *Brigham*, one would have to worry what could happen with other decisions based on

the equity guarantee in Article 7. Trying to solve a challenging financial issue created by numerous decisions on many levels of government could, ultimately, result in the erosion of the Common Benefits clause, an equity right established in the Vermont Constitution nearly 250 years ago. It would be an unfortunate legacy for us all, if that were to occur.

Allen Gilbert

Worcester VT

Disclosures: I was chair of the Worcester School Board when it was a plaintiff in the *Brigham* school funding lawsuit. At that time, I was also chair of the Washington Central Supervisory Union Board and president of the Vermont School Boards Association. After passage of Act 60, I was executive director of Vermonters for Equal Educational Opportunity. In 2004, I became executive director of the Vermont chapter of the American Civil Liberties Union, which had brought the *Brigham* lawsuit. I retired from the ACLU in 2016. I have a master's degree in education from the College of William and Mary, and an undergraduate degree in history from Harvard. I have written a book on equity, *Equal Is Equal, Fair Is Fair*, about Vermont's efforts in education funding, same-sex marriage rights, and health care access.

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Allen Gilbert
444 Hampshire Hill Rd.
Worcester, VT 05682
802-229-2027
hallengilbert@gmail.com or agilbert@post.harvard.edu