

*Vitale et al. v. Bellows Falls
Union High School et al.,
2023 VT 15*

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Parties, Facts, and Claims

- Parties
 - Plaintiffs: 3 families with school age children
 - Defendants: State of Vermont, Secretary of Education, State Board of Education
 - Initially, the school districts within which each family lived were included as named defendants but claims against the school districts were dismissed during the appeal
- Facts
 - All 3 families are residents of school districts that maintain a public school for at least some grades
 - Families preferred that their children attend a school other than the public school available to them in their district of residence, and reported the following as some of the reasons for this preference:
 - Bullying and harassment
 - Disparate treatment by school officials
 - Services within the district of residence were not adequate
 - Families wanted their children to attend schools that “best fit” the needs of their particular child, at the State’s expense
- Claim & procedural posture
 - Lack of school choice for families not living in tuitioning districts violates the Education and Common Benefits Clause of the Vermont Constitution
 - Lower court dismissed Plaintiffs’ complaints for failure to state a claim upon which relief could be granted.

Facial challenge vs. as-applied challenge

- Facial challenge: Plaintiff is seeking to invalidate a law as it is written, or “on its face.” A facial challenge would invalidate a law for everyone.
 - Can be brought at any time
- As-applied challenge: Plaintiff is arguing that a law is invalid as it is applied to the plaintiff’s particular case/facts. The remedy or relief sought would be applicable only to those facts.
 - Can only be brought after enforcement and exhaustion of other available remedies

Court's Analysis: 2 Types of Claims

Equal-Educational-Opportunity Claim

- Children's right to education falls under the Education Clause and Common Benefits Clause of the VT Constitution, *Brigham v. State*, 166 vt. 246 (1997)
 - Education Clause: Ch. II, § 68: "...a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions to the convenient instruction of youth."
 - No "right to attend the school of their parents' choice at the state's expense" *Vitale* at ¶9
 - Common Benefits Clause: Ch. I, Art. 7: "...government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community..."

Common Benefits Clause Claim

- 3 part test under *Baker v. State*, 170 Vt. 194, 212 (1999)

Equal- Educational- Opportunity Claim

- Education Clause
 - “Vermont children have a fundamental right to education under the Education Clause of the Vermont Constitution.” *Vitale* at ¶ 11
 - If the government has a fundamental obligation to *provide* education, then children have a fundamental right *to* education
 - The Education Clause is explicit in the State’s responsibility to provide education, but is silent on how they can carry out this responsibility
 - “[S]chool choice itself is not an educational opportunity but rather a means to provide for educational opportunities.” *Vitale* at ¶ 13
 - *Mason v. Thetford Sch. Bd.*, 142 Vt. 495, 499 (1983): “...there is no constitutional right to be reimbursed by a public school district to attend a school chosen by a parent.”
 - Do the means selected by the legislature treat children unequally under the Common Benefits Clause?
- Common Benefits Clause
 - Must show that school choice—which is a *means* to meet educational ends, not an educational *opportunity* itself—results in substantially different educational opportunities
- “Parents’ failure to allege facts to connect school choice with better educational opportunities is fatal to their claim.” *Id.* at ¶ 38
 - i.e., Plaintiffs did not state a claim upon which relief could be granted

Non- Educational Common Benefits Claim

- Common Benefits Clause analysis 3 part test—complaint, on its face, must allege facts sufficient to:
 1. “define the part of the community disadvantaged by the legal requirement;
 2. identify the governmental purpose, if any is known, in excluding a part of the community from the benefit; and
 3. State how the omission of a part of the community from the benefit does not bear a reasonable and just relation to the governmental purpose identified” *Vitale* at ¶41
- The court made assumptions, without actually deciding or holding so, that the first two parts were met
- 3rd part: “The complaint contains very little to discern how the statutes are unreasonable or unfair in light of the government’s stated purpose to provide quality education while adapting to local needs and desires.” *Id.* at 44

Holding

- “The complaint fails to make out a prima facie case under the standards articulated in *Brigham I* and in *Baker*. We accordingly conclude that parents have failed to state a claim for an equal-educational-opportunity or other Common Benefits violation.” *Vitale* at ¶47

But...

- “Our conclusion in this case does not end the evolution of the debate over how the state should educate Vermont children. It also does not foreclose the possibility that a plaintiff could bring a challenge that satisfies the legal standards stated in this opinion. When we review legal questions, we are limited to the controversy before us.” *Id.* at 48