



# ***Brigham***

Jon Gray, Legislative Counsel

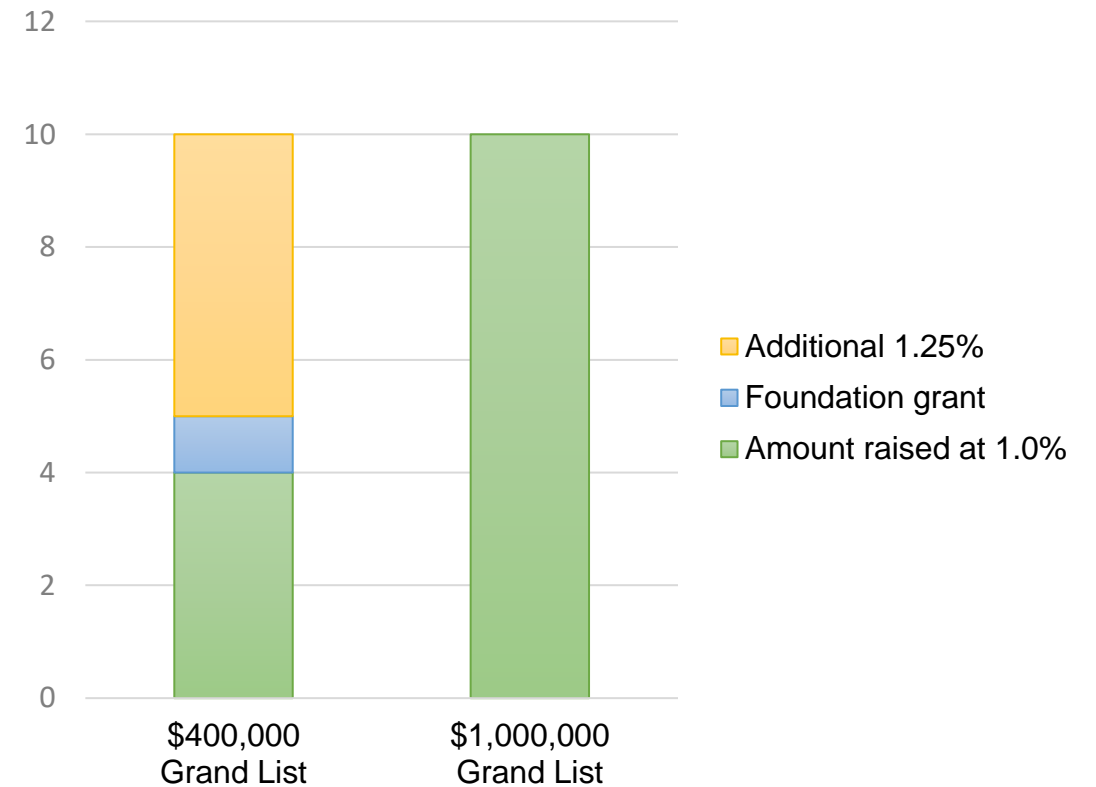
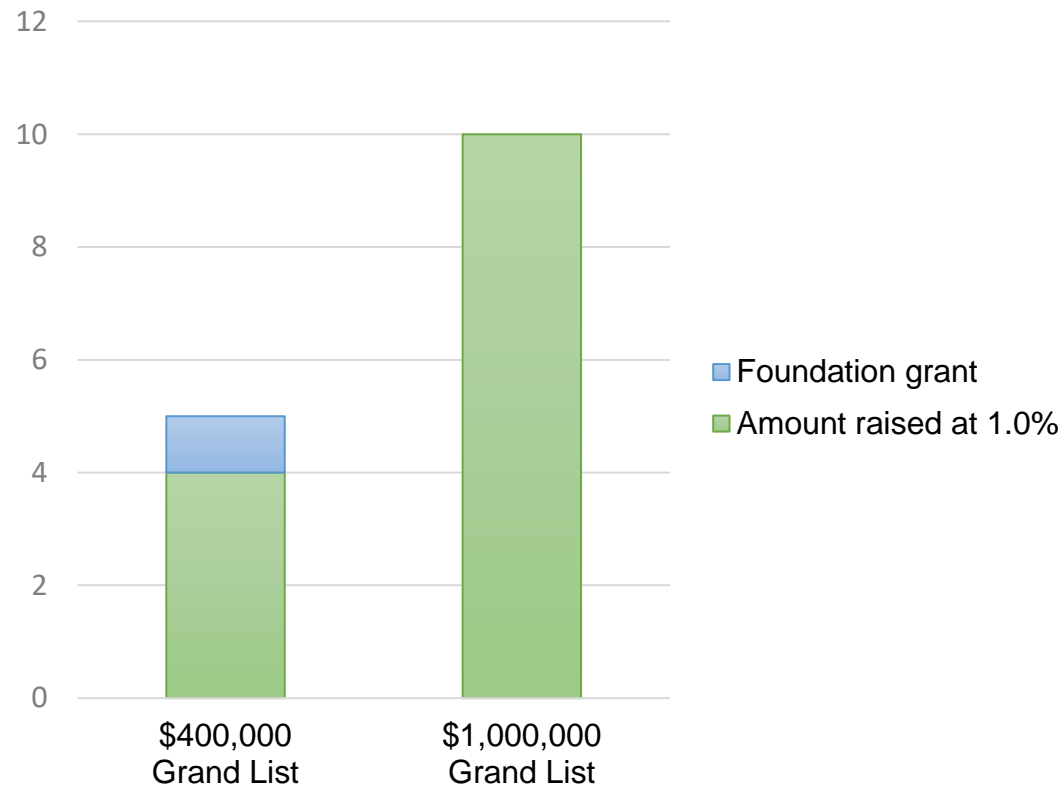
April 23, 2025

# Historical Background: Act 84 (1987)

- Created the Vermont Foundation Plan, which Vermont relied on until *Brigham*
- Funded public education through a combination of local property taxes and State aid
- Under the Plan, Vermont set two figures:
  - **Foundation tax rate**—a rate the State considered to be a reasonable rate of local property taxation necessary to enable each district to raise enough funds to provide “at least a minimum-quality education program”
  - **Foundation cost**—the amount needed for a minimum-quality program
- State aid was then calculated to make up the difference between the foundation cost and the amount that the district could actually raise at the foundation tax rate

# Equity Example

Foundation rate: 1% | Foundation cost: \$5,000 | Goal: \$10,000



# Plaintiff Allegations in *Brigham*

The plaintiffs in *Brigham* alleged that Vermont's then-current education financing system violated the Vermont Constitution by:

- Depriving students residing in “property-poor” school districts of their right to the same educational opportunities as students in wealthier school districts
- Compelling property owners in “property-poor” school districts to contribute an unjust proportion of tax dollars to fund education
- Depriving “property-poor” school districts of the ability to raise sufficient money to provide educational opportunities equal to those in wealthier school districts and compelling the districts to impose disproportionately high tax rates

# **Court's Factual Discussion**

## Purpose of Act 84 (1987)

The Vermont Supreme Court observed:

“Even if we are to assume that [the then-current Foundation Plan] is working adequately to accomplish its purpose, we must confront the constitutionality of the system in light of the limited nature of the Foundation Plan’s purpose. The object of the Plan is not equality of educational opportunity generally, or even equality of local capacity to facilitate opportunity. It is only to equalize capacity to produce a minimally adequate education, assuming the voters can sustain the state-selected tax rate.” (253-54)

# Court's Factual Discussion

## Wealth, Spending, & Opportunity

The Court observed that:

- Wealthier school districts were relatively more able than poorer districts to raise the funds necessary to support an educational program that was more than “minimally adequate”
- “[T]he undisputed evidence ... amply supports plaintiffs’ claim that wide disparities in student expenditures exist among Vermont school districts and that these disparities correlate generally with taxable property wealth within the districts” (255)
- The record did not develop whether funding disparities resulted in unequal educational opportunities; but the State had conceded that “the funding scheme denies children residing in comparatively property-poor school districts the same ‘educational opportunities’ that are available to students residing in wealthier districts” (255)

# **Court's Factual Discussion**

## Money as a Meaningful Measure of Opportunity

The Court concluded that:

“While ... equal dollar resources do not necessarily translate equally in effect, there is no reasonable doubt that substantial funding differences significantly affect opportunities to learn. ... Money is clearly not the only variable affecting educational opportunity, but it is one that government can effectively equalize.” (255-56)



# **Do these disparities in educational opportunities violate Vermont law?**

“[I]n Vermont the right to education is so integral to our constitutional form of government and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification. The State has not provided a persuasive rationale for the undisputed inequities in the current educational funding system. Accordingly, we conclude that the current system, which concededly denies equal educational opportunities, is constitutionally deficient.” (256)



# Court's Constitutional Analysis

## The Right to Education in Vermont

- **Education Clause:** Chapter II, § 68 of the Vermont Constitution provides that “a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth.”
- The Court stated that the text and structure of the Constitution supported education’s status as a constitutional right: “[o]nly one governmental service—public education—has ever been accorded constitutional status in Vermont.” (259)
- ...and that history lends further support: “Apart from its prominence in the Constitution, the importance of education to self-government and the state’s duty to ensure its proper dissemination have been enduring themes in the political history of Vermont.” (262)

# Court's Constitutional Analysis

Where does the constitutional responsibility for education lie?

- The State argued that “the primary constitutional responsibility for education rests with the *towns* of Vermont ... [and] that [the State’s] only responsibility, if any, is to ameliorate inequities if they become too extreme ...” (264)
- The Court rejected this argument and declared that “[t]he state may delegate to local towns and cities the authority to finance and administer the schools within their borders; it cannot, however, abdicate the basic responsibility for education by passing it on to local governments, which are themselves creations of the state.” (264)

# Court's Constitutional Analysis

Does the Constitution mandate a particular method of funding?

The Court noted that although the State has a constitutional obligation to provide public education, the Constitution is silent regarding the way in which it must be funded:

- “The Legislature has implemented the education clause by authorizing school districts to raise revenue through local property taxes. But neither this method, nor any other means of financing public education, is constitutionally mandated. Public education is a constitutional obligation of the state; funding of education through locally-imposed property taxes is not.” (259)
- “[O]ur Constitution *nowhere* states that the revenue for education must be raised locally, that the source of revenue must be property taxes, or that such revenues must be distributed unequally in conformity with local wealth.” (264)

# Court's Constitutional Analysis

## The Right to Equal Educational Opportunities

- **Common Benefits Clause:** Chapter I, Article 7 of the Vermont Constitution provides “[t]hat 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...”
- The Court did not find it necessary to establish the level of scrutiny required to evaluate the inequities in educational opportunities, stating: “we are simply unable to fathom a legitimate governmental purpose to justify the gross inequities in educational opportunities evident from the record. 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.” (265)

# Court's Constitutional Analysis

What kind of variation is permissible?

- The Court explicitly rejected the argument that achievement of a minimally adequate education is sufficient to satisfy the Vermont Constitution: “We find no authority for the proposition that discrimination in the distribution of a constitutionally mandated right such as education may be excused merely because a ‘minimal’ level of opportunity is provided to all.” (267)
- But the Court observed that “*absolute* equality of funding is neither a necessary nor a practical requirement to satisfy the constitutional command of equal educational opportunity. ... 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.” (268)

# ***Brigham's Holding***

The Court held:

“[T]he current system for funding public education in Vermont, with its substantial dependence on local property taxes and resultant wide disparities in revenues available to local school districts, deprives children of an equal educational opportunity in violation of the Vermont Constitution.” (249)

“Children who live in property-poor districts and children who live in property-rich districts should be afforded a substantially equal opportunity to have access to similar educational revenues. ... to fulfill its constitutional obligation the state must ensure *substantial* equality of educational opportunity throughout Vermont.” (268)

# ***Brigham's* Guidance**

1. Vermont students are constitutionally entitled to “equal educational opportunities”
2. The *State* has the constitutional responsibility for public education
3. Discrimination in the distribution of education cannot be excused merely because a “minimal” level of opportunity is provided to all
4. Financial resources affect educational opportunities; money is one variable affecting opportunity that the State has the ability to equalize
5. The Vermont Constitution does not require “absolute” equality of funding
6. Nor does it mandate any system of education *funding*
7. The specific means of discharging the State’s constitutional duty to ensure substantially equal opportunities is properly left to the discretion of the Legislature



A long-exposure photograph of a waterfall, creating a soft, ethereal blue and white flow of water cascading over dark, mossy rocks. The image has a dreamy, high-key aesthetic with a cool color palette.

**Questions?**