

ACT 60 IS BACK IN COURT ... TO BE CONTINUED

Education funding is an issue that refuses to put itself to bed in Vermont, as in many other states. The monster has reared its head again in another lawsuit entitled *Brigham v. State*, 2005 VT 105 (September 12, 2005) (“Brigham II”). The Supreme Court has remanded a decision of the Washington Superior Court to address the merits of the issues raised by the plaintiffs. This action is a different Brigham than what we saw in the *Brigham v. State* (“Brigham I”) case that led to the creation of Act 60, the education funding law that we see, more or less, in place today.

The decision in Brigham II is a highly technical legal decision that does not address the policy arguments raised by the plaintiffs, who are both public school students and taxpayers. The students allege that Act 60 is unconstitutional, because it does not remedy the inequality in public education that was found in Brigham I. The students argue that Act 60 is unconstitutional because it violates the common benefits clause of the Vermont Constitution (Chapter I, Article 7), as well as the provision specifying 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 . . .” Vermont Constitution Ch. II, § 68.

The Washington Superior Court never reached a substantive decision on either of these claims, stating, “... the continuation of this case would not only be disrespectful of the political process underway, it could harm the political process by delaying it or distracting attention and resources more productively focused on it, or derailing it with unnecessary mandates or, worse, the unnecessary perception of mandates.” Essentially, the Superior Court sidestepped the case on the notion that judges should steer clear of political issues that are better left to the legislative and executive branches to determine.

Nevertheless, the Vermont Supreme Court, on appeal, reversed the lower court’s decision. The Court remanded the case, stating, “Rather than conducting an analysis on whether plaintiffs met the requirements of [the rule], the superior court improperly relied on the notion of judicial restraint in dismissing the complaint.” Furthermore, the Supreme Court stated that the judicial system is required to hear this sort of case, as, “Adjudicating cases involving alleged violations of plaintiffs’ constitutional rights resulting from a legislative enactment does not undermine the legislative process, nor is it disrespectful of the other branches of government.” Rather, determining possible constitutional violations, the Court reasoned, is precisely the job of the judiciary.

This case is not the end of the story. Education funding in Vermont will continue to be litigated, and whatever the outcome of the case, there will be a substantive impact on Vermont municipalities, at least in so long as we continue to rely on municipally-collected property taxes to fund education.

- *Brian Monaghan, Attorney, VLCT Municipal Assistance Center*