



Tax Foundation Urges Indiana Court to Avoid Education Finance Mess: *Bonner v. Daniels*

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Brief Argues State Constitution Does Not Require Judicial Funding Mandate

The Tax Foundation, in a friend-of-the-court brief filed with the Indiana Supreme Court, urges the reversal of a lower court decision creating a judicially enforceable right to a "quality" education. The brief explains that such an interpretation goes beyond the text and historical meaning of the Education Clause of the Indiana Constitution, focuses improperly on funding as the only way to improve state education, and ignores the problematic experiences other states have had with judicial funding mandates.

The Indiana Constitution Does Not Create a Judicially-Enforced Right to a "Quality" Education

Article VIII, Section 1 of the Indiana Constitution requires that, in order to preserve a free government, the General Assembly shall (1) encourage knowledge, (2) provide for a general and uniform school system, (3) charge no fees for this system, and (4) make it open to all. In other words, the Indiana Government is obligated to establish free public schools. Nothing in the Education Clause establishes a specific, defined level of education that must be attained, but rather only that the state maintains a generally supportive stance towards knowledge and learning. Evidence from the framing of the Indiana Constitution, outlined in the brief, supports this interpretation.

By contrast, the lower court in this case concluded that the education system envisioned by the framers (presumably reading, writing, arithmetic, and civics) is inadequate because students cannot secure their "place in the global economy." Even if this meaningless statement described a serious problem, it would be one for the Legislature because such policy concerns cannot overcome the lack of textual or historical support necessary to elevate a perspective into a

constitutional right. The Education Clause guarantees a free public education, not the right to a "quality" education.

It must also be noted that the framers of Indiana's Constitution inserted the Education Clause because they were concerned with preserving freedom through democracy, which in turn requires a population educated enough to participate. Even the quotations used by the Court of Appeals do not support the idea that the delegates were concerned with the economic success or social advancement of public school graduates, nor that they believed such matters required judicial supervision.

It Would Be Impossible to Enforce a Right to a Quality Education

Even if the people of Indiana had a right to a quality education, it would be impossible to enforce that right with judicially manageable standards. Courts can only develop doctrine case-by-case; legislatures, by contrast, can obtain evidence from interested stakeholders and consider political and economic factors. Judicial guidance to policymakers will necessarily remain vague and elusive. The guidance given by the Court of Appeals (knowledge beyond "mere competence in the basics" and making students "fully integrated into the world around them") is representative.

Applying hard-to-define and continually evolving standards such as these to real cases can harm the credibility of the judiciary. Courts would need to hear testimony from economic participants, gather and analyze reports, consider short-term and long-term results of the current education system, evaluate transition costs and trade-offs, and employ specific standards to judge the state's alleged failures.

Many courts and experts recognize that courts are not well-equipped for this micromanaging role. Legislative action, despite its drawbacks, provides better comprehensiveness and accountability, and is the best vehicle for addressing perceived inadequacies in educational quality. It is impossible to expect courts to adjudicate these complex policy issues in a fair manner, without the aid of resources available only to the legislative process.

The Tax Foundation has prepared a report, "Appropriation by Litigation: Estimating the Cost of Judicial Mandates," Tax Foundation Background Paper No. 55, July 2007, available at <http://tinyurl.com/tfedfin>, that outlines the serious problems encountered by courts as they embark on micromanaging education policy and mandating funding levels.

Judicial Funding Mandates Are Not Likely to Improve the Quality of Education

The brief argues that *Bonner v. Daniels* is the latest instance of a national campaign to involve the courts in determining appropriate levels of state spending on education. The unstated assumption used to justify these efforts is that increased education spending leads to increases in education quality. This argument is not applicable in this case because the Education Clause does not focus on finance issues. The argument is also problematic because more money does not necessarily mean better performance. A focus on dollar amounts ignores potential efficiency increases, the diminishing returns of added spending, and alternative uses for each dollar.

The Tax Foundation's report on education finance litigation shows that, after an initial lawsuit, courts typically require the legislature to "fix" the education system, strongly hinting that the

only proper solution is to increase funding. Although judicial mandates often lead to funding increases, they often do not lead to improvements in student performance. Schools may fail to put funds to their best uses, leaving plaintiffs unsatisfied and prompting their return to court. The result is an endless cycle of resource-draining litigation. (See, as one example, [Paul Galindo's blog post](#) on the New Jersey *Abbott* litigation of 17 education finance cases over 12 years.)

Court mandates tend to produce one-time high-profile expenditures, rather than long-term comprehensive solutions. Although spikes in capital funding may occur in the short-term, long-term trends indicate stagnation in recurring spending. Following the *Rose* decision in Kentucky, for example, spending appears virtually unchanged even after post-litigation legislation pumped over \$1,136 per pupil into education. The explanation may lie in the fact that money is fungible, and an order mandating spending in one education-related area may simply shift resources from others.

Conclusion

Courts that have issued mandates for "adequate" and "efficient" educational systems have quickly found themselves mired in endless lawsuits seeking to quantify the unquantifiable, and doing so without the benefit of resources available only to legislative bodies. Indiana should learn from the mistakes of its sister states, and avoid judicial micromanagement of education finance and policy.

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