CFE

Analytic Overview of Appellate Division Majority's Decision in *CFE v. State of New York*

Almost ten years ago, the Campaign for Fiscal Equity, Inc. (CFE) filed a lawsuit against New York State challenging the constitutionality of New York State's education financing system. In 1995, CFE won a major victory when the Court of Appeals, New York's highest court, decided as a threshold matter that the New York State constitution requires that the state offer all children the opportunity for a "sound basic education." The Court of Appeals stated that the exact meaning of this standard could only be evaluated and resolved after development of a factual record. On January 10, 2001, Justice Leland DeGrasse, the trial court judge, issued a detailed decision carefully analyzing the evidence gathered during a 7-month trial and found that the current state school funding system was unconstitutional.

On June 25, 2002, the Appellate Division, First Department of the State Supreme Court, reversed Justice DeGrasse's decision. The majority decision, authored by Justice Alfred D. Lerner and joined by Justices John T. Buckley and Joseph P. Sullivan, held that the New York State constitution's guarantee of a "sound basic education" requires nothing more than that schools provide the opportunity to learn at an eighth or ninth grade skill level. Justice Peter Tom wrote a separate opinion concurring in the holding but expressing concern that there is a growing educational crisis and explicitly leaving the door open to a future finding that the state funding system violates the constitution. Justice David B. Saxe wrote a strong dissenting opinion chastising the court majority for a decision that logically means that the state has no obligation to provide a high school education and emphasizing that the current system fails to provide the resources that at-risk children need to have an opportunity to succeed.

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I. Definition of "A Sound Basic Education"

Justice Lerner's opinion for the 3-judge majority largely agrees with Justice DeGrasse on the general definition of a "sound basic education," that is, that it "should consist of the skills necessary to obtain employment, and to completely discharge one's civic responsibility." He differs greatly with Justice DeGrasse, however, on the application of that definition

DEGRASSE DECISION	LERNER DECISION
Employment Justice DeGrasse held that the public schools have a constitutional responsibility to prepare students for a "good job", which is above "low-level jobs paying the minimum wage", but less than what would be required to be "accepted into elite four-year colleges and universities in preparation for lucrative careers."	Employment Justice Lerner held that the schools' constitutional responsibility is merely to prepare students "to get a job, and support oneself, and thereby not be a charge on the public fisc … society needs workers in all levels of jobs, the majority of which may very be low level."
Civic Participation Justice DeGrasse's held that students should be prepared to be capable voters and jurors who can "evaluate complex campaign issues such as tax policy, global warming and charter reform" and who can determine questions of fact on such matters as "DNA evidence, statistical analysis, and convoluted financial fraud."	Civic Participation 1. The Appellate Division majority agreed with Justice DeGrasse's holding that students should be prepared to be capable voters and jurors who can "evaluate complex issues, such as campaign finance reform, tax policy, and global warming, to name only a few." 2. Justice Lerner accepted "computerized readability analysis" submitted by one of defendants' experts which claimed that newspapers read by most voters and certain jury documents are at 8th and 9th grade reading levels, and he concluded that therefore students with such reading skills can function as capable voters and jurors.[1]

No evidence in the record supported Justice Lerner's assumption that the majority of future jobs would be "low level." On the contrary, the evidence in the record indicated that "today's economy demands that all high school graduates…have higher levels of skills and knowledge" (President's 1996 National Education Summit Policy Statement); and that today "90 percent of the jobs…require…a level of technical skill …that we used to expect of about 50% of the employees in 1950" (Prof. Linda Darling-Hammond).

[1] Justice Saxe's dissent stated that "…if the State's constitutional mandate under the Education Article is satisfied by providing students with low-level arithmetic and reading skills, then, logically, it has no meaningful obligation to provide any high school education at all."

II. Intent of the Drafters of Article XI, § 1

The delegates to the New York state Constitutional Convention of 1894, which enacted Art XI, § 1 of the New York State Constitution, intended to ensure that the state provide "adequate free common schools for the education of all the children of the state." They also noted that "[t]he public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before."

The Appellate Division majority totally ignored this constitutional history and the intent of the framers of the Constitution.

III. Misconceptions and Distortions of the Evidence

The Appellate Division majority:

1. **Created facts out of whole cloth** (e.g. asserting that up to "one billion dollars" could be saved by transferring special education students to general education programs, even though the most that defendants claimed that could be saved by such changes was $335 million…and even that amount Justice DeGrasse had determined would be almost entirely offset by the extra cost needed to educate these students in the mainstream)

2. **Cavalierly rejected compelling implications of the evidence** (e.g. agreeing that New York City's teachers were substantially less qualified than those in the rest of the state, but holding nonetheless that lack of qualifications does not mean that "the city's teachers are inadequate")

3. **Distorted the logical implications of the evidence** (e.g. setting aside substantial evidence that small classes result in improved student achievement, and holding that "there was no indication that students cannot learn in classes consisting of more than 20 students…")

4. **Reached conclusions based on assumptions that had no basis in the evidence** (e.g. assuming that New York City schools which lack up-to-date books and libraries are amply supplied with "the classics")

5. **Distorted burdens of proof** (e.g. holding that although plaintiffs showed that 30% of students drop out and an additional 10% obtain only a GED, "[t]here was no evidence quantifying how many drop outs failed to obtain a sound basic education [before they dropped out]")

Justice Saxe's review of his colleagues' misuse of the evidence in the record prompted him to state:

> "However, the evidence here so strongly supported the trial court's fundamental conclusions with regard to the education being provided to 'at-risk' students that the trial court can only be reversed by ignoring either much of the evidence or the actual circumstances of the City's student population."

IV. Rejection of the Needs of "At-Risk" Students

A. The Appellate Division majority held that:

> "Although there was evidence that certain 'time on task' progress, such as specialized reading courses, tutoring and summer programs could help such 'at-risk' students, … more spending on education is not necessarily the answer … [T]he cure lies in eliminating the socio-economic conditions facing certain students."

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B. The dissent's response was:

> "There was substantial evidence that at-risk students who have received the type of resources proposed by plaintiffs have made impressive academic progress. In New York City, 99% of the students who completed the Reading Recovery program were able to read at grade level by the end of the school year, even though they began the year significantly below grade level: a comparison group of at-risk students who did not receive Reading Recovery support only achieved this level for 38% of the group."

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> "[T]he question of whether a minimally adequate education is being offered to New York City's public school students cannot be answered by considering whether it would be adequate if it were being provided to a theoretical student body consisting only of privileged children."

V. State's Constitutional Responsibility

All of the Appellate Judges agreed with Justice DeGrasse that under the State constitution "[t]he State must 'assure' that some essentials are provided, and thus it is indeed ultimately responsible for providing students with the opportunity for a sound basic education."

VI. Role of the Court of Appeals

Ultimately, the Court of Appeals, the highest court in the State, will decide this case:

> 1. It was the Court of Appeals that articulated the right of each child in New York State to the "opportunity for a sound basic education" and then sent the case back for a trial to determine if all children are, in fact, receiving such an education.
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> 2. The Court of Appeals, in its initial 1995 ruling in this case, equated the opportunity for a sound basic education with the skills students need to be "voters and jurors." It is the only state court in the country to have emphasized the importance of preparing students for a civic participation in this way.
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> 3. In the preliminary round of this case in l994-95, the Appellate Division upheld the state's motion to dismiss by unanimous 5-0 vote. That decision was reversed by the Court of Appeals by a 5-1 vote on one count and 6-0 vote on the other.