

# **Vermont's Commitment To Equity**

**By Allen Gilbert**

**For Public Assets Institute / Voices for Vermont's Children  
Education Equity Conference, Nov. 1, 2017**

I hope to show you this afternoon that Vermont has promised equity to its citizens from the time of the state's founding. I also hope to show how all of us, but particularly school board members, are responsible for acting to make this promise real.

# PA Common Benefits Clause, 1776

*That 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 man, family, or set of men, who are a part only of that community: And that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.*

# VT Common Benefits Clause, 1777

*That 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 man, family or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable and indefeasible right, to reform, alter or abolish government, in such manner as shall be, by that community, judged most conducive to the public weal.*

# PA Common Benefits Clause, Current

*All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.*

# VT Common Benefits Clause, Current

*That 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; and that the community hath an indubitable, unalienable and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.*

# Bottom Line

A commitment to equity – ensuring all citizens have equal access to benefits provided by the state – is part of Vermont’s core of essential beliefs and responsibilities.

# VT Justice Thomas Hayes

*This generation of Vermont lawyers has an unparalleled opportunity to aid in the formulation of a state constitutional jurisprudence that will protect the rights and liberties of our people, however the philosophy of the United States Supreme Court may ebb and flow.*

*We have an opportunity to develop a sound jurisprudence of state constitutional law that will serve not only this generation of Vermonters but those who will come after us in the decades yet to be.*

-- State v. Jewett, 1985

# Brigham v. State, 1997

*The evidence demonstrates, in sum, that the system falls well short of achieving reasonable educational equality of opportunity. Therefore, we hold that the student and school district plaintiffs are entitled to judgment as a matter of law that the current educational financing system in Vermont violates the right to equal educational opportunities under Chapter II, § 68 and Chapter I, Article 7 of the Vermont Constitution.*

# Baker v. State, 1999

*The affirmative right to the "common benefits and protections" of government and the corollary proscription of favoritism in the distribution of public "emoluments and advantages" reflect the framers' overarching objective "not only that everyone enjoy equality before the law or have an equal voice in government but also that everyone have an equal share in the fruits of the common enterprise." W. Adams, The First American Constitutions 188 (1980).*

# VT Education Clause, 1777

*A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town, making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly.*

# VT Education Clause, Current

*Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and 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.*

# Significance of VT Education Clause

*... from the earliest period in this State, the proper education of all of the children of its inhabitants has been regarded as a matter of vital interest to the State, a duty which devolved upon its government, and which should be fulfilled at the public expense.*

-- Williams v. School District, 1860

# *Brigham v. State, Scope of Decision*

*We acknowledge the conscientious and ongoing efforts of the Legislature to achieve equity in educational financing and intend no intrusion upon its prerogatives to define a system consistent with constitutional requirements. In this context, the Court's duty today is solely to define the impact of the State Constitution on educational funding, not to fashion and impose a solution. The remedy at this juncture properly lies with the Legislature.*

-- VT Supreme Court, 1997

# The Common Benefits Clause Is A Challenge

*The other aspect of Brigham that is so astonishing is this. At a time in our political life in this country when individual success and Darwinian individual survival are celebrated, the Brigham case reinforces the fundamental human condition that we are all in this together.*

*-- State Sen. Peter Welch, 1997*

A commitment to equity forces us to accept and confront the discomfort that while we may all be in this together, some have still been left out.

# Working Towards Equity

The moral arc of the universe, the abolitionist Theodore Parker said in 1853, bends towards justice. If there is a definition of justice, it is that all are treated equitably. The common benefits clause of Vermont's constitution can perhaps best be seen as a weight that tries to increase the bend of the arc so equity and justice are achieved more quickly.

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