
Ten-Year Dispute over Public Education in New Hampshire Ends With Supreme Court Reversal

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BOSTON - July 26, 2001 - On March 13, 2001, Hale and Dorr lawyers submitted an amicus brief to the Supreme Court of New Hampshire on behalf of Jeanne Shaheen, Governor of the State of New Hampshire, in the well-publicized case of *Evelyn Sirrell v. State*.

The suit was the most recent in a ten-year string of cases that had challenged the constitutional adequacy of public education in New Hampshire and of the tax schemes that had been enacted to fund that education. At previous stages, the New Hampshire Supreme Court had held that the educational system was unconstitutional, that the State was required to fund a constitutionally-adequate education, and that the State's tax schemes designed to raise those funds were unconstitutional.

Sirrell was brought by three New Hampshire property owners who challenged the constitutionality of a statewide property tax scheme intended to help fund the State's obligation to provide a constitutionally adequate public education. The plaintiffs claimed that the property tax, as applied, violated Part II, Articles 5 and 6 of the New Hampshire Constitution. The trial court below ruled that the tax scheme was unconstitutional, and ordered the State to reimburse the taxpayers for the \$880 million already collected. Compliance with this order threatened to bankrupt the State.

Two weeks before briefs were due in the New Hampshire Supreme Court, the Governor approached Hale and Dorr to request its assistance in writing an amicus brief, which we agreed to do on a *pro bono* basis. The case raised complicated issues of New Hampshire constitutional and tax law. After extensive review of case law and legislative history, we submitted a brief arguing that (1) the trial court had failed to apply the appropriate standard of proof in determining the constitutionality of the tax statute; (2) the state's current approach to property valuation was sufficient to satisfy the constitutional requirements of Article 6; and (3) the trial court's order that the State repay \$880 million to the taxpayers was "extraordinary and impermissible" for reasons ranging from sovereign immunity to separation of powers. None of these issues was raised by the State below or on appeal.

On May 3, 2001, relying heavily on the standard of proof and Article 6 arguments made in Hale and Dorr's brief, the Supreme Court reversed the trial court in a 3-to-2 decision. The Supreme Court

held that the trial court had applied an incorrect standard of proof and that the plaintiffs' evidence failed to meet the correct (heightened) standard. The Supreme Court also reversed the order requiring that the State return the property tax already collected. The decision effectively ended ten years of litigation over the adequacy and funding of public education in New Hampshire.

Steve Jonas, Gabrielle Wolohojian, Christine Trowbridge, Dan Esrick and Mark Rienzi worked on this case.