

## Tax Cap Upheld Over Strong Dissent: Next Stop N.Y.'s Highest Court

The Appellate Division, Third Department today upheld a constitutional challenge to New York's tax cap. The suit, brought by NYSUT, asserted several different legal theories challenging the constitutionality of the statute. Two primary arguments were that the tax cap unconstitutionally divests local school boards of local control over their funding and that the cap on raising revenue to fund schools has a disparate impact of poorer school districts with the most high need and vulnerable student populations.

The four-judge majority held that local control was not itself a separate claim that could be brought in court and that economic disparities are permissible in school funding, notwithstanding that the statute caps the ability of school boards to enhance their funding at the local level. It appears to have been the majority's view that these claims could only have been pursued on a showing that the impact was so severe as to amount to "the deprivation of a sound basic education" which could be attributed to the State.

In a strong dissent, Judge Lynch stated that the issue of local control was in fact a valid basis to challenge the tax cap: "the focus must be on the ability of a local school district to provide funding for enriched educational opportunities that go beyond the bare minimum.... Plaintiffs persuasively argue that the Education Article embraces and protects their rights to provide such funding."

Regarding equal protection, Judge Lynch reasoned that the funding ceiling imposed by the tax cap has a heightened negative impact on poorer school districts. This ceiling, in his view makes the tax cap distinguishable from prior cases holding that economic disparities in school funding were permissible. Judge Lynch concluded that, "With the conceded disparate funding, compounded by the fact that taxpayers within the poorer school districts end up subsidizing, at least in part, the tax credits granted to taxpayers within the wealthier districts, I find that the plaintiffs have stated a viable equal protection claim."

The reasoning of the dissent is in accord with arguments advanced by the Middletown School District, R.E.F.I.T., and the Mid-Hudson School Study Council. on whose behalf we submitted the attached friend of the court brief which you can read [here](#).

Counsel for NYSUT has indicated that this case is headed for the Court of Appeals, which will need to decide for the first time whether the State can place limits on local school boards in their ability, with simple majority voter support, to enhance their programs above the bare minimum, and whether the ceiling imposed by the cap renders economic disparities in school funding constitutionally infirm.

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