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The Honorable Bob Duff
Senate Majority Leader
Legislative Office Building
300 Capitol Avenue, Suite 3300
Hartford, CT 06106-1591

Dear Senator Duff:

You have asked whether certain potential changes to Connecticut's Education Cost Sharing ("ECS") formula would violate our state constitution. Specifically, you ask whether our constitution requires that the ECS formula measure a town's ability to raise property tax revenue "using a ratio of ninety percent property wealth and ten percent income wealth." We conclude that the Connecticut Supreme Court has never specifically required that or any other particular approach, but rather has articulated general standards for state educational funding as further described below.

Before discussing your specific question, it is necessary to provide some background regarding certain Supreme Court cases and the ECS formula.

In *Horton v. Meskill*, 172 Conn. 615 (1977) (*Horton I*), our Supreme Court ruled that the state's method of funding education was unconstitutional. At that time, the state provided a flat grant of $250 per pupil in state aid, and left the rest of the responsibility for funding local public education to each district to provide through local property taxes. The Court explained that by relying primarily on a local property tax base without regard to the disparity in the financial ability of the towns to finance an educational program, the state was failing to meet its constitutional duty to educate its children. *Id.* at 649.

In 1979, in response to *Horton I*, the General Assembly adopted the original ECS funding formula. Following a subsequent constitutional challenge, the Court held that the formula was constitutional, and ordered further proceedings to determine whether legislative changes to the system after 1979 undermined the new system's constitutionality. *Horton v. Meskill*, 195 Conn. 24 (1985) (*Horton III*).

The ECS grant program created in response to *Horton I* has been the principal method by which the General Assembly appropriates funds to support local public elementary and secondary education. The original ECS formula was created by P.A. 79-128 and P.A. 79-553. The formula was last set out in a repealed section of Conn. Gen. Stat. § 10-262h, which may be found in P.A. 13-247, § 153. Many of the terms defining the components of the formula are still set out in Conn. Gen. Stat. §§ 10-261 to 10-262h. While the General Assembly has not precisely followed the formula in the last three fiscal years, choosing instead to allocate funds by specified dollar amounts to each local district, *see* P.A. 14-47, § 18; P.A. 15-244, § 33; P.A. 16-2, § 20, those specified dollar amounts still closely follow the results that would be produced by the ECS formula, with some minor variations.

The ECS formula takes the total amount of funding allocated by the legislature for this purpose for a fiscal year and divides it among the local school districts based upon the number of students attending school in each district and numerous other factors set forth in the statutes, including the "equalized net grand list," Conn. Gen. Stat. § 10-261(a)(6) and § 10-262f(8), the "median household income adjustment factor," Conn. Gen. Stat. § 10-262f(43), and the number of children in district schools who are eligible for free or reduced price meals, Conn. Gen. Stat. § 10-262f(25)(G). The "equalized net grand list" is the basis for an adjustment that weights each town's ability to raise property taxes based upon the property wealth of the town. The "adjusted equalized net grand list" is the basis of an adjustment that weights each town's ability to raise property taxes based upon the property wealth of the town adjusted on the basis of the median household income of the town compared to that of other Connecticut towns. The number of students eligible for free or reduced price meals is a measure of the number of students in poverty in a town. In recent years, the grants have also awarded substantial additional funding and support for the 30 poorest performing school districts through the Alliance Districts program, Conn. Gen. Stat. § 10-262u, and the Commissioner's Network Schools program, Conn. Gen. Stat. § 10-223h.

Under the most recent ECS formula, in determining a town's ability to raise revenue, the "equalized net grand list" factor counts for 90% of the adjustment for ability to pay, and the "median household income adjustment factor" counts for 10% of the adjustment for ability to pay. Conn. Gen. Stat. § 10-262f(44). Districts also receive a 30% upward adjustment for students in poverty. Conn. Gen. Stat. § 10-262f(25)(G).

With this background, we turn to your specific question. You have asked whether a revision of the ECS formula that decreased the 90% weight given to towns' "equalized net grand lists" and correspondingly increased the 10% weight given to the "median household income adjustment factor" in computing ECS grants would violate the requirements of *Horton III*.

The short answer to your question is that *Horton III* does not discuss the manner in which various towns' ability to pay for education costs should be determined, and therefore does not directly address your question. The Court did not discuss how town wealth should best be measured. In order to provide a fuller answer, however, we must briefly review the *Horton III* decision. That decision contains our Supreme Court's last significant discussion of the constitutional requirement that the legislature move towards equalizing funding for public education. The Court held that the state "was required to assure to all students in Connecticut's free public elementary and secondary schools a substantially equal educational opportunity." *Horton III*, 195 Conn. at 35 (internal quotation marks and citations omitted). In determining whether a funding plan meets that standard, the Court said that the constitutionality of education funding:

> must be strictly scrutinized using a three step process. First, the plaintiffs must make a prima facie showing that disparities in educational expenditures are more than de minimis in that the disparities continue to jeopardize the plaintiffs' fundamental right to education. If they make that showing, the burden then shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy. If the state's justification is acceptable, the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional. In other words, to satisfy the mandate of *Horton I*, a school financing plan must, as a whole, further the policy of providing significant equalizing state support to local education. However, no such plan will be constitutional if the remaining level of disparity continues to emasculate the goal of substantial equality.

Id. at 38 (internal quotation marks and citations omitted). The Supreme Court has not had occasion to further explain or apply this standard since 1985, although its interpretation and application are at issue in the case of *CCJEF v. Rell*, now pending on appeal before that Court.

In sum, *Horton III* stands for the general proposition that if disparities in educational expenditures among towns are more than de minimis in that they jeopardize the fundamental right to education, then the courts will look closely to consider the size of the disparities, the reason for the disparities, and the effects of the disparities. If spending disparities are jeopardizing the right to education, then *Horton III* requires the state to use state funding so that the overall availability of funds to local districts is less dependent on variations in local school districts' ability to raise funds through local property taxes. Because this test does not provide a formula or numeric benchmarks, it is impossible to predict with confidence how the Supreme Court might apply it in considering a challenge to a new or revised ECS formula.
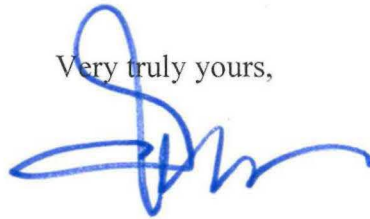
Thus, while *Horton III* does not directly answer the question you ask, it does generally describe the standard under which the courts may view the question. The *Horton III* ruling would appear to require a court evaluating any new formula in the future to first consider whether the formula created disparities in education spending that were more than de minimis and jeopardized students' opportunities for an adequate education. If the court found such disparities, then it would need to consider the size of, reasons for, and effects of the disparities. In applying the standard to evaluate a district's ability to pay, advocates of giving greater weight to the "equalized net grand list" factor might argue that because a locality can only tax its own taxable property to raise revenue, the sole or principal factor in determining ability to pay should be the "equalized net grand list." On the other hand, advocates of giving some or greater weight to the "median household income adjustment factor" might argue that even if a district has a high value of taxable property, if its residents have relatively low income levels, they still cannot afford tax rates comparable to those in higher income communities. No doubt there are many other policy and factual arguments that could be made in support of many different approaches to creating a constitutional and fair formula.

In addition, in evaluating any change to the role of the property wealth and income factors in considering a challenge to a new funding formula, a court might wish to consider data at the time of trial showing the effects of various formulas upon the neediest (and other) districts, and possibly data showing the effects of

various alternatives. Because the formula includes a complex web of interrelated factors, and each factor may have different effects depending on the other factors, and also because *Horton III* does not provide more than the most general guidance, we cannot confidently predict how a court would evaluate any particular change in the relative weighting of the "equalized net grand list" and "median household income adjustment" factors. That said, it is fair to assume that a funding formula could so deviate from the standards set out in *Horton III* as to cross the line into unconstitutionality. Accordingly, in any redefinition of the ECS formula, the legislature should seek to adhere to the general standards identified by the Court.

Very truly yours,

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