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Iowa Supreme Court Deeply Divided on Whether the Iowa Constitution Contains a Right to Education

by Ryan Koopmans

In April, the Iowa Supreme Court rejected a plea to read a right to a "minimally sufficient" education into Iowa's Constitution. The case, *King v. State*,[1] is noteworthy for that ruling alone—especially because education reform was at the top of the legislative agenda in Iowa this year. But the five separate opinions—totaling 163 pages—are about much more than education. Several issues surfaced in this case, chief among them constitutional interpretation and the role of the judiciary. The justices also wrangled over how to apply the rational-basis test, issue preservation, and the pleading requirements applicable to a motion to dismiss. The case also highlights the split among the justices that formed when Justices Waterman, Mansfield, and Zager joined the court after the 2010 retention election.

I. The Decision

The plaintiffs—several students and their parents—sued the State, the Department of Education, and Iowa's former Governor, Chet Culver, in 2008, claiming that they weren't doing enough to serve Iowa's largest and smallest school districts. The plaintiffs didn't claim that the schools were underfunded; rather, they faulted the defendants for giving too much control to the local school districts and for not implementing statewide academic standards. As a result, the plaintiffs claimed that the defendants violated the education, equal protection, and due process clauses of the Iowa Constitution.

The district court dismissed the entire lawsuit, ruling that the claims were nonjusticiable political questions. The case was briefed and then argued in the Iowa Supreme Court in March 2010, and then reargued in June 2011 after Justices Waterman, Mansfield, and Zager joined the court.

By a 4-3 vote, the Iowa Supreme Court affirmed the dismissal of the lawsuit, although not on political question grounds. Justice Mansfield, joined by Chief Justice Cady and Justices Waterman and Zager, reached the lawsuit's merits and held that the plaintiffs' criticisms of the Iowa's education policy, even if true, do not amount to a violation of Iowa's education clause. The majority also ruled

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New Jersey Supreme Court Rules Homeowners' Association's Sign Restriction on the Interior of a Unit Is Unconstitutional

by Jaime K. Fraser

On June 13, 2012, the Supreme Court of New Jersey affirmed the appellate division's ruling and found that the sign restrictions adopted by Mazdabrook Commons Homeowners' Association ("Association") violate the free speech clause of the state constitution.[1] In *Mazdabrook Commons Homeowners' Ass'n v. Khan*[2] ("*Mazdabrook*"), the court held that a homeowner's free-speech right to post political signs in his home outweighed the private property interest of a homeowners'

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whether property owners will use this decision to justify the construction of concrete protective bulkheads to prevent erosion.[29] These structures have previously been disallowed by the Texas General Land Office because they contribute to erosion on neighboring property, but given the decision in *Severance,* the GLO may have to allow their construction.[30]

The biggest question that remains undecided is where the line should be drawn between "gradual" and "dramatic" changes in the coast line: when does erosion that creates a rolling easement become protected avulsion?[31] Only future litigation can resolve this complicated question.

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Endnotes

1 No. 90-0381, 2012 WL 1059241(Tex. Mar. 30, 2012).

2 *Id.* at *3.

3 "Avulsion . . . is the sudden and perceptible change in land and is said not to divest an owner of title." *Id.* at *24.

4 *Id.* at *3.

5 *Id.* at *7.

6 *Id.*

7 *Id.* at *8-9.

8 The Texas legislature has defined public and private beaches along the Gulf of Mexico as land between the mean low-tide line and the line of vegetation. *Id.* at *12.

9 *Id.*

10 Severance v. Patterson, 485 F. Supp. 2d 793, 802-04 (S.D. Tex. 2007).

11 *Severance*, 2012 WL 1059241, at *10.

12 *Id.*

13 *Id.* at *5.

14 *Id.* at *6. Texas courts have interpreted "time immemorial" as referring to the time when Spanish or Mexican civil law governed. *Id.* at *41-42.

15 *Id.*

16 *Id.*

17 *Id.* at *34.

18 *Id.* at *35.

19 *Id.*

20 *Id.* at *22.

21 *Id.* at *16.

22 *Id.*

23 Nick Jimenez, *Render Ballot Justice to These Five Justices*, Caller, Apr. 22 2012, http://www.caller.com/news/2012/apr/22/render-ballot-justice-to-these-five-justices/.

24 *Id.*

25 *Id.* at *35-36.

26 *Id.* at *36.

27 Heber Taylor, *Clean Beaches and Public Access*, Daily News, May 14, 2012, http://galvestondailynews.com/story/314482.

28 *Id.*

29 Harvey Rice, *Galveston Beach Homeowners Prepare to Exert Rights: Battle May Be Looming After High Court Ruling*, Chron, May 9, 2012, http://www.chron.com/news/houston-texas/article/Galveston-beach-homeowners-prepare-to-exert-rights-3547164.php.

30 *Id.*

31 Matt Festa, *Decision on Open Beaches Act/Rolling Easement Case (Severance v. Patterson)*, Land Use Prof Blog, Jul. 18 2012, http://lawprofessors.typepad.com/land_use/2010/11/decision-on-open-beaches-act-rolling-easement-case-severance-v-patterson.html.

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that the plaintiffs' equal protection and due process claims failed because there was a conceivable rational basis for not establishing greater statewide standards—namely, that "[t]he legislature may have decided that local school board autonomy is preferable in certain instances to state mandates." Moreover, the plaintiffs didn't claim that the state treats school districts differently from one another (i.e., unequally); they claimed only that the state should be more active in regulating those school districts. That, said the majority, does not amount to a violation of the equal protection clause.

The majority also questioned whether the state can ever violate *substantive* due process by failing to act. The plaintiffs alleged that the state was not doing enough to regulate schools, not that it was taking some wrongful affirmative action. As the majority noted, that is an unusual due process claim. The due process clause

of the Iowa Constitution, like the U.S. Constitution, provides that "no person shall be deprived of life, liberty, or property, without due process of law." Normally, the right to liberty is associated with the right to be left alone—to live one's life without government intrusion. The plaintiffs in this case argued the opposite—that the state government should have injected itself into school governance to a greater degree. The majority expressed "serious doubt" whether such a claim would ever have merit, but nonetheless left the issue open because the state's "inaction" survived rational-basis review.

Justices Wiggins, Appel, and Hecht dissented, with Wiggins and Appel each writing separate opinions. These three justices believe the plaintiffs' claims are justiciable and that the judgment should be reversed and the case remanded to the district court for further proceedings. Justice Wiggins, joined by Justices Appel and Hecht, faulted the majority for reaching the merits of the lawsuit, since the State had not raised those issues in its appellate briefing. (The State did address the merits in the district court.)

Justice Appel also wrote a lengthy dissent (joined by Justice Hecht) in which he discussed the importance of education and concluded that education is a fundamental right under the Iowa Constitution. He would subject any "deprivations of a basic or adequate education" to "heightened judicial review," and analyze "other material differences in education" under some form of the rational-basis test. The plaintiffs, in his view, alleged sufficient facts to withstand a motion to dismiss under either standard.

Chief Justice Cady and Justice Waterman also wrote separate concurring opinions, although they also joined Justice Mansfield's opinion in full. They responded directly to the dissenting opinions and emphasized additional reasons for dismissing the plaintiffs' claims.

II. Differing Views on Constitutional Interpretation

King highlights the split on the Iowa Supreme Court that that has repeated several times since the 2010 retention elections. Indeed, the majority's and dissent's approaches to constitutional interpretation could not be further apart.

In analyzing whether article IX, division 2, section 3 of the Iowa Constitution contains a right to a minimally sufficient education, Justice Mansfield considered three sources, starting with the text of section 3 and the surrounding provisions. He then moved to the court's relevant precedents, most of which were decided shortly after the ratification of the Iowa Constitution. And finally, he considered the debates of the constitutional convention. These three sources led Justice Mansfield, who was joined by Chief Justice Cady and Justices Waterman and Zager, to conclude that article IX, division 2, section 3 does not contain a right to a minimally sufficient education: (1) the text of section 3 and the surrounding provisions suggest that section 3 merely allows the legislature to fund schools, it doesn't require the legislature to do so; (2) the Iowa Supreme Court held shortly after the 1857 convention that "no aspect of the Iowa Constitution, including the education clause, authorized the legislature to provide for public schools (as opposed to merely funding them)"; and (3) one delegate to the 1857 convention proposed an amendment to section 3 that would have required the State to provide education "without charge," but after another delegate argued that the local districts should "regulate this matter themselves" the convention rejected the amendment by a vote of twenty-five to eight.

In contrast to Justice Mansfield, who started his analysis with the text of the constitutional provision, Justice Appel began with a detailed, twenty-two-page analysis of the "historical roles of national and state government in educating children" and the "relationship of education to democratic government, personal liberty, and human dignity." He quoted some of our nation's founders—Thomas Jefferson, John Adams, and Benjamin Rush—as well as several nineteenth-century Iowa governors. He noted, for example, that Governor James Grimes "emphasized education" in his 1856 inaugural address, the year before the constitutional convention. Justice Appel also relied on statements made during the constitutional convention, as well as several facts that post-date the ratification of Iowa's Constitution. He found it significant to the constitutional question that Iowa held a statewide education summit in 1954 at President Eisenhower's request, that Governor Ray served as the chairman of the Education Commission of the States from 1981 to 1982, that Governor Branstad has recently proposed legislative changes to Iowa's education system, and that the United States ratified the United Nation's 1948 Universal Declaration of Human Rights, which declares that education is a "human right."

Justice Appel's reliance on such a wide array of sources drew this response from Justice Mansfield:

> We do not think a resolution of this case requires us to review the history of education generally or what past Iowa governors have said on the subject. We are judges, not historians. For judges, some history,

such as our own precedent, is highly relevant. But there are risks when we draw on political history as source material for judicial decisionmaking. One risk is that we may unwittingly diminish the importance of more relevant historical events, such as the ratification debates on the Iowa Constitution, by submerging them in other political history that has only background importance. Another risk is that political trends might then be used to justify the outcome in a particular case. It is not surprising to us that Iowa's governors have believed education to be a critical responsibility of government. But demonstrating that education has been a vital concern of the political branches of government does not answer the present question whether this particular case ought to proceed through the judicial branch.

Justice Waterman also criticized Justice Appel's "wide-ranging survey of authorities," noting specifically that he "fail[s] to see how a 1948 UN Declaration helps our court ascertain the intent of the framers of the Iowa Constitution ratified ninety years earlier." That comment, in turn, drew a response from Justice Appel. He noted that several U.S. Supreme Court Justices have relied on foreign law in their decisions, that many of our nation's founders were influenced by a broad array of foreign sources, and that "the University of Iowa College of Law has a program in international and comparative law" that "'provides an essential theoretical foundation for all lawyers by affording unique insight into the nature of law and legal process.'"

For his part, Chief Justice Cady joined Justice Mansfield's opinion in full, but he also wrote that Justice Appel had "captured the rich history of [education] in Iowa and has provided insight into its constitutional stature." That the Chief Justice would be more willing to consider modern-day events is consistent with his theory that Iowa's Constitution is a "living document" that changes "with the increasing knowledge and understanding of the world."[2] Nonetheless Chief Justice Cady concluded that the allegations of this case, even if true, did not state a claim under the right to education—assuming there is one. And so he was "content to wait for a different case" in which to explore Justice Appel's historical account.

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Endnotes

1 King v. State, 2012 WL 13366597 (Iowa Apr. 20, 2012).

2 The Hon. Mark Cady, *Iowa View: Why the Iowa Constitution is a 'Living' Document*, Des Moines Register, Apr. 15, 2012.

New Jersey Supreme Court Rules Homeowners' Association's Sign Restriction on the Interior of a Unit Is Unconstitutional

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association. The court found the restriction at issue—which had amounted to a near-complete ban on all residential signs—to be unreasonable and unconstitutional. However, the homeowners' associations can still adopt reasonable time, place, and manner restrictions, providing adequate alternative means of communication.[3]

Background and Procedural History

Wasim Khan ("Khan"), a Morris County homeowner within the Association, was sued by the Association for failure to pay his maintenance fees and fines incurred from his planting a rosebush against his home. Khan filed a counterclaim alleging, among other things, that his right to free speech had been violated by the Association's prohibition of all window signs except for one "For Sale" sign. Kahn was running for Parsippany Town Council in 2005 and wanted to publicize his candidacy.

Section 12 of the Association's Public Offering Statement provides in pertinent part: "(k) No signs are permitted on the exterior or interior of any Unit, except for one 'For Sale' sign on the interior of a Unit." Article X(a)(vii) of the recorded Declaration of Covenants and Restrictions ("Declaration") provides: "No signs . . . shall be erected or installed in or upon any Building, the Common Facilities or any part thereof without the prior written consent of the Board."

The trial judge awarded the Association $3500, comprised of $2000 in unpaid assessment fees and $1500 in fines for the over-height rosebush. The judge dismissed Khan's counterclaim about the sign prohibition in its entirety. Khan appealed, and the Association cross-appealed.