

Thompson v. Benson
199 Wis. 2d 674 (1996)

This case illustrates the restrictions the Wisconsin Constitution places on legislative enactments and the checks and balances that exist in a three-branch system of government. Here, the Wisconsin Supreme Court stopped an attempt to take powers away from the elected state superintendent of schools and give them to gubernatorial appointees. In an opinion authored by Chief Justice Roland B. Day, the Supreme Court voided the education provisions of 1995 Wis. Act 27. Justice Jon P. Wilcox filed a concurring opinion and was joined by Justice Donald W. Steinmetz.

In this case, the Wisconsin Supreme Court decided that the duties of the elected state superintendent of public instruction (SPI) could not be reallocated or diminished by the appointment of an education commission and education secretary.

The petitioner, Governor Tommy G. Thompson, asked the Court to uphold an action that would permit appointees of the governor to fulfill some of the duties of the SPI. The respondent, State Superintendent John T. Benson, argued that such action would take away powers granted to the elective office in Article X of the Wisconsin Constitution.*

In deciding the case, the Court interpreted 1995 Wis. Act 27,** focusing on four areas:

- the meaning of the words in the text;
- the debates over the amendment by the framers of the state Constitution;
- the context within which the amendment was written and
- the Legislature’s first interpretation of the amendment.

The governor argued that the wording of Article X, Section 1, “[t]he supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct,” implies that the superintendent’s power is to be shared.

However, the Court, when looking at the 1847-48 constitutional convention records, found that, as the framers debated Amendment X, they “rejected the very framework proposed by 1995 Wis. Act 27.” Furthermore, the “other officers,” the Court found, were meant to be subordinate to the SPI.

The Court found that “the constitutional difficulty with the education provisions of 1995 Wis. Act 27 is not that it takes power away from the office of the SPI, but rather that it gives the power of supervision of public education to an ‘other officer’ instead of the SPI.”

Justice Wilcox wrote in his concurring opinion that although he agreed that the provision was unconstitutional he disagreed with the Court’s interpretation of Article X which concluded that the “other officers” were meant to be subordinate. He argued that the Court’s decision reduced the Legislature’s flexibility to administer future changes to Wisconsin’s educational system. 12/97

* The 1902 amendment to Article X, Section 1, of the Wisconsin Constitution states: “The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their qualifications, powers, duties, and compensation shall be prescribed by law. The state superintendent shall be chosen by the qualified electors of the state at the same time and in the same manner as members of the supreme court, . . . The term of office, time and manner of electing or appointing all other officers of supervision of public instruction shall be fixed by law.”

** 1995 Wis. Act 27 created the Department of Education, a new Education Commission and a new office, the Secretary of Education. This officer is appointed by the Governor and is head of the Department of Education.