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CARL GOLDEN: Who will blink on school aid?

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Neither side in the litigation challenging the constitutionality of the reductions in state aid to education broke any new ground in recent oral arguments before the State Supreme Court.

The Education Law Center reiterated its position that anything less than full funding of the aid formula violated the Supreme Court ruling of three years ago that upheld the formula provided it was funded in its entirety.

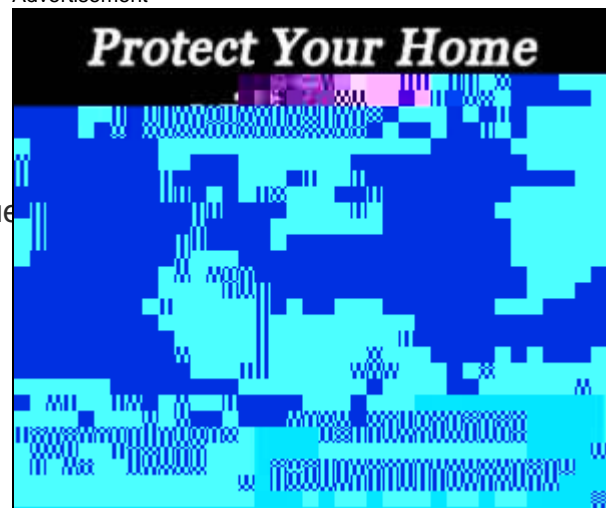
Former Associate Justice Peter Verniero, recruited by the Christie administration to defend it, contended that forces outside the control of the Administration — the collapse of the national economy and the resulting loss of tax revenue — left no choice but to reduce state spending across the board.

The Law Center's task was both familiar and relatively easy; it was the same argument it made for the four decades the position the state took at that time, a dilemma noted by Associate Justice Jaynee LaVecchia as well as Superior Court Judge Peter Doyne, the special master appointed by the Court, who ruled the aid cuts violated the Constitution.

Doyne noted drily that "ironies abound" in the state's position, while LaVecchia was more direct, recalling that the formula was brought before the court "like tablets from the mountain."

Rather than attempting to explain away this
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he said, the constitutional obligation of the elected branches of government to set spending and revenue policy and they should be left to that task.

As the court's critics have made clear repeatedly, the constitution expressly and unequivocally places the appropriation authority in the legislative branch.

The court, however, has held just as repeatedly that its interpretation of the constitution demands adequate funding be provided to less wealthy school districts — largely urban areas — to bring them up to the levels of their more well to do neighbors.

The court has neither ordered a tax revenue source nor dictated the appropriations process. Rather, it has said districts must be funded at a certain formulaic level and it is up to the executive and the Legislature to find the money to meet the mandate.

Verniero argued there is no ready money and the court should excuse itself from the process until there is.

In response, Associate Justice Barry Albin referred to the income tax surcharge on wealthy taxpayers — a levy that expired last year — as a potential revenue source which could be used to restore the aid cuts.

Whatever Albin's feelings may be with respect to the surcharge, he should have held his tongue. Critics quickly and gleefully

pounced on his remarks as further evidence that the court was attempting to legislate tax policy.

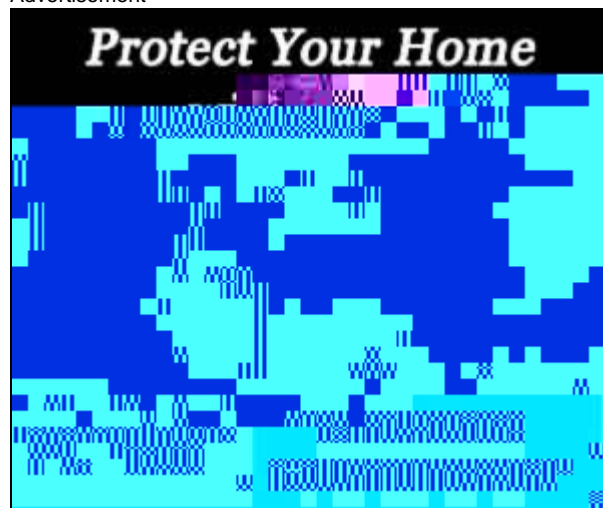
As the administration awaits the court's ruling, speculation about its response has run amok. The governor said defying a court order to restore the funds in their entirety — some \$1.6 billion — was an option under consideration.

Even though there are a number of other options available, Christie's comments were seen as potentially setting up an eyeball-to-eyeball-who-blinks-first confrontation.

Should that occur — with talk of constitutional crisis, contempt citations and closing schools filling the air — it will make for the type of riveting political theater New Jerseyans secretly love.

Moreover, against the background of bitter disputes between administrations and public employee unions in states around the country, an unprecedented c

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onfrontation between the governor and the Supreme Court would attract national media attention and fill the blogosphere, talk radio and cable television roundtables.

Coincidentally, shortly after the court heard oral argument, a Quinnipiac University poll was released, showing that while a majority favors additional state aid to local school districts, a nearly equal majority opposes court-ordered expenditures. At the moment at least, public sentiment appears to be on Christie's side.

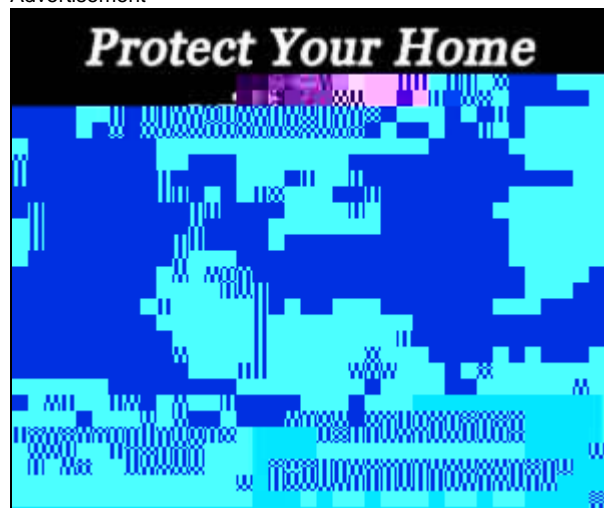
Christie also has said he remains opposed to any tax increase to meet a court mandate to restore the cuts and would, instead, impose deep reductions in spending for hospitals, senior citizen programs, and higher education to name a few.

The court has not given any timetable for the release of its ruling even though only two months remain before the fiscal 2011-12 state budget must be in place. An order to restore the aid would blow the proposed budget apart and create serious divisions between the administration and the Legislature over what to cut and by how much.

Compromise? Maybe. Confrontation? Perhaps. Fascinating? You bet.

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