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John F. Watson

THE CAUSE, EFFECT AND CONSTITUTIONAL CONSEQUENCE OF UNEQUAL FUNDING: PUBLIC EDUCATION IN ILLINOIS

INTRODUCTION

In 1986 and 1987, wealthy school districts in Illinois spent four times more per student than poor districts, thereby ranking Illinois sixth in the nation for disparate educational funding systems.[1] In 1990, parents and students from forty-seven school districts challenged the state's funding system[2] by filing suit in the Circuit Court of Cook County. The complaint alleged three separate violations of the Illinois Constitution, including the education article, equal protection clause, and due process clause.[3] The circuit court granted

1. This data compares the richest 10% of Illinois school districts with the poorest 10% of Illinois school districts. ILLINOIS STATE BD. OF EDUC., 1989 ANNUAL REPORT 6 (1990).

2. 105 ILL. COMP. STAT. (1993) (ILL. REV. STAT. ch. 122 (1991)) establishes the public school system in Illinois. See *infra* notes 144-61 and accompanying text, discussing the current method of funding in Illinois.

3. Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct. filed Nov. 13, 1990) (order granting Defendant's Motion to Dismiss), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992). In *Committee for Educational Rights*, the plaintiff's complaint alleged that the present statutory scheme in Illinois violates three provisions of the Illinois Constitution: the education article, the equal protection clause, and the no-special-law article. Plaintiff's Second Amended Complaint for Declaratory Judgment at 53-57, Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct. filed Nov. 13, 1990) (order granting Defendant's Motion to Dismiss), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992) [hereinafter Plaintiff's Second Amended Complaint].

For similar constitutional challenges in both state and federal courts, see, *e.g.*, Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450 (1988); Papasan v. Allain, 478 U.S. 265 (1986); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973); Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973); Dupree v. Alma Sch. Dist., 651 S.W.2d 90 (Ark. 1983); Serrano v. Priest, 487 P.2d 1241 (Cal. 1971), *cert. denied*, 432 U.S. 907 (1977); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); Horton v. Meskill, 376 A.2d 359 (Conn. 1976); McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981); Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983); Milliken v. Green, 212 N.W.2d 711 (Mich. 1973); Helena Elementary Sch. Dist. v. State, 769 P.2d 684 (Mont. 1989); Opinion of the Justices, 387 A.2d 333 (N.H. 1978); Abbott v. Burke, 575 A.2d 359 (N.J. 1990); Robinson v. Cahill, 303 A.2d 273 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1973); Board of Educ. v. Nyquist, 439 N.E.2d 359 (N.Y. 1982); Britt v. North Carolina State Bd. of Educ., 357 S.E.2d 432 (N.C. Ct. App. 1987), *cert. denied*, 361 S.E.2d 71 (N.C. 1987); *In re* G.H., 218 N.W.2d 441 (N.D. 1974); Board of Educ. v. Walter, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); Olsen v. State of Oregon, 554 P.2d 139 (Or. 1976); Danson v. Casey, 399 A.2d 360 (Pa. 1979); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); Seattle Sch. Dist. No. 1 v. State of Washington, 585 P.2d 71 (Wash. 1978); Pauley v.

the defendant's motion to dismiss, and now the plaintiffs have appealed the case to the Appellate Court of Illinois, First District.[4] If the appellate court finds a constitutional violation, the Illinois General Assembly would be required to examine alternative funding methods and to adopt a new financing scheme tailored to comply with the Illinois Constitution. The present funding system raises constitutional issues not only because of its social and economic impact, but also because of education's critical role in the political process.

One of the state's most important functions is to educate its citizens.[5] Education provides the opportunity for people to succeed in life.[6] However, the level of funding a school district receives directly affects the quality and quantity of educational services a school district can offer.[7] Because local property taxes primarily fund the public school system,[8] wealthier school districts produce

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Kelly, 255 S.E.2d 859 (W. Va. 1979); Washakie County Sch. Dist. v. Herschler, 606 P.2d 310 (Wyo. 1979), *cert. denied*, 449 U.S. 824 (1980).

4. Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct. filed Nov. 13, 1990) (order granting Defendant's Motion to Dismiss), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992).

5. See *infra* notes 15-19 and accompanying text, discussing the importance education holds in our political structure and way of life.

6. "[Education] is the very foundation of good citizenship . . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Brown v. Board of Educ., 347 U.S. 483, 493 (1953).

7. See *infra* notes 15-19 discussing the importance of education to the political process. Counts 138-60 of the complaint filed in the Illinois suit outline concrete examples of how the differences in funding create differences in educational services. Plaintiff's Second Amended Complaint, *supra* note 3, at 38-43. The neighboring districts of Mt. Morris Community Unit School District and Byron Community Unit School District have substantially the same property values, except that the Byron School District benefits from the Commonwealth Edison nuclear facility built within its boundaries. *Id.* at 40. The Byron school district, at a tax rate of 2.1%, produces $10,085 per student, whereas the Mt. Morris school district, at a tax rate of 4.14%, produces only $3,483 per student. *Id.* at 39.

The following is a comparison of the difference in the number of courses offered by the high schools in the Byron and Mt. Morris school districts:

Type of Course	*Byron*	*Mt. Morris*
Agriculture	9	0
Business	16	9
Career Education	10	0
Computer	5	1
English	25	16
Gifted Students	10	0
Home Economics	11	6
Industrial Arts	22	12

Id. at 40-42.

In addition, Byron High School offered a total of 187 courses while Mt. Morris offered only 113. *Id.*

8. Local property taxes in 1986 and 1987 accounted for $3,634,200,000 or 50.9% of total school district revenues. Plaintiff's Second Amended Complaint,

significantly more funds per student than poor school districts, with less tax effort.[9] Such disparities result in wealthier districts employing more teachers with advanced degrees,[10] paying their teachers considerably higher salaries,[11] and producing students with higher average scores on standardized tests.[12]

Public school systems in Illinois are dedicated to the "educational development of all persons to the limits of their capacities."[13] To meet this goal, Illinois must eliminate disparaties by restructuring the current system of funding. The Illinois General Assembly must carefully consider alternative methods of funding and choose a course of action that will not only be workable today, but will continue to evolve, providing all children with the maximum educational resources possible.

Part I of this Note will focus on the overall importance of education in American society and will discuss how the level of funding impacts the educational development of students. Part II will set forth the background of the constitutional challenge upon disparate funding systems in both the federal and state courts. Part III will

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supra note 3, at 22. Other local sources, such as proceeds from bond issuances and the Corporate Personal Property Tax Replacement Fund, account for an additional 7.9% of total school district revenues. *Id.* State sources of revenue in 1986 and 1987 accounted for 33.9% of total school district revenues, and federal sources accounted for 7.3% of total school district revenues. *Id.* In some counties, property taxes supply almost all of the school district's budget. In DuPage County, for example, 86.5% of the school budget comes from local property taxes, 11.8% comes from state aid, and 1.7% comes from federal aid. Casey Banas, *Poll Finds Backing for Funding Changes*, CHI. TRIB., Jan. 1, 1991, § 2, at 3.

9. Wealthier school districts, where property values are high, raise substantially more funds than poorer school districts. ILLINOIS STATE BD. OF EDUC., PERFORMANCE PROFILES: ILLINOIS SCHOOLS REPORT TO THE PUBLIC, SCHOOL REPORT CARD OF 1989 18 (1990) [hereinafter SCHOOL REPORT CARD OF 1989]. Equalized Assessed Valuation (EAV) denotes the assessed value of real property subject to taxation by the school districts. Plaintiff's Amended Complaint, *supra* note 3, at 10. EAV per student adequately measures the relative wealth of a school district. SCHOOL REPORT CARD OF 1989, *supra*, at 11. *See also* Plaintiff's Amended Complaint, *supra* note 3, at 15.

10. The following data compares the top 25% of school districts in EAV per student with the bottom 25% of school districts in EAV per student. SCHOOL REPORT CARD OF 1989, *supra* note 9, at vi. At the elementary level, 44% of teachers in wealthier districts held master's degrees as compared to 38% in poor districts. *Id.* at vii. Additionally, at the high school level, 69% of teachers held master's degrees and above in wealthier districts as compared to 38% in poor districts. *Id.*

11. *See* SCHOOL REPORT CARD OF 1989, *supra* note 9, at vii (stating, "The differences in average teacher salaries between rich and poor school districts were approximately $5,800 at the elementary level and $12,000 at the high school level.").

12. The standardized tests were comprised of both the IGAP (Illinois Goal Assessment Program) mathematics and reading assessment tests, and the ACT (American College Testing program) college placement test. SCHOOL REPORT CARD OF 1989, *supra* note 9, at vi.

13. ILL. CONST. art. X, § 1.

delineate the approach taken by the plaintiffs in the Illinois suit to declare the financing method in Illinois unconstitutional. Part IV will then discuss alternative methods of funding. Finally, Part V will conclude by proposing that the Illinois General Assembly adopt a public school system fully funded by the state.

I. SOCIAL POLICY AND ITS RELATIONSHIP TO UNEQUAL PUBLIC SCHOOL FUNDING

The quality of a child's education directly impacts two important aspects of American society: the operation of the political process and the potential for mobility between the social classes. Quality of education is not solely a function of money. Contrasting socioeconomic realities between the richer and poorer communities also affect educational opportunities. While opponents of equal educational funding argue that crime, poverty, complacency and the inability to educate poor minorities are the causes of inferior education,[14] this section argues that these factors are actually the result of an inferior education. Additionally, this section argues that since the state has direct control over funding, equalizing expenditures may be the only effective means to combat such social problems.

A. Education, the Political Process, and Social Mobility

In the United States, education plays a significant role in the operation of the government. In an effective democracy, the people must elect their representatives based upon an understanding of the policies which those representatives endorse.[15] If people lack the basic skills needed to make an informed choice in electing their representatives, the political process breaks down.[16] In addition, education plays a vital role in the free exercise of fundamental rights.[17] For example, the ability to effectively petition the govern-

14. See *infra* notes 29-36 for sources addressing why some students fail and why educators may choose to point a finger at factors out of their control.

15. Many cases and commentators have recognized that education plays an important political role in a democratic society. In *Brown v. Board of Education*, the Supreme Court noted that education "is required in the performance of our most basic public responsibilities, even service in the armed forces." 347 U.S. 483, 493 (1953); *see also* People of the State of Ill. *ex rel.* McCollum v. Board of Educ., 333 U.S. 203, 216 (1948) (Frankfurter, J., concurring) (recognizing that public education is "the most powerful agency for promoting cohesion among a heterogeneous democratic people."); Abington Sch. Dist. v. Schempp, 374 U.S. 203, 230 (1963) (Brennan, J., concurring) (noting that "Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government.").

16. *See Brown*, 347 U.S. at 493 (stating that "education is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities.").

17. Thomas Jefferson stated that the population was entitled to enough education to read and write because basic literacy is necessary to render the gen-

ment for redress of grievances gives substance and meaning to the fundamental right of free speech.[18] Consequently, education assures that people have the power necessary to exercise fundamental rights central to a democratic government "by the people, and for the people."[19]

In recognition of education's political importance, state-run public school financing systems generally require a minimum level of funding per student, called a foundation level of funding.[20] If local property taxes fail to raise the minimum level of funding, the state provides supplemental funds.[21] This type of "foundation plan" attempts to provide each child with the basic skills necessary to function in society.[22]

However, independent of democratic needs, the level of a person's education directly affects his or her economic status. The average salary of a high school graduate exceeds that of a non-graduate, and the average salary of a college graduate exceeds that of a high school graduate, and so on.[23] The social and economic mobility of a person in our society directly relates to the level and type of education the person has attained.[24]

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eral populace capable of guarding its liberty. Thomas Jefferson, *A Bill for the More General Diffusion of Knowledge, in* WRITINGS 365 (Merrill D. Peterson ed., 1984).

18. *Id.*

19. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

20. 105 ILL. COMP. STAT. 5/18-8(5) (1993) (ILL. REV. STAT. ch. 122, para. 18-8(5) (1991)); *see also* JOHN E. COONS ET AL., PRIVATE WEALTH AND PUBLIC EDUCATION 64 (1970) (noting that a foundation plan "establishes a dollar level (foundation) of spending per pupil which it guarantees to every district."). A foundation program establishes a minimum dollar level which is required to provide a student an adequate education. *Id.* The state guarantees this minimum funding level for each student provided that the local district complies with a minimum property tax rate. *Id.* To preserve incentive, the local district can raise property taxes in an effort to raise additional local revenues. *Id.* The advantage to a foundation plan is that shifts in spending can take effect almost immediately because of local control. *Id.* Additionally, it leaves parents with apparent control over their children's education. *Id.*

21. COONS ET AL., *supra* note 20, at 64.

22. *Id.*

23. In 1986, the average salaries relative to the level of education attained were as follows: a college graduate earned $33,443; a high school graduate earned $19,844; and a person with no high school diploma earned $16,605. Carol Kleiman, *Higher Learning Clearly Means Higher Earning*, CHI. TRIB., Mar. 12, 1989, § Jobs, at 1.

In 1987, the average man with a graduate degree earned $41,700; the average man with a bachelor's degree earned $35,200; and the average high school graduate earned $25,394. *Education a Better Investment*, UPI, Oct. 24, 1989, *available in* LEXIS, Nexis Library, WIRES file.

24. In the United States, social status and economic status are essentially synonymous because the U.S. Constitution restricts the power of Congress to grant a title of nobility. *See* U.S. CONST. art. I, § 9, cl. 8. However, distinct social classes do exist in America, which in itself fuels a form of bigotry, especially in the areas of educational opportunity. *See* Brian Mikulak, *Classism and Equal*

In the United States, the belief in equal opportunity[25] and the notion that any person can achieve success, regardless of his social or economic background, necessarily implies support for social and economic mobility.[26] Funding schools with local property taxes attempts to facilitate the political process and also provides desired local control.[27] However, the present funding system in Illinois actually inhibits social mobility by providing better educational opportunities[28] to children with wealthier parents and neighbors. This bias toward maintaining the status quo and structuring success as a function of one's neighborhood rather than a function of one's intelligence, desire, and hard work is offensive to our value system.

B. Socioeconomic Realities and Perceptions

However, unequal educational opportunities are not solely responsible for inhibiting social mobility. Poorer communities are further disadvantaged by other interdependent factors, namely so-

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Opportunity: A Proposal for Affirmative Action in Education Based on Social Class, 33 HOW. L.J. 113, 120 (1990) (noting that children from "upper-class" families are more inclined to pursue higher education than their "lower-class" counterparts).

25. Most Americans believe in equal opportunity as a basic foundation of American law. *See* William J. Brennan, Jr., *The Equality Principle: A Foundation of American Law*, 20 U.C. DAVIS L. REV. 673, 678 (1987) (noting that "equal justice under law, an immensely moral concept, is the very cornerstone of our American concept of justice, and will remain so for as long as courts function in its service.").

26. Social and economic mobility in America provide incentives to work hard in hopes of attaining a more stable economic position. *See* John M. Jefferies & Richard McGahey, *Equity, Growth and Socioeconomic Change: Anti-Discrimination Policy in an Era of Economic Transformation*, 13 N.Y.U. REV. L. & SOC. CHANGE 233, 235 (1985) (citing David M. Potter, PEOPLE OF PLENTY: ECONOMIC ABUNDANCE & THE AMERICAN CHARACTER (1954)) (noting that social mobility and equal opportunity have a positive correlation).

Thomas Jefferson had a different point of view, believing "that true happiness does not depend upon increasing one's wealth or upon rising to a more exalted social station." Stephen B. Presser, *The Original Misunderstanding: the English, the Americans, and the Dialectic of Federalist Constitutional Jurisprudence*, 84 NW. U. L. REV. 106, 152 (1989). Instead, Jefferson believed that "happiness depends upon making the best of one's abilities consistent with the constraints imposed by the 'condition' in society to which one has been born." *Id.*

27. Relying on local property taxes does have advantages: income does not fluctuate with the economy as it would with income taxes or sales taxes, and the availability of expenditure information to parents and the parents' ability to protest makes local officials more responsive to the parents and their children's needs than state officials. *See* Allen D. Schwartz, *Illinois School Finance—A Primer*, 56 CHI.-KENT L. REV. 831, 838-39 (1980) (noting that if the state fully funded state schools, "[l]ocal school boards, without control of their revenue, would become functionaries of the state - responsive to broader state issues rather than their local concerns.").

28. See *supra* notes 7-12, illustrating the differences in educational opportunities offered by wealthy school districts, as compared to poor school districts.

cioeconomic realities and perceptions.[29] Social realities such as higher rates of crime and accidents, high unemployment, racism, absence of positive role models, and negative influence from peer groups damper a person's incentive to work for a good education.[30] Additionally, social perceptions of the community inhibit an effective education in certain areas. For example, a child from a poorer community must perceive himself as decidedly more intelligent and more ambitious than his peers to take on studies that are not generally pursued within that school.[31] Further, this same child must overcome the financial intimidation associated with the cost of an education without being familiar with the end value of an expensive degree.[32] These perceptions place an additional disadvantage on a child from a poorer district compared to a child with identical intelligence from a wealthier district.

However, commentators have noted that beliefs held by professional educators are the real problem, rather than any deficiency in the students' ability to learn and progress.[33] William J. Bennett, former Secretary of Education, stated, "Educational achievement by students comes from clear purpose, high expectations, strong and persistent teaching, and hard work. But achievement can be torpedoed by the idea that it is mostly a matter of luck, wealth, or native ability, an idea altogether too prevalent in American education today."[34] School administrators and teachers holding these beliefs blame poor performance on the students, and on the unstated assumption that factors such as race or class explain educational failure.[35] This provides some educators with a reason to offer less

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29. The social perceptions of a class of citizens consist of their assumptions, beliefs and knowledge, contrasted against the assumptions, beliefs and knowledge of other social classes. *See* Mikulak, *supra* note 24, at 123 (noting that children from "upper-class" families have higher expectations for themselves than their "lower-class" counterparts because they have more confidence as a result of their social mobility).

30. WILLIAM J. BENNETT, DEPT. OF EDUC., AMERICAN EDUCATION: MAKING IT WORK, 33-34 (1988) (explaining factors contributing to the success or failure of students).

31. For a persuasive hypothetical about how perceptions of children and parents of different social classes inhibit children from less advantaged classes, see Mikulak, *supra* note 24, at 125.

32. *Id.*

33. *See* BENNETT, *supra* note 30, at 33 (proposing that prevalent cultural attitudes in American society affect not only the parents of socially limited children, but also the educators who teach those children).

34. *See also* Harold W. Stevenson, *Child Development in Life-Span Perspective, in* CULTURE AND SCHOOLING 257 (E. Mavis Hetherington et al. eds., 1988). ("The importance of hard work is diminished to the degree that parents believe that native ability is a basis for accomplishment. Holding this belief . . . provides an excuse for offering some children less challenging curricula and making fewer demands for their mastery of the material.").

35. *See* BENNETT, *supra* note 30, at 32 (noting that statistical information showing that one-fifth of all American children live below the poverty level is

challenging curricula and to make fewer demands of students with a lower socioeconomic status.[36] Disparate funding provides additional excuses for these educators to blame poor student performance on factors "out of their control."

While the state has little direct control over these problems,[37] the state does have direct control over financing public education. Equalized financing is a sure way to directly increase the overall quality of the public school system.[38] Increasing the quality of the public school system may be the only way to affect positive changes in society given the disintegration of traditional social values. In an effort to turn the tide on diverging social classes, the Illinois public school system should provide equal educational opportunities to all its students throughout the state.

II. THE HISTORY OF CONSTITUTIONAL ATTACK

Residents of poor school districts have challenged school funding systems on both the federal and state levels.[39] Challenges at the federal level rely on the underlying principles of *Brown v. Board of Education*.[40] However, the United States Supreme Court seems unwilling to take control in an area traditionally considered to be the state's responsibility.[41] In contrast, at the state level, reformers

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often used as grounds for the assumption that "some children can't learn because their color, class or family background gets in the way.").

36. *See* BENNETT, *supra* note 30, at 34; *see also* Stevenson, *supra* note 34, at 257, for a discussion of educators' role in watering down the school curricula.

37. To possibly control or reverse the effects of these social perceptions, the government could initiate an affirmative action program based on social and economic class. *See* Mikulak, *supra* note 24, at 133 (stating that affirmative action policies may be the only means of providing working class and lower class individuals with the opportunity to obtain a college education). Section 2-3.71 of the Illinois School Code, in effect, attempts to mitigate this problem by funding a pre-kindergarten for "children who because of their home and community environment are subject to such language, cultural, economic and like disadvantages that they have been determined as a result of screening procedures to be at risk of academic failure." 105 ILL. COMP. STAT. 5/2-3.71(b) (1993) (ILL. REV. STAT. ch 122, para. 2-3.71(b) (1991)).

38. Improvements in administrative efficiency are also a related way to increase the apparent amount of money spent on facilities and services. However, this topic is not within the scope of this Note, and thus will not be considered.

39. See *supra* note 3 for a listing of federal and state cases that have decided constitutional issues involving education.

40. 347 U.S. 483 (1954).

41. The Court eventually backed away from the implication in *Brown* that education is a fundamental right under the U.S. Constitution. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 29-39 (1973) (holding that education is not a fundamental right and that students who reside in poor school districts do not constitute a suspect class); *see also* Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450 (1988) (holding that an assessment of a fee for bus service did not deny equal protection); *see also* Papasan v. Allain, 478 U.S. 265 (1986) (holding that local distributions of state funds attained from the local real estate sales did not create a suspect class or involve a fundamental right); Plyler v. Doe, 457 U.S.

have successfully used two methods of attack on disparate funding systems.[42] This section will discuss the position taken by the Supreme Court, the two methods of state constitutional attack, and the successes and failures at the state level.

A. The Federal Position

The landmark case of *Brown v. Board of Education*[43] held that a state cannot segregate public schools on the basis of race.[44] The Court recognized not only that "the most basic public responsibilities" require an education, but also that a child cannot reasonably be expected to succeed if denied the opportunity of an education.[45] The Court also noted that when a state chooses to provide an education to its citizens, it must make that education available on equal terms to all children.[46] Although the *Brown* Court based its holding on the equal protection clause, it implied that education was a fundamental right by stating that it "is a right which must be made

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202 (1982) (holding that discrimination against school-aged children illegally admitted into this country only warranted application of an "intermediate" level of scrutiny, rather than strict scrutiny).

42. See *infra* notes 63-90 and accompanying text for a discussion of the two methods of state constitutional attack developed in the state courts.

43. 347 U.S. 483 (1953). In *Brown*, the U.S. Supreme Court reviewed a consolidation of four cases in which African-American minors sought admission to public schools on a nonsegregated basis. *Id.* at 487. In the four cases, laws requiring or permitting segregation according to race denied admission of African-American children to schools attended by Caucasian children. *Id.* at 487-88. The plaintiffs alleged that this segregation denied the children equal protection of the laws, and sought to overturn the "separate but equal" doctrine announced by the U.S. Supreme Court in Plessy v. Ferguson, 163 U.S. 537 (1896). *Id.* at 488. The plaintiffs contended that the "separate but equal" doctrine, which provided equal treatment when the state provided substantially equal but "separate" facilities, was "not equal and could not be made equal." *Id.* The Court, recognizing that "[s]eparate educational facilities are inherently unequal," held that segregation on the basis of race deprives African-American children of the equal protection of the laws guaranteed by the Fourteenth Amendment. *Id.* at 495.

44. *Brown*, 347 U.S. at 495.

45. *Id.* at 493. The U.S. Supreme Court recognized the importance of education in the following passage:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Id.

46. *Id.*

available to all on equal terms."[47]

Riding on the implications of *Brown*, proponents of equal school funding challenged state systems claiming that funding disparities violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.[48] In *San Antonio Independent School District v. Rodriguez*,[49] parents from a poor school district in Texas argued that education was a fundamental right, that the poor were a suspect class, and that the Texas public school funding system which relied heavily on local property taxes violated the Equal Protection Clause.[50]

The *Rodriguez* Court held that education is not a fundamental right under the U.S. Constitution and that "poor" people do not constitute a suspect classification.[51] The Court additionally recognized education as an important interest in our democratic society,[52] and found that the Texas funding system provided its citizens with the minimal skills required to exercise their rights and partici-

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47. *Id.* The Supreme Court did not expressly state whether it considered education a fundamental right, or whether the "separate but equal" legislation denied equal protection because it discriminated against a specific class of citizens. *See Brown*, 347 U.S. at 495. The Court held "that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Id.* In its reasoning, the Court relied extensively on the psychological impact on the African-American children along with unequal educational opportunities resulting from segregation. *Id.* at 493-95. Therefore, the court's statement that "[education] is a right which must be made available to all on equal terms" can reasonably be interpreted as dicta, not binding on future courts. *See id.* at 493.

48. *See, e.g.*, San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

49. 411 U.S. 1 (1973). In *Rodriguez*, the Court reviewed whether the Texas public school funding system violated the Equal Protection Clause of the Fourteenth Amendment because of the disparities in funding between rich and poor school districts. *Id.* at 16-18.

50. *Id.*

51. *Id.* at 18. The U.S. Supreme Court, recognizing the far-reaching effects its decision would have had if the Court had held that strict scrutiny of the education legislation was appropriate, noted the following:

> If, as previous decisions have indicated, strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a "heavy burden of justification," that the state must demonstrate that its educational system has been structured with "precision," and is "tailored" narrowly to serve legitimate objectives and that it has selected the "less drastic means" for effectuating its objectives, the Texas financing system *and its counterpart in virtually every other State* will not pass muster.

Id. at 16-17 (emphasis added) (footnotes omitted).

52. *Id.* at 30. Although the Supreme Court recognized the importance of education, it noted that "the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause." *Id.* The Court further stated that to hold a service fundamental for purposes of the Equal Protection Clause because of the importance of the service would "be assuming a legislative role and one for which the Court lacks both authority and competence." *Id.* at 31.

pate in the political process.[53] However, the Court failed to decide whether the U.S. Constitution explicitly or implicitly guaranteed the right to an education.[54] Furthermore, since the funding system did not discriminate against any definable category of poor people,[55] nor did it absolutely deprive one of an education,[56] the Court held that the class was not suspect in traditional terms.[57]

In his dissent, Justice Marshall stated that because education is so interrelated to constitutionally guaranteed rights, education itself should be considered fundamental.[58] Furthermore, Justice Marshall asserted that inequality written into the actual laws of the state raises questions of equal protection, "not some notion of gross inadequacy."[59] Nevertheless, the *Rodriguez* Court backed away

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53. *Id.* at 37. The plaintiffs contended that the free exercise of explicit fundamental rights such as the right of free speech and the right to vote have a sufficient interrelation to education to require recognition of a right to an education. *Id.* at 35-36. The Court stated that "we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice." *Id.* at 36. Furthermore, the Court stated that "no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process." *Id.* at 37.

54. *Rodriguez*, 411 U.S. at 33-34. The Court stated that "[i]t is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws." *Id.* at 33. The Court further held that fundamental rights are either explicitly or implicitly guaranteed by the Constitution, that education is not afforded explicit protection under the Constitution, and that it could not find any basis for implicit protection. *Id.* at 33-35.

55. *Id.* at 19-23. The Supreme Court discussed the problems with the "suspect class" of people who reside in poor districts by stating the following:

> The case comes to us with no definitive description of the classifying facts or delineation of the disfavored class. . . . The Texas system of school financing might be regarded as discriminating (1) against "poor" persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally "indigent," or (2) against those who are relatively poorer than others, or (3) against all those who, irrespective of their personal income, happen to reside in relatively poorer school districts.

Id. at 19-20.

56. *Id.* at 23-24. The Supreme Court further explained that the plaintiffs did not evidence any discrimination because their lack of personal resources had not occasioned an absolute deprivation of the desired benefit. *Id.* at 23. Furthermore, the Court limited its holding by stating that "at least where *wealth* is involved, the Equal Protection Clause *does not require absolute equality* or precisely equal advantages." *Id.* at 24 (emphasis added).

57. *Id.* at 25.

58. *Id.* at 102. Justice Marshall advocates a "nexus" test, where a non-constitutional interest becomes more fundamental and demands a higher level of judicial scrutiny when the nexus between the constitutionally guaranteed right and the non-constitutional interest draws closer. *Id.* at 102-03. In this case, Justice Marshall believes that because of the close interrelation between education and the exercise of a person's fundamental rights, particularly the right to free speech and the right to vote, the Court should scrutinize legislation that provides for discrimination in education at a higher level. *Id.* at 110-17.

59. *Rodriguez*, 411 U.S. at 90. In Justice Marshall's view, "[t]he Equal Protection Clause is not addressed to the minimal sufficiency but rather to the un-

from *Brown*'s implication of education as a fundamental right,[60] and chose not to view wealth as a suspect class.[61] Rather, the Court shifted the burden of safeguarding education to the courts of the individual states.[62] The next section examines the methods of constitutional attack in state courts.

B. Methods of Attack in State Courts

Over the past twenty years, reformers have developed two methods of attacking public school funding systems under a state constitution. The first method relies on the equal protection and due process clauses within the state's constitution.[63] The second method relies on an interpretation of the state's constitutional article mandating education.[64] Each of these methods will be discussed below.

1. State Equal Protection and Due Process Clauses

Success in the state courts came prior to the Supreme Court's holding in *Rodriguez*. In *Serrano v. Priest* (*Serrano I*),[65] the Cali-

justifiable inequalities of state action." *Id.* at 89. Justice Marshall further contended that the plaintiffs made a sufficient showing of disparities to raise a substantial question of discriminatory state action. *Id.* at 90.

60. See *infra* notes 133-43 and accompanying text for a discussion of judicial review of legislative enactments under the Due Process Clause.

61. See *infra* notes 133-43 and accompanying text for a discussion of judicial review of legislative enactments under the Due Process Clause.

62. The majority in *Rodriguez* noted that protection of every important interest as a fundamental right would assume a legislative role. 411 U.S. at 31. Consequently, the Court shifted the burden onto Congress, the state legislatures, or the state courts. The Court held that fundamental rights, for the purposes of the Fourteenth Amendment, are only those either explicitly or implicitly guaranteed by the U.S. Constitution. *Id.* at 33-34. However, the Illinois Constitution *explicitly* mandates education, allowing Illinois courts to hold education as a fundamental right guaranteed under the Illinois Constitution by paralleling federal equal protection analysis. *See* ILL. CONST. art. X, § 1.

63. State equal protection clauses are generally similar to the Equal Protection Clause within the U.S. Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

Compare that with the Illinois Constitution, which states: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." ILL. CONST. art. I, § 2.

64. The Illinois Constitution mandates that "[t]he State shall provide for an efficient system of high quality public educational institutions and services." ILL. CONST. art. X, § 1, cl. 2.

65. 487 P.2d 1241 (1971). In *Serrano I*, Los Angeles County public school children and their parents brought a class action on behalf of all school children in California except for those children for whom the public school system provides the best educational opportunities. *Id.* at 1244. The plaintiffs contended that the public school system, which relies heavily upon local property taxes,

fornia Supreme Court recognized that education plays two significant roles in society.[66] First, education determines an individual's chances for economic and social success in our society.[67] Second, education develops a child into a useful citizen by affecting his participation in political and social life.[68] In view of this, the *Serrano I* court held that education played such a "distinctive and priceless function" in our society that it warrants treatment as a fundamental interest.[69] Relying primarily on federal case law,[70] the *Serrano I* court reviewed the California public school finance system under strict scrutiny[71] for compliance with the U.S. Constitution's Equal Protection Clause and subsequently held the system unconstitutional.[72]

After the U.S. Supreme Court's *Rodriguez* decision,[73] the California Supreme Court in *Serrano v. Priest* (*Serrano II*)[74] reviewed its decision concerning the constitutional significance of unequal

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created substantial disparities in funding, and resulted in substantial disparities in educational opportunities throughout the state, thereby violating the equal protection clauses of the U.S. Constitution and the California Constitution. *Id.*

66. *Id.* at 1255-56.

67. *Id.*; see also *supra* notes 22-27 for other sources discussing the importance of education to the socioeconomic success of a child.

68. *Id.* at 1256; see *supra* notes 16-18 for sources recognizing that a democratic society requires its citizens to obtain a certain minimal education to participate in the political process.

69. *Serrano*, 487 P.2d at 1258.

70. *Id.* at 1256-58.

71. *Id.* at 1259-60. Under strict scrutiny, the California school finance system must be *necessary* to achieve a *compelling state interest*. *Id.* The court recognized two goals furthered by the structure: first, granting the local districts effective decision-making power over the administration of the schools; and second, establishing local control over the amount of money spent on education. *Id.* at 1260. The court did not consider whether these interests were compelling, because it found that "the present financial system cannot be considered necessary to further this interest." *Id.* The court further explained that "[n]o matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts." *Id.*

72. *Id.* at 1259-60. In *Serrano I*, the court emphasized that this was not a final decision on the merits, and held that the complaint was legally sufficient to withstand a motion to dismiss. *Id.* at 1266. However, the court deemed it appropriate to make these non-binding findings to allow the trial court to "properly provide for the enforcement of the judgment in such a way as to permit an orderly transition from an unconstitutional to a constitutional system of school financing." *Id.*

73. In 1971, the California Supreme Court held that education is a fundamental right under the U.S. Constitution. *Serrano I*, 487 P.2d 1241. However, in 1973, the U.S. Supreme Court ruled the opposite way in *Rodriguez* on the same issue. *Rodriguez*, 411 U.S. 1. See *supra* notes 46-62 for an explanation of the *Rodriguez* holding and rationale.

74. 557 P.2d 929 (1976). The California Supreme Court noted that "it is clear that *Rodriguez* undercuts our decision in *Serrano I* to the extent that we held the California public school financing system (if proved to be as alleged) to be invalid as in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." *Id.* at 949.

funding. In *Serrano II*, the California Supreme Court, emphasizing the importance placed on education by *Serrano I*,[75] held independently under California's state constitution[76] that "(1) discrimination in educational opportunity on the basis of district wealth involves a suspect classification, and (2) education is a fundamental interest."[77]

The *Serrano II* court noted that although the California state provision for equal protection provides substantially the same guarantees as the Fourteenth Amendment of the U.S. Constitution, state provisions are independent and may demand a different analysis.[78] The court further reasoned that a state may provide more protection to individual rights than does the U.S. Supreme Court.[79] Thus, the equal protection and due process clauses of state constitutions provide the first method of attack on state public school funding systems.

2. *The Education Article*

The education articles within a state's constitution provide the second method of attack. This method first appeared in *Robinson v. Cahill*.[80] Here the New Jersey Supreme Court held that the public school finance system, which did not provide equal educational op-

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75. *Id.* at 951.

76. *Id.* at 951. In support of its decision, the court stated the following:

> [I]n the area of fundamental civil liberties which includes . . . all protections of the California Declaration of Rights, we sit as a court of last resort, subject only to the qualification that our interpretations may not restrict the guarantees accorded the national citizenry under the federal charter. In such constitutional adjudication, our first referent is California law and the full panoply of rights Californians have come to expect as their due. Accordingly, decisions of the United States Supreme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but are to be followed by California courts only when they provide no less individual protection than is guaranteed by California law.

Id. at 950 (citations omitted).

The United States Supreme Court has also recognized that, under the state constitution, a state can afford more protection to individual rights than the United States Constitution affords. Michigan v. Long, 463 U.S. 1032, 1041 (1983). However, the state must make clear that the protection is upon an adequate and independent state basis. *Id.*

77. *Serrano II*, 557 P.2d at 951.

78. *Id.* at 950. The court stated that the California equal protection clause is "possessed of an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were applicable." *Id.*

79. *See id.*

80. 303 A.2d 273 (N.J. 1973). In *Robinson*, the court addressed the issue of whether the system of financing public schools which results in disparities in the number of dollars spent per pupil, depending upon the district of residence, violated the New Jersey Constitution. *Id.* at 276.

portunity, violated the "thorough and efficient" clause[81] of the state's constitution.[82] The New Jersey constitution mandates that "the legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools."[83] The court determined that the ultimate responsibility of providing a "thorough and efficient" education rests with the state.[84] The *Robinson* court found that the "thorough and efficient" clause intended to mandate equal educational opportunity for all children.[85] The court held that on the basis of discrepancies in funds per pupil, the present funding system failed to meet the constitutional mandate for a "thorough and efficient" system.[86]

Presently, citizens in twenty-one states have challenged the constitutionality of their public school funding systems utilizing one of these two methods of attack.[87] In eight states, plaintiffs have been successful on equal protection arguments,[88] in three states,

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81. The New Jersey Education Article reads as follows: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years." N.J. CONST. art. VIII, § 4.

82. *Robinson*, 303 A.2d at 294-95.

83. N.J. CONST. art. VIII, § 4.

84. *Robinson*, 303 A.2d at 291. The court held that the New Jersey Constitution placed the responsibility directly upon the State, and the delegation of taxing ability to local municipalities did not relieve the State of this duty. *Id.*

85. *Id.* at 294. In commenting on the "thorough and efficient" clause, the court stated that "an equal educational opportunity for children was precisely in mind." *Id.* "The mandate that there be maintained and supported 'a thorough and efficient system . . .' can have no other import." *Id.*

86. *Id.* at 295.

87. *See* Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973) (en banc); Dupree v. Alma Sch. Dist., 651 S.W.2d 90 (Ark. 1983); Serrano v. Priest, 487 P.2d 1241 (Cal. 1971) (en banc); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1982) (en banc); Horton v. Meskill, 376 A.2d 359 (Conn. 1977); McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981); Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983); Milliken v. Green, 212 N.W.2d 711 (Mich. 1973); Helena Elementary Sch. Dist. v. State, 769 P.2d 684 (Mont. 1989); Robinson v. Cahill, 303 A.2d 273 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1973); Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 439 N.E.2d 359 (N.Y. 1982) *appeal dismissed*, 459 U.S. 1139 (1983); Britt v. North Carolina State Bd. of Educ., 357 S.E.2d 432 (N.C. Ct. App. 1987); Board of Educ. v. Walter, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); Olsen v. State, 554 P.2d 139 (Or. 1976); Danson v. Casey, 399 A.2d 360 (Pa. 1979); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); Seattle Sch. Dist. v. State, 585 P.2d 71 (Wash. 1978); Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979) (en banc); Washakie County Sch. Dist. v. Herschler, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824 (1980).

88. *See* Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973). There, the Arizona Supreme Court held that the state constitution establishes education as a fundamental right. However, the school financing system, which meets the constitutional mandate of uniform, free, available, and open at least six months out of the year, need otherwise only be rational, reasonable and nondiscriminatory. *Id.* *See also* Dupree v. Alma Sch. Dist., 651 S.W.2d 90 (Ark. 1983) (statutory public school funding system is unconstitutional in that it denies equal protec-

plaintiffs have been successful in reliance upon education articles,[89] and in ten states, plaintiffs have been unsuccessful.[90] The present

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tion and equal educational opportunities to property poor school districts in absence of rational relationship); Serrano v. Priest, 487 P.2d 1241 (Cal. 1971) (education is a fundamental interest which may not be conditioned on wealth); Horton v. Meskill, 376 A.2d 359 (Conn. 1976) (education is a fundamental right, and system of financing public education cannot pass the test of strict judicial scrutiny); Helena Elementary Sch. Dist. v. State, 769 P.2d 684 (Mont. 1989) (the Montana Constitution guarantees equal educational opportunity); Seattle Sch. Dist. v. State, 585 P.2d 71 (Wash. 1978) (children residing within the state have a constitutional right to an education for which the state must provide sufficient funds for a general and uniform system of public schools); Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979) (mandate that state establish a thorough and efficient system of schools makes education a fundamental, constitutional right, and any discrimination in financing cannot stand unless the state demonstrates a compelling state interest); Washakie County Sch. Dist. v. Herschler, 606 P.2d 310 (Wyo. 1979) (education is a matter of fundamental interest and statutory classification based upon wealth is suspect, whereby the state must show the statutory system meets a compelling government interest, with means least onerous), *cert. denied*, 449 U.S. 824 (1980).

89. *See* Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989) (in order to comply with the constitutional mandate of efficient system of common schools, the system must be substantially uniform and provide equal opportunities to every child for an adequate education); Robinson v. Cahill, 303 A.2d 273 (N.J. 1973) (the constitutional mandate of a thorough and efficient system of free public schools requires equal educational opportunity to all children throughout the state), *cert. denied*, 414 U.S. 976 (1973); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) (the framers of the constitution would have neither envisioned nor condoned the present system with its gross disparities, and therefore, the constitutional mandate of thorough and efficient system of schools requires the system to provide for a general diffusion of knowledge across the entire state).

90. *See* Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1982) (en banc) (selecting school system which provides for equal educational opportunities throughout the state depends upon considerations and goals which properly lie within the legislative domain); McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981) (the adequate education provisions within the constitution do not require the state to equalize educational opportunities between districts); Thompson v. Engelking, 537 P.2d 635 (Idaho 1975) (school financing system which results in differences in per-pupil expenditures does not violate the constitutional requirement of uniform system of public schools); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983) (neither specific constitutional mandate to provide for, nor mandate to establish thorough and efficient schools, elevates education to a fundamental right requiring equality in per-pupil funding); Milliken v. Green, 212 N.W.2d 711, 719 (Mich. 1973) ("[I]t has not been shown that eliminating disparities in expenditures will significantly improve the quality or quantity of educational services or opportunity offered to Michigan school children."); Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 439 N.E.2d 359 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1139 (1983) (objectives of expenditures of public money for educational purposes present issues of enormous practical and political complexity, and therefore, reside appropriately in the arena of legislative and executive authority); Britt v. North Carolina State Bd. of Educ., 357 S.E.2d 432, 436 (N.C. Ct. App. 1987) (although the constitutional mandate that "equal opportunities shall be provided for all students" emphasizes that the days of racial segregation are over, it does not contemplate absolute equal educational opportunity throughout the state), *cert. denied*, 361 S.E.2d 71 (N.C. 1987); Board of Educ. v. Walter, 390 N.E.2d 813 (Ohio 1979) (the statutory system of school finance does not violate the constitutional provision to secure a thorough and efficient system of common schools), *cert. denied*, 444

lawsuit in Illinois challenges the public school funding system using both methods of attack.[91]

III. THE CHALLENGE IN ILLINOIS

The suit in Illinois challenges the public school funding system on the grounds that it violates the Illinois education article, the Illinois equal protection clause, the Illinois due process clause, and the no-special-law article.[92] The complaint alleges that unequal expenditures among school districts violate the education article because such disparities prevent "an efficient system of high quality" education.[93] The complaint further alleges that the expenditures violate the equal protection clause and the no-special-law article[94] because the distribution scheme is irrational and/or because the distribution scheme imposes unnecessary burdens upon the constitutionally suspect class of children living in school districts with relatively lower property wealth.[95] Finally, the complaint alleges that the current funding system violates the Illinois due process clause because the resulting unequal funding impinges upon the fundamental right of education.[96]

A. Illinois' "Thorough and Efficient" Clause

Initially, the complaint alleges that unequal funding fails to provide an efficient system of high quality education, and therefore

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U.S. 1015 (1980); Olsen v. State, 554 P.2d 139 (Or. 1976) (the present system of school financing rationally furthers the legitimate state interest of local control); Danson v. Casey, 399 A.2d 360 (Pa. 1979) (there is no requirement under the Pennsylvania Constitution that educational opportunities be uniform throughout the state).

91. Plaintiff's Second Amended Complaint, *supra* note 3, at 53-57.

92. *Id.* at 54.

93. *Id.* at 54-55; *see also supra* note 64 for the text of the Illinois education article.

94. Judicial review of legislative enactments under the no-special-law article generally parallels that of the equal protection clause noted here by the Illinois Supreme Court:

> Special legislation differs from a violation of equal protection in that the latter consists of arbitrary and invidious discrimination *against* a person or class of persons. It results from the governmental withholding of a right, privilege or benefit from a person or class of persons without a reasonable basis (or, where a fundamental right or suspect classification is involved, a compelling State interest) for doing so. Whether a law is attacked as special legislation or as violative of equal protection, it is still the duty of the courts to decide whether the classification is unreasonable in that it preferentially and arbitrarily includes a class (special legislation) to the exclusion of all others, or improperly denies a benefit to a class (equal protection).

Polygraph Society v. Pellicano, 83 Ill. 2d 130, 138, 414 N.E.2d 458, 462-63 (Ill. 1980) (citations omitted).

95. Plaintiff's Second Amended Complaint, *supra* note 3, at 53-54.

96. *Id.*

violates the thorough and efficient clause of the education article.[97] The plaintiffs' allegation assumes that the constitutional terminology "efficient" mandates either equal funding or equal educational opportunities. The validity of this assumption requires review of the case law defining the word "efficient" and examination of the constitutional debates concerning equal educational opportunities. The following sections undertake this review.

1. *The Definition of "Thorough and Efficient"*

When the delegates to the 1970 Constitutional Convention asked the Education Committee whether the term "efficient" would carry the same meaning it had under the 1870 constitution,[98] the Committee answered that it would.[99] The Illinois Supreme Court has held that "thorough and efficient" imposes two requirements upon the legislature when implementing the concept: the school system must be *free* and must be *open* to all without discrimination.[100] Thus, the Illinois Supreme Court's interpretation of "efficient" under the 1870 constitution, which the delegates adopted into the 1970 constitution, does not support the assumption that an "efficient" system requires one that equally funds all students.

2. *The Constitutional Debate Over Equalized Funding*

During the Constitutional Convention of 1970, the delegates debated considerably over the issue of equalized funding.[101] During the first of three readings of the proposed education article, the

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97. *Id.* at 54-55.

98. 2 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 766 (1970) [hereinafter RECORD OF PROCEEDINGS]. For an objective and interesting commentary on the constitutional debates surrounding the education article adopted into the 1970 Illinois Constitution, see JANE G. BURESH, A FUNDAMENTAL GOAL: EDUCATION FOR THE PEOPLE OF ILLINOIS 82-122 (1975).

99. 2 RECORD OF PROCEEDINGS, *supra* note 98, at 766.

100. People v. Deatherage, 401 Ill. 25, 30, 81 N.E.2d 581, 586 (1948). In *Deatherage*, the State's Attorney of Morgan County, through the thorough and efficient clause, challenged the validity of the school code which allowed fractioning of a prior school district. *Id.* at 29-30, 81 N.E.2d at 585. The State's Attorney alleged that the fractioning would "make it impossible for the district to maintain a school at the prior level of efficiency and thoroughness." *Id.* at 30, 81 N.E.2d at 585. The *Deatherage* court affirmed the judgment and sustained the school code, holding that the thorough and efficient clause places only two limitations upon the legislature: the schools must be free, and must be open to all without discrimination. *Id.* at 30, 81 N.E.2d at 586. *See also* People v. Barrington Consol. High Sch. Dist., 396 Ill. 129, 71 N.E.2d 86 (1947); Fiedler v. Eckfeldt, 335 Ill. 11, 166 N.E. 504 (1929); People *ex rel.* Leighty v. Young, 301 Ill. 67, 133 N.E. 693 (1921).

101. 4 RECORD OF PROCEEDINGS, *supra* note 98, at 3535-70. The proposals mandate the state to directly provide at least 90% of the funds for operational costs of public schools. *Id.* *See also* BURESH, *supra* note 98, at 95 (noting that the "[d]iscussion on the topic of financing public schools was lengthy; it occupied three hundred thirty-two pages of the transcript of August 4.").

younger members of the Education Committee submitted a proposal to mandate that the state provide at least ninety percent of the funds for operational costs.[102] This proposal was intended to accomplish two goals. First, it attempted to reduce the burden of real and personal property taxes on the farmer and the homeowner.[103] Second, it attempted to equalize educational opportunities throughout the state.[104]

A minority of members on the Education Committee presented five objections to the proposal: (1) the committee had not sufficiently investigated the effects of this provision, and "freezing" such a mandate into the constitution would be ill-advised; (2) the legislature had been annually increasing state appropriations thereby potentially creating total state financing; (3) the legislature would need to greatly increase income or sales taxes to produce the funds; (4) local school boards and parents would lose local control; and (5) the provision might reduce all school districts to a level of mediocrity.[105] After considering proposed amendments requiring the state to provide fifty percent of operational costs,[106] the committee delegates rejected the proposal on the first reading.[107]

On the second reading, Delegate Netsch proposed the following amendment: "The State has the primary responsibility for financing the system of educational institutions and services."[108] In explaining her amendment, Netsch admitted that the language did not provide a legally enforceable duty, but "hope[d] that it [would] function as a conscience to the General Assembly to assume a greater proportion of the financing of public schools of the state."[109] A second alternative amendment specifically mandated that the state "provide for a substantial parity of educational opportunity throughout the state."[110] The delegates rejected the latter amend-

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102. 4 RECORD OF PROCEEDINGS, *supra* note 98, at 3536-44.

103. *Id.* This is the author's summary of separate arguments advocated individually by Delegates Fogal, Patch, Howard, Dove, Kamin, and Pughsley. *See id.*

104. *Id.*

105. *Id.* at 3544-51. This is the author's summary of separate arguments advocated individually by Delegates Mathias, Evans, Bottino, Buford, and Parker. *See id.*

106. *Id.* at 3550-51. Delegate Bottino proposed an amendment mandating the state to provide 50% of operational costs. *Id.*

107. 4 RECORD OF PROCEEDINGS, *supra* note 98, at 3567-70. The vote was conducted by a roll call with many delegates explaining the reasons for their position. *Id.*

108. 5 RECORD OF PROCEEDINGS, *supra* note 98, at 4145.

109. *Id.* at 4145.

110. *Id.* at 4145-46. Delegate Bottino proposed this alternate amendment and stated that his language was not hortatory, unlike Delegate Netsch's proposal. *Id.*

ment;[111] however, they approved Netsch's amendment on the third and final reading upon reassurance that the statement did not provide a legally enforceable duty on the state.[112]

The 1970 Illinois Constitution contains words giving the state "the primary responsibility for financing the system of educational institutions and services."[113] However, the constitutional debates specifically contravene the assertion that the delegates intended this provision to explicitly require the General Assembly to provide for an equalized funding system. In summary, neither the case law explaining the meaning of the word "efficient," nor the debates during the 1970 Constitutional Convention supports the contention that the word "efficient" mandates equal educational opportunity, or a system that provides substantially the same expenditures per student. Consequently, an approach to declare the finance system unconstitutional simply on the basis of the education article and its "thorough and efficient" clause should fail in Illinois.

B. Children in Poor School Districts as a Suspect Class

The complaint in the Illinois lawsuit alleges that the funding system violates the Illinois equal protection clause by imposing unnecessary burdens upon the "constitutionally suspect" class[114] of children living in school districts with relatively lower property wealth.[115] Alleging a class based upon wealth poses a problem because the phrase "people living in property poor districts" specifies too broad of a class with neither a definite description of the classifying facts, nor a delineation of the disfavored class.[116] In *Rodriguez*, the U.S. Supreme Court noted that "people living in poor districts" may define one of three categories of people: (1) persons whose income falls below the legally recognized poverty level; (2) persons who are simply poorer than others; or (3) persons who, irrespective of their personal incomes, happen to reside in school districts with relatively lower property values.[117]

The complaint alleges facts to support all three of these categories outlined in *Rodriguez*. Consistent with the first category, the complaint alleges discrimination toward students from poverty-

111. *Id.* at 4148-49.

112. *Id.* at 4500-07.

113. ILL. CONST. art. X, § 1, cl. 3.

114. See *infra* notes 133-34 and accompanying text discussing due process analysis in Illinois.

115. Plaintiff's Second Amended Complaint, *supra* note 3, at 53.

116. See *supra* notes 55-57 and accompanying text for the development of this analysis in the *Rodriguez* opinion.

117. 411 U.S. at 19-20; see also *supra* notes 49-62 and accompanying text for an explanation of the *Rodriguez* opinion.

stricken families.[118] Further, the complaint alleges discrimination by comparing the differences between funding of the richest ten percent of school districts and the poorest ten percent of school districts.[119] Finally, consistent with the third category, the complaint alleges large differences in funding between two adjacent school districts, Byron and Mt. Morris, in which neither the wealth of the school children's parents, nor the level of private property values is a factor.[120]

If an Illinois court were to recognize a suspect class, it would have to choose one of these classes. However, choosing only one of these classes defines only part of the problem and ignores the broader scope of equalizing educational opportunities for all students regardless of which of these categories fits their situation. This would encourage reform legislation targeted only to solve the problem selected. On the other hand, inclusion of all these categories creates an unduly large suspect class suggesting equal funding of all state-funded civil services in general. Neither choice is acceptable if the court's focus is education and its intent is to insure equal educational opportunities throughout the state. Thus, any approach based on a suspect class in violation of the Illinois equal protection clause should be rejected.

C. Enforcing Fiscal Neutrality Through the Illinois Due Process Clause

The final method of attack taken by the complaint alleges that education is a fundamental right in Illinois, and that the present disparate funding system denies the plaintiffs their substantive due

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118. Plaintiff's Second Amended Complaint, *supra* note 3, at 53. The complaint sets forth particular problems children are faced with in poverty stricken environments. *Id.* at 44. Furthermore, the complaint illustrates the various social problems that inhibit a minimal education, such as the disintegration of the social and family structure, dangers of crime, and the absence of positive role models leading directly to educational disadvantages. *Id.* at 45. In addition, the complaint contends that proper funding for programs designed to help children at younger ages, such as the "at risk" program, do make a difference and produce socio-emotional development in 80% of the children participating in the program. *Id.* at 49. Finally, the complaint notes that studies have shown that the positive growth children experience through the program dissipates if they are not continually provided with a decent educational environment. *Id.*

119. Plaintiff's Second Amended Complaint, *supra* note 3, at 27-45. The complaint notes the differences in relative property values in the richest and poorest 10% of school districts, the relationship to per pupil spending disparities, and the differences in educational services resulting from such disparities. *Id.*

120. *Id.* at 38-43. In 1990 and 1991, the Byron district enjoyed substantially more funds per student, $10,085 contrasted to the Mt. Morris school district at $3,483. *Id.* This disparity is due to a nuclear plant Commonwealth Edison built within the Byron school district in the mid 1970s. *Id.* See *supra* note 7 for a list of the contrasting educational services offered as a result of the differences in funding.

process rights.[121] This section will conclude that the fundamental right of education is implicit in the Illinois Constitution, and that the present system will not withstand scrutiny under the Illinois due process clause. Further, recognition of education as a fundamental right attacks the problem in its necessary scope without involving an unduly large suspect class.

1. Recognizing Education as a Fundamental Right

Illinois courts have never resolved the issue of whether education is a fundamental right.[122] However, there are a number of ways in which courts have recognized the existence of fundamental rights not explicitly mentioned by the terms of the constitution.[123] When a constitution specifically mentions or guarantees a right, courts generally recognize that right as fundamental, and then determine if the interest affected is the right guaranteed.[124] Com-

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121. *Id.* at 54-55.

122. Although the court in *People ex rel. Jones v. Adams* addressed this specific issue, the court need not have addressed it. 40 Ill. App. 2d 189, 350 N.E.2d 767 (5th Dist. 1976). In *Adams*, Illinois farmers argued that the method of public school financing deprived children in poorer districts equal protection of the laws. *Id.* at 191, 350 N.E.2d at 769. The *Adams* court adopted a *Rodriguez* "invidious" standard for review, but found that the defendants (1) failed to introduce any evidence concerning the discriminatory aspects of the Illinois method of financing, (2) failed to provide any analysis of the statistics they did provide, (3) failed to introduce any evidence concerning the inadequacy of the education provided to poor school districts, and (4) failed to provide any evidence concerning the disparity of expenditures between rich and poor districts. *Id.* at 200, 350 N.E.2d at 776. Because of this lack of proof, the court found that the Illinois method of financing did not deny the students equal protection of the laws. *Id.* at 201, 350 N.E.2d at 776.

While not finding for the defendants in this case, the court suggested that the Illinois method of school funding did violate equal protection of the laws. *Id.* at 200, 350 N.E.2d at 776. However, subsequent litigation probably never occurred because the *Adams* court was reviewing the method of school funding before the 1973 reformation of school finance by the Illinois Legislature. *Id.*

123. The two major tests for determining if an interest is fundamental under the U.S. Constitution have been whether the interest is "implicit in the concept of ordered liberty" or whether the interest is fundamental in light of the "traditions and collective conscious of our people." *See* Griswold v. Connecticut, 381 U.S. 479, 499 (Goldberg, J., concurring) (recognizing that the right of married couples to use voluntary birth control ranks as fundamental when looking to the traditions and collective conscience of our people); *see also id.* at 500 (Harlan, J., concurring) (arguing that the restriction of voluntary birth control from married couples "violates the basic values implicit in the concept of ordered liberty").

124. For example, the First Amendment guarantees freedom of speech which also encompasses symbolism as a protected form of expression. *See* Spence v. Washington, 418 U.S. 405 (1974) (display of a modified American flag is a protected form of expression).

Recently, the people of Illinois voted on revising the education article to unambiguously indicate that (1) education is a fundamental right, (2) the state must guarantee equality of educational opportunity, and (3) the state would have the preponderant financial responsibility for the public school system. PROPOSED AMENDMENTS TO THE CONSTITUTION OF ILLINOIS (submitted to the

mentators have concluded that the Illinois Constitution implicitly guarantees the right to an equal education. This implicit guarantee comes from the stated goal to "educate all persons to the limits of their capacities"[125] coupled with the mandate to provide "an efficient system of high quality public education."[126] Additionally, since education is the only government entitlement guaranteed by the state constitution, Illinois should recognize the right to education as fundamental.[127] Recognition of education as a fundamental

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voters on November 3, 1992) (George H. Ryan, Secretary of State). The proposed amendments required approval of either 50% of the registered voters, or 60% of the people who actually voted on the amendment. ILL. CONST. art. XIV § 2(b). The proposed amendment failed ratification, but nevertheless, it attained the approval of 58% of the people of Illinois who voted on the amendment.

The amendment's ratification failure does not adversely effect the current constitutional challenge for two reasons: first, the courts must interpret the current constitutional language without regard to language that failed to pass; second, the amendment's failure in no way indicates that the people of Illinois would have adopted contrary language indicating that education is not a fundamental right — quite the contrary, such a proposition would have at best only received 42% of the vote.

However, the proposed amendment's failure may subtlely provide an argument for recognizing education as a fundamental right. All constitutional decisions are slightly motivated for political reasons, in that a court is ill-advised to establish a constitutional rule that is unacceptable to the public. *See* Herbert Hovenkamp, *The Supreme Court as Constitutional Interpreter: Chronology without History*, 90 MICH. L. REV. 1384, 1388 (1992) (stating that "the Supreme Court's constitutional interpretation has always been greatly affected by contemporary political, social, and economic developments."). However, the proposed amendment's 58% approval rating by the people who voted on the amendment indicate that a majority of Illinois citizens are ready for such a constitutional decision.

125. ILL. CONST. art. X, § 1, cl. 1.

126. ILL. CONST. art. X, § 1, cl. 2; *see* Michael P. Seng & Michael Booden, *Judicial Enforcement of the Right to an Equal Education in Illinois*, 12 N. ILL. U. L. REV. 45, 76 (1991). This article stresses the change of focus from the 1870 Constitution, having the General Assembly establish a public school system, to a new focus in the 1970 Constitution, the needs of the individual students regardless of handicap, ability, or wealth. *Id.* This article concludes the following:

> There can be no doubt that Article X, section 1 guarantees the right to an equal education in Illinois. This right is derived from the State's stated goal to educate *all* persons to the limits of their capacities and the State's duty to establish 'an efficient system of high quality public educational institutions and services.'

Id.

Additionally, the Illinois Supreme Court has recognized the state's vital interest in education by noting the following: "That education is a compelling state interest is not disputed here. Article X, section 1, of the constitution of Illinois states, 'A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.' " Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 90, 566 N.E.2d 1283, 1299 (Ill. 1990).

127. The complaint filed in Illinois takes the approach that education is the only government entitlement or service that is guaranteed by the Illinois Constitution, thereby elevating education to the status of a fundamental right. *See* Defendant's Memorandum in support of their Motion to Dismiss at 15-16, Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct.

right in Illinois would then invoke a higher level of scrutiny by the courts under a substantive due process analysis.

In addition to arguing that education is not a fundamental right, the defendants in the Illinois suit, relying on *People ex rel. Ogilvie v. Lewis*,[128] contend that the specific constitutional provision of the education article controls over the general constitutional provision of the due process clause.[129] Thus, the defendants argue that the equal protection clause may not be used to overturn the 1970 Constitutional Convention's refusal to mandate fiscal neutrality in the education article.[130] However, the defendants' logic is incorrect.

First, the delegates did not mandate the absence of fiscal neutrality in the education article.[131] Furthermore, simply because one provision of the constitution does not require an outcome does not thereby imply that such a result cannot be required by another provision.[132] Therefore, the present funding system violates the due process clause regardless of whether it directly violates the education article.

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filed Nov. 13, 1990), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992) (order granting defendant's motion to dismiss). Alternatively, education is elevated to a fundamental interest because of the interrelationship with the fundamental right of free speech. *See id.* More specifically, *see* Plaintiff's First Complaint at 55, Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct. filed Nov. 13, 1990) (order granting defendant's motion to dismiss), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992).

Compare Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973). In *Shofstall*, the court held that although the state constitution establishes education as a fundamental right, the school financing system, which meets the constitutional mandate of being uniform, free, available, and open at least six months out of the year need otherwise only be rational, reasonable and nondiscriminatory. *Id.* at 592. The court recognized that education plays a vital role in the political process and in the exercise of related fundamental rights; however, the court rejects the notion that the constitutional mandate with those goals in mind also mandates equal educational opportunity. *Id.*

This conclusion gives no effect to the equal protection clause of the state. If a court recognizes an express or implied fundamental right, an operable equal protection clause should guarantee equal opportunity to exercise and take full advantage of that right.

128. 49 Ill. 2d 476, 274 N.E.2d 87 (Ill. 1971).

129. *Id.* at 488, 274 N.E.2d at 95. *See* Defendant's Memorandum in support of their Motion to Dismiss at 15, Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct. filed Nov. 13, 1990), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992).

130. *People ex rel. Ogilvie*, 49 Ill. 2d at 488, 274 N.E.2d at 95.

131. On the contrary, as the plaintiffs point out, there was almost unanimous support for the principle of fiscal neutrality. *See* Plaintiff's Response to Defendant's Motion to Dismiss at 17-22, Committee for Educ. Rights v. Jim Edgar, No. 90 Ch. 11097 (Cook County Cir. Ct. filed Nov. 13, 1990), *appeal docketed*, No. 92-2379 (1st Dist. July 20, 1992) (Delegate Foster was the sole holdout disfavoring equality in the distribution of financial resources).

132. If this contention were not true, a party would be forbidden to bring alternative constitutional grounds, which is clearly not the case.

In summary, Illinois courts should recognize education as a fundamental right for two reasons. First, the Illinois Constitution specifically guarantees the people of Illinois a public education. Second, the right is implied from the wording of the education article. Recognizing public education as a fundamental right would invoke a higher level of scrutiny from the courts under substantive due process analysis, as discussed below.

2. *Application of the Substantive Due Process Analysis*

In a statutory challenge on the grounds of substantive due process, Illinois courts employ a two-step analysis.[133] The court first determines the proper level of scrutiny to apply and then determines whether the legislative enactment withstands that level of scrutiny.[134] If the statute affects a fundamental right or discriminates against a suspect class, the court will subject the legislation to strict scrutiny. As a result, the court will uphold the statute only if it serves a compelling state interest.[135] If the legislation does not affect a fundamental right or discriminate against a suspect class, the court will uphold the legislation if it bears a rational relationship to a legitimate legislative purpose.[136]

If Illinois courts recognize education as a fundamental right, the reasons for the state's reliance on local property taxes in funding local school districts must serve a compelling governmental interest.[137] There are two main purposes for preserving reliance on local property taxes: (1) funding from local property taxes does not fluctuate with the economy as do income and sales taxes; and (2) local officials can more quickly respond to the needs of parents and children within a district than can state officials.[138] Proceeding on a case by case basis, courts have recognized a number of interests as compelling; however, they have failed to develop a constitutional test. Generally, courts have recognized a number of interests as compelling, however, usually proceeding on a case-by-case basis,

133. Harris v. Manor Healthcare Corp., 111 Ill. 2d 350, 367-68, 489 N.E.2d 1374, 1382 (Ill. 1986). In *Harris*, the defendants alleged that an award of treble damages where negligence is the basis of liability violates due process. *Id.* at 366-67, 489 N.E.2d at 1381-82.

134. *Id.* at 367-68, 489 N.E.2d at 1382.

135. *Id.* at 368, 489 N.E.2d at 1382.

136. *Id.* The court explained that, under the rational-basis test, "[a]s long as there is a conceivable basis for finding a rational relationship, the law will be upheld." *Id.*

137. *See id.* at 368-69, 489 N.E.2d at 1382 (holding that the government must serve a compelling interest when affecting a fundamental right).

138. Schwartz, *supra* note 27, at 838-39. See also note 105 and accompanying text discussing the policies behind funding school districts with local property taxes voiced at the Illinois 1970 Constitutional Convention.

never developing a constitutional test.[139] Although the courts give little guidance, the interests recognized usually involve a public health or safety issue, or a countervailing constitutional interest.[140]

Concerning the first purpose of relying on local property taxes, the United States Supreme Court's decision in *Shapiro v. Thompson*[141] provides guidance. There the Court held that administrative convenience would not suffice as a compelling state interest.[142] Relying on more predictable property taxes facilitates budget planning, thereby promoting an administrative function of the school system. Persuaded by the direction of the United States Supreme Court in *Shapiro*, an Illinois court should not consider the administrative convenience of budget planning a compelling state interest.

Regarding the second purpose of relying on local property taxes, communities will not lose the responsiveness of local officials

139. For example, in *Regents of University of California v. Bakke*, the United States Supreme Court held that an admission policy of a medical school that discriminated on the basis of race was unconstitutional. 438 U.S. 265, 320 (1978). In its analysis, the Court held that any classification based upon race is constitutionally suspect, giving rise to strict scrutiny. *Id.* at 291. In invalidating the admission policy, the Court held that the purpose of helping certain groups whom the facility perceived as victims of "societal discrimination" did not stand as a compelling interest, and therefore did not justify the discrimination. *Id.* at 310. The Court did hold that the interest in "ethnic diversity" was compelling in the context of the university's admission standards, however, stated that the program's racial classification was not essential to advance this interest. *Id.* at 314-15.

140. *See* Sable Communications of Cal., Inc. v. FCC, 492 U.S. 115 (1989) (holding that there is a compelling interest in protecting the physical and psychological well-being of minors); Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (finding that drug and alcohol testing of railroad employees without probable cause, due to the dangerous nature to the public, is a compelling government interest); Press-Enterprise Co. v. Superior Court of Cal., Riverside County, 464 U.S. 501 (1984) (stating that fundamental fairness in the jury selection process is a compelling interest); Globe Newspaper Co. v. Superior Court for Norfolk, 457 U.S. 596 (1982) (finding that protecting a victimized child is a compelling interest); Roe v. Wade, 410 U.S. 113 (1973) (holding that the state has a compelling interest in the life of a viable fetus); Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 566 N.E.2d 1283 (1990) (stating that education is a compelling state interest); People v. Bartley, 109 Ill. 2d 273, 486 N.E.2d 880 (1985) (finding that the reduction of drunk driving and alcohol related deaths is a compelling state interest); People v. Gacy, 103 Ill. 2d 1, 468 N.E.2d 1171 (1984) (holding that deterring crime is a compelling government interest); People v. Village of Long Grove, 169 Ill. App. 3d 866, 523 N.E.2d 656 (2d Dist. 1988) (finding a compelling public interest in deterring municipalities from depriving landowners of notice of annexing proceedings); People v. Morgan, 152 Ill. App. 3d 97, 504 N.E.2d 172 (1st Dist. 1987) (concluding that the physical and mental well-being of a child testifying in a rape case is a compelling interest).

141. 394 U.S. 618 (1969).

142. *Shapiro*, 394 U.S. at 634. The state advanced four administrative purposes for a residency requirement that affected a fundamental right to freely travel interstate. *Id.* at 633-34. These administrative purposes consisted of the following: (1) facilitating the planning of the welfare budget, (2) providing an objective test of residency, (3) minimizing the possibility of fraud, and (4) encouraging early resident admission. *Id.* at 634.

except on the issue of funding. If local control of funding is the main purpose in relying on local property taxes, this purpose is invalid because it contradicts the constitutional goal of educating all children to the limits of their capacities. This purpose rests on a parent's desire to convert a public school system into a private school system focused on the interest of his child, instead of the interests of *all* children in the state. Therefore, any purpose relating to local responsiveness or administrative convenience should be rejected as not being a compelling governmental interest, and the present method of public school funding should be held unconstitutional for unduly infringing upon a constitutional right, thus violating the Illinois due process clause.[143]

IV. ALTERNATIVE METHODS OF FUNDING

If the Illinois judicial branch takes an affirmative role in education reform by declaring the present system unconstitutional, the General Assembly will need to define the specific provisions to implement a new funding system. However, the judicial branch must fashion a constitutional remedy by outlining the structure of a new funding system that meets the constitutional requirements. This section will overview the present method of funding in Illinois, explain alternative methods of funding possibly suited for Illinois, and discuss experiences in other states using these methods.

A. The Present Method of Public School Funding In Illinois

Illinois' present system initially funds local school districts with local property taxes, then the state provides additional funding in accordance with one of two alternate plans.[144] The state's present funding system combines a foundation plan ("FP")[145] with a resource equalization plan ("REP").[146] The Illinois General

143. *See* ILL. CONST. art. I, § 2 (stating that "[n]o person shall be deprived of life, liberty or property without due process of law . . . .").

144. *See* 105 ILL. COMP. STAT. 5/18-8(5) (1993) (ILL. REV. STAT. ch. 122, para. 18-8(5) (Supp. 1991)).

145. *See id.* (outlining the state's funding system in the form of a foundation plan); *see also* COONS ET AL., *supra* note 20, at 64 (describing a "foundation plan" funding system). A foundation program establishes a minimum dollar level which is required to provide a student an adequate education. *Id.* The state guarantees this minimum funding level for each student provided that the local district complies with a minimum property tax rate. *Id.* To preserve incentive, the local district can raise property taxes in an effort to raise additional local revenues. *Id.* The advantage to an FP is that shifts in spending can take effect almost immediately because of local control. *Id.* Additionally, it leaves parents with apparent control over their children's education. *Id.*

146. *See* 105 ILL. COMP. STAT. 5/18-8(5) (1993) (ILL. REV. STAT. ch. 122, para. 18-8(5) (1991)) (setting up the structure of the Illinois public school finance program); *see also* Schwartz, *supra* note 27, at 835 (characterizing the Illinois funding program as the "Strayer-Haig state aid formula" after its founders).

Assembly enacted the present program in 1974, replacing a pure FP, presumptively in response to increased litigation in state and federal courts concerning unequal funding issues.[147] The REP provides for more equal expenditures than the old FP; however, it equalizes less than a straightforward district power equalization plan[148] because wealthier school districts may opt for the alternative FP.[149]

The FP requires a minimum taxation on local property to qualify for state supplements.[150] The FP will supplant any amount to provide for a basic amount of $520 per pupil; however, even when supplemental funds are not required, every district is guaranteed at least $48 per pupil.[151] This guaranteed minimum prompts rich school districts to opt for the FP when no funds are guaranteed through the REP.[152]

Under the REP option, each district is guaranteed a certain level of funds per student, corresponding to a tax rate that the local residents choose.[153] If the local tax rate does not yield that guaranteed amount, for example if property values are low, then the state provides the supplemental funds.[154] The amount guaranteed will be equal to the selected tax rate multiplied by a standard property value.[155] The funds guaranteed per student in K-12 district schools are equal to the selected tax rate multiplied by $74,791.[156] Similarly, the funds guaranteed per student in elementary districts and high school districts are equal to the selected tax rate multiplied by $108,644 and $187,657 respectively.[157]

The REP limits operating tax rates to 2.76% for K-12 districts, 1.9% for elementary districts, and 1.1% for high school districts.[158] However, through a "voter override," a school district can exceed

147. Schwartz, *supra* note 27, at 836-37 (noting that "[t]he public focus on school finance reform led to the passage in 1973 of an alternative state aid formula called the resource equalizer. Through this formula, the state sought to equalize spending levels by ameliorating the effect of wealth or poverty in school districts.").

148. W. Norton Grubb, *The First Round of Legislative Reforms in the Post-Serrano World*, 38 LAW & CONTEMP. PROBS. 459 app. at 477 (1974).

149. *Id.*

150. 105 ILL. COMP. STAT. 5/18(5) (1993) (ILL. REV. STAT. ch. 122, para. 18-8(5) (Supp. 1991)).

151. *Id.*

152. Grubb, *supra* note 148, app. at 477.

153. *Id.* at 478.

154. *Id.* at 478.

155. *Id.* at 478.

156. *Id.* at 478.

157. Grubb, *supra* note 148, at 478.

158. 105 ILL. COMP. STAT. 5/18(5) (1993) (ILL. REV. STAT. ch. 122, para. 18-8(5) (1991)).

the maximum under certain conditions.[159] This limit generally prevents both rich and poor districts from excessive taxing to provide large funds for education. However, rich districts rarely opt for the REP and are not subject to the limit.[160] Although the REP option narrows the gap in funding between wealthy and poor school districts, it has not provided for equalized expenditures.[161]

B. *Alternative Methods of Funding Promoting Equal Educational Opportunities*

Three general methods of public school funding are specifically designed to reduce or eliminate inequalities in educational opportunity. These methods are District Power Equalization, Full State Funding, and Voucher Plans (also known as Family Choice).[162] This section will briefly discuss the structure of these methods, as well as their advantages and disadvantages.

1. *District Power Equalization*

The first method, District Power Equalization ("DPE"),[163] maintains the structural appearance of a wealth-based system making it the most politically acceptable of the three options.[164] In fact, the REP option in Illinois resembles a DPE in many ways.[165] A DPE formula allows a school district to spend at any desired level and adopt a school rate tax according to that spending level.[166] However, the spending level is not tied to the amount of revenues collected, but only to the tax rate selected.[167] Therefore, rich school districts collect more revenues than they are allowed to expend.[168] Under this method, the state would "recapture" the revenues in excess of the predetermined spending level and then distribute the funds to poor school districts whose tax rates did not raise sufficient revenues to meet their predetermined spending

159. *See id.* (describing the conditions which allow school districts to exceed the maximum funding).

160. *See id.* (setting forth the state's REP funding system).

161. See *supra* notes 7-12 illustrating the disparities created under the present public school funding system in Illinois.

162. See *supra* notes 146-61 and accompanying text discussing the methods Illinois presently employs for funding public education.

163. *See* COONS ET AL., *supra* note 20, at 201-42 (describing the general workings of a DPE plan).

164. *See* Robert L. Manteuffel, *The Quest for Efficiency: Public School Funding in Texas*, 43 SW. L. J. 1119, 1129 (1990) (discussing briefly the four basic funding alternatives including the DPE).

165. See *supra* notes 144-61 and accompanying text for an explanation of the REP option that Illinois offers within its present funding system.

166. *See* COONS ET AL., *supra* note 20, at 201-42 (discussing a district "power equalizing" system).

167. *See id.*

168. *See id.*

levels.[169]

The advantage of DPE is that it leaves local communities some control over expenditures, while at the same time providing some equalization among communities.[170] However, continued reliance on local property taxes, even through a DPE, creates disparities in expenditures[171] that can only be alleviated by placing the burden of school finance completely on the state.

2. *Full State Funding*

The second method, Full State Funding ("FSF"), allocates all funding to individual school districts based upon a per student amount and places all responsibility for school funding at the state level.[172] Although local school districts and their constituents still maintain control of operations, funding becomes a state issue in which the quality of education for all children in all districts reflects the concerns of all the citizens.[173] Additionally, an FSF can respond to particular needs of the children, whereas the per student amount can be a function of regional cost difference, or costs associated with handicapped and disabled children.[174] This system creates equality between the districts and allocates money primarily upon the characteristics of the child.[175]

Despite some advantages, an FSF does have drawbacks. First, reliance on state income and sales tax revenues, shifted away from property tax revenues, requires restructuring of more than just the

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169. *See id.*

170. *See id.*; *see also* Manteuffel, *supra* note 164, at 1129 (describing the advantage of the DPE system).

171. For example, in New Jersey, the state legislature instituted a DPE. Manteuffel, *supra* note 164, at 1131-33. Although the DPE lessened the disparities between school districts, consequently the new funding system was constitutionally defeated because of the disparities of funding between wealthy and poor school districts. Abbot v. Burke, 575 A.2d 359 (N.J. 1990). *See also* Stephan Michelson, *What is a "Just" System for Financing Schools? An Evaluation of Alternative Reforms*, 38 LAW & CONTEMP. PROBS. 436 (1974) (discussing the merits of various school finance systems). Michelson makes some strong comments in disapproval of a DPE:

> DPE increases inequality, but it seems to reverse the slope. . . . District power equalizing is in no way neutral, but requires the state to express a philosophy on the value of children which is related to their district's tax characteristics. It may or may not be equalizing in result, but in form it is nothing more than price manipulation.

Id. at 448.

172. Manteuffel, *supra* note 164, at 1129; *see* Michelson, *supra* note 171, at 457-58 (analyzing the advantages and disadvantages of FSF).

173. *See* Michelson, *supra* note 171, at 457-58 (describing the impact of FSF upon the school districts).

174. Manteuffel, *supra* note 164, at 1128.

175. Manteuffel, *supra* note 164, at 1128; *see also* Michelson, *supra* note 171, at 457-58 (outlining the operation of a FSF system).

education funding system.[176] However, this problem may be overcome by "recapturing" a designated percentage of local property taxes, similar to a DPE. Second, an FSF method may create equal funding, but it does not inherently take into account "municipal overburden" on urban communities,[177] or other special needs of the handicapped or learning disabled. However, these concerns can be factored into the financing equation as is done now with the REP. Finally, a FSF may face strong political opposition because it gives the local community the perception that they have virtually no control over the education of their children.[178]

3. Voucher Plans or Family Choice

The third method, a Voucher Plan or Family Choice ("FC") Plan, gives parents a voucher to spend at the school of their choice.[179] An FC allows the family to choose the kind of education they believe is best for the child.[180] A family can base this decision on the teachers, science facilities, artistic opportunities, or even sports programs available at the various schools.[181]

An FC provides equal educational opportunity by ensuring equal access to educational resources rather than providing equalized funding.[182] An FC not only gives more control to the family, but proponents also argue that the market-like distribution of edu-

176. *Compare* Manteuffel, *supra* note 164, at 1128 *with* Michelson, *supra* note 171, at 452-53 (contrasting the author's views regarding the FSF system). Michelson argues that although issues of expenditure and revenues are inherently related, it is more important to conceptualize and structure the system on what would produce a good distribution of funds, apart from considerations of a good tax structure and its associated problems. Michelson, *supra* note 171, at 452-53.

177. Michelson, *supra* note 171, at 452-53. Municipal overburden is the extra costs to urban school districts associated with increased security or poverty. *Id.* at 452. Michelson argues that municipal overburden is not a school finance issue, and thus these problems should be dealt with by either the state or the community separately without complicating the public school revenue package. *Id.* at 453.

178. Manteuffel, *supra* note 164, at 1128.

179. *See* Stephen D. Sugarman, *Family Choice: The Next Step in the Quest for Equal Educational Opportunity*, 38 LAW & CONTEMP. PROBS. 513, 513-14 (1974) (analyzing various funding systems, including the Family Choice plan); *see also* Manteuffel, *supra* note 164, at 1130 (describing the advantages and disadvantages of a FC plan).

180. Sugarman, *supra* note 179, at 514.

181. *See id.* at 518 (contending that diversity of school experiences not only affects the children in a positive way, but also promotes the mental health of parents who feel powerless in the direction of their children's education).

182. *See id.* at 514, 520-21 (describing how a Family Choice plan may result in a complete breakdown of the local school district system and the control exercised through such a system). Under Family Choice, the family's ability to control the education of their child will no longer be conditioned on the majority will of the constituents in the district.

cational services will increase the efficiency of the school system.[183] Additionally, an FC allows separate school districts to develop low-demand, highly specialized courses without the cost of duplication in every school district.[184] In the interest of equal education, an FC may also incidentally be the most effective means for racial integration.[185]

However, an FC does pose difficulties in implementation for three reasons. Initially, the legislature must determine whether the plan should be limited to include only public schools, or if private and religious schools could also partake in the system.[186] Additionally, incorporation of an FC into a system with wide disparities may result in overcrowding in the best schools or present a difficult question of student eligibility.[187] Finally, the radical departure from the typical school district and the potential breakdown of school districts may pose substantial political difficulty.[188]

All three funding methods are specifically designed to alleviate or eliminate the inequalities of educational opportunities by either mandating equal funding or by providing equal access to educational resources. Depending upon the type of problems a state faces, all three systems present advantages and disadvantages. If forced to conform to a constitutional standard of equality of educational opportunity, the Illinois General Assembly should choose a system based on one of these plans. The following section considers which plan is appropriate for Illinois.

V. CREATING EQUALITY IN ILLINOIS

The first part of this section will determine which method of financing most appropriately addresses the inequalities within the present financing system in Illinois. This will be done by identify-

183. *Id.* at 517.

184. Manteuffel, *supra* note 164, at 1141; see also *infra* note 187 for an argument of the unlikehood that a Family Choice Plan will produce these highly diverse courses distributed throughout different school districts because such diversity in limited choice situations fights against the free-market-type model the family choice plan emulates.

185. Sugarman, *supra* note 179, at 539-44. Two hypotheticals illustrating both sides are imaginable: "All whites would flee from integrated programs, set up private schools, and block entry of black students; or alternatively, blacks might flock to currently all white suburban and private schools promoting racial integration." *Id.* at 540. Sugarman suggests that either projection is too simplistic because pressures exist for either scenario, and an array of alternative possibilities exist. *Id.*

186. *Id.* at 520-33.

187. *Id.* at 536. Such criteria for acceptance would not only be opposed by constitutional restraints, but would also reduce the amount of choice to the parents, thereby impeding the original focus of the plan. *Id.* at 536-37.

188. *See* Manteuffel, *supra* note 164, at 1130 (analyzing the effects of an FC plan on the school districts).

ing the overall goals of a new financing system and evaluating whether any of the three alternative methods for financing can accomplish these goals. The second part of this section will encourage the Illinois judicial branch to exercise a strong hand in the development of a new system by specifying exactly what the constitutional mandate requires.

A. The Objective of a New Method of Finance

There are typically eight ways to define equal educational opportunities.[189] The two most important are equal funding and equal ability to access educational resources.[190] The fundamental goal in Illinois is "the educational development of all persons to the limits of their capacities."[191] Therefore, the objective of a new financing system must be equal access to educational resources for all students in the state.

Over time, equal access to educational resources can be attained by providing equal funding per student. Logically, even presently disparate school districts would eventually offer equal resources over the course of time.[192] Therefore, Illinois can reach both goals by ensuring equal funding to all students. The following subsections examine the methods of providing equal funding.

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189. *See* John E. McDermott & Stephen P. Klein, *The Cost Quality Debate in School Finance Litigation: Do Dollars Make a Difference?*, 38 LAW & CONTEMP. PROBS. 415, 416 (1974) (noting that although defining educational opportunity is a "hazardous undertaking," past judicial attempts to define the term have produced eight different standards). These standards are as follows: (1) equal dollars per pupil, (2) dollars adjusted according to pupil needs, (3) lack of judicially manageable standards, (4) maximum variable ratio, (5) negative standard, (6) inputs, (7) outputs, and (8) minimum adequacy. *Id.* at 416. The authors explain that the reason for the number of different definitions, all of which may not be completely satisfactory, is due to the dynamic nature of education. *Id.* at 416 n.6.

190. These two factors are of primary importance because this Note does not stress the theory of educational opportunities and the "cost-quality debate," but stresses the most concrete way to satisfy the constitutional goal and provide a better educational environment for all children in the state.

191. ILL. CONST. art. X, § 1.

192. This result is conditioned upon the degree that factors such as local crime, complacency in maintenance, and insurance rates will contribute to the stagnation of services offered by urban school districts. These factors are traditionally referred to as "municipal overburden," and this is the strongest argument against a fully state funded public school system. Michelson, *supra* note 171, at 452-53. Michelson argues that such factors are not education issues and should not factor into a school finance methodology, but should be left to the municipalities to be dealt with in more appropriate ways. *Id.* Furthermore, since other school finance methods also fail to remedy these problems, a fully state funded system is in no way subordinate to other funding schemes on this issue. *See id.* (discussing the FSF plan and its handling of tax issues).

1. District Power Equalization

A DPE primarily attempts to equalize the available expenditures to each student while still maintaining local control of those expenditures.[193] Local control of expenditures, built into the system, does allow variations in expenditures depending upon the local tax effort preferred by the constituents within the school districts.[194] Maintaining local control of expenditures may be the most politically acceptable to parents.[195] However, the concerns of the parents are not the primary issue. The educational goal of the Illinois Constitution concerns the needs of the *children* rather than the wants of the parents. A DPE system, by continually relying on local property taxes and by structurally allowing disparities in funding, proves undesirable and inappropriate to meet the constitutional goal. An alternative is a Voucher or Family Choice Plan.

2. Voucher Plans or Family Choice Plans

An FC approach to educational equality allows parents to choose the school they believe is best for their child, theoretically resulting in substantial advantages for all children.[196] Generally contrary to traditional reliance on professional educators' judgment, the approach trusts parental judgment and directly offers equal access to educational facilities.[197] To ensure equal access to educational facilities, an FC plan must allow parents to choose out-of-district public schools (assuming the scope of the FC plan applies only to public schools, excluding private and sectarian schools),[198] thereby breaking down the present local school district structure.[199] Since parents would have direct control over their chil-

193. *See* COONS ET AL., *supra* note 20, at 201-42 (describing the finance system of "power equalization" which tends to emphasize local control); *see also* Manteuffel, *supra* note 164, at 1129 (discussing the advantage of a DPE funding system).

194. *See* COONS ET AL., *supra* note 20, at 201-42 (parenthetical).

195. *See* Manteuffel, *supra* note 164, at 1142-43 (recommending a DPE to the Texas legislature primarily because of its political acceptability).

196. Sugarman, *supra* note 179, at 513.

197. *See id.* at 514 (discussing the advantages of the FC plan).

198. Although a Family Choice plan could expand to encompass private and sectarian schools, allowing parents with the financial ability to send their children to private schools by applying the public school vouchers would only create a two-tiered financially discriminatory system. The likely result would be that poor children would attend public schools, and middle and upper class children would simply choose to attend private schools. Adding to the problem, the financial needs of the public schools would no longer be responsive to the entire state. With political pressure from the middle and upper classes, public school finances will eventually drop off, seriously undermining the public school system.

199. Parents, anticipating tax assessments, could opt for the lowest tax rates within their districts and send their children to the best, fully funded schools. Vouchers could reflect expenditures on local taxes with supplements paid by

dren's education, parents would have little need for indirect control of operations through local school boards.

With a breakdown of school district barriers, funding schools through local property taxes would become obsolete.[200] Therefore, operation of a successful FC plan ensuring equal access to educational resources requires the state to first institute a fully state-funded system. Additionally, to avoid overcrowding of the presently better equipped public schools, Illinois must first realize the equalizing effects of a fully state-funded system.[201]

An FC system focuses on equal access to educational facilities and therefore parallels the constitutional goal,[202] provided that an FC plan produces diverse schools.[203] However, although an FC appears attractive, the present disparities render an FC plan unworkable, and the complete breakdown of school district barriers make an FC plan politically undesirable.[204] Thus, the General Assembly should consider the final plan, Full State Funding.

3. Full State Funding

An FSF method ensures equal funding per student, thereby financially attempting to guarantee equal educational opportunity.[205] Initially, an FSF plan does not deliver equal education because of the pre-existing disparities in resources and facilities.[206] However,

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the parents. However, this reduces equal access to educational resources by discriminating against the poor and virtually instituting a solely private school system.

200. With a breakdown of school district barriers, funding schools through local taxes would become highly undesirable, most notably to the local property owners who would not appreciate funding non-local students from other districts with their local property taxes.

201. See *supra* notes 182-88 for a brief note on the parallel problems due to overcrowding.

202. See *supra* note 190 and accompanying text for an explanation of the overall goal.

203. A Family Choice plan *theoretically* provides an unlimited number of schools a child could attend within the limits of the state. However, in *reality*, transportation limits the actual number of choices to about three to six schools, depending upon the density of the area. With a limited number of actual choices, the market-based family choice plan produces a significantly different result. From an alternative point of view, the schools themselves have only limited competition, and compete for only a limited number of students. To attract a sufficient number of students, schools will need to develop a curriculum tailored to appeal to the general populace. Consequently, this reduces the incentive to develop the low-demand, highly specialized courses that would be the essence of the scheme's diversity.

204. *See* Manteuffel, *supra* note 164, at 1142 (describing this undesirability as "fear of inter-district desegregation").

205. *See* Manteuffel, *supra* note 164, at 1129 (outlining the operation of the FSF plan); *see also* Michelson, *supra* note 171, at 457-58 (analyzing the merits of the FSF plan).

206. See *supra* note 177 for a comment on the additional problem of "municipal overburden."

given time, the disparities in facilities and resources should decrease and finally disappear.

The FSF method will have a more immediate impact on an equal distribution of teaching skills. With equalized funding, both rich and poor districts will have identical resources to attract higher qualified educators.[207] Furthermore, state response, as opposed to local response, to the financial needs of education creates better prospects of increasing the overall quality of education within the state.[208]

Implementation of an FSF plan could also lead to eventual incorporation of an FC plan which not only facilitates equal access to educational resources, but also allows parents to choose a school which is tailored to their children's needs.[209] FSF plans have the ability to deliver equalized educational opportunity, the potential for refinement into the highly diversified FC,[210] and the workability to coexist. Together, these characteristics within the school district's present situation, make an FSF plan the best alternative for the Illinois General Assembly.

B. Judicial Assertion of an Appropriate Remedy

For Illinois to institute an appropriate method of financing which meets the constitutional mandate, one of two events must occur. Either the General Assembly must, under its own initiative, enact a school finance system focusing only on the collective needs of the children, or the judicial branch must take an assertive role by specifically instructing the General Assembly as to the type of funding system that will conform to the constitutional restraints.

Trusting the General Assembly to look solely at the needs of the children is unrealistic for two reasons. First, the political influence of property wealth alone raises questions as to whether the General Assembly would promulgate an adequate remedy.[211] The present Illinois finance plan demonstrates the General Assembly's

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207. Although an area's crime rate and school conditions would play a factor in how "attractive" a comparative salary would be in a depressed school, with the present ability to offer competitive salaries coupled with eventual equal facilities and resources, the once "poor" school districts will have an equal ability to draw quality educators.

208. *See* Michelson, *supra* note 171, at 457-58 (discussing the advantages of the FSF plan).

209. *See* Manteuffel, *supra* note 164, at 1143-47 (discussing the effects of a FSF system on the Texas school system).

210. See *supra* note 198 arguing that an FC plan with the potential to provide diversified schools each offering highly specialized courses, may not actually provide this diversity.

211. *See* Note, *Unfulfilled Promises: School Finance Remedies and State Courts*, 104 HARV. L. REV. 1072, 1078-80 (1991) (discussing various factors hindering constitutional remedies to school financing).

reluctance to enact a school code that removes advantages of property wealth already built into the system.[212] This type of reluctance is seen in other states as well. The Texas Legislature, responding to *Edgewood Independent School District v. Kirby* (*Edgewood I*)[213] which held the Texas public school funding system unconstitutional, proposed a school code which excluded the five percent of students living in the state's wealthiest school districts from the equalizing provisions of the new school code.[214] Consequently, the Texas Supreme Court held that this proposed system is unconstitutional.[215]

Second, the reluctance of the general populace to commit to higher taxes for the common good of schoolchildren provides no encouragement for the General Assembly to provide an adequate remedy.[216] Taxpayers, likely to underestimate the collective benefits of a better-educated citizenry and concerned with higher taxes, are likely to reject a plan that focuses on equal funding.[217] The problems of trusting the legislature to provide a constitutionally adequate system should prompt the judiciary to abandon its deference and take an affirmative role in the enactment of a proper financial plan.

In *Edgewood I*,[218] the Texas Supreme Court took an affirmative role by setting forth six general guidelines for the legislature to follow.[219] The Illinois Supreme Court should take a similar affirmative role by outlining the general requirements of a constitutional school funding system. Some guidelines for a fully state-funded system are as follows: (1) the new system should not rely on local tax effort; (2) all children must be afforded equal funds for educational facilities and operations; (3) variations in funding can be al-

212. See *supra* notes 144-61 and accompanying text for a discussion the present finance scheme in Illinois and the opt out ability of wealthy districts.

213. 777 S.W.2d 391 (Tex. 1989).

214. Edgewood Indep. Sch. Dist. v. Kirby, 804 S.W.2d 491, 495-96 (Tex. 1991).

215. *Id.* at 496.

216. Note, *supra* note 211, at 1080.

217. *Id.*

218. *Edgewood*, 777 S.W.2d at 391.

219. *Id.* at 398. These guidelines set forth by the Texas Supreme Court have been summarized by Manteuffel as follows:

> (1) the correlation between a district's tax effort and the funds available for the children of that district must be direct and close; (2) all children must be afforded substantially equal access to educational funds; (3) the legislature must provide funding for the school system before allocating other funds because the education system is mandated constitutionally; (4) the legislature may act directly or enlist the aid of local governments to meet its obligation; (5) local communities may supplement their system, but that enrichment must come from local taxes alone; (6) the system must be overhauled completely, and merely reallocating money between rich and poor districts under the present system will not suffice.

Manteuffel, *supra* note 164, at 1127-28.

lowed if they reflect a child's need (such as disability); (4) control of operations and procedures and choice of facilities should be left to local communities through local school boards; and (5) exclusion of any public school district from the general framework is unacceptable. By setting forth specific guidelines, the Illinois Supreme Court will increase the state's chances of attaining a constitutionally acceptable public school finance system in the first round of litigation.

VI. CONCLUSION

Education is an important facet of American society: first, our democratic system of government depends upon it; second, education provides social and economic mobility, a value adopted by our country's economic system. Public school finance systems that rely primarily on local property taxes create educational disparities that erode a child's ability to rise above his social status. Professional educators, shifting the blame to "factors out of their control," assert that poor funding does not inhibit a quality education, but rather that a child's social and economic environment inhibits education. However, a poor social and economic environment is more likely a result of inadequate education rather than a cause of inadequate education. Because the state directly controls educational funding, financial equalization is the only effective way to make positive changes in the disintegration of traditional social values in impoverished communities.

Responding to the need for change, reformers now challenge the present method of finance in Illinois on constitutional grounds. With an excellent chance for success on substantive due process grounds, the suit pending in the First District Appellate Court of Illinois may force the General Assembly to rebuild the public school financing scheme in order to conform to constitutional constraints. Through strong guidance by the judicial branch, implementation of a new financing scheme, fully funded by the state, will not only meet the constitutional mandate, but will also hold potential for refinement. Furthermore, the feasibility of such a plan, given the school districts' present conditions, makes a fully state-funded financing system appropriate for Illinois.

John F. Watson