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When All Else Has Failed: Resolving the School Funding Problem

*John Dayton**

I. INTRODUCTION

Most citizens know little about policies for funding public education. Yet systems of public school funding based on these policies have produced inequities and inadequacies in educational resources affecting the quality of their childrens' lives, and the economic and social futures of their communities. Further, property tax-based systems of funding are in many instances harmful to the most vulnerable children in our society.¹ Funding policies that rely on local property wealth to support education make many already disadvantaged children the recipients of an inadequately funded education that compounds their other disadvantages.²

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1. An increasingly significant dimension of the political battle over education resources is the struggle between inner city and suburban schools. Regrettably, this conflict also carries with it racial and class dimensions with inner city children being increasingly non-white and poor and suburban children being predominately white and relatively affluent. But the problem of funding inequities is not limited to cities and minority children. Many rural children also live in poverty and attend seriously under-funded schools. The problems of rural children may receive less attention because of the geographic isolation of rural areas and their often marginal representation in the political process. Nonetheless, as Hodgkinson recognized: "In the nation, for every urban 'hyper-poor' child living at 50 percent of poverty of the official poverty level, there is one rural child who is just as poor." HAROLD L. HODGKINSON, *A DEMOGRAPHIC PROFILE OF THE SOUTHEAST* 18 (1992).

2. In *San Antonio v. Rodriguez*, 411 U.S. 1, 26-27 (1973), the U.S. Supreme Court questioned the alleged correlation between taxable district property wealth and the collective wealth of families residing within districts. The argument advanced here is not that all children in poorer districts are economically disadvantaged, but that for the many financially disadvantaged children living in poorer districts the school district's poverty compounds the effects of their personal poverty. Affluent families residing in poorer districts can afford to supplement poor education programs or choose superior private schools; such costly options are not available to children without financial resources.

Advocates for these children have sought redress of their disadvantaged educational circumstances. Failing to achieve reform through the legislative process, public school funding reformers turned to federal and state constitutions and the assistance of courts to obtain relief. Efforts to obtain relief under the federal Constitution were unsuccessful. In *San Antonio v. Rodriguez*, the U.S. Supreme Court upheld the Texas system of public school funding despite substantial funding disparities.³ Nonetheless, school funding reform advocates have achieved some success in litigation based on state constitutional provisions.⁴ Twenty-eight states' highest courts have ruled on the merits of constitutional challenges to their states' funding systems, with fourteen states' highest courts upholding states' systems of public school funding and fourteen states' highest courts declaring school funding systems unconstitutional.⁵

3. 411 U.S. 1 (1973). In reviewing the Texas public school funding system the Court recognized substantial disparities in school districts' assessed property values and per-pupil expenditures. The Court compared two districts in the San Antonio area, finding that the Edgewood Independent School District had an average assessed property value per pupil of \$5,960 and expended \$356 per pupil for education. In contrast, the Alamo Heights School District had an average assessed property value per pupil of \$49,000 and expended \$594 per pupil for education. *Id.* at 12-13. Sixteen years later the Supreme Court of Texas in *Edgewood v. Kirby*, 777 S.W.2d 391, 392 (Tex. 1989), recognized a per pupil spending disparity ratio of approximately 9 to 1 among Texas school districts. The wealthiest school district in Texas spent \$19,333 per pupil, while the poorest district had only \$2,112 per pupil for education.

4. For a more complete analysis of judicial treatment of school funding cases see John Dayton, *An Anatomy of School Funding Litigation*, 77 EDUC. L. REP. 627 (1992).

5. The public school funding systems of Colorado, Georgia, Idaho, Maryland, Michigan, Minnesota, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Virginia, and Wisconsin, have been upheld by their states' highest courts. See *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981); *Idaho Schools for Equal Educ. Opportunity v. Evans*, 850 P.2d 724 (Idaho 1993); *Hornbeck v. Somerset*, 458 A.2d 758 (Md. 1983); *Milliken v. Green*, 212 N.W.2d 711 (Mich. 1973); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993); *Board of Educ., Levittown v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982); *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979); *Fair School Fin. Council v. State*, 746 P.2d 1135 (Okla. 1987); *Coalition for Equitable School Funding v. State*, 811 P.2d 116 (Or. 1991); *Danson v. Casey*, 399 A.2d 360 (Pa. 1979); *Richland Co. v. Campbell*, 364 S.E.2d 470 (S.C. 1988); *Scott v. Commonwealth*, 443 S.E.2d 138 (Va. 1994); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989). The public school funding systems of Arizona, Arkansas, California, Connecticut, Kentucky, Massachusetts, Montana, North Dakota, New Jersey, Tennessee, Texas, Washington, West Virginia, and Wyoming have been declared unconstitutional by the state's highest court. See *Roosevelt v. Bishop*, 877 P.2d 806 (Ariz. 1994); *Dupree v. Alma School Dist.*, 651 S.W.2d 90 (Ark. 1983); *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971); *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977); *Rose v. Council for Better Educ.*, 790 S.W.2d

Those disadvantaged by public school funding systems continue to turn to state courts seeking a judicial declaration that the existing funding system is unconstitutional and requesting a judicial mandate for funding reform. Funding reform advocates hope a favorable judicial decision will serve as a catalyst for legislative reform.⁶ But after many years of judicial intervention substantial funding inequities continue.⁷ Even where legislative reforms have been enacted there has often been a tendency towards deterioration of equity gains.⁸ Through the disproportionate influence often afforded to those with economic and political power wealthy districts may continue to dominate the legislative process, sometimes altering reform legislation to the degree that inequities may actually increase.⁹

Advocates of funding reform have worked diligently to achieve greater funding equity. Despite their efforts funding inequities and resulting inadequacies persist, making childrens' educational opportunities largely a function of local economics and geographic accident. Significant human capital is wasted by

186 (Ky. 1989); *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); *Helena v. State*, 769 P.2d 684 (Mont. 1989); *Bismarck Public School Dist. v. State*, 511 N.W.2d 247 (N.D. 1994) (affirming a district court judgment that "the overall impact of the entire statutory method for distributing funding for education in North Dakota is unconstitutional," but lacking the supermajority required by the North Dakota Constitution to declare statutes unconstitutional); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993); *Edgewood v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Seattle School Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979); *Washakie Co. School Dist. v. Herschler*, 606 P.2d 310 (Wyo. 1980).

6. See *Serrano v. Priest*, 557 P.2d 929, 931-933 (Cal. 1976); *Horton v. Meskill*, 376 A.2d 359, 372 n.12 (Conn. 1977); *Seattle School Dist. No. 1 v. State*, 585 P.2d 71, 95 (Wash. 1978).

7. Most scholars recognize *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) as the beginning of the modern era of school funding litigation. See MARK G. YUDOF ET AL., *EDUCATIONAL POLICY AND THE LAW* 606 (3d ed. 1992). Although *Serrano* was decided nearly a quarter century ago, state courts continue to be extensively involved in school funding litigation. See Lonnie Harp, *Recent Finance Activity Follows Disparate Patterns*, EDUC. WEEK, Feb. 15, 1995, at 11. Despite this judicial action, the prevalence of large funding inequities as large and larger than those identified in *Serrano* continues. See *Serrano v. Priest*, 487 P.2d 1241, 1247 n.9 (Cal. 1971); *Helena v. State*, 769 P.2d 684, 686 (Mont. 1989); *Edgewood v. Kirby*, 777 S.W.2d 391, 392 (Tex. 1989).

8. See William E. Camp & David C. Thompson, *School Finance Litigation: Legal Issues and Politics of Reform*, 14 J. EDUC. FIN. 221, 223-224 (1988).

9. Tricia Bevelock, *Public School Financing Reform: Renewed Interest in the Courthouse, But Will the Statehouse Follow Suit?*, 65 ST. JOHN'S L. REV. 467, 489 (1991).

failing to provide adequate educational opportunities for all children. This article examines reasons that inequities and inadequacies in educational funding persist, and identifies a possible solution for this public policy problem.

II. THE PERSISTENT PROBLEM OF SCHOOL FUNDING INEQUITIES

Historically, American schools were a local responsibility supported by local funds.¹⁰ In recognition of the increased importance of public education, lawmakers in the early 1800's adopted state constitutional provisions addressing public education.¹¹ Today, all fifty states have constitutional provisions describing the state's duty to support public education.¹² Nonetheless, the perception that public educational support is a local obligation persists, as does substantial reliance on local property taxes for funding. Many citizens would be surprised to learn that their state's constitution assigned ultimate responsibility to the state, and not the local district, for supporting public education. Further, many citizens are unaware that revenues collected for support of public education are in fact state funds rather than local funds.¹³

It is in the conceptual gap between constitutional mandates for public school funding and citizens' perceptions that the problem of school funding inequities unfolds. State constitutions establish a state level duty to support public education, but citizens continue to claim ownership over local funds generated to support education. Underlying this divergence between constitutional mandates and public perceptions is a tension

10. *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 529 (Mass. 1993) ("In 1647, in a law which is credited with beginning the history of public education in America, the General Court required the towns to maintain a system of public schools").

11. Indiana's 1816 Constitution was the first to specifically provide for free public education throughout the state. *NEW AMERICAN DESK ENCYCLOPEDIA* 582 (1984).

12. See Allen W. Hubsch, *Education and Self-Government: The Right to Education Under State Constitutional Law*, 18 J.L. & EDUC. 93, 134 (1989) (citing the language contained in the education clauses of all 50 states' constitutions).

13. WILLIAM D. VALENTE, *EDUCATION LAW: PUBLIC AND PRIVATE* § 20.23, at 290 (1985) ("local tax revenues are state taxes, subject to state control"). Citizens' perceptions of local funding responsibility and local ownership of funds partially explains their adversity to attempts to equalize funding through state recapture of local funds for education throughout the state. See *Buse v. Smith*, 247 N.W.2d 141 (Wis. 1976).

between altruism and self-interest: the altruistic wish for equity for all children and an enhancement of the general welfare of the society versus wanting the best for one's own children and advancing one's self-interest.¹⁴ Granting public education constitutional status was an altruistic gesture to set all children's educational interests above the political fray of self-interest. But egalitarian ideals are often frustrated by the realities of self-interest. Proclamations that may have been attractive as constitutional ideals may become politically problematic when they result in additional taxation or the transfer of economic resources from one community to another.

Unconstitutional disparities in expenditures result from this conflict between altruistic ideals and the harsh political realities of self-interest. Although the state's constitution proclaims that the state owes a duty of educational support to all of the state's public school students, in order to appease local political concerns the state operates a system of public school funding that results in substantial disparities in educational support and tax burdens. Even though all children are equally "children of the state" entitled to a state supported free public education, some of the state's children are favored or disfavored based on local wealth.¹⁵

Substantial variations in per pupil funding exist among school districts within many states. For example, in *Edgewood v. Kirby*, the Supreme Court of Texas recognized a per pupil spending disparity ratio of approximately 9 to 1. The wealthiest school district in Texas spent \$19,333 per pupil, while the poorest district had only \$2,112 per pupil for education.¹⁶ In

14. *San Antonio v. Rodriguez*, 411 U.S. 1, 49 (1973) ("The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children, and the desire of each family to provide the best education it can afford for its own children"). See also *Skeen v. State*, 505 N.W.2d 299, 316 (Minn. 1993); *Board of Educ. v. Walter*, 390 N.E.2d 813, 820 (Ohio 1979); Robert E. Lindquist, *Buse v. School Finance Reform: A Case Study of the Doctrinal, Social, and Ideological Determinants of Judicial Decision Making*, 1978 WIS. L. REV. 1071, 1135 (1978).

15. See Kern Alexander, *The Common School Ideal and the Limits of Legislative Authority*, 28 HARV. J. ON LEGIS. 341, 341 (1991), citing Sir Isaiah Berlin, *Equality*, in *JUSTICE AND SOCIAL POLICY* 131 (F. Olafson ed. 1961) ("If I have a cake and there are ten persons among whom I wish to divide it, then if I give exactly one-tenth to each, this will not, at any rate, automatically call for justification; whereas, if I depart from this principle of equal division, I am expected to produce a special reason").

16. 777 S.W.2d 391, 392 (Tex. 1989).

Helena v. State, the Supreme Court of Montana recognized an 8 to 1 disparity in per pupil expenditures.¹⁷ Other states' systems of public school funding have also resulted in substantial disparities.¹⁸

In defending these inequities in funding, many states have asserted that it is not the amount of money expended that determines the level of educational opportunity offered by a school district, but instead, how that money is spent.¹⁹ Certainly spending more money on education does not by itself guarantee that students will receive a better education. Mismanagement and inefficiency could result in the waste of additional

17. 769 P.2d 684, 686 (Mont. 1989).

18. For additional cases recognizing per pupil spending disparities and declaring the state's system of funding unconstitutional, see *Dupree v. Alma School Dist.*, 651 S.W.2d 90, 92 (Ark. 1983) (a disparity of \$2,378 to \$873, a 3 to 1 ratio); *Horton v. Meskill*, 376 A.2d 359, 366 (Conn. 1977) (expenditures in the top and bottom deciles were \$1,245 and \$813, a 1.5 to 1 ratio); *Abbott v. Burke*, 575 A.2d 359, 383 (N.J. 1990) (a disparity of \$4,029 to \$2,861, a 1.4 to 1 ratio); *Robinson v. Cahill*, 303 A.2d 273, 276 (N.J. 1973) (disparity recognized, no amount or ratio indicated); *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 197, 199 (Ky. 1989) (recognizing "wide variations" and a disparity which "runs in the thousands of dollars"). For cases recognizing per pupil spending disparities, but upholding the state's system, see *McDaniel v. Thomas*, 285 S.E.2d 156, 160 n.8 (Ga. 1981) (ranging from \$1,682 to \$777, a 2 to 1 ratio); *Hornbeck v. Somerset*, 458 A.2d 758, 764 (Md. 1983) (recognizing "substantial spending imbalances"); *Milliken v. Green*, 212 N.W.2d 711, 712 n.2 (Mich. 1973) (\$1,427 to \$541, a 3 to 1 ratio); *Board of Educ., Levittown v. Nyquist*, 439 N.E.2d 359, 363 (N.Y. 1982) (recognizing "significant inequalities"); *Board of Educ. v. Walter*, 390 N.E.2d 813, 819 (Ohio 1979) (disparity admitted by the defendant); *Fair School Fin. Coun. v. State*, 746 P.2d 1135, 1141 (Okla. 1987) (recognizing a "wide difference"); *Olsen v. State*, 554 P.2d 139, 140 (Or. 1976) (disparity of \$1,795 to \$674, a 3 to 1 ratio); *Kukor v. Grover*, 436 N.W.2d 568, 573 (Wis. 1989) (recognizing "wide disparities").

19. Justice Marshall has concluded that: "Quite obviously, a district which is property poor is powerless to match the education provided by a property-rich district, assuming each district allocates funds with equal wisdom." *San Antonio v. Rodriguez*, 411 U.S. 1, 83 n.41 (1973) (Marshall, J., dissenting). Initially wealthy districts join the state arguing that the amount of money available for education is not important to educational opportunity, it is instead "how wisely you spend it." *Id.* (Marshall, J., dissenting). However, if a redistribution of resources is ordered, the same wealthy districts may then claim that they cannot maintain a quality educational program in their districts without maintaining their high level of expenditures. See *Buse v. Smith*, 247 N.W.2d 141 (1976) (wealthy districts objected to a tax recapture system that would have used wealthy district's resources for statewide equalization). Justice Marshall noted the incongruity of their position in *Rodriguez* stating that: "In fact, if financing variations are so insignificant to educational quality, it is difficult to understand why a number of our country's wealthiest school districts, which have no legal obligation to argue in support of the constitutionality of the Texas legislation, have nevertheless zealously pursued its cause before this Court." *Rodriguez*, 411 U.S. at 85 (Marshall, J., dissenting).

financial resources. But just as certainly, schools that cannot afford science labs and foreign language teachers are unlikely to produce students proficient in science and foreign language.²⁰ Common sense suggests that although money does not guarantee a better quality education, those with money can afford important educational resources that those without money cannot.²¹ Nonetheless, there has been extensive academic debate over this issue.²² And with expert witnesses willing to testify on both sides of this issue it continues to be hotly debated in both academic and legal circles.²³

However, most courts have not shared the skepticism of some scholars regarding whether expenditures affect educational opportunity. The majority of courts instead reflect the common wisdom that although money alone does not guarantee educa-

20. As Wise and Gendler recognized, scholars that dispute the relationship between expenditures and educational opportunity have not been able to produce research "to show that a school with high expectations and no German teacher will produce students who speak German, or that a school with orderly classrooms and no laboratory facilities will train its students to be good scientists." Arthur E. Wise & Tamar Gendler, *Rich Schools, Poor Schools: The Persistence of Unequal Education*, 151 COLLEGE BD. REV. 12, 17 (1989).

21. The court in *Abbott v. Burke* concluded that: "We therefore adhere to the conventional wisdom that money is one of the many factors that counts." 575 A.2d 359, 406 (N.J. 1990).

22. For articles generally supporting the correlation between expenditures and educational opportunity, see Ronald F. Ferguson, *Paying for Public Education: New Evidence on How and Why Money Matters*, 28 HARV. J. ON LEGIS. 465 (1991); Christopher F. Edley, Jr., *Lawyers and Education Reform*, 28 HARV. J. ON LEGIS. 293, 296 (1991); Richard J. Murnane, *Interpreting the Evidence on "Does Money Matter?"* 28 HARV. J. ON LEGIS. 457, 461 (1991); COMMITTEE ON EDUCATION AND LABOR, 101ST CONG., 2D SESS., REPORT ON SHORTCHANGING CHILDREN: THE IMPACT OF FISCAL INEQUITY ON THE EDUCATION OF STUDENTS AT RISK 25 (Comm. Print 1990). Those supporting the correlation between expenditures and educational opportunity have had to contend with contrary findings in the well known *Coleman Report*. See JAMES S. COLEMAN ET AL., EQUALITY OF EDUCATIONAL OPPORTUNITY (1966). For articles generally refuting the alleged correlation between expenditures and educational opportunity see Eric A. Hanushek, *When School Finance "Reform" May Not Be Good Policy*, 28 HARV. J. ON LEGIS. 423, 425 (1991); *The Economist: A Survey of Education*, THE ECONOMIST, Nov. 21, 1992, at 6.

23. There is considerable disagreement among scholars regarding the alleged correlation between expenditures and educational opportunity, and an abundance of expert testimony and research supporting both sides of the debate. Even individual scholars have displayed indecision regarding this issue. Underwood noted that in *Rodriguez*, the U.S. Supreme Court relied on scholarly research in declining to accept the correlation between expenditures and educational opportunity. The author cited by the Court later reversed his position. See Julie Underwood, *Changing Equal Protection Analyses in Finance Equity Litigation*, 14 J. EDUC. FIN. 413, at 414-415 (1989).

tional opportunity, it is a significant factor.²⁴ The existence of a positive correlation between expenditures and educational opportunity has been recognized by fifteen states' highest courts.²⁵ No court has affirmatively ruled that money makes no difference to educational opportunity. But four states' highest courts have found that the plaintiffs did not sufficiently carry their burden of proving this fact, leaving the establishment of this correlation unproven.²⁶

For property poor districts, inadequate educational resources and high property taxes may create a cycle of poverty from which there is little hope of escape without greater equity in school funding and taxation.²⁷ Because the local district must fund its schools by taxing a small tax base, the community will have high property tax rates but a low financial yield leading to inadequate educational resources, inadequate education, and ultimately an unskilled local labor force. High property tax rates and an unskilled local labor force are then an additional disincentive for the economic development needed to improve the local tax base. Without state educational support and tax payer equity it is unlikely that disadvantaged communities will be able to attract

24. See John Dayton, *Correlating Expenditures and Educational Opportunity in School Funding Litigation: The Judicial Perspective*, 19 J. EDUC. FIN. 167 (1994).

25. These 15 states are Arkansas, California, Connecticut, Georgia, Kentucky, Maryland, Massachusetts, Montana, New Jersey, New York, North Dakota, Tennessee, Texas, West Virginia, and Wyoming. However, there are 17 high court opinions recognizing the correlation between expenditures and educational opportunity, with two opinions each from the supreme courts of California and New Jersey. See *Dupree v. Alma School Dist.*, 651 S.W.2d 90, 92 (Ark. 1983); *Serrano v. Priest* (Serrano II), 557 P.2d 929, 939 (Cal. 1976); *Serrano v. Priest* (Serrano I), 487 P.2d 1241, 1253 (Cal. 1971); *Horton v. Meskill*, 376 A.2d 359, 368 (Conn. 1977); *McDaniel v. Thomas*, 285 S.E.2d 156, 160 (Ga. 1981); *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 198 (Ky. 1989); *Hornbeck v. Somerset*, 458 A.2d 758, 764 (Md. 1983); *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 552 (Mass. 1993); *Helena v. State*, 769 P.2d 684, 687 (Mont. 1989); *Abbott v. Burke*, 575 A.2d 359, 377 (N.J. 1990); *Robinson v. Cahill*, 303 A.2d 273, 277 (N.J. 1973); *Board of Educ., Levittown v. Nyquist*, 439 N.E.2d 359, 363 n.3 (N.Y. 1982); *Bismarck Public School Dist. v. State*, 511 N.W.2d 247, 261 (N.D. 1994); *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 141 (Tenn. 1993); *Edgewood v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989); *Pauley v. Bailey*, 324 S.E.2d 128, 131 (W. Va. 1984); *Washakie Co. School Dist. v. Herschler*, 606 P.2d 310, 332 (Wyo. 1980).

26. These four states are Colorado, Idaho, Michigan, and Pennsylvania. See *Lujan v. Colorado*, 649 P.2d 1005, 1018 (Colo. 1982); *Thompson v. Engelking*, 537 P.2d 635, 641-642 (Idaho 1975); *Milliken v. Green*, 212 N.W.2d 711, 719 (Mich. 1973); *Danson v. Casey*, 399 A.2d 360, 366 (Pa. 1979).

27. See *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 145 (Tenn. 1993); *Edgewood v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989).

the quality business and residential investors that are needed to improve the community's tax base and public schools.

Continuing inequities in school funding are not merely an artifact of chance. It is well known among educational policy makers that reliance on local property wealth for funding public schools creates fiscal inequities.²⁸ These disparities continue despite decades of pressure to equalize educational funding. Inequities continue in many states because those with economic and political power are advantaged by their continuation.²⁹

III. ATTEMPTS TO REMEDY THE PROBLEM OF SCHOOL FUNDING INEQUITIES

In their attempts to remedy public school funding inequities, reformers have turned to all three branches of government. Theoretically, any branch of government could contribute to funding reform.

In the executive branch, a president could use the high visibility of the office to call for greater equity in educational opportunity. But among recent presidential administrations, neither the Reagan nor Bush administrations were enthusiastic advocates of greater equity in educational opportunities. The Reagan administration was opposed to active federal involvement in education and attempted to abolish the U.S. Department of Education.³⁰ But with the release of "A Nation at Risk" national education policy recaptured its status as a high profile national issue making the abolition of the U.S. Department of Education politically unacceptable.³¹ President Reagan then appointed Bill Bennett as Secretary of Education, and the administration supported the movement for excellence in

28. As Ward recognized: "It has been known for more than 60 years that current systems of school finance and school governance are inadequate to the task, but we are not willing to change. Until we are willing to do so, little if any progress will be made." James Gordon Ward, *Schools and the Struggle for Democracy: Themes for School Finance Policy*, in WHO PAYS FOR STUDENT DIVERSITY?: POPULATION CHANGES AND EDUCATIONAL POLICY 241, 249 (James Gordon Ward & Patricia Anthony, eds., 1992).

29. See Camp, *supra* note 8, at 223 ("Districts that have political clout within a legislature continue to influence the design of school finance formulas").

30. Edward B. Fiske, *George Bush as the Education President*, in THE PRESIDENCY AND EDUCATION, 121, 124 (Kenneth Thompson, ed., 1990).

31. See *Id.* at 126-127 (noting the national interest in educational reform following the release of *A Nation at Risk*, and that this positive public reaction made it "impossible to abolish the Department of Education").

education.³² Increasing funding equity was not a high priority for Bennett, nor for most other advocates of "educational excellence" during the Reagan administration.³³ In the succeeding administration, President Bush advocated a national education plan titled "America 2000" with its metaphor of "four trains" on 'four tracks,' all headed for 'educational excellence.'³⁴ But as former U.S. Commissioner of Education Harold Howe noted, school finance "failed to make any of the four trains."³⁵

In 1994 President Clinton signed into law a similar plan titled the "Goals 2000: Educate America Act."³⁶ But funding equity was not a primary goal of Goals 2000.³⁷ A possible indicator of President Clinton's impact on school funding equity may be his efficacy in addressing funding equity problems as the Governor of Arkansas. Arkansas' Supreme Court declared the state's inequitable system of school finance unconstitutional in 1983.³⁸ Nonetheless, significant disparities in public school funding in Arkansas continued.³⁹

In state level administrations governors have varied in their degree of support or opposition towards school funding equity reform. Nonetheless, most Governors are united in their reluctance to raise taxes for additional educational funding. When governors have supported tax raises, they have generally done so at their peril.⁴⁰

The explosion of litigation after *Serrano v. Priest* in 1971 captured the attention of both federal and state lawmakers.⁴¹

32. *Id.* at 127.

33. See George Bush, *The Bush Strategy for Excellence in Education*, 70 PHI DELTA KAPPAN 112 (1988).

34. Harold Howe, *America 2000: A Bumpy Ride on Four Trains*, 73 PHI DELTA KAPPAN 192, 193 (Nov. 1991).

35. *Id.* at 194.

36. Pub. L. No. 103-227, 108 Stat. 125 (1994).

37. The national education goals in brief are listed as "1. All children ready to learn; 2. 90 percent graduation rate; 3. All children competent in core subjects; 4. First in the world in math and science; 5. Every adult literate and able to compete in the work force; 6. Safe, disciplined, drug-free schools." *The National Education Goals in Brief*, GOALS 2000 EDUCATE AMERICA COMMUNITY UPDATE (U.S. Dept. of Educ., Washington, D.C.), March 1994, at 3.

38. *Dupree v. Alma School Dist.*, 651 S.W.2d 90 (1983).

39. G. Alan Hickrod et al., *The Effect of Constitutional Litigation on Education Finance: A Preliminary Analysis*, 18 J. EDUC. FIN. 180, 196 (1992).

40. Karen Diegmüller, *New Republican Governors in N.J. and Va.*, EDUC. WEEK, Nov. 10, 1993, at 17. See also the failed prediction in Karen Diegmüller, *1990 Tax Increases May Not Sink N.J.'s Florio After All*, EDUC. WEEK, Oct. 27, 1993, at 1.

41. 487 P.2d 1241 (Cal. 1971).

In the eighteen months following *Serrano* litigation increased substantially, with fifty-three suits being filed in thirty-eight states.⁴² Congress responded with remedial legislation in 1974.⁴³ The fact that public school funding inequities continued largely unabated is an indicator of the efficacy of the 1974 legislation. Congress attempted to address this issue again in 1990 with the "Fair Chance Act."⁴⁴ Following hearings, the proposed act died in committee.

At the state level, legislators continue to struggle with the problem of school funding inequities. Since funding reform will ultimately require new state statutes, state lawmakers will be centrally involved in any final settlement of the school funding problem. But to date, most state legislatures have experienced only limited success in funding reform.⁴⁵ As Bevelock recognized, even when there was initial success there has often been retrenchment, sometimes creating inequities that exceeded the inequities experienced before reform legislation was enacted.⁴⁶

Frustration with the political branches led funding reform advocates to litigation. If reform advocates had won a U.S. Supreme Court mandate for funding equity similar to the racial equity mandate of *Brown v. Board of Education*, it could have legitimized their cause and placed funding reform on the legislative agendas of all 50 states.⁴⁷ But following a defeat in

42. See MARK G. YUDOF ET AL., *EDUCATIONAL POLICY AND THE LAW* 606 (3d ed. 1992).

43. Pub. L. No. 93-380, § 82 (1974).

44. See COMMITTEE ON EDUCATION AND LABOR, 101ST CONG., 2D SESS., *REPORT ON SHORTCHANGING CHILDREN: THE IMPACT OF FISCAL INEQUITY ON THE EDUCATION OF STUDENTS AT RISK* (Comm. Print 1990) (proposing the withholding of federal funds to states that fail to comply with standards for equalized spending including an expenditure disparity limit of five percent). *Id.* at 3-4.

45. Even Kentucky's widely publicized reforms remain under attack. See Lonnie Harp, *The Plot Thickens: The Real Drama Behind the Kentucky Education Reform Act May Have Just Begun*, *EDUC. WEEK*, May 18, 1994, at 20. Following the Kentucky Supreme Court's decision in *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989) the Kentucky legislature enacted a sweeping reform bill. Opponents of the reforms continue to chip away at reform legislation.

46. See Bevelock, *supra* note 9; RICHARD F. ELMORE & MILBREY WALLIN McLAUGHLIN, *REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM* (1982).

47. 347 U.S. 483 (1954). Although it is possible that a U.S. Supreme Court decision could have served as the catalyst for significant school funding reform nation-wide, the true efficacy of a decision for plaintiffs by the Court is subject to question. Even with the Court's unanimous decision in *Brown v. Board of Education*, scholars have raised serious questions regarding the efficacy of *Brown* and its progeny. See Kevin Brown, *Has the Supreme Court Allowed the Cure for De*

the U.S. Supreme Court in *San Antonio v. Rodriguez*, reform advocates turned to individual state court systems with mixed results.⁴⁸

When courts have declined to declare challenged funding systems unconstitutional, their decisions have been viewed by many as a judicial endorsement of the inequitable funding systems.⁴⁹ But even in those states where school funding advocates won their cases in the state's highest court, substantial and lasting improvements in equity have been elusive.⁵⁰ What prevailing funding reformers typically won was the opportunity to return to the legislature armed with merely a determination by the court that the funding system was unconstitutional.⁵¹

Jure Segregation to Replicate the Disease?, 78 CORNELL L. REV. 1 (1992).

48. In *San Antonio v. Rodriguez*, 411 U.S. 1 (1973) the Court held that education was not a fundamental right, *Id.* at 37, and that the plaintiffs did not constitute a suspect class. *Id.* at 28. The Court then examined the plaintiffs' equal protection challenge under a rational basis test, concluding that the state's interest in promoting local control was sufficient justification for disparate funding treatment among school districts. *Id.* at 52-53. The influence of the Court's decision in *Rodriguez* on state court decisions has varied widely. For a list of state high courts ruling for and against plaintiffs in school funding cases, see *supra* note 5.

49. Lonnie Harp, *Court Upholds Minn.'s System of Paying for Schools*, EDUC. WEEK, Sept. 8, 1993, at 31 (noting that following a judicial decision supporting the state's system of funding that: "Observers said the ruling is likely to kill a legislative effort to alter the existing school-funding system"); see also William E. Camp & David C. Thompson, *School Finance Litigation: Legal Issues and Politics of Reform*, 14 J. EDUC. FIN. 221, 224 (1988), citing Jose A. Cardenas, *Equalization-Past, Present, and Future*, IDRA NEWSLETTER, Nov., 1993, at 2 ("It is amazing to note in retrospect how quickly support for school finance reform withered after the reversal in *Rodriguez*").

50. See Bevelock, *supra* note 9.

51. The doctrine of separation of powers prevents unilateral control by the courts where legislative action is required. See JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 3.5 (4th ed. 1991). Even when courts have declared school funding systems unconstitutional they have generally been very deferential to legislators regarding the substance of reforms. See *Horton v. Meskill*, 376 A.2d 359, 375 (Conn. 1977) ("The judicial department properly stays its hand to give the legislative department an opportunity to act"); *Helena v. State*, 769 P.2d 684, 693 (Mont. 1989) (providing "the Legislature with the opportunity to search for and present an equitable system of school financing"); *Abbott v. Burke*, 575 A.2d 359, 409 (N.J. 1990) ("The funding mechanism is for the legislature to decide"); *Tennessee Small Sch. Systems v. McWherter*, 851 S.W.2d 139, 156 (Tenn. 1993) ("The means whereby the result is accomplished is, within constitutional limits, a legislative prerogative"); *Edgewood v. Kirby*, 777 S.W.2d 391, 399 (Tex. 1989) ("The legislature has primary responsibility to decide how best to achieve an efficient system"); *Seattle School Dist. No. 1 v. State*, 585 P.2d 71, 105 (Wash. 1978) ("we see no reason to assume legislators will fail to act in good faith"); *Washakie County Sch. Dist. v. Herschler*, 606 P.2d 310, 336 (Wyo. 1980) ("The ultimate solutions must be

Courts ordered reform, but legislators often failed to pass and fund sufficient remedial legislation, leading to serial litigation that has continued for decades.⁵² Funding reformers were caught in a Gordian knot consisting of both judicial orders based on constitutional ideals and legislative evasions rooted in the political realities of self-interest.⁵³

To create opportunities for authentic and sustained reform in public school finance, a significant change is needed to break the judicial-political grid-lock over the funding equity problem.⁵⁴ Funding reformers are keenly aware that even if funding equity improves, children may only end up with more equal amounts of less.⁵⁵ If no new funds are added to the state's educational resources, public education will only be enhanced through greater equity if the prior total amount of educational funding was already sufficient to provide an adequate education for all of

shaped by the legislature"). *But see* *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 205 (containing a nine page definition of an "efficient system of common schools"); *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 554 (Mass. 1993) (citing *Rose*, 790 S.W.2d at 212 to define an "educated child"); *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979) (specifically defining "a thorough and efficient system of schools").

52. *See* *Abbott v. Burke*, 575 A.2d 359 (*Abbott II*) (N.J. 1990); *Abbott v. Burke*, 495 A.2d 376 (*Abbott I*) (N.J. 1985); *Robinson v. Cahill (Robinson VII)*, 360 A.2d 400 (N.J. 1976); *Robinson v. Cahill (Robinson VI)*, 358 A.2d 457 (N.J. 1976); *Robinson v. Cahill (Robinson V)*, 355 A.2d 129 (N.J. 1976); *Robinson v. Cahill (Robinson IV)*, 351 A.2d 713 (N.J. 1975); *Robinson v. Cahill (Robinson III)*, 335 A.2d 6 (N.J. 1975); *Robinson v. Cahill (Robinson II)*, 306 A.2d 65 (N.J. 1973); *Robinson v. Cahill (Robinson I)*, 303 A.2d 273 (N.J. 1973). Litigation continues in N.J. *See* Karen DiegmueLLer, *N.J. Judge Declares Finance System Unconstitutional*, EDUC. WEEK, Sept. 8, 1993, at 30.

53. In addition to political evasions of judicial orders, a political struggle often occurs among state and local officials regarding who must carry the burden of reform. *See* Mark G. Yudof, *School Finance Reform: Don't Worry be Happy*, N.O.L.P.E. NOTES, May 1992 at 1, 3 ("the pursuit of school finance reform inevitably becomes a struggle between state and local officials to avoid political accountability for tough and unpopular taxes").

54. California in response to the *Serrano* decision achieved greater equity through dramatic funding changes, but at a significant cost to the public school system. *See generally* RICHARD F. ELMORE & MILBREY WALLIN MCLAUGHLIN, *REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM* (1982). More recently, abolishing property taxes as a source of funding, as occurred in Michigan, has caused a significant reshuffling of educational funding. Lonnie Harp, *Mich. Officials Scramble in Wake of Property-Tax Decision*, EDUC. WEEK, Sept. 8, 1993, at 30.

55. *See* Neil B. Theobald & Lawrence O. Picus, *Living with Equal Amounts of Less: Experiences of States with Primarily State-Funded School Systems*, 17 J. EDUC. FIN. 1 (1991).

the state's children.⁵⁶ If funding reformers are to achieve real and lasting improvements for all of the state's children, the public school funding system must be both equitable and adequate, a goal that may be best achieved through the development of popular political support for equity and adequacy in educational funding.⁵⁷

IV. RESOLVING THE SCHOOL FUNDING PROBLEM

Despite the persistence of school funding reformers, neither the political branches nor the courts have produced the desired reforms. In many states economically advantaged districts have retained or even increased their advantaged status, while disadvantaged districts have failed to generate sufficient legislative support to overcome the political influence of advantaged districts.⁵⁸ The resolution to this problem may be found in the generation of popular political support for funding reform by convincing the electorate that making egalitarian educational ideals a reality is ultimately consistent with their self-interests. If the electorate and educational policy makers were sufficiently informed about the harms of inadequate education, and the benefits of the common school,⁵⁹ this information could act as a catalyst for reform. And if popular political support for funding reform existed, the political branches might have the fortitude needed to make the reforms that many courts have ordered.⁶⁰

56. For a discussion of the problem of defining adequacy, see Arthur E. Wise, *Educational Adequacy: A Concept in Search of Meaning*, 8 J. EDUC. FIN. 300 (1983).

57. See *San Antonio v. Rodriguez*, 411 U.S. 1, 59 (1973) ("the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them"); *Kukor v. Grover*, 436 N.W.2d 568, 585 (Wis. 1989) ("demands cannot be remedied by claims of constitutional discrepancies, but rather must be made to the legislature and, perhaps, also to the community").

58. See Bevelock, *supra* note 9, at 489 ("the system, which was enacted in response to *Robinson I*, actually resulted in increased disparities").

59. See *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 206 (Ky. 1989) (citing Delegate Moore at the Kentucky Constitutional Convention of 1890: "Common schools make patriots and men who are willing to stand upon a common land. The boys of the humble mountain home stand equally high with those from the mansions of the city. There are no distinctions in the common schools, but all stand upon one level"). See also Alexander, *supra* note 15, at 356-359; Mary J. Guy, *The American Common Schools: An Institution at Risk*, 21 J.L. & EDUC. 569 (1992).

60. In a democracy the votes of the many can serve to counterbalance the economic influence of the few. Alexander Hamilton described an electorate composed of: "Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States." THE FEDERALIST No. 57 (Alexander Hamilton).

Advocates for educationally disadvantaged children need to communicate the unfortunate realities of under-funded schools to the electorate. The harms of inequitable and inadequate public school funding are not merely an abstraction for the children that attend these disadvantaged schools. The New Jersey Supreme Court's opinion in *Abbott v. Burke* contained an extensive account of educational disparities and the educational harms resulting from inequitable and inadequate funding.⁶¹ While children in wealthier districts had excellent facilities, enhanced curricula, and desirable educational enrichment opportunities, children in poorer schools attended classes in converted closets, old bathrooms and coal bins, ate lunch in shifts in the hallways, used bathrooms that had no hot water, studied with inadequate heating and lighting in unsafe structures with collapsed floors, electrical, and asbestos problems, and in one district "the entire building was sinking."⁶² Further, as the New Jersey Supreme Court stated "poorer districts offer curricula denuded not only of advanced academic courses but of virtually every subject that ties a child, particularly a child with academic problems, to school."⁶³ The court noted: "The State contends that the education currently offered in these poorer urban districts is tailored to the students' present need, that these students simply cannot now benefit from the kind of vastly superior course offerings found in the richer districts."⁶⁴ When the state decides to provide excellent educational opportunities for some of its children, but maintains that children in other districts could not benefit from similar educational opportunities, as in *Brown v. Board of Education* the state's relegation of these children to an inferior educational status "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."⁶⁵ Inequitable and inadequate education not only destroys the hopes and dreams of individual children, but it takes with it the full potential that these children could have contributed to the community. As Justice Marshall noted in his dissenting opinion

61. *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990).

62. *Id.* at 397.

63. *Id.* at 394-398.

64. *Id.* at 398.

65. *Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954). See also Justice Marshall citing this language in *San Antonio v. Rodriguez*, 411 U.S. 1, 71-72 (1973) (Marshall, J., dissenting).

in *San Antonio v. Rodriguez* “who can ever measure for such a child the opportunities lost and the talents wasted for want of a broader, more enriched education?”⁶⁶ If fully cognizant of the injuries to children and society, the majority of Americans would likely reject such widely disparate treatment of children,⁶⁷ and uphold the common good over the self-interests of the advantaged few.⁶⁸

Funding reformers must communicate to the electorate that it is both unfair and unwise to condemn some segments of the population to an inferior education based merely on the arbitrary location of district lines.⁶⁹ This imprudently squanders human capital, exchanging future potential for under-achievement or dependency.⁷⁰ Instead, quality education for all children can be an investment in the future economic security of both individuals

66. *San Antonio v. Rodriguez*, 411 U.S. 1, 84 (1973) (Marshall, J., dissenting). Other courts have recognized disparities in educational goods and services, and educational harm to students. See *Dupree v. Alma Sch. Dist.*, 651 S.W.2d 90, 92 (Ark. 1983); *Serrano v. Priest*, 557 P.2d 929, 939 (Cal. 1976); *Horton v. Meskill*, 376 A.2d 359, 368 (Conn. 1977); *McDaniel v. Thomas*, 285 S.E.2d 156, 160-161 (Ga. 1981); *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 197-198 (Ky. 1989); *Hornbeck v. Somerset*, 458 A.2d 758, 768 (Md. 1983); *Helena v. State*, 769 P.2d 684, 687 (Mont. 1989); *Olsen v. State*, 554 P.2d 139, 145-146 (Or. 1976); *Edgewood v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989); *Pauley v. Kelly*, 255 S.E.2d 859, 862 n.4 (W.Va. 1979).

67. Inequitable systems of funding public education discriminate indirectly in a way that most Americans would find morally unacceptable if the discrimination were direct. See JONATHAN KOZOL, *SAVAGE INEQUALITIES* 207 (1991).

68. See Alexander, *supra* note 15, at 358 (1991) (“John Adams noted that a broader interest should prevail beyond the self-interest of the propertied few, and that a unified state interest must transcend the various special interests”).

69. Given three adjoining lots, lots A, B, and C, it would seem arbitrary and unfair if without sufficient justification the owner of lot B agreed to the payment of property taxes to fund public education for the children of lot A, but deemed any dispersment of funds to the children of lot C an intolerable infringement. Both sets of children are children of the same state, are guaranteed a free education at public expense under the same constitution, and will likely benefit or burden the community and state to the same degree depending on the adequacy of their education. But arbitrary treatment with its corresponding advantages or disadvantages to children is precisely what happens when citizens insist that the legitimacy of the distribution of tax revenues, and therefore the adequacy of financial support for the child’s education, is dependent on which side of an imaginary and arbitrary school district line the child resides.

70. As Bader recognized, another question that arises regarding the persistence of funding inequities is “whether we should privatize educational gain by allowing only wealthier communities the access to superior schools when we have to socialize the results of the uneven and unequal educational experiences — welfare, unemployment, and crime that result from inferior schools?” Beth D. Bader, *Abbott v. Burke: Policy, Politics and Political Economy*, April 1991, available in ERIC, No. ED 337-907, p. 2.

and the nation.⁷¹ The development of human capital is increasingly essential to success in the evolving world economy. No nation can produce a highly qualified and competitive work force without first providing its citizens with a high quality educational program.⁷²

But in a democracy quality education is about much more than just economic success: "Public education must enable children to become active participants in a democratic community with the common goal of improving their lives and the circumstances of their community."⁷³ Today's students will ultimately be tomorrow's electorate charged with the responsibility of governing their communities and the nation. Through quality education children can become citizens who actively participate in the market place of ideas, learning to effectively communicate their ideas and critically evaluate the ideas of others, resulting in wiser decisions about governance.⁷⁴ Quality education may also introduce children to the richness of cultural arts. Through this personal enrichment cultural arts may flourish in the community improving the quality of life for all citizens.⁷⁵

Advocates of more equitable school funding should communicate these arguments and other similar points to the electorate.⁷⁶ In order to produce real and lasting change, the elector-

71. In 1990 high school dropouts earned an average of \$492 a month, high school graduates earned \$1,077 a month, and those with a degree beyond high school earned an average of \$2,231 a month. Those with a professional degree earned \$4,961 a month. *Education and Income*, EDUC. WEEK, Feb. 3, 1993, at 3.

72. See NATIONAL CENTER ON EDUCATION AND THE ECONOMY, AMERICA'S CHOICE: HIGH SKILLS OR LOW WAGES 3 (1990).

73. John Dayton & Carl Glickman, *American Constitutional Democracy: Implications for Public School Curriculum Development*, 69 PEABODY J. EDUC. 62, 63 (1994).

74. Thomas Jefferson recognized education "as the *sine qua non* of a truly viable democracy." GORDON C. LEE, CRUSADE AGAINST IGNORANCE: THOMAS JEFFERSON ON EDUCATION 2 (1961).

75. See *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979) (listing among the "legally recognized elements" of a thorough and efficient education "development in every child to his or her capacity of . . . interests in all creative arts, such as music, theatre, literature, and the visual arts").

76. Courts may play an important role in public school funding reform. Under appropriate circumstances judicial decisions supporting reform may be useful: to educate the public and the legislature about the wisdom and necessity of complying with constitutional mandates to support public education; to provide needed political cover for members of the political branches too apprehensive to initiate reform on their own; to serve to further legitimize the position of funding reformers; to generate significant media attention; and to get funding reform on the legislative

ate must be persuaded that realization of the egalitarian ideal of quality education for all children is an economic, social, and political necessity, and that it is in their self-interests to assure the universal provision of quality education. It is essential that the electorate comprehend that choosing short term savings over long term investment in education is an unwise choice. It is more economical and socially preferable to provide quality education now, rather than more social services and prisons later.⁷⁷ As New York's highest court recognized "nothing may be more important—and therefore fundamental—to the future of our country . . . education is not only 'the great equalizer of men' but, by alleviating poverty and its societal costs, more than pays for itself."⁷⁸ Advocates of greater educational equity must counter attacks by defenders of the status quo with persuasive arguments illuminating the importance of universal educational opportunity. Although the public education campaign may begin at the local level, it must progress to the state level, and ultimately the national level.⁷⁹ Just as under funding of education in some districts ultimately effects the rest of the state, under-funding of education in some states effects other states economically, politically, and socially. Significant under-funding of education in some states results in inadequately educated citizens that may eventually affect other states through migration and interstate commerce.⁸⁰ When any state fails to adequately support education, other states will likely feel the adverse impact of that state's inadequate educational system.

agenda.

77. See Charles S. Benson, *Definitions of Equity in School Finance in Texas, New Jersey, and Kentucky*, 28 HARV. J. ON LEGIS. 401, 403 (1991) ("School failure is associated with incarceration, welfare dependency, and bad health, all of which drain the public coffers").

78. Board of Educ., *Levittown v. Nyquist*, 439 N.E.2d 359, 371 (N.Y. 1982).

79. For an example strategy, see DAVID L. FUNK, *VICTORY AT THE POLLS: A STRATEGIC PLAN FOR SUCCESSFUL SCHOOL FINANCE ELECTIONS* (1990).

80. In measurements of students' mathematics proficiency among U.S. states and Organization for Economic Co-operation and Development (OECD) nations there was a striking range of scores. Students from Iowa ranked at the top with students from Taiwan, while students from Mississippi were at the bottom below Jordan. NATIONAL CENTER FOR EDUCATION STATISTICS, U.S. DEPARTMENT OF EDUCATION, *EDUCATION IN THE STATES AND NATIONS: INDICATORS COMPARING U.S. STATES WITH THE OECD COUNTRIES IN 1988* 55 (1993). Mississippi was also at the bottom in comparison to other states in per student expenditures for k-12 education. *Id.* at 73.

The political route to resolving the school funding problem has been advocated by both judges and scholars.⁸¹ Because in a democracy it is ultimately the people who rule, to achieve lasting change school funding reformers must persuade the electorate of the need to provide a quality education for all children. If educational funding inequities are to be resolved, this must be consistent with the will of the people. State judges and constitutional provisions are significantly more vulnerable than their federal counterparts to the political influence of the majority.⁸² Through their votes the people can promote, prevent, or reverse policy changes in the state.⁸³ If the people will not support equity in educational opportunities for all of the state's children, then the school funding equity problem is likely unresolvable; Short term self-interests will continue to prevail over the long term common interests of communities and the nation.

V. CONCLUSION

Although it may be tempting to embrace judicial action as a panacea for school funding inequities, political reality dictates otherwise.⁸⁴ Political reality supports the Court's conclusion in *San Antonio v. Rodriguez* that "the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them."⁸⁵ Given this reality, advocates of school

81. See *San Antonio v. Rodriguez*, 411 U.S. 1, 59 (1973); DAVID C. THOMPSON ET AL., *FISCAL LEADERSHIP FOR SCHOOLS* 290 (1994) ("rapid change is often available only at the polls").

82. See Note, *Unfulfilled Promises: School Finance Remedies and State Courts*, 104 HARV. L. REV. 1072, 1084 (1991) ("Many state constitutions provide for an elected judiciary or periodic review of appointed judges. Seven states subject sitting judges to the possibility of popular recall. Rather than enjoying the life tenure afforded federal judges, most judges on state high courts serve limited terms ranging from six to fourteen years"). Even if state court judges risk the political wrath of the electorate in supporting an unpopular interpretation of the constitution, if facing significant political opposition their judicial fortitude could be in vain, because "if judicial protection of the rights of politically less-powerful groups proves sufficiently unpopular, the politically mobilized can overrule the court by amending the constitution." *Id.*

83. See *Coalition for Equitable School Funding v. State*, 811 P.2d 116, 119 (Or. 1991) (declining to rely on a former decision by the Supreme Court of Oregon on school funding because: "The people have added a new provision that addresses specifically how public schools are to be funded").

84. See John Dayton, *The Judicial-Political Dialogue*, 22 J.L. & EDUC. 323, 324 (1993).

85. 411 U.S. at 59.

funding reform should focus greater attention on persuading the electorate and lawmakers that educational inequities should be eliminated not only because they are unconstitutional, but because they are unwise public policy.⁸⁶ To achieve lasting reform, the electorate and lawmakers must be persuaded that school funding reform is in the best interests of all children and the general public.⁸⁷

If the public and educational policy makers were sufficiently informed about the harms of funding inequities and inadequacies, and of the social and democratic benefits of the common school, this could act as a catalyst for funding reform. If they were fully cognizant of the injuries to children and society, it is likely that a majority of Americans would reject unjustified and injurious disparate treatment of children and uphold the common good over the self-interests of the advantaged few. Funding reform advocates must persuade the public and their elected representatives that education is a highly productive use of limited financial resources and a sound investment in the nation's future. And further, that ultimately it is in the public's best interests that all children have access to a quality education. A strong argument can be made that when adequately educated children become adults they are more productive, pay more taxes, enhance the nation's international competitiveness, commit less crime, and require fewer social services.⁸⁸ Courts may contribute to the dialogue on school funding equity, but the ultimate resolution of this public policy problem will turn upon the judgment of the people.

86. See *The Fair Chance Act: Hearing on H.R. 3850 Before the Subcomm. on Elementary, Secondary, and Vocational Educ. of the House Comm. on Educ. and Labor*, 101st Cong., 2d Sess. (1990).

87. Courts can play a role in educating the electorate and lawmakers about harm to children caused by inequities and inadequacies in public school funding. Four recent opinions overturning school funding systems discussed educational harm to children because of funding inequities and inadequacies. See *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 197 (Ky. 1989); *Helena v. State*, 769 P.2d 684, 687 (Mont. 1989); *Abbott v. Burke*, 575 A.2d 359, 395 (N.J. 1990); *Edgewood v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989). At least one court has recognized the potential public relations impact of school funding litigation. See *Kukor v. Grover*, 436 N.W.2d 568, 587 (Wis. 1989) ("This case has been a public cry to the legislature, disguised as a constitutional attack, that additional funds are necessary to improve education in some districts").

88. See *supra* note 77, at 403.