July 2015

School Finance Reforms for Ohio

Linda L. Robison

Loi Yoder

SCHOOL FINANCE REFORMS FOR OHIO

INTRODUCTION

ONE OF THE MOST critical problems currently facing the State of Ohio is its inability to properly finance its 617[1] school districts. The practical aspects of the problem indicate that one area of concern is the inability to make the current basic state support funding system, known as the Foundation Program,[2] operative. This failure has been illustrated by the increasing number of schools that have been forced to temporarily close their operations in recent years, the significant number of school districts that have sought state aid from the Emergency Loan Fund established by by the General Assembly in 1978, and the various legislative proposals for reforming the current program that have been introduced and have occupied time on the floor of the General Assembly.

Statistics of school closings in recent years indicate that in 1976, seventeen Ohio school districts were forced to apply to the State Auditor for closing audits due to insufficient funds to keep their schools open.[3] Seven "audit" districts actually closed their schools for varying times.[4] As of November 16, 1977, fifty-one districts had applied to the State Auditor for closing audits in 1977 due to acute shortages of funds.[5] Thirty-three of these districts were certified by the Auditor to have a deficit if they completed the school year,[6] and eleven districts were recognized as having to close unless a new levy or other additional funds were obtained before the year's end.[7] In actuality, fifteen school districts ended up closing in 1977.[8] The Auditor estimated that if these districts had completed the year without closing, their total deficits would have amounted to $37,461,371.84.[9] In 1978, the school district closings were limited to four, while an additional ten school districts avoided the necessity of closing by receiving aid from the State Emergency Loan Fund.[10] These statistics emphasize the serious impact of the current funding problem.

Coupled with these practical aspects of the funding problem is the

[1] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 43 (Hamilton County C.P. Ct., Ohio, Nov. 21, 1977).

[2] OHIO REV. CODE ANN. § 3317 (Page 1972 & Supp. 1978).

[3] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 57.

[4] *Id.* at 58.

[5] *Id.* at 63.

[6] *Id.*

[7] *Id.* at 68.

[8] Telephone interview with Roger Lulow, Executive Director for Administration, Ohio Dept. of Education (Feb. 12, 1979).

[9] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 69.

[10] Lulow, *supra* note 8, at 2.

case of *Board of Education of Cincinnati v. Walters,*[11] which is currently before the Ohio Supreme Court, and which challenges the constitutionality of the Foundation Program under both the Ohio Constitution's Equal Protection Clause[12] and its Thorough and Efficient Clause.[13] Although both the Hamilton County Court of Common Pleas[14] and the Court of Appeals held the Foundation Plan unconstitutional.[15] However, the Court of Common Pleas based its decision on the program's violation of both constitutional clauses, while the Court of Appeals held that the Foundation Program was unconstitutional solely as a violation of the equal protection provisions of Ohio's Constitution. Regardless of the Ohio Supreme Court's decision in this case, it is evident that Ohio is in immediate need of alternate solutions to its public school financing problems.

This comment will first examine the legal rationale of the leading court decisions concerned with the constitutionality of educational funding programs. Secondly, the advantages and disadvantages of current funding programs, as well as Ohio's present program, will be discussed. An analysis of the guidelines set by the Ohio courts, and a discussion of what is wrong with Ohio's current plan will follow. Finally, proposals for solving Ohio's problems will be offered.

CHALLENGES IN THE COURT

Ohio is not alone in its school finance dilemma. The first challenges to state programs of public school finance emerged elsewhere in the late 1960's based on alleged violations of the Equal Protection Clause of the fourteenth amendment. Early cases in Illinois[16] and Virginia[17] were unsuccessful because the plaintiffs' claims were based on the educational needs of the students. The rationale applied was that "only a financing system which apportions public funds according to the educational needs of the students satisfies the fourteenth amendment."[18] The courts ruled that no discoverable and manageable standards existed to evaluate whether the United States Constitution had been violated. Also, the plaintiff's claim in *McInnis v. Shapiro*[19] that the state financing statutes resulted in wide district variations in expenditures per pupil violated the fourteenth

[11] 10 Ohio Op. 3d 26 (Hamilton County Ct. App. 1978).

[12] OHIO CONST. art. I, § 2.

[13] OHIO CONST. art. VI, § 2.

[14] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op.

[15] 10 Ohio Op. 3d at 26.

[16] McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd sub nom. mem.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

[17] Burruss v. Wilkerson, 310 F. Supp. 572 (W.D. Va. 1969), *aff'd mem.* 397 U.S. 44 (1970).

[18] 293 F. Supp. at 331.

[19] *Id.* at 335.

amendment's Equal Protection Clause was rejected by the court.[20] The plaintiffs had failed to prove that the unequal classifications made by the statute were wholly irrelevant to a valid state purpose.[21] Instead, the court felt that the state's desire to allow the local districts to decide the amount of education they wanted to provide was a valid state purpose, and sufficient to support the resulting unequal classifications of students.[22]

A challenge to a state's program for public school financing was successful in the 1971 California case of *Serrano v. Priest*.[23] This class action was based on both federal[24] and state[25] equal protection clauses. The California system was held to be violative of both because the "system discriminates on the basis of the wealth of a district and its residents."[26] The court, citing *Brown v. Board of Education*,[27] held education to be a fundamental right.[28] In *Brown*, the fiscal neutrality theory[29] was adopted as the standard for equality of educational opportunity.[30] This theory prohibits a state's wealthier districts from spending more for education because of their greater property wealth than the poorer districts spend, and is based on the assumption that equal dollars spent for education in each district will result in an equal quality of education for all students in all districts.[31]

After the success of this California case, lawsuits challenging school financing plans, and relying on the *Serrano* decision, were filed in a majority of the states. By 1973, nine other state courts had ruled their state plans unconstitutional as violations of the fourteenth amendment's Equal Protection Clause.[32]

---

[20] *Id.*

[21] *Id.* at 333-34.

[22] *Id.*

[23] 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

[24] U.S. CONST. amend. XIV.

[25] CAL. CONST. art. I, §§ 11, 21.

[26] Serrano v. Priest, 5 Cal. 3d 584, 615, 487 P.2d 1241, 1263, 96 Cal. Rptr. 601, 623 (1971).

[27] 347 U.S. 483 (1954).

[28] 5 Cal. 3d at 609, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

[29] *See generally* J. COONS, W. CLUNE, & S. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970).

[30] 5 Cal. 3d at 598-603, 487 P.2d at 1250-54, 96 Cal. Rptr. at 610-14 (1971).

[31] *See generally* J. COONS, *supra* note 29.

[32] Rodriguez v. San Antonio Independent School Dist., 337 F. Supp. 280 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973); Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Sweetwater County Planning Comm. v. Hinkle, 491 P.2d 1234 (1971), *juris. relinquished*, 493 P.2d 1050 (Wyo. 1972); Parker v. Mandel, 344 F. Supp. 1068 (D. Md. 1972); Hollins v. Shofstall, Civ. No. C-253652 (Ariz. Super. Ct., June 1, 1972), *rev'd*, 110 Ariz. 88, 515 P.2d 590 (1973); Caldwell v. Kansas, Civ. No. 50616 (Johnson County Dist. Ct., Kan., Aug. 30, 1972); Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972), *vacated*, 390 Mich. 389, 212 N.W.2d 711 (1973); Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972),

In 1973, one of these nine cases, *San Antonio Independent School District v. Rodriguez*,[33] reached the United States Supreme Court. This decision upheld the Texas school finance system by employing a rational basis test for equal protection evaluation.[34] Because the Court held that education was not a fundamental right under the federal Constitution,[35] and found that the classification of students by the district's property wealth was not suspect,[36] the classification was presumed valid.[37] There was no need to examine the Texas financing system under the strict scrutiny test of the Equal Protection Clause.[38] Applying the rational basis standard, that a rational relationship exists between the state objective and the challenged classification, the Court ruled that the Texas system rationally furthered the state's legitimate purpose of providing local control of the state's school districts,[39] and that this purpose justified sustaining interdistrict disparities in per pupil expenditures.[40] The Court based its holding that education is not a fundamental right on the rationale that it is neither a right expressly stated in the Constitution, nor an implicit right arising from the close relationship of such explicitly guaranteed rights as free speech and voting. The majority opinion stated: "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution . . . . As we have said, the undisputed importance of education will not alone cause the Court to depart from the usual standard for reviewing a State's social and economic legislation."[41] The holding that no suspect classification existed here resulted from the Court's reasoning that the class of poor discriminated against was not discernible, and that the deprivation of education was not absolute since students continued to receive some education.[42] The Court's majority used a minimum adequacy standard holding the Texas funding system valid. Since every student in the state is provided an education that meets minimum standards, no deprivation was seen to exist.[43] But, as the dissent by Justice Marshall pointed out, the majority failed to specify any guide-

supplemented in 119 N.J. Super. 40, 289 A.2d 569 (1972), *aff'd as modified*, 62 N.J. 473, 303 A.2d 273 (1973); Spano v. Board of Educ. of Lakeland Cent. School Dist. No. 1, 68 Misc. 2d 804, 328 N.Y.S. 2d 229 (Sup. Ct. 1972).

[33] 411 U.S. 1 (1973).
[34] *Id.* at 47-54.
[35] *Id.* at 35.
[36] *Id.* at 28.
[37] *Id.*
[38] *Id.* at 40.
[39] *Id.* at 49-55.
[40] *Id.*
[41] *Id.* at 35.
[42] *Id.* at 25.
[43] *Id.* at 24.

lines for determining what type of expenditure would meet the minimum standards for adequacy.[44]

The result of the Supreme Court's decision of *Rodriguez* did not absolutely prevent the possibility that a state school financing system may be unconstitutional under the fourteenth amendment. The Court's decision applied only to the facts in the *Rodriguez* case. Under the decision, it still seems possible that, if a readily identifiable class or an absolute deprivation could be proved to exist under a funding system in a subsequent case, the Court would apply the compelling state interest test under the fourteenth amendment's Equal Protection Clause, and the funding system would more likely fail under this stricter scrutiny.[45]

Following the *Rodriguez* case, the number of federal constitutional challenges to state financing systems decreased, and the remaining cases turned to the state constitutions for relief. All states except Colorado, Delaware, Mississippi, and Montana have equal protection provisions in their constitutions.[46] Cases in Michigan, Arizona, and California centered their attacks on these clauses. When a question was presented to the Michigan Supreme Court on certification of a trial court case, the court held education to be a fundamental right under the state constitution.[47] Furthermore, it found that this fact, coupled with the Equal Protection Clause required that the state system of public school finance provide equal maintenance and financial support to all its districts.[48] Since the challenged system failed to so provide, it was ruled unconstitutional under the Michigan Constitution.[49] A year later, however, the court vacated its earlier decision because by the time the case reached the Michigan Supreme Court on appeal, the Michigan legislature had taken sufficient steps toward reforming Michigan's public school financing system to render the case moot.

In the Arizona case, *Shofstall v. Hollins*,[50] the Arizona Supreme Court refused to expand the state's equal protection clause beyond the interpretation given by the United States Supreme Court to the fourteenth amendment's Equal Protection Clause.[51] The system was upheld as con-

---

[44] *Id.* at 89 (Marshall, J., dissenting).

[45] Comment, *An Analysis and Review of School Financing Reform*, 44 FORDHAM L. REV. 773, 783-84 (1976); Note, 27 RUTGERS L. REV. 773, 785 (1976).

[46] Project, *An Analysis and Review of School Financing Reform*, 44 FORDHAM L. REV. 773, 785 (1976).

[47] Governor v. State Treasurer, 389 Mich. 1, 27, 203 N.W.2d 457, 469 (1972), *vacated*, 390 Mich. 389, 212 N.W.2d 711 (1973).

[48] *Id.* at 30-33, 203 N.W.2d at 470-71.

[49] MICH. CONST. art. I, § 2.

[50] 110 Ariz. 88, 515 P.2d 590 (1973).

[51] *Id.* at 90, 515 P.2d at 592.

stitutional, with the Arizona Supreme Court recognizing that the Arizona Constitution expressly guaranteed a basic right to education; however, this basic right could be met by any system of education that was "rational, reasonable, and neither discriminatory nor capricious."[52] This position taken by the Arizona Court regarding its equal protection clause seems to be the general trend in most states.

However, when the California case of *Serrano v. Priest*[53] was remanded to the trial court after the *Rodriguez* case, California continued to hold its financial system unconstitutional based on the equal protection clause of the California Constitution.[54] This decision was upheld by the California Supreme Court which noted the similarities between the Equal Protection Clause of the fourteenth amendment and that of California's Constitution, but which refused to have the federal provision's interpretation control the applicability of the similar state provision.[55] Regarding the two equal protection provisions, the California court stated that "they are 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."[56] The California Supreme Court found education to be a fundamental right under the California Constitution, not because it was expressly stated as such in the state constitution, but because education is one of "those individual rights and liberties which lie at the core of our free and representative form of government, [and] are properly considered 'fundamental.' "[57] The court thus applied a compelling state interest standard to the financial system resulting in the system being held unconstitutional.

Connecticut, in *Horton v. Meskill,*[58] affords a third example of a state supreme court holding its existing financial scheme violative of the equal protection clause of that state's constitution. Again, education was held to be a fundamental right under either the *Rodriguez* or *Serrano* tests for fundamental rights.[59] The Connecticut Constitution provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principal by appropriate legislation."[60] This, the court held, mandated education to be a fundamental

[52] *Id.* at 90, 515 P.2d at 592.
[53] No. 938, 254 (Los Angeles County Super. Ct., Cal., Apr. 10, 1974).
[54] *Id.*
[55] Serrano v. Priest, 18 Cal. 3d 728, 768, 557 P.2d 929, 952, 135 Cal. Rptr. 345, 368 (1977).
[56] *Id.* at 764, 557 P.2d at 950, 135 Cal. Rptr. 366.
[57] *Id.* at 767-68, 557 P.2d at 952, 135 Cal. Rptr. at 368.
[58] 172 Conn. 615, 642-46, 376 A.2d 359, 373-74 (1977).
[59] *Id.* at 646, 376 A.2d at 373.
[60] CONN. CONST. art. VIII, § 1.

right.[61] The Connecticut Supreme Court applied strict judicial scrutiny of the financial program, and found it unconstitutional since alternative means were available to achieve the state objective of local control of education resulting in less interference with the fundamental right to education than the current financing plan provided.[62]

In addition to equal protection provisions, "almost all state constitutions contain an express provision guaranteeing a free public education, although the language varies from state to state."[63] Eight states, including Ohio, have statutes requiring a "thorough and efficient" system of public schools.[64] Seven states have either "thorough" or "efficient" provisions.[65] Eight states provide for a "general and uniform" public school system, while ten more states require either a "general" or a "uniform" school system.[66] These education clauses have also been used as a basis for challenging public school financing programs.

One such successful attempt occurred in New Jersey only two weeks after the *Rodriguez* case was decided. In *Robinson v. Cahill,*[67] the New Jersey Supreme Court held the state system of school finance unconstitutional because it violated the Thorough and Efficient provisions of the New Jersey Constitution.[68] The court interpreted the Thorough and Efficient Clause as requiring equal educational opportunities for all students in the public school system in the state. Furthermore, "the Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."[69] The New Jersey financing plan relied heavily on local revenue from property taxes resulting in large disparities in per pupil expenditures due to the unequal property of the school districts.[70] Due to this disparity, the system was held violative of the Thorough and Efficient clause of New Jersey's Constitution.[71] Thus, this New Jersey case provided an alternative avenue of challenge to state programs for financing public schools by relying on the education clauses of the state constitutions in addition to their equal protection provisions.

[61] 172 Conn. 615, 647-48, 376 A.2d 359, 374 (1977).

[62] *Id.* at 648-53, 376 A.2d at 374-76.

[63] Levin, *Current Trends in School Finance Reform Litigation: A Commentary,* 1977 DUKE L.J. 1099, 1103 (1977).

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] N.J. 473, 303 A.2d 273 (1973).

[68] *Id.* at 508-19, 303 A.2d at 291-97. *See also* N.J. CONST. art. VIII, § 4, ¶ 1.

[69] Robinson v. Cahill, 62 N.J. 473, 515, 303 A.2d 273, 295 (1973).

[70] *Id.* at 480-81, 303 A.2d at 276-77.

[71] *Id.* at 508-19, 303 A.2d at 291-97.

The Idaho Constitution requires that the legislature "establish and maintain a general, uniform and thorough system of public, free common schools."[72] Based on this provision, an attack on Idaho's funding plan was held unconstitutional by the trial court. The Idaho Supreme Court reversed the lower court's ruling, however, stating that the enactment of a foundation plan by the state legislature satisfied the constitutional requirement that the legislature establish and maintain a system of public schools.[73] The court felt that the general and uniform system did not require equal dollar expenditure per pupil, but failed to indicate whether the clause mandated equal educational opportunity measurable in any other manner.[74] It failed to define the clause's requirements. This point disturbed the dissent which agreed with the majority that the general and uniform clause did not mandate equal dollar expenditure per pupil,[75] but interpreted the clause as mandating a system which is fiscally neutral — one that may vary educational expenditures for any reason other than the wealth of the school district.[76] Here, the disparities in property wealth in the districts resulted in a plan that had inherent biases favoring one group over another in violation of the fiscal neutrality theory.

The "general and uniform" requirement for public school systems also appears in the Washington Constitution.[77] In *Northshore School District No. 417 v. Kinnear*,[78] as in *Thompson*, the Washington Supreme Court upheld the state financing scheme even though substantial disparities among per pupil expenditures were found to exist.[79] The Washington Supreme Court interpreted "a general and uniform of public schools"[80] to mean:

> one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the twelfth grade — a system administered with that degree of uniformity which enables a child to transfer from one district to another within the same grade . . . and with access by each student . . . to acquire those skills . . . that are reasonaly understood to be fundamental and basic to a sound education.[81]

Oregon followed Washington's interpretation of a uniform system of

---

[72] IDAHO CONST. art. IX, § 1.

[73] Thompson v. Engelking, 96 Idaho 793, 815, 537 P.2d 635, 652-53 (1975).

[74] *Id.* at 828, 537 P.2d at 668 (Donaldson, J., dissenting).

[75] *Id.*

[76] *Id.*

[77] WASH. CONST. Art. IX, § 2.

[78] 84 Wash. 2d 685, 530 P.2d 178 (1974).

[79] *Id.* at 696-98, 530 P.2d at 185-86.

[80] WASH. CONST. art. IX, § 2.

[81] 84 Wash. 2d at 729, 530 P.2d at 202.

public education, and stated that the constitutional provision was satisfied when the state "provided for a minimum of educational opportunities in the district and permits the districts to exercise local control over what they desire, and can furnish, over the minimum."[82] Based on this rationale, the Oregon Supreme Court upheld that state's public school financing program.[83]

Washington's system of financing education has been held unconstitutional by a trial court in a recent case, *Seattle School District No. 1 v. Washington*.[84] This holding was based on a provision of the Washington Constitution which requires the state to make "ample provision for the education of all children residing within its borders."[85]

Since the *Rodriguez* decision in 1973, only two cases, *Robinson* and *Horton*, have been successful in their attacks on school finance systems based upon education clauses in state constitutions. Relying upon equal protection provisions of state constitutions, two cases, *Horton* and *Serrano*, have proven successful. Additionally, three state supreme courts, Idaho *(Thompson)*, Oregon *(Olsen)*, and Washington *(Northshore)*, have held that neither the education clauses nor the equal protection clauses have been violated by their current state programs for financing public education, even though the programs result in substantial variance in the amount of dollars spent per pupil from district to district within the same state.

CLASSIFYING PLANS

All states have recognized an obligation to aid local school districts in financing. Some public education is required by every state except Mississippi.[86] The problem that has arisen is, what type of funding program should the state implement? State grant distributions have been classified into variable equalizing, variable nonequalizing, and fixed grants.[87]

A variable equalizing program is designed to reduce the wealth disparity between a low property wealth district and a high property wealth district by providing greater state support where there is less local wealth.[88]

Under a variable nonequalizing program, the state agrees to pay some percentage of local cost generally for a specified program.[89] Cate-

---

[82] Olsen v. State, 276 Ore. 9, 27, 554 P.2d 139, 148 (1976).

[83] *Id.* at 27, 554 P.2d at 149.

[84] Civ. No. 53950 (Thurston County Super. Ct., Wash., Jan. 14, 1977)

[85] *Id.*, slip op. at 24-28. *See also* WASH CONST. art. IX, § 1.

[86] UNITED STATES DEPT. OF HEALTH, EDUC. AND WELFARE, STATE CONSTITUTIONAL PROVISIONS AND LEGISLATIVE MATERIAL RELATING TO PUBLIC SCHOOL FINANCE (1973).

[87] WISE, RICH SCHOOLS, POOR SCHOOLS 130 (1968).

[88] *Id.*

[89] *Id.*

gorical program supports for gifted children and vocational education whereby the school district furnishes a portion of the support are examples of this type of plan. If a school district does not or cannot provide its share for the program, the district will not receive the state grant. Variable nonequalizing grants probably increase wealth disparity between districts because it is likely that a greater number of poorer districts will fail to qualify for them.

Fixed grants are given to a district generally on a per pupil basis for either a general or specific purpose regardless of the district's need for aid.[90]

Commentators have noted that an increase in the level of state aid regardless of the state aid formula employed results in a decrease of the inequality in total expenditures.[91] Generally, it is the increase in level of state support rather than the type of formula which determines the equalizing effect of state aid.[92]

If adequately funded and properly implemented, each of the current funding methods would appear to reduce disparities between districts. However, as the result of community pressures and lobbying efforts, the plans have tried to provide some state financing for everyone. In every state in which this trend occurs to the extent of state guarantees to districts, the system has become "substantially disequalized."[93]

Under a pure state foundation program, the state legislature would establish an amount which it considers sufficient to adequately fund an adequate education. Local communities would then be required to tax at a certain specified rate in order to qualify for state funds. If in applying the rate the local district is unable to raise the difference between the foundation amount and the state guaranteed level, the state will make up the difference.

The result is that state aid becomes a variable grant which is provided in an inverse relationship to the assessed valuation of the district. This system became known as the Strayer-Haig[94] formula for calculating school aid. Under this program, unless the state's guaranteed amount is the equivalent of the amount the wealthiest district would obtain at the specified rate, inequalities between districts will still exist. An alternative means

---

[90] *Id.*

[91] Michelson, *Reform through State Legislatures,* 38 L. & CONTEMP. PROB. 436, 444 (1974). [hereinafter cited as *Alternative Reforms*]. *See also* Killalea Assoc., *School Finance Reform in the Seventies: Achievements & Failures* in SELECTED PAPERS ON SCHOOL FINANCE REFORM IN 1978 68 (1978). [hereinafter cited as *School Finance Reform.*]

[92] *Id.*

[93] Board of Educ. v. Walter, No. A 7602725, slip op. at 19 (1977).

[94] *Id.* at 18. *See also* W. N. GRUBB & S. MICHELSON, STATES & SCHOOLS 160-71 (1974).

of completely eliminating wealth disparities would be to set the guaranteed amount at an adequate level of funding. If wealthier districts taxing at the same rate receive more than the guaranteed amount, they would be required to pay the excess to the state. This excess repayment would be used for financing poorer districts.

The second major financing program has been termed district power equalizing (DPE).[95] Under this type of plan, each district is allowed to set its own tax rate thus preserving local control over budgeting.[96] The state then sets an amount which the state guarantees each district if it applies a given rate. If in applying a given tax rate the district does not obtain revenues equal to the amount guaranteed by the district, the state will make up the difference. In the ideal form of this plan, the local districts which tax at the same rate will have equal revenue available for spending regardless of the underlying property wealth of the district. As in the foundation plan, in order to achieve absolute equality, the state would either be required to set the guaranteed amount at the level which the property wealthiest district could raise or require those districts raising excess revenues at the given rate to remit the excess to the state. Wisconsin had adopted this type of "negative aid."[97] Under this state's program, each local district was permitted to set any level rate it chose; however, if in applying the rate to the district's property value greater revenues were raised, the excess over the state set figure would be diverted to the state to finance poorer property wealth districts.

The constitutionality of this statute was successfully challenged in the Wisconsin state court.[98] One implication of this decision is that this case represents the point beyond which at least the Wisconsin judicial branch will refuse to allow state legislators to go in achieving equalized education opportunity.

In Florida, Maine, Montana, and Utah, revenues must be paid to the state if proceeds from the required tax rate exceed permitted expenditures.[99] Furthermore, Montana's recapture provision has been upheld as a "statewide uniform property tax" levied for a public purpose rather

---

[95] J. COONS, *supra* note 29 at 202-03.

[96] *Id.* Proponents of DPE saw local control as the chief advantage of DPE over other forms of budgeting. *Compare* Note, *Texan School Finance: The Incompatibility of Property Taxation & Quality Education*, 56 TEX. L. REV. 253 (1978) *and School Finance Reform, supra* note 91.

[97] WISC. STAT. ANN. § 121.08 (2), (3) (West Supp. 1976-1977).

[98] Buse v. Smith, 74 Wis. 2d 550, 247, N.W.2d 141 (1976). *See also* Note, 90 HARV. L. REV. 1528, 1530 (1977) for discussion of the conflict between Wisconsin's constitutional provisions and the holding in this case.

[99] *School Finance Reform, supra* note 91, at 81, 87, 91, 97.

than a tax levied on one district for the sole benefit of another.[100] Proportional benefits are not a constitutional requirement for a tax which benefits the state as a whole.[101] Although DPE proponents view local control as a necessary element of school financing,[102] as do some state constitutional provisions,[103] the critics attack local control as allowing the individual taxpayer the right to determine the quality of education the children of the community will receive.[104] Although district wealth is eliminated under the ideal DPE system, the adult community's prejudices and preferences are still the most important characteristic in determining the quality of education in the local community.

"Once the state has the funds, adult favoritism should play no role, and only the characteristics of the child should be recognized."[105] Under this view, parents as individuals may compensate their children beyond what the state provides, but the state is limited to differentiating among children only as to the child's needs. The notion that the quality of the child's education cannot depend on the willingness of the district's voters to tax themselves was introduced by the Ohio lower courts' decision.[106] Such a position is inconsistent with a plan based upon a district power equalizer.

The third type of plan is a flat grant. Under this plan, the state designates a certain amount of funds to be provided each pupil within the district regardless of the financial needs of the district. Connecticut's flat grant program was declared unconstitutional by the state supreme court in *Horton v. Meskill*.[107]

If the state's flat grant is high enough to provide an adequate education for all children in the state, such a state program becomes almost indistinguishable from full state funding which is another popular alternative. If a state were to adopt a full funding program, it may under one view still allow local option to provide enriching programs within the district.

---

[100] Woodahl v. Straub, 164 Mont. 141, 148, 520 P.2d 776, *cert. denied*, 419 U.S. 845 (1974).

[101] *Id.* at 151.

[102] GOVERNOR J. RHODES, A PROPOSAL FOR IMPROVING THE QUALITY OF PUBLIC EDUCATION IN OHIO 3 (1979). *See also* Note 90, HARV. L. REV. 1528 (1977).

[103] WISC. CONST. art. X, § 4.

[104] Michelson, *supra* note 91, at 440.

[105] *Id.*

[106] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op.

[107] 172 Conn. 615, 376 A.2d 359 (1977). *See* notes 58-62 and accompanying text, *supra*. Connecticut has since adopted a modified equalization grant under which each district is guaranteed a tax base at the 85% level of all districts in the state. The wealth base is calculated on a combined per capita and per pupil basis. CONN. GEN. STAT. ANN. § 10-262 C (West. Supp. 1978).

The other view would require absolute spending equality between districts in order to meet the desired standard.

Only the State of Hawaii has currently adopted a full funding plan.[108] In Hawaii, education is a full state service providing both administrative and operational responsibilities for education. Under such a system, teachers, principals, and other school district employees would be employed by the state. An alternative to the completely unitary school system as established in Hawaii would be to establish a system whereby the state collected and distributed revenues, but local boards of education would retain responsibility for operating the school. Local control over district spending is not necessarily incompatible with centralized financing.[109]

Another alternative within the full state funding scheme is the voucher system. Although no state presently follows such a program, the Office of Economic Opportunity has encouraged school systems to adopt this plan.[110] Under such a program, the state would assume responsibility for raising all public money, and then would distribute vouchers to each family who could use the voucher in any public or private school of its choice. If the parents so desired, they could supplement the voucher with additional moneys of their own. Proponents of this plan believe that the educational system will be improved by the increased competition for students.[111] The basic problem, however, is that educational quality will become a product of individual wealth rather than community wealth. Those who can afford to spend more will receive greater opportunities than those who cannot.

An alternative voucher system would attempt to equalize family expenditures by offering a guaranteed amount based on a percent of the families' income.[112] For example, if the state guaranteed that every family devoting one percent of its income to education would receive $2,000, a family earning $30,000 would receive no state aid, and a family earning $5,000 would receive $1,950. This plan is subject to one weakness which is also applicable to other equalization plans, such as foundation programs and DPEs. It is that poorer families require a greater portion of their income for necessities leaving available a smaller percentage of their money

---

[108] HAW. REV. STAT. § 298 (1978).

[109] Levin, Muller, Scanlon & Cohen, *Public School Finance: Present Disparities & Fiscal Alternatives,* 38 L. & CONTEMP. PROB. 212-43 (1974).

[110] R. REISCHAUER & R. HARTMAN, REFORMING SCHOOL FINANCE 78 (1973): *See also,* OEA *Has One Legislative Priority—School Funding,* 1 OHIO SCHOOL 18, 19 (Jan. 1979) urging Ohio Education Association members to oppose a voucher plan in Ohio.

[111] REISCHAUER & HARTMAN, *supra* note 110, at 79.

[112] *Id.*

for education. The family earning $5,000 may need every dollar simply to survive.

Regardless of which basic program or combination of programs the state selects, there are other considerations which must be addressed before an equitable funding plan for reducing disparities may be obtained.

First, the state must define equality.[113] It must set the desired level it wishes to achieve whether absolute or whether along some continuum ranging from high quality to minimum adequacy. Then the state must decide whether disparities beyond this standard will be permitted. Secondly, the state must determine what elements will compose the chosen standard, that is, whether the standard is equal dollars, dollars based on needs of the children within the district, costs of operating the district, resources available and required, and to what extent cost variables between districts will be considered. Third, if the state is to reduce wealth disparities, an adequate measure of wealth disparity whether based on property wealth, income, or remaining income after necessities and other taxes must be determined. Finally, the state must determine whether it wishes to enact restrictive revenue provisions or expenditures curbs as a means of reducing disparities. The absence of these restrictions, however, may allow some districts to implement innovative and exciting programs that might otherwise not develop in the state. [114] As an alternative, the state could provide funds for experimental programs.

After each of these considerations are evaluated and the state's policies towards education are determined, a means for satisfying the desired policies may be derived.

No state requires absolute equality of education as such would be impossible to obtain regardless of the standard chosen to measure quality. Basically two categorical standards have been identified. First, there is the objective school concept, and secondly, the subjective child performance concept.[115] Both of these have been dissected and examined as to the individual components necessary to construct a standard by which to measure the quality of education.

---

[113] Educators have not been able to agree as to what an equal education entails. *See generally* Coleman, *The Concept of Equality of Educational Opportunity,* 30 HARV. EDUC. REV. 7 (1968); Berne, *Alternative Equity and Equality Measures: Does the Measure Make a Difference?* in SELECTED PAPERS IN SCHOOL FINANCE REFORM IN 1978 (1978) [hereinafter cited as *Alternative Equity*].

[114] *School Finance Reform, supra* note 91, at 72. For examples of this type of legislation, see discussion related to Florida, Indiana, Iowa, Kansas, Maine, and New Mexico.

[115] J. Coons, *supra* note 29, at 25.

Commentators[116] as well as judicial decisions have attempted to define standards of quality. Each, however, is a variation of the objective school concept or subjective pupil concept. Simply stated, the objective school concept involves a measure of the resources put into the system, and the subjective pupil concept involves measurements of what the students are achieving generally measured through the use of some standardized achievement tests. The major difficulties with the later position include the criticism that such tests do not measure what they claim to measure,[117] and secondly, that other factors such as home environment influence a pupil's performance on achievement tests.[118]

One suggested application of an objective school standard is a maximum variable ratio which would permit districts to vary expenditures within a specific range, thereby providing school districts with some flexibility in planning their programs.[119] This position is essentially a compromise position between complete recapture beyond the state guaranteed level, and allowing wealthier districts to raise and retain all revenues beyond the state's fixed guarantee. Such a standard assumes the adequacy of the state's determined amount without providing guidelines as to what is adequate.

Fiscal neutrality which simply provides that "[t]he quality of education may not be a function of wealth other than the wealth of the state as a whole,"[120] is a second application of the objective school concept. This standard is applied by proponents of district power equalizing, and as previously noted, continues to allow the quality of education to be a product of the communities' willingness to tax themselves. Ohio courts have, at this point, apparently rejected this standard.

Since money is an easily quantified item, it is the easiest place to start in defining a standard for equality of educational opportunity.[121] However, more than mere equality of dollars is necessary to achieve an equitable system of education since both educational needs of the students within the district, as well as variations in cost, must be considered. Dollars alone cannot operate as the sole criterion for determining equal input

---

[116] Wise, *supra* note 87, at 25. *See also* McDermott & Klein, *The Cost Quality Debate in School Finance Litigation*, 38 L. & CONTEMP. PROB. 415 (1974); *see generally Alternative Equity, supra* note 113.

[117] *See, e.g.*, Note, 68 COLUM. L. REV. 691 (1968).

[118] McDermott & Klein, *supra* note 116, at 420.

[119] Project, *supra* note 46, at 794. This author suggests trying a maximum variable ratio with a recapture provision under a DPE system.

[120] J. COONS, *supra* note 29, at 2.

[121] *See generally* McDermott & Klein, *supra* note 116. The authors contend that if cost and quality are not related, there would be no meaning or need for local control, and therefore, no state interest which would validate a system based on local control.

into the educational system. The total resources which can be obtained with the dollar serve as the better criterion of providing equal opportunity. Such concept requires that the state adjust its state aid formula to take into consideration differences in money cost for providing the same service in differing districts. Florida has incorporated a cost of living adjustment into its state aid program.[122] By using its own consumer price, Florida has calculated differential costs of living among districts.[123] This type of approach could effectively reduce many of the problems faced by inner cities such as higher wages, building and transportation costs, security problems as well as factors faced by rural districts with such problems as sparse student populations, widespread geographic locations, and the myriad other identifiable problems.

Some writers believe that municipal overburden[124] should be considered when distributing state aid.[125] The converse of this argument is that the people who live in districts with higher community costs have chosen to live there because of the extra advantages they receive, and therefore, are not entitled to additional consideration. One authority adopts the view that municipal burden is a taxing or revenue collecting issue, and not a proper consideration for state revenue distributions.[121] Although tax revenue raising and revenue spending would be separable in a full state funding program, they are by necessity tied together in a program dependent upon local and state funding particularly where voter choice determines the rate at which a district will tax itself.[127]

Defining total resources as the measurement tool for determining equality does not determine the level at which equality is to be achieved, nor does it consider the need for additional resources where the educational needs of children differ due to special characteristics of the students, such as blindness, deafness, giftedness, retardation, and so forth. Both of these considerations involve value judgments as well as scientific studies to determine what effect they must be given in arriving at an overall financing scheme.

The elimination of wealth as a determinant of the quality of education

---

[122] U.S. DEPT. OF HEALTH, EDUCATION & WELFARE, SELECTED PAPERS ON SCHOOL FINANCE IN 1975 (1975).

[123] *See generally School Finance Reform, supra* note 91.

[124] The additional taxes that persons living in areas with high costs pay for police protection, fire protection, recreation, etc.

[125] For an example of this type of legislation see Michigan's Equal Yield Program which contains a municipal overburden provision designed primarily to aid Detroit. MICH. COMP. LAWS ANN. § 388.1101-388.127 (West 1976).

[126] Michelson, *supra* note 91, at 453.

[127] *Id.* at 457.

is an element in all reform programs. However, there is much disagreement as to whether wealth should be measured by the value of property within a district, or the income of the residents of the district, or perhaps a combination of the two.[128] An examination of this problem raises many issues. First, do high property values automatically indicate high income which enables the individual to pay the property tax? A negative answer is obvious in some situations. Districts composed of a large number of older taxpayers living on valuable properties, but with fixed incomes, may be unable to pay their taxes; in locations where taxpayers vote their own millage increases they are unwilling to provide the needed support. One solution to this problem is to enact "circuit breaker provisions"[129] whereby property tax relief will be granted when the tax rate equals a certain set percentage of the families' incomes.

A second alternative, however, would be to eliminate the property tax, and to establish an income tax as the primary means of financing education. Although property taxes provide the bulk of revenue received by local governments in the United States, it has serious limitations which need to be examined.[130] The Ohio State Board of Education, however, considers it neither "unworkable or illegal."[131] The primary advantage is that it is well suited for use by local units of government. Taxpayers can see direct benefits to their children, and property, being immobile, cannot be moved to escape taxation.

First, the public has strongly rebelled against increased property tax as is evidenced by the refusal of many districts to support levy increases.[132] Second, the property tax is regressive.[133] A person who pays $1,000 in property tax, who is in the seventy percent marginal tax bracket, ends up paying only $300, since he is allowed a deduction for an amount which if taxed would have been taxed at seventy percent. The individual who does not itemize deductions effectively pays 100% of his property tax.[134] A third problem is its effect on business and industry decisions to locate in one community over another. The existence of a favorable tax rate may determine a business location, thus depriving other districts of needed funds.

---

[128] In Kansas, the matching rate is inversely related to district income as well as considering property valuation. KAN. STAT. ANN. § 72-7001 to 72-7012 (Supp. 1978).

[129] *See, e.g.*, MICH. COMP. LAWS ANN §§ 206.504-206.530 (West 1976).

[130] NATIONAL EDUCATION FINANCE PROJECT, ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 61 (1971).

[131] OHIO STATE BOARD OF EDUCATION, RECOMMENDATIONS FOR LEGISLATIVE CONSIDERATION TO THE GOVERNOR AND MEMBERS OF THE 113TH GENERAL ASSEMBLY 1 (Dec. 11, 1978).

[132] Board of Educ. of Cincinnati v. Walters, No. A 7602725, slip op. at 186. *See also* O'Neill, *Public Views on Taxes & Education in the State of Ohio,* 57 (No. 3) OHIO SCHOOLS 13 (1979).

[133] NATIONAL EDUCATION FINANCE PROJECT, ALTERNATIVE PROGRAMS, *supra* note 130, at 253-63 for a formula for measuring progressivity of tax.

[134] B. BITTKER & L. STONE, FEDERAL INCOME ESTATE & GIFT TAXATION 190 (4th Ed. 1972).

Neither the Ohio Court nor the state legislature has suggested eliminating the property tax. For the present, the property tax is firmly entrenched as the method for obtaining the local revenues with which to finance schools.[135]

CURRENT FUNDING IN OHIO

Ohio's current school financing system has developed into its present form from changes which have been effected by legislation passed since 1930. Before then, the real property tax levied by each school district was the sole source of school revenue. Local school boards financed district schools under authority of the Tax Levy Law.[136]

The boards of education of each of the school districts in Ohio are authorized to levy taxes for current operating expenses upon taxable property located within the school district, and listed on the general tax lists and duplicates. Taxable property includes all real estate (except that expressly exempted), and all personal property used in business.[137] Both constitutional and statutory requirements impose what is commonly called the "ten mill limitation" upon the board of education's taxing authority.

Ohio's Constitution provides: "[N]o property taxed according to its value shall be taxed in excess of one percent of its true value in money for all state and local purposes,"[138] unless the rate is approved by at least a majority of the electors of the taxing district voting on such proposition. Section 5705.02 of the Code limits the total amount of taxes that may be levied on any taxable property to ten mills on each dollar of tax valuation (taxable value), unless specifically authorized by the voters thereof. By applying the millage rate to assessed value rather than true value as authorized by the Ohio Constitution, revenue obtained is less than one-third of the constitutionally allowed amount.[139] Since school districts are authorized by law to levy only a property tax, voter approval must be obtained to raise property taxes above a ten mill rate if required to meet school operating expenses. Ohio is only one of seven states which requires a referendum on all levies above a certain low rate limitation.[140]

Prior to 1930, property was the primary source of wealth and income throughout the state. Beginning in 1935, as a response to the more highly

---

[135] OHIO SCHOOL BOARDS ASSOCIATION POLICY & LEGISLATIVE COMMITTEE, ADEQUATE & EQUITABLE FUNDING FOR OHIO SCHOOLS 3 (July 1978) [hereinafter cited as ADEQUATE & EQUITABLE FUNDING].

[136] OHIO REV. CODE ANN. § 5705 (Page Supp. 1978).

[137] *Id.*

[138] OHIO CONST. art. XII, § 2.

[139] ADEQUATE & EQUITABLE FUNDING, *supra* note 135, at 2.

[140] *Id.*

industrialized society, the State introduced a plan for state aid.[141] The State began to provide revenues in the form of modified flat grants per pupil assuming about 50% of the educational costs. In 1956, the Legislature adopted the first form of a school foundation program, and established the State Board of Education.[142] By 1964, the State's portion of costs had decreased to 30% and by 1970-71 to 28.8%.[143] After passage of a state income tax in 1973, the State assumed 35% of the educational costs under the last enactment of the Foundation Program in 1971.[144]

That law provided each district with the choice of a variable equalizing plan or fixed grant whichever was greater. Basic state aid consisted of the greater of: (a) allowances for each approved classroom unit of certain enumerated types of special education classes, and extended service contracts plus the guaranteed sum of $600 of combined state and local funds per pupil in average daily membership (ADM). The State's contribution was limited to that portion of amount in excess of a figure derived by multiplying twenty-five mills times the tax valuation of the district, or (b) a flat grant sum determined by multiplying the number of pupils in average daily membership (ADM) times an amount per pupil fixed by statute on a determined scale.[145] If the district's taxable property value was greater than $32,000, the district would receive the lowest figure on the scale, an amount of $75 per pupil.[146]

Responding to increased litigation and successful challenges to the constitutionality of state funding methods for education in other states, the Ohio Legislature introduced into its Foundation Program the equal yield formula.[147] The formula itself is quite complicated. Simply stated, it provides an equal sum of money (local and state combined on a per pupil per mill basis) for each district in the State. The stated purpose was "to compensate for disparities between districts in taxable property wealth."[148] Unfortunately the plan has not been as successful as its proponents had hoped, Ohio continues to refer to this new program as Ohio's Foundation Program. Even though a substantially altered program to that established in 1971, the matching provisions for the first twenty mills

---

141 OHIO DEPARTMENT OF EDUCATION, THE OHIO LAW FOR STATE SUPPORT OF PUBLIC SCHOOLS (1978).

142 Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 19.

143 *School Finance Reform, supra* note 91, at 95.

144 OHIO REV. CODE ANN. § 3317.02 (Page Supp. 1978).

145 *Id.*

146 *Id.*

147 OHIO REV. CODE ANN. § 3317.022 (Page Supp. 1978).

148 OHIO DEPT. OF EDUCATION, *supra* note 141, at 4.

achieve essentially the same result as the traditional Strayer-Haig Foundation Plan.

The present Foundation Program consists of two phases termed Basic Program Support and Categorical Program Funding. The formula for calculating basic support is a variation of the school financing technique labeled district power equalizing.[149] When the formula is fully funded, each district which levies at least twenty school operating mills is guaranteed at least $48 per mill per pupil in state and local funds combined. In order to reward districts for making an extra tax effort over the twenty mills, for each mill levied by the district between twenty and thirty, the State guarantees a yield of $42 per mill.[150] Therefore, when fully funded, the State is guaranteeing each district which levies thirty equalized mills $1,380 per ADM. Both the $48 and the $42 figures have been arbitrarily chosen by the Legislature. In order to achieve this financial position, the voters of the district must agree to tax themselves at a rate of thirty equalized mills. The majority of the voters in each of the 617 school districts have thus far refused to tax themselves at this rate.

The basic average daily membership, the equalized valuation, and the equalized millage rate are employed to determine the equalized valuation per pupil and the local yield per pupil per mill.[151] The formula establishes an arbitrary wealth ceiling of $48,000 per pupil which is lower in fact than the property wealth of some districts in the state.[152]

When fully funded, State Basic Aid under this program will consist of:

1. $48 minus Local Yield Per Pupil Per Mill times basic ADM times twenty mills;
2. $42 minus Local Yield Per Pupil Per Mill times number of equalized mills or fractions in excess of twenty mills, but not exceeding thirty mills.

Those districts which can obtain more than $48 per mill are not required to pay this excess into the State. Without a repayment provision, this disparity can only be eliminated by setting the per mill guarantee at the level which the wealthiest district would obtain.[153] Having obtained Basic State Aid for the current year, each district's current entitlement is equal to the Basic State Support less fiscal year 1975 Basic State Aid times the current year phase in percentage plus Basic State Aid for fiscal

[149] *Id.* at 20.
[150] *Id.*
[151] *Id.* at 4-6.
[152] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip. op. 22.
[153] This type of provision has been declared unconstitutional in Wisconsin. *See* notes 230-232 and accompanying text *infra*.

year 1975. Basic State Support is the larger of Basic State Aid for fiscal year 1975 or current entitlement adjusted by certain specified factors including teacher/pupil ratio, teacher training and experience, and number of educational service personnel. The negative adjustment provisions effectively penalize districts which cannot or refuse to comply with mandated requirements for teacher personnel, administrative personnel, et cetera.

In addition to Basic State Support, each district may be eligible to receive supplements by implementing certain categorical programs. The State allocates certain amounts of money for approved units of vocational students, special education students, and transportation operating expenses.[154]

An additional subsidy is provided districts in relation to the percentage of the districts' students who receive Aid for Dependent Children benefits. Disadvantaged Pupil Impact Aid[155] is the only form of categorical funding which does not consist of a flat grant.

Two rather important features of the formula involve guarantees made to districts in special circumstances. Under the current system, property is reappraised during the preceding fiscal year of distribution and the district is guaranteed the same state payment as it received in the previous year. When a community's property value is reappraised and adjusted upward, the millage rate is automatically rolled back so that local revenue remains the same. However, the school district will not receive state funds equal to the previously effective millage rate. One example is the Paint Valley Local District in Rose County which, in enacting a seven mill levy in June, 1977, brought the district millage rate to thirty.[156] Following reappraisal, the 30.0 mill tax rate was rolled back to 20.83. As a result, Paint Valley District received the same locally collected taxes as it would have received at thirty mills, but was deprived of the State's guarantee of $42 per mill between 20.00 and 30.00.

Cincinnati School District offers a further example of the rollback effect.[157] Cincinnati's millage rate was rolled back from 25.94 mills to 24.06 mills.[158] As a result of the increased valuation, the State portion of the local yield per pupil per mill was reduced in reaching the guaranteed level of $48 and $42 per mill due to the increased value of the property, but the eligible mills between twenty and thirty were reduced further reducing State aid.[159] After the one-year period of grace, during which time

---

[154] OHIO REV. CODE ANN. § 3317.024 (Page Supp. 1978).
[155] *Id.*
[156] STATE BOARD OF EDUCATION, *supra* note 131, at 1.
[157] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 32.
[158] *Id.*
[159] *Id.*

the district is guaranteed the same rate it received in the previous year, the State aid will decrease unless an additional levy is enacted by local vote.

A second guarantee involves school districts which consolidate. For a period of three years, a district will receive no less money than the sum the districts received in the year of consolidation.[160]

School districts will receive the larger of the guarantee or the sum of basic support plus the total categorical program funding. Such guarantees are called "Save Harmless Provisions" because they result in guaranteeing the same payment in the current year as received in a prior year regardless of present needs.

CONSTITUTIONAL ATTACK IN OHIO

The challenge of Ohio's Foundation Plan, as advanced in *Board of Education of Cincinnati v. Walters,*[161] follows the two-pronged state constitutional attack employed successfully in the previous cases. The challenge in the Ohio case is based on two provisions of the Ohio Constitution: its education clause, which is a "thorough and efficient" type of education clause, and its equal protection provision.

Ohio's Thorough and Efficient Clause is the equivalent of New Jersey's clause which was successfully employed in *Robinson v. Cahill,*[162] as a basis for holding the New Jersey financial system, one similar to Ohio's current system in revenue sources and resulting disparities in per pupil expenditure among districts, unconstitutional. The Ohio Constitution provides:

> The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.[163]

Likewise, the equal protection clause is representative of those found in most states, and provides that "[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit."[164]

In the class action of *Walters,* extensive evidence was presented of the current funding system: its disparities in per pupil expenditure from district to district, the causes of these disparities, and viable alternative

[160] OHIO REV. CODE ANN. § 3317.04 (Page Supp. 1978).
[161] 10 Ohio Op. 3d at 26.
[162] 62 N.J. 473, 303 A.2d 273, *cert. denied,* 414 U.S. 976 (1973).
[163] OHIO CONST. art. IV, § 2.
[164] OHIO CONST. art. 1, § 2.

funding systems available that could result in less inequities.[165] After analyzing the historic development of the system and its current status in view of the meanings of the Thorough and Efficient Clause and the equal protection clause, the trial court ruled that the current funding system violated both provisions of the Ohio Constitution.[166]

In its opinion, the trial court, relying on *Miller v. Korns*[167] and *Powell v. Young*,[168] specifically described the requirements for a thorough and efficient system of public education:

> [T]he Ohio Constitution [holds] the General Assembly to a high standard of accountability in the provision it makes for financing public elementary and secondary education. That responsibility is unmistakeably that of the General Assembly. In discharging it, the Legislature's concern must be statewide, not local. The General Assembly must upbuild a system of schools throughout the state. It must attain thoroughness and efficiency in that system. The constitutional standard is not met if any number of school districts are starved for funds, or lack teachers, buildings, or equipment. Moreover, the General Assembly must anticipate that the greatest expense may arise in the poorest districts, presumably in the cities, and must allocate resources to meet those expenses. Above all, our state has a commitment not merely to provide minimal educational opportunities, but to maintain the finest public school system possible in order to train youth for citizenship in a free government.[169]

Additionally, the Court cites legislation in 1956 by the Ohio General Assembly as supportive of the State's commitment to provide greater than minimal educational opportunities.[170] In this legislation, the General Assembly first adopted the Foundation Program for financing its public schools, and it granted authority to the State Board of Education to establish minimum standards to be applied to all Ohio public schools "for the purpose of requiring a general education of high quality."[171] The trial court also found support in Connecticut's identical Thorough and Efficient Clause which the Connecticut Supreme Court interpreted as requiring more than adequate or minimal standards in establishing equal educational opportunities for all students.[172]

After reviewing the evidence in light of the standard required by

[165] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip. op.
[166] *Id.* at 358-88.
[167] 107 Ohio St. 287, 297-98 (1923).
[168] 148 Ohio St. 342, 358-59 (1947).
[169] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 365.
[170] *Id.* at 68. *See also* OHIO REV. CODE ANN. § 3301.07 (Page 1972).
[171] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 371.
[172] *Id.* at 366-68.

Ohio's Thorough and Efficient Clause, the trial found that the General Assembly had absolutely failed to carry out its duty under this clause. It found, therefore, that the entire present funding system, due to its substantial disparities and inequities, clearly violated the thorough and efficient clause.[173] Some of the problems with the current system that the court relied on for its finding included the following:[174]

1. The numerous school closings that became necessary in 1976 and 1977 causing students to suffer irreparable educational deficits.
2. The majority of Ohio school districts which operate under conditions of educational deprivation.
3. The vast disparities of total state and local support received by each district resulting in further disparities in expenditures for education, and varying quantities and qualities of educational services. The court noted the fact that a majority of Ohio students receive only substandard educational services, thereby resulting in a lack of equality of educational opportunity.
4. The collapse of the current local tax program, which provides 60% of the total revenue, due to the program's dependence on voter referendum.
5. The unfair distribution of the Save Harmless Provisions to affluent school districts.
6. The penalties imposed upon poor districts for lacking the funds to meet statutory mandates for teacher/pupil ratios, and for teachers' qualifications.
7. The inability of school districts under the current financing plan to predict future revenues adequately enough to determine the programs of curriculum and staffing needs for future years.
8. The fact that due to disparities in property wealth among districts, a mill raises more educational revenue in some districts than in others. Thus, a "taxpayer who pays taxes on property located in districts wherein it is necessary to levy more than 20 mills in order to provide an education of high quality appears to be bearing a disproportionately heavy burden for public education. The evidence also shows that property taxpayers in certain districts are so overburdened by nongovernmental costs that they are unable to withstand the financial strain of supporting educational costs to the extent that educational interests require.[175]

Although the trial court held Ohio's Foundation Program uncon-

[173] *Id.* at 370-72.
[174] *Id.* at 371.
[175] *Id.* at 356.

stitutional as a violation of the thorough and efficient clause, the court of appeals refused to employ this clause as a basis for unconstitutionality.[176] The appellate court returned to the Ohio Constitution's wording and reasoned that since the power to establish a thorough and efficient school system was expressly granted to Ohio's General Assembly, the power was plenary; therefore, the trial court had overstepped its authority in ruling the Foundation Program unconstitutional.[177] The court differentiated between the situation where a legislature fails to act and one wherein a legislature acts by exercising its discretion.[178] The court indicated that the first situation would be grounds for a court to intervene, while the second would not.[179] Here the appellate court held that the Ohio General Assembly had enacted a financing program which, in its discretion, provides a thorough and efficient school system. The appellate court would not permit the trial court to attempt to remedy a situation which by mandate of the Ohio Constitution is adjustable only by the legislature.[180] Noting the trial court's reliance on *Miller v. Korns*[181] as authority for ruling the Foundation Program a violation of the thorough and efficient clause, the court of appeals pointed out that the trial court was relying on dictum, and that *Miller* contained an excerpt directly on point as to the deference the judiciary should pay to the legislature in matters of public school finance. The *Miller* opinion quoted, and relied on the following excerpt from *Sawyer v. Gilmore*:[182]

> The particular method of distribution rests in the wise discretion and sound judgment of the Legislature. The Constitution provides no regulation in this matter and it is not for the court to say that one method should be adopted in preference to another. We are not to substitute our judgment for that of a coordinate branch of the government working within its constitutional limits.[183]

Although the court of appeals has rejected a challenge to the Ohio Foundation Plan based on the thorough and efficient clause, the viability of this argument has not been extinguished. The appellate court relied only on its own interpretation of the clause's wording plus its application of the *Miller* case, an Ohio Supreme Court case which seems equally adaptable to an argument in support of the thorough and efficient clause as the trial court applied it. Also, the application of an identical thorough and efficient clause by the New Jersey Supreme Court as a valid basis

[176] 10 Ohio Op. 3d at 32-34.
[177] *Id.*
[178] *Id.* at 33.
[179] *Id.*
[180] *Id.* at 32-34.
[181] 107 Ohio St. 287 (1923).
[182] 109 Me. 169, 83 Atl. 673 (1912).
[183] Miller v. Korns, 107 Ohio St. 287, 301 (1923).

for invalidating New Jersey's similar school finance system is a strong factor to consider in determining what interpretation to place on Ohio's thorough and efficient clause.[184] Although not controlling in Ohio, New Jersey's ruling adds support and precedent to the viability of the use of the thorough and efficient clause as an employable device in challenging Ohio's Foundation Program.

In reference to the scope of the legislature's duty under the New Jersey's Thorough and Efficient Clause, the New Jersey Supreme Court in *Robinson v. Cahill*[185] states: "Whether the State acts directly or imposes the role upon local government, the end product must be what the Constitution commands. A system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command."[186] Thus, New Jersey's Supreme Court interpreted the thorough and efficient clause's mandate to permit review of a legislature's funding program by the state courts to determine whether such funding program meets the requirements of the constitution. The recent New York case of *Levittown Union Free School District v. Nyquist*[187] also adopts the *Robinson* interpretation. In this case, the Nassau County Supreme Court used New York's education clause as additional grounds for review of the legislature's funding program by the state courts.[188] The court held that the education clause imposed the duty on the state to distribute educational funds on the basis of the educational needs of the students in each district, so as to achieve the constitutional guarantee to all children of equal opportunity to acquire basic minimal educational skills.[189] The court indicated that failure of the state to carry out its duty would amount to the equivalent of excluding "many underachieving pupils from the educational program."[190]

This New York case is very similar to the Ohio case in the type of funding programs attacked[191] and the similar problems that develop as a result of implementation of the programs.[192] The New York funding

[184] An interpretation of *Miller v. Korns* that is in agreement with the trial court's interpretation can be found in OHIO PUBLIC SCHOOL FINANCE, REPORT No. 106 (Oct. 1977).
[185] 62 N.J. 473, 303 A.2d 273 (1973).
[186] *Id.* at 513, 303 A.2d at 294.
[187] 408 N.Y.S.2d 606 (Nassau County Super. Ct., June 23, 1978).
[188] *Id.* at 642-43.
[189] *Id.*
[190] *Id.* at 643.
[191] Both states have foundation programs with save harmless provisions. New York, however, has a flat grant provision which Ohio's program does not have. *See* Levittown Union Free School Dist. v. Nyquist, 408 N.Y.S.2d 606, 613-14 (Nassau County Super Ct., June 23, 1978).
[192] Both plans result in disparities in per pupil expenditures among districts. Both funding programs rely heavily on the property weath of each district which varies greatly among districts. Both plans result in great disparities among districts as to personnel, facilities, and equipment. All of these factors combine to create great disparities in the overall educational quality among the districts.

system was held unconstitutional not only under its education clause, but also under its equal protection clause.[193]

Thus, the current trend by state courts seems to be to employ the education clauses of their state constitutions as additional bases for evaluating the constitutionality of education funding programs. This trend will be a significant factor in the Ohio Supreme Court's evaluation of the *Walters* case.

The second basis which the Ohio Supreme Court will consider in determining the constitutionality of Ohio's Foundation Program is the equal protection provision found in Article 1, Section 2 of the Ohio Constitution. Both lower courts found the Foundation Program to be unconstitutional under an equal protection analysis.[194] The trial court determined that education is a fundamental right guaranteed by Article VI, Section 2 of Ohio's Constitution. This court proceeded to apply strict judicial scrutiny to the foundation plan, and concluded that no compelling state interest existed to justify the discrimination between Ohio's students that existed as a result of implementation of the plan.[195] In addition, the trial court examined the Foundation Program under the traditional rational basis test, and concluded that the plan failed under this less stringent test as well.[196] The court rejected the defendant's rationale of the Foundation Program's disparities as being necessary to maintain the desired state objective of local control of the schools.[197] If found this rationale insufficient to satisfy either the compelling state interest or the rational basis tests for justifying the gross inequality of educational opportunity in Ohio.[198] As precedent, the trial court relied on *Serrano v. Priest's*[199] holding that a school financing system is violative of equal protection guarantees if it "makes the quality of a child's education a function of the wealth of his parents or his neighbors,"[200] and that of *Horton v. Meskill*[201] that the desire for local control of education is not a compelling state interest justifying substantial inequalities in educational opportunities among a state's students.[202]

In addition to the general Foundation Program, the Save Harmless Provisions of Ohio's financing plan as well as its mandate provisions

[193] 408 N.Y.S.2d at 643-44.
[194] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip. op. at 381; 10 Ohio Op. 3d at 36-37.
[195] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 378.
[196] *Id.*
[197] *Id.* at 379-80.
[198] *Id.*
[199] 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1977).
[200] *Id.* at 776, 557 P.2d at 957, 135 Cal. Rptr. at 373.
[201] 172 Conn. 615, 376 A.2d 359 (1977).
[202] *Id.* at 648-49, 376 A.2d at 374-75.

cere held violative of Ohio's equal protection clause. The Save Harmless Provisions assure that no district receives less basic state aid than it re-received during certain designated prior years, regardless of how many dollars that district receives under the present system in total state and local support and without regard to any factor of financial need in that school district,[203] and the mandate provisions "impose penalties upon districts for their inability to comply with statutory mandates concerning pupil/teacher ratios and the number of service personnel they employ."[204] Both were held violative of Ohio's Equal Protection Clause.

The court of appeals agreed with the trial court that education is a fundamental right under the Ohio Constitution, and applied strict scrutiny to the situation.[205] This appellate court concluded that no compelling state interest existed to justify interfering with the fundamental right of Ohio students to an education.[206] The court also rejected the interest in local control of education as a compelling state interest, stating:

> The constitutional responsibility to provide for education rests with the legislature, and we cannot perceive a compelling state interest in local control which in effect thwarts the legislature in the exercise of this responsibility. We believe that there are other methods of financing the public school system which will maintain the salutory features of local control without the disequalizing effects fostered by the present system. Moreover, real property taxation seems a permissible ingredient of the funding system, as long as the state does not overrely upon it. The guiding constitutional principle must be equality of educational opportunity for all of the children of Ohio rather than utilization of well intended but nevertheless miscarrying formulae such as the wealth neutral plan or the "reward for effort" program.[207]

Thus, the court of appeals, while not indicating what specific form an acceptable finance program should take, did indicate possible guidelines and principles for the legislature to consider and follow in formulating a new program.

In view of the precedent cited, Ohio's equal protection clause seems to be a sound basis for overruling Ohio's present Foundation Program. While some states have refused to interpret their equal protection clauses differently from the United States Supreme Court's interpretation of the corresponding provision in the fourteenth amendment, New York's *Levittown* case seems to have resolved this conflict. While New York followed

[203] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 383.
[204] *Id.* at 381.
[205] 10 Ohio Op. 3d at 35-36.
[206] *Id.* at 36.
[207] *Id.*

the *Roderiguez* holding that education is not a fundamental right and thus not subject to strict judicial scrutiny, the Nassau County Supreme Court has held the New York public school financing program violative of the state equal protection clause by applying a rational basis test. The funding program in New York, as previously mentioned, is very similar to Ohio's program. In addition, both plans were initiated with the purpose of providing state aid to equalize the varying financial capabilities of the state's school districts, which in turn would equalize the educational opportunity for all students. In operation, unfortunately, both systems failed to achieve their purposes, resulting instead in large disparities in per pupil expenditure. The programs place great reliance on property values which vary greatly from district to district, and additionally fail to consider the unique characteristics and financial needs of each district, including the differing cost of living levels, the unique educational needs of students in each district, the variance in the quality of facilities and equipment located in each district, and the differing needs for transportation. The case is similar to the *Walters* case in another way. Both cases stress the extreme disparity of educational opportunity that exists between students in large cities and students in rural or suburban areas by concentrating attention on the unique problems and characteristics of the urban school districts.

Thus, even if the Ohio Supreme Court chooses to interpret Ohio's equal protection clause in compliance with *Rodriguez,* thereby terminating implementation of the stricter compelling state interest requirement, the court can still apply the rational basis test to Ohio's Foundation Program. Also it is interesting to keep in mind that under application of this lesser standard by the trial court, Ohio's Foundation Program failed to withstand the equal protection challenges.

Therefore, a challenge to Ohio's public school financing program under the equal protection provisions of the Ohio Constitution appears to be sound.

WHAT IS WRONG WITH OHIO'S PLAN?

Regardless of the Ohio Supreme Court's decision in *Board of Education of Cincinnati v. Walters,*[208] the Ohio schools are not in a sound financial position. Some school districts have been forced to close, some have been saved only by applying to the State's emergency loan fund, and others fail to meet the State's own minimum standards for educational services. Although the present system of school financing was implemented for the purpose of reducing wealth disparities between districts, the system as presently operating has not worked.

[208] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op.

The primary problem in Ohio is that the level of funding is inadequate. The guaranteed yield under Ohio's present program is simply not high enough to provide an adequate education. Therefore, this level of funding is not sufficient at the present time regardless of the lack of provision in the formula for adjusting for inflation. Regardless of the formula chosen for expending State aid, there are simply not enough dollars put into the system to provide the quantity and quality of educational services required. Expert testimony in *Walters* indicated that between $1,589 and $1,941 per pupil was needed in 1976 to provide the quality and quantity of education necessary for a high quality of education throughout the state.[209] Even when fully funded, the current system will only guarantee $960 per pupil to those districts taxing at twenty mills, and another $420 where the voters of the district agree to tax themselves an additional ten mills. The "[e]qualization of the state's resources which are now committed to financing public elementary and secondary education would result only in the equalization of poverty."[210]

Although proponents of district power equalizing (DPE) have considered voter willingness a proper element in determining the quality of education, the Hamilton County Common Pleas Court agreed with critics of DPE that voter willingness cannot control the quality of education within this state.[211] Whether this decision is upheld by the state supreme court or not, if all of the school districts in Ohio are to provide a high quality of education, adequate funds must be provided without dependency upon voter approval. The "reward for effort provision" is simply inequitable to the children involved as an element for determining basic state aid.

Third, the present system does not provide for spiraling inflationary costs. The present property tax requirement of freezing local revenues has the opposite effect upon a school district's ability to increase its revenues along with inflation. Furthermore, the state program itself does not adjust for inflationary costs.

Although taxpayer pressures to provide tax relief have resulted in the local property tax-freeze provisions, such provisions have left school districts in the position of needing greater revenues due to the rising costs of business without any means of obtaining such increases, and without additional voter approval of tax levy increases previously voted upon.

Fourth, Ohio's program does not consider the differing needs of children throughout the State in providing its present distribution program.

[209] *Id.* at 307-10.
[210] *Id.* at 303.
[211] *Id.*

School districts vary as to the proportion of disadvantaged and handicapped students, those needing vocational training, and transportation factors.

Fifth, the "Save Harmless Guarantees,"[212] although politically desirable for preserving wealthy district support of the financing system, have resulted in continuing disparities between wealthy and poor districts. Funds needed to equalize poor districts have continued to be provided to wealthy districts which admittedly could operate adequate school systems without any State aid at all.

Sixth, the Formula does not contain provisions to adjust for differences in operating costs throughout the state. As a result, high cost districts have not been able to provide the same services as a lower cost district at the same level of revenue attainment.

Seventh, the present financial system neither guarantees the same yield as that obtained by the wealthiest district at a given rate, nor provides for recapture provisions. Without either of these provisions, the districts cannot provide equal resources at the same millage rate. Although absolute equality has not been designated a goal of Ohio's school finance system, the present system allows some Ohio school children to receive more than five times the financial resources as others within the state.[213] The ten districts with the greatest property wealth per pupil can each raise more than $60 per pupil with each mill of property tax. The wealthiest district can raise $230 per pupil per mill. The ten poorest districts can raise less than $10 per pupil with each mill. The absence of a recapture provision perpetuates these disparities. Participation in the state system would have to be mandatory, or the wealthiest districts would opt out of the program since they would receive nothing from the State. Regardless of the manner in which recapture is structured in absolute terms or as a function of a maximum variable ratio, wealthy districts will balk at this type of provision.

Eighth, the adjustment provisions penalize districts which are unable or refuse to provide sufficient classroom teachers and educational service personnel.

Ninth, no consideration has been given to personal income of the residents residing in the district. Such consideration is necessary to ascertain whether the districts has high income residents who can afford high millage rates or low income residents who need some type of property tax relief.

---

[212] New York's statute also contains Save Harmless provisions which were declared unconstitutional in Board of Educ. of Levittown v. Nyquist, 408 N.Y.S.2d 606 (1978).
[213] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op.

Tenth, property tax inequities in administration, tax-freeze laws, and lack of coordination with income exist. If the property tax is to be retained as a means of financing the schools, the inadequacies in administration, the tax-freeze provisions, and the lack of coordination with income must be eliminated.

HOW CAN OHIO SOLVE ITS FINANCIAL PROBLEMS?

A. *Other States' Solutions*

Recent studies indicate that it is not the form which the state plan takes, but the infusion of additional dollars into the system which controls the reduction of disparities between school districts within a state.[214] Quoting one study:

> The States used a variety of mechanisms, and no one formula can be identified as a preferred or more effective vehicle for reform. Although the presence of rigid rate or levy ceilings appeared to be somewhat associated with reduced education disparities, it is *equally clear that in most states* a more important factor contributing to meaningful reform was the *commitment of additional resources for education*. Without additional funds, any reform other than resource distribution seems to have been virtually impossible.[215]

The states which are generally considered reform states[216] have adopted a variety of programs some of which focus upon providing property tax relief, some with equalizing wealth disparities within the districts, others focus primary emphasis upon recognizing individual needs of the districts, and others have simply increased the states' share.

Although leading reformers across the nation have advocated full state funding programs, other than Hawaii, no state has gone this far in implementing its state aid program.

Full state funding would satisfy even the strictest of constitutional standards whether "uniformity" or "thorough and efficient," as stated in Ohio's Constitution.[217]

The New Jersey Constitution mandates a "thorough and efficient" system of free public schools, just as does that of Ohio. Following the court's decision in *Robinson v. Cahill*,[218] the state enacted a Public School

---

[214] *See School Finance Reform, supra* note 91.
[215] *Id.* at 77.
[216] A. ODDEN, J. AUGENBLICK & P. VINCENT, SCHOOL FINANCE REFORM IN THE STATE: AN OVERVIEW OF LEGISLATIVE ACTIONS, JUDICIAL DECISIONS, AND PUBLIC POLICY RESEARCH (1976).
[217] *See* U.S. OFFICE OF HEALTH, EDUCATION AND WELFARE, *supra* note 86, at 6-7 for categorization of state constitutional requirements.
[218] 62 N.J. 473, 303 A.2d 273 (1973).

Education Act of 1975.[219] Although the new law which essentially involves a guaranteed equalized value per pupil contains extensive Save Harmless Provisions, cost factors were introduced which provide additional aid guarantees to special needs pupil populations; spending limits were introduced; and most importantly, specific goals and standards for meeting the thorough and efficient clause were legislatively defined. The Legislature established goals and standards as well as guidelines within which to operate.[220] Furthermore, the state provided for a periodic review and update of state goals and standards.[221]

Minnesota enacted legislation which raised the foundation support to a level approximately equal to the statewide average pupil expenditure.[222] This plan provided for save harmless provisions, unlimited leeway options for raising revenue, and additional weightings provided for each Aid to Families of Dependent Children (AFDC) pupil. Data collected in one study indicate that "high wealth districts were the principal gainers in school resources."[223] One offered explanation was that central city districts which have a larger number of AFDC pupils are also high property wealth districts.[224]

Florida's education financing program has shown progress towards equalization.[225] The legislative purpose was "to guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his/her educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors."[226] Pupil weights, locational features, and a lid on the amount of leeway dollars which can be raised locally are all characteristics of Florida's finance program.

Another state reducing educational disparities is New Mexico.[227] Distributions are made to local school districts in three parts: a state equalizing guarantee distribution, a transportation distribution, and a supplemental distribution. Optional local leeway levies are not allowed. The state's equalization guarantee distribution is the "[a]mount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues . . ., is at least equal to

---

219 N.J. STAT. ANN. § 18 A:7a (West Supp. 1978).
220 *Id.* at § 18 A:7a-4.
221 *Id.* at § 18 A:7a-7.
222 MINN. STAT. ANN. § 124.212 (West 1979).
223 *School Finance Reform, supra* note 91, at 91.
224 *Id.*
225 *Id.* at 81.
226 FLA. STAT. ANN. § 236.012 (West Supp. 1979).
227 N.M. STAT. ANN. § 22-8-1 (1978).

the school district's program cost."[228] The result is that New Mexico's program has helped the lowest wealth districts.[229]

Prior to formulating a new program, it is interesting to note and important to keep in mind, how other state courts have reacted to their various new programs. For instance, Wisconsin enacted a new school finance program with a district power equalization factor based on the property value of each school district and containing a negative-aid provision, whereby the districts in which per pupil property value was greater than the guaranteed standard set by the state were required to pay the excess property tax into a state general fund, and this in turn was to be distributed to other school districts.[230] The purpose of the negative-aid provision was to overcome the disparity in property value among districts. However, in *Buse v. Smith*,[231] the Wisconsin Supreme Court held the negative-aid provisions to be in violation of another Wisconsin constitutional provision, the uniform taxation provision. Since the means which were chosen to achieve the fundamental state right of an equal educational opportunity were themselves violative of another state constitutional provision, the financing program was held unconstitutional. Thus, it may be necessary to draft any recapture provisions of a funding program carefully in consideration of any state uniformity of taxation clauses. While states differ in their interpretations of these uniformity clauses, "unlike Wisconsin, most courts . . . consider that the uniformity rule applies only to the raising of taxes and not to the distribution of the proceeds."[232]

Another challenge to a new state funding program arose in Kansas through the case of *Knowles v. Smith*.[233] The new funding program, which was based on a district power equalizing formula, resulted in discrimination as to various districts due to the restricted definition the funding program applied to the term "district wealth." The program was held invalid by a trial court because the program violated the Equal Protection Clause of the fourteenth amendment, Section 1 of the Kansas Bill of Rights, and two state provisions for uniform taxation and the uniform operation of state laws. No rational basis was found for the classifications. By the time the case reached the Kansas Supreme Court, the Legislature had amended the program and the case was remanded for review once again at the trial level.

These cases illustrate the need for new funding programs to be care-

[228] *School Finance Reform, supra* note 91, at 94.
[229] *Id.*
[230] WIS. STAT. ANN. §§ 121.07, 121.08 (West 1973).
[231] 74 Wis. 2d 550, 247 N.W.2d 141 (1976).
[232] Levin, *Current Trends in School Finance Reform Litigation*: A Commentary, 1977 DUKE L.J. 1099, 1132 (1977).
[233] 219 Kan. 271, 547 P.2d 699 (1976).

fully drafted and implemented in order to avoid additional constitutional challenges to these programs which would cause not only substantial legal expense, but significant time delays and setbacks for the state's educational system and for the students as well.

B. *Ohio's Solution — More Money.*

Although full state funding would assure equality throughout the state, such would require either a statewide property tax, or at least the doubling of the income or sales taxes within the state.[234] Those in the legislature who favor traditional ideas of local control would strongly oppose such a plan, and such a plan would most likely be unpopular. Since at this point such has not been constitutionally required, the likelihood of passage of this type of provision in Ohio appears remote. Although the Ohio School Boards Association, the Education Review Committee of the Ohio General Assembly, the Governor[235] and the State Board of Education have all made recommendations for legislative consideration, none have suggested full state funding. Numerous commentators, however, have recognized full state funding as the best method for the future, and have pointed out that local control and full state funding are not inconsistent.[236] Full state financing requires that revenue collection occur at the state level, and distribution to local school districts at the state level. It does not require control over day to day operations at the state level.

If the concept of full state funding is temporarily rejected, the State is still plagued with the problem of how to finance the schools, and how to eliminate the inequities of the present equal yield program.

The legislature must first define the goals and standards of equality the State must meet in order to provide a thorough and efficient system. The question is whether there are workable solutions which will solve the constitutional problem, as well as assure that every school district will meet the State Board of Education's own minimum requirements with a financing program composed of state and local funds. If a combination of state and local funds is to be used, Ohio must obtain funds to adequately fund the system so that each pupil in every district can be assured that sufficient dollars will be spent on his/her behalf to allow the district to meet the Board of Education's own minimum requirements of the legislative set standards. Regardless of the form taken to distribute state aid, additional state revenues must be raised. Several possibilities are available including raising the state income tax,[237] the sales tax, introducing a value

[234] ADEQUATE & EQUITABLE FUNDING, *supra* note 135, at 3.
[235] *See* GOVERNOR J. RHODES, *supra* note 102.
[236] A. ODDEN, *supra* note 216, at 52; *see also Alternative Reforms, supra* note 91.
[237] Board of Educ. of Cincinnati v. Walter, No. A 7602725, slip op. at 353.

added tax, or establishing a public school tax fund as suggested by a committee of the Ohio School Boards Association.[238] This latter suggestion would involve commercial, industrial, and public utility property being taxed by the State, rather than by the local district in which it is located.

Reforms needed in the revenue raising area in regard to the property tax area include "circuit breaker" provisions to give property tax relief where needed,[239] revamping the property tax collection system,[240] and repeal of the property tax-freeze provisions.[241]

On the distribution side, Ohio must eliminate the "reward for effort" provisions of the current program. Regardless of whether the system operates as a foundation plan, an equal yield plan, or a per pupil allocation plan,[242] each district must be guaranteed adequate funds if it applies the specific tax rate. Receipt of State funds, however, should not depend on local tax effort.[243] Additionally, each district should receive the same State aid to which it would be otherwise entitled if it were levying the required millage. The adjustment provisions which penalize a district for failure to comply with certain personnel standards should also be eliminated. The effects of inflation, costs of doing business differentials, and the differing needs of children in the district must be accounted for by the distribution system. Finally, Save Harmless Guarantees should be eliminated so that districts not requiring State aid are not receiving it.

In conclusion, the future of Ohio's public school system depends not on what constitutional challenges the present financing system can meet, but on the Ohio legislature's realization that the present system is inequitable. Bold legislative action is required to solve the school financial problems. Only by providing additional funds and ignoring regional priorities can the finance program provide the type of educational objectives that all the students of this state deserve.[244]

LINDA L. ROBISON
AND
LOIS YODER

[238] ADEQUATE & EQUITABLE FUNDING, *supra* note 135, at 6. *See also* E. Strong, *A New Idea for School Financing*, BUCKEYE FARM NEWS 36 (Jan. 1978).
[239] GOVERNOR J. RHODES, *supra* note 102, at 2.
[240] *See, e.g.*, OHIO FAIR TAX INITIATIVE PROPOSAL (materials received from Ohio Rep. John E. Johnson) which would create a personal income tax credit for taxes on real property exceeding 2.5% of income.
[241] *See* ADEQUATE & EQUITABLE FUNDING, *supra* note 135.
[242] OHIO STATE BOARD OF EDUCATION, *supra* note 131, at 2.
[243] Proposed Senate Bill No. 59 retains this provision which was declared unconstitutional by the lower court in the slip opinion of *Board of Education of Cincinnati.*
[244] While this Comment was at the press, the Ohio Supreme Court upheld the constitutionality of the statutory system established by the General Assembly for the financing of public education. *See* Board of Education of Cincinnati v. Walter, 58 Ohio St. 2d 368, 390 N.E.2d 813 (1979).