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THE INFLUENCE OF RACE IN SCHOOL FINANCE REFORM

James E. Ryan*

It would be an exaggeration to say that school finance reform is all about race, but largely in the same way that it is an exaggeration to say that welfare reform is all about race. Like welfare reform, the controversy generated by school finance litigation and reform has, on the surface, little to do with race. Battles over school funding, which have been waged in nearly forty state supreme courts and at least as many state legislatures, instead appear to be over such issues as the redistribution of resources, retaining local control over education, and the efficacy of increased expenditures.¹ But just as race seems to be an influential undercurrent in welfare policy and debate, so too does it appear to influence school finance litigation and reform. Whereas the role of race in welfare reform has been well canvassed,² the influence of race in school finance litigation and reform is virtually unexamined.

Indeed, the only direct evidence bearing on the topic consists of two studies of popular attitudes toward school finance reform, one conducted by Professor Douglas Reed in New Jersey and the other by Professor Kent Tedin in Texas.³ Both New Jersey and Texas have witnessed long court battles over school finance.⁴ The Reed and Tedin studies indicated that white citizens in both states inaccurately

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1. See, e.g., *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973); William A. Fischel, *Did Serrano Cause Proposition 13?*, 42 NAT'L TAX J. 465 (1989) [hereinafter Fischel, *Did Serrano*]; William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & POL. 607 (1996) [hereinafter Fischel, *How Serrano*]; Eric A. Hanushek, *When School Finance "Reform" May Not Be Good Policy*, 28 HARV. J. ON LEGIS. 423 (1991).

2. See, e.g., EDWARD D. BERKOWITZ, *AMERICA'S WELFARE STATE* 100-11 (1991); MICHAEL K. BROWN, *RACE, MONEY, AND THE AMERICAN WELFARE STATE* 1-29 (1999); JAMES T. PATTERSON, *AMERICA'S STRUGGLE AGAINST POVERTY 1900-1994*, at 134, 211-23 (3d ed. 1994).

3. See Douglas S. Reed, *Twenty-Five Years After Rodriguez: School Finance Litigation and the Impact of the New Judicial Federalism*, 32 L. & SOC'Y REV. 175, 209 (1998); Kent L. Tedin, *Self-Interest, Symbolic Values, and the Financial Equalization of the Public Schools*, 56 J. POL. 628 (1994).

4. See *infra* Section III.A (discussing school finance litigation in New Jersey and Texas).

perceived school finance reform as primarily benefiting blacks.⁵ Reed's study also indicated that nonwhites tended to support school finance reform more than whites,⁶ and Tedin's study revealed that the level of support among whites depended as much upon racial attitudes as it did upon self-interest — e.g., some whites whose school districts stood to gain from school finance reform opposed such reform for reasons apparently having to do with their attitudes toward blacks.⁷

The Reed study, which involved surveying 800 New Jersey residents, and the Tedin study, which involved surveying 1,000 Texas residents, are obviously fairly limited and do not “prove” much of anything. Nonetheless, the studies raise and offer some support for the hypothesis that race plays a significant role in school finance reform. I believe that hypothesis is true, that it is not well understood, and that it carries enormously important implications for school finance reform in particular and education reform in general. Indeed, if I am correct and race does play an influential role in school finance reform, school finance scholars and practitioners should begin paying closer attention than they have to the dynamics of race relations and school desegregation; historians and legal scholars should recognize with added confidence the wisdom of the NAACP's desegregation strategy; and civil rights attorneys, courts, critical race theorists, and conservative critics of desegregation should hesitate before abandoning the goal of desegregation.

I intend to explore the influence of race in school finance reform not by following the methodologies of Tedin and Reed and searching for further evidence of popular attitudes, but by surveying the history and success of minority districts in school finance litigation. Specifically, this Article examines how predominantly minority districts have fared when they have been involved in school finance litigation and how legislatures have responded to successful school finance challenges. Based on my review of the pertinent data, it appears that minority school districts — particularly urban minority districts — do not fare as well as white districts in school finance litigation. More precisely, minority districts do not win school finance cases nearly as often as white districts do, and in the few states where minority districts have successfully challenged school finance schemes, they have encountered legislative recalcitrance that exceeds, in both intensity and duration, the legislative resistance that successful white districts have faced.⁸ As this and additional evidence suggests, there are strong reasons to believe that the racial composition of the school district plays

5. See Reed, *supra* note 3, at 211-12; Tedin, *supra* note 3, at 634 n.18, 639 n.27.

6. See Reed, *supra* note 3, at 212.

7. See Tedin, *supra* note 3, at 638, 646-47.

8. See discussion *infra* Parts II & III.

an influential role in determining its success or failure in school finance litigation and legislative reform.

As already suggested, this evidence is significant for academic, historical, and practical reasons. First, the evidence offers further proof that one must understand the dynamics of race relations and school desegregation in order to understand fully the limits and dynamics of school finance reform.⁹ Second, the evidence presented here suggests that the principle underlying the NAACP's desegregation strategy — namely, that green follows white — appears to have been a sound one, as the somewhat precarious financial situations facing predominantly minority districts stand in contrast to the relatively sound funding received by integrated districts. Lastly, the evidence is relevant to the current debate about returning to de facto segregated neighborhood schools and/or consciously creating single-race schools for minorities. There is waning support these days for continuing efforts to integrate schools, while there is growing support for educational reforms directed at improving the education provided within racially isolated schools.¹⁰ What has been missing from this debate is consideration of the financial consequences of returning to de facto segregated schools or pursuing single-race schools; this Article suggests that the consequences could be significant and deserve to be part of the contemporary debate about school desegregation.

The Article proceeds in four Parts. Part I examines the current expenditure levels of minority districts in order to ascertain whether these districts are underfunded relative to other districts within their respective states. It turns out that, contrary to conventional wisdom, most minority districts are not relatively underfunded, but they are likely to become so when they lose funds that have been directed to them through court-ordered desegregation decrees. For those minority districts already funded below average, as well as for those that will soon fall into that category, school finance reform is of obvious importance. Parts II and III accordingly assess the performance of minority districts in school finance litigation and reform. In Part II, I examine how predominantly minority districts have fared when they have been involved in school finance litigation, and in Part III, I examine legislative responses to court decisions. Based on this examination, I conclude that race does appear to play an influential role in school finance litigation and legislative reform, and in Part IV, I discuss in some detail the academic, historical, and practical implications of this conclusion.

9. I develop this thesis in greater detail in a separate article. See James E. Ryan, *Schools, Race, and Money*, 109 *YALE L.J.* 249, 272-96 (1999).

10. See *id.* at 253-54.

A brief caveat is in order before proceeding. It seems clear from the evidence examined that minority districts — particularly urban minority districts — do not fare well in school finance litigation, and it seems reasonable to conclude that race is playing an influential role in determining outcomes. I would be the first to acknowledge, however, the limitations of my approach: there are a number of factors not related to race that cause plaintiffs to lose in court and that cause legislators to respond quickly or slowly to court orders, and I cannot pretend to have controlled for those numerous factors. The brush I am using is too broad. This Article thus represents a first look at the evidence and an invitation to those with the appropriate analytical skills to take a closer inspection of the data. In the meantime, however, the patterns noted below should enter the conversation about the future of school finance reform, the dismantling of desegregation decrees, and the financial implications of returning to or promoting majority-minority schools.

I. MYTHS AND REALITIES REGARDING RACE AND SCHOOL FUNDING

Most black students — roughly two-thirds — attend elementary and secondary school in central city districts. Most central city districts, in turn, are populated primarily by minority students — generally African-American and Hispanic. These students are also disproportionately poor, and they generally perform below average on standardized tests.¹¹ Poor students have greater educational needs and require more resources to educate than do affluent students.¹² Schools dominated by poor students will therefore usually be more expensive to operate than schools populated by middle- and upper-income students. In addition, because of generally higher costs in urban areas, as opposed to rural or suburban areas, inner city schools are typically more expensive to operate.¹³ The greater needs of poor children, coupled with the greater costs of operating urban schools, virtually guarantee that urban schools will have to spend more than average simply to provide average educational opportunities.

Although there is general agreement regarding the higher costs of educating poor children, particularly poor children in urban districts,

11. *See id.* at 272-75 (discussing data regarding urban schools).

12. *See, e.g.,* JEAN ANYON, *GHETTO SCHOOLING 6-7* (1997); WAYNE RIDDLE & LIANE WHITE, *PUBLIC SCHOOL EXPENDITURE DISPARITIES*, CONG. RES. SERV. REP. No. 96-51 EPW, at 4, 24 (1995). Indeed, that poor students require additional resources is the premise of Title I, a federal program ostensibly designed to provide financial assistance to schools educating impoverished students. *See* 20 U.S.C. § 6301 (1994).

13. *See* NATIONAL CTR. FOR EDUC. STATISTICS, *ISSUE BRIEF IB-2-96*, at 4 (Dec. 1996); *see also* *Abbott v. Burke*, 693 A.2d 417, 434 (N.J. 1997) (“*Abbott IV*”).

there is much discord concerning the relationship between expenditures and achievement. An intense debate is raging within the education policy world regarding the extent to which we can expect resources to improve the academic achievement of urban minority students.¹⁴ For purposes of this Article, I would like to put this debate to one side and assume that resources will help these students. The question that I would like to address instead is the likelihood that students in predominantly minority districts will receive resources sufficient to provide an adequate education.¹⁵ A natural starting point for this inquiry is an examination of current expenditure levels in predominantly minority districts.

It is easy to imagine, perhaps too easy, that predominantly minority schools are also the most poorly funded. This is the impression left by Jonathan Kozol's *Savage Inequalities*, a well-known and searing — but largely anecdotal — account of high poverty, urban minority schools.¹⁶ And the “fact” of underfunded minority schools is casually reported by commentators, often without citation or serious study.¹⁷ The reality, however, is more complicated. In fact, it is generally not true that predominantly minority districts are “underfunded,” if one defines that term in relation to the statewide average.

At the same time, many of the minority districts that are spending over the statewide average are doing so as a result of desegregation funds, typically *Milliken II* funds for compensatory and remedial pro-

14. See Ryan, *supra* note 9, at 291-92 (discussing the debate regarding the extent to which spending and achievement are related — i.e., the extent to which “money matters”).

15. By “resources sufficient to provide an adequate education,” I do not mean anything more precise than the level of resources one could reasonably expect, if spent well, to cover the costs of providing an education that would prepare most students to enter the work force or go on to higher education. One of the problems that plagues school finance reform, and by extension this Article, is that no one really knows the exact level of resources necessary to provide an adequate education. The best one can do is to compare spending and results: if a particular school spends X amount of money per pupil and is achieving good results (e.g., most students perform adequately or better on standardized tests, go on to college, or find gainful employment after high school), that spending level can be used as a benchmark for schools populated by a similar group of students. As a rough benchmark, I use statewide average expenditures. Although it is reasonable to expect that urban schools will need to spend more than average in order to produce average results, the statewide average is a decent starting point for assessing the financial circumstances of minority districts.

16. See JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* 112-13 (1991).

17. See, e.g., Erwin Chemerinsky, *Lost Opportunity: The Burger Court and the Failure to Achieve Equal Educational Opportunity*, 45 *MERCER L. REV.* 999, 1002 (1994) (citing Roberta L. Steel, Note, *All Things Not Being Equal: The Case for Race Separate Schools*, 43 *CASE W. RES. L. REV.* 591, 620 (1993)); see also *id.* at 1002 & nn.14-16 (citing figures from a student law review note and Kozol's *Savage Inequalities* as demonstrating that “the reality is that far more is spent on the average white student's education than on the average black student's”); Martha Minow, *School Finance: Does Money Matter?*, 28 *HARV. J. ON LEGIS.* 395, 399 (1991).

grams.¹⁸ A comparison of predominantly minority districts spending over the statewide average with those spending below that average bears out this hypothesis, although there are some exceptions. When desegregation funding is terminated, as is occurring in states across the country, expenditure levels for predominantly minority districts will certainly fall.¹⁹ Thus, while the perception that minority schools are underfunded may not be accurate now, it may be closer to reality in the near future.

A. Data and Methodology

Before describing the data regarding the racial composition of school districts and their expenditure levels, it is necessary to describe and justify the measure used here as a benchmark. Because of the varied ways in which equity in school funding can be measured, inequitable school funding is often in the eye of the beholder. The most common baseline for measurement is horizontal, intrastate equity, which simply examines how expenditures per pupil vary among districts within the same state. Although a useful starting point, the shortcomings of this measurement are obvious. Left out of consideration are the differences in student needs and in the costs of providing similar services, two factors that can substantially affect the purchasing power of an education dollar. That a rural district and an urban district have the same funding per pupil may not be equitable, for example, if it costs more to provide the same services in urban areas and/or if the urban district has students with more expensive needs.²⁰

18. In *Milliken II*, the Court held that compensatory and remedial programs can be included as part of a court-ordered desegregation decree, and that states can be ordered to contribute to the funding of such programs. See *Milliken v. Bradley*, 433 U.S. 267 (1977).

19. See *infra* notes 50-55 and accompanying text (discussing the termination of desegregation funding).

20. Just as focusing on horizontal equity has some shortcomings, so too does focusing solely on intrastate disparities and ignoring interstate disparities. Interstate disparities can be dramatic. In the 1994-95 school year, for example, average per-pupil spending varied from a low of \$3,431 in Utah to a high of \$9,136 in New Jersey. See RIDDLE & WHITE, *supra* note 12, at 19. (In a classroom of 25 students, this \$5,700 disparity amounts to \$142,500 per class.) The disparities between the poorest districts of one state and the wealthiest of another are of an even higher magnitude, approaching and sometimes exceeding \$10,000 per pupil. See, e.g., HOUSE COMM. ON EDUC. & LABOR, 102D CONG., REPORT ON SHORTCHANGING CHILDREN: THE IMPACT OF FISCAL INEQUITY ON THE EDUCATION OF STUDENTS AT RISK 19-20 (Comm. Print 1991) (prepared by William L. Taylor & Dianne M. Piche) [hereinafter SHORTCHANGING CHILDREN] (reporting that the lowest spending district in Mississippi spent \$1,324 per pupil in 1986-87, while in the same year two of the highest spending districts in New York spent \$11,752 and \$10,544 per pupil).

I will not focus on interstate disparities primarily for practical reasons: school finance reform has traditionally been a state-by-state effort, and there appears little current prospect for increased federal involvement in encouraging or requiring interstate equality. The closest thing to federal involvement is a provision in the 1994 Improving America's Schools Act, Pub. L. No. 103-802, ("IASA") that authorizes a funding incentive to encourage states to equalize their own school finance schemes. Although this provision could potentially help

I rely for discussion and analysis primarily on expenditure figures for seventy-four urban districts, contained in a recent special edition of *Education Week*, which focused on the status of urban schools.²¹ These seventy-four districts are a representative sample of urban districts across the country and thus include at least one urban district from each state, with the exception of the handful of states (such as Montana and Maine) that are overwhelmingly rural. The expenditure figures reported in the compilation are weighted to account for differences in cost of living and in the educational needs of the students in the district.²² This weighting of expenditures provides a more accurate picture of the actual purchasing power of an educational dollar and thus allows for a more realistic comparison of districts.

I compare these weighted per-pupil expenditures against the state average expenditure, in an effort to assess whether one can fairly conclude that urban minority districts are underfunded. To be sure, this is not the only possible basis of comparison. One could compare spending in urban districts to that in surrounding suburbs, a comparison that typically reveals fairly large disparities in favor of the suburban districts and one that forms the basis of a number of school finance cases.²³ Although these urban-suburban disparities are discussed, using statewide averages as the benchmark for comparison seems the best way to control for some differences in expenditures that are not likely linked to race. If affluent suburban districts, as is usually the case, are spending well above both urban minority districts and the state average, they are also spending at levels above those of other white suburban and rural districts that are less affluent. By contrast, if the average school district in the state is spending above urban

eradicate interstate disparities, the unlikelihood that the federal government will play a large role in addressing those disparities is perhaps best revealed by the fact that the provision in the IASA has not been funded. See LIANE WHITE, *EDUCATION FINANCE INCENTIVE GRANT UNDER ESEA TITLE I*, CONG. RES. SERV. REP. No. 95-963 EPW (1995). It is nonetheless instructive to keep the interstate disparities in mind, if only to provide some perspective on the scope and magnitude of intrastate disparities.

21. See *Quality Counts*, EDUC. WK., Jan. 8, 1998, at 56.

22. More and more researchers in the field are making such adjustments to expenditure levels in an effort to capture the actual "buying power" of educational funds within different kinds of districts. Although it has long been recognized that cost and need adjustments should be made in assessing equity in school financing, see, e.g., ROBERT BERNE & LEANNA STIEFEL, *THE MEASUREMENT OF EQUITY IN SCHOOL FINANCE* (1984), the approach used to weigh expenditures is still being refined. See, e.g., NATIONAL CTR. FOR EDUC. STATISTICS, *supra* note 13, at 3 (" 'Buying power' is a new concept currently under development by the education research community. Actual dollars are expressed to reflect differences in the relative costs of providing educational services," including differences in costs of living and differences in the educational needs of students.). The basic approach is to count students with special needs and students living in urban districts as a fraction above one student. See *id.*

23. See, e.g., George C. Galster, *Polarization, Place, and Race*, 71 N.C. L. REV. 1421, 1441 (1993) (noting that, as "[c]ompared to suburban districts, the forty-seven largest urban districts spend \$873 less per pupil").

minority districts, then it seems more likely that race is a plausible explanation of the disparity.

B. *Myths*

The central myth that must be addressed (though not completely debunked) is that predominantly minority districts are generally underfunded as compared to predominantly or exclusively white districts.²⁴ This common misperception likely stems from the historical reality that, prior to and for a period after *Brown*, minority schools typically received fewer state funds than white schools.²⁵ But this no longer appears to be true. Instead, there is a great deal of variation both across and within states. Some urban, heavily minority districts spend well above the state average, whereas others — sometimes within the same state — spend below the state average. On balance, it appears that minority districts are more likely than not to spend *above* the state average, even after adjusting for the higher costs of providing educational services in urban areas.

Specifically, among the seventy-four urban districts examined, forty-five spent above the statewide average in 1993-94, the school year for which the figures were compiled. Of these forty-five districts, nine were majority white, and thirty-six were majority non-white. Twenty-eight of the urban districts spent below the statewide average. Of these twenty-eight, five were majority white, and twenty-three were majority non-white. Focusing solely on the minority districts reveals that thirty-six of fifty-nine predominantly minority districts (or 61%) in this sample spent above statewide averages.²⁶

Some of these thirty-six districts, moreover, spent well above the statewide average: Little Rock, Phoenix, Atlanta, Kansas City (MO), Pittsburgh, and Richmond all spent more than \$1,000 per pupil above the state average. Conversely, some of the minority districts spending below the state average were quite near the average, with six (Sacramento, San Jose, Kansas City (KS), Clark County (NV), Fort Worth, and Norfolk) spending only \$100 or less per pupil below the statewide average.²⁷ Given that the figures have been adjusted to account for the higher costs of providing educational services in urban areas, it is

24. See, e.g., Theresa Glennon, *Race, Education, and the Construction of a Disabled Class*, 1995 WIS. L. REV. 1237, 1321 (1995) (asserting, without citation, that “predominantly African-American or minority school districts often receive significantly fewer financial resources”).

25. See, e.g., RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 88, 122, 134 (1975); John J. Donohue III et al., *Social Action, Private Choice and Philanthropy*, at 3-4 (Dec. 1997) (unpublished manuscript, on file with author).

26. For the figures in this paragraph, see *Quality Counts*, *supra* note 21, at 25-75.

27. See *id.* at 56-57, 62-63, 66-67.

safe to assume that actual expenditure levels in at least these six districts — and probably others — exceeded statewide averages.

Funding levels also do not appear to correlate in a linear way with the percentage of minority students in districts. It is not consistently true, in other words, that the greater the percentage of minority students, the less the funding levels.²⁸ In Virginia, for example, Richmond spends \$1100 per pupil above the state average and is 92% minority. Norfolk, which is only 67% minority, spends \$300 below the statewide average. In Florida, the school district of which Miami is a part is 85% minority and spends \$350 above the statewide average, as compared to the Broward County School District, which is 49% minority and spends only \$16 above the statewide average. There are counterexamples, to be sure. Compton, California, is 100% minority, for example, and spends \$250 below the statewide average, while San Diego is only 69% minority and spends \$450 above the statewide average.²⁹ But the fact that there is variation is enough to prove the point that funding levels, at least at the moment, do not consistently drop as the percentage of minority students rises.

This is not to deny that there is evidence that funding disparities within some states closely track the racial composition of districts. To understand the full picture, which unfortunately most closely resembles a Picasso, it is worth considering that as of 1991, overall intrastate disparities — measured by the coefficient of variation³⁰ — appeared “to be greatest in industrialized, high-population states with substantial minority populations.”³¹ These states, which include Illinois, New

28. In fact, a 1989-90 national study conducted by the National Center for Education Statistics found that, on average, districts with the highest percentage of minorities spent the most per pupil. See THOMAS B. PARRISH, ET AL., *DISPARITIES IN PUBLIC SCHOOL DISTRICT SPENDING 1989-90*, at 12 (National Ctr. for Educ. Statistics No. 95-300, 1995). These figures, although quite surprising at first, turn out not to be particularly instructive. The primary reason is that the figures do not account for different costs in urban districts. The same study adjusted the figures to reflect cost differentials and concluded that districts with the highest percentage of minorities spent the least, and districts with the lowest percentage of minority students spent the most. See *id.* at 13-14. In addition, the study found that total expenditures per student were higher in communities with higher socioeconomic status, as measured by the value of housing and by education attainment. See *id.* at 11-12.

29. For the figures cited in this paragraph, see *Quality Counts*, *supra* note 21, at 64-67; see also *SHORTCHANGING CHILDREN*, *supra* note 20, at 23-24 (reporting that in both Mississippi and Maryland, data reveal that the lowest-spending districts tend to have the highest concentrations of poor black students).

30. The coefficient of variation is the standard deviation from the mean expenditure divided by the mean. The standard deviation, in turn, is the average variation from the mean of a distribution of numbers. The coefficient of variation thus takes into account the expenditure levels of all districts within the state, and it records the standard deviation as a percentage of the mean. Thus, if the coefficient of variation is 30%, then the average variation from the mean is 30% of the mean. In plainer, bottom-line terms: the higher the coefficient of variation, the greater the disparity among districts in a particular state. For a helpful explanation, along with a sample illustration, see, e.g., RIDDLE & WHITE, *supra* note 12, at 5-6.

31. *SHORTCHANGING CHILDREN*, *supra* note 20, at 21.

Jersey, Michigan, New York, Ohio, Pennsylvania, and Texas, also have highly segregated schools.³² And within these states, the districts with the lowest expenditures often had the highest percentage of minority students, and those with the highest expenditures typically had the highest percentage of white students.³³ The disparities in these states, which exist most dramatically between urban and suburban districts, probably explain why urban districts were involved in school finance challenges in all of these states, a topic addressed below. For now, however, I only note this evidence to round out the picture and to acknowledge that using statewide averages as the relevant benchmark can sometimes mask significant disparities among minority and majority white districts.³⁴

C. Realities

What accounts for the surprising fact that most minority districts appear to be funded at a level above their respective state averages? One potential explanation is that race plays no role in school financing, and that predominantly minority districts fare well in the political process when it comes to capturing state educational funds. If this were true, the increasing segregation among school districts and the pursuit of single race schools would raise no serious financial implications. But this explanation, while it may hold true in a couple of states,³⁵ does not appear generally persuasive.³⁶

32. See *id.* at 21-22; see also Gary Orfield et al., *Deepening Segregation in American Public Schools* (Harvard Project on School Desegregation, April 5, 1997) (listing states according to degree of segregation among districts). More recent data is consistent with the findings reported in 1991. As of 1995, for example, Illinois, Ohio, New York, and Michigan still reported some of the largest disparities among district expenditures. See RIDDLE & WHITE, *supra* note 12, at 10.

33. See SHORTCHANGING CHILDREN, *supra* note 20, at 22-23 (discussing court findings in New Jersey and Texas); see also William E. Camp et al., *Within-District Equity: Desegregation and Microeconomic Analysis*, in THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE 273 (Julie Underwood & Deborah A. Verstegen eds., 1990) (describing intradistrict spending disparities among black and white schools in Little Rock, St. Louis, and Los Angeles).

34. See, e.g., COUNCIL OF GREAT CITY SCHOOLS, NATIONAL URBAN EDUCATION GOALS: BASELINE INDICATORS, 1990-91 85 (1992) [hereinafter BASELINE INDICATORS] (reporting that, in 1990-91, the average per-pupil expenditure in the forty-seven largest urban school systems was \$5,200, compared to an average expenditure of \$6,073 in suburban schools and \$5,476 in rural schools).

35. The two states in which this explanation may be true are, oddly enough given their history, Virginia and Georgia. The school district in Richmond, Virginia, is 92% minority, and it spends \$1,100 per pupil over the state average. See *Quality Counts*, *supra* note 21, at 66-67. The district receives no desegregation money, and the state finance scheme was upheld, so the additional funding is not traceable to a court order. See *School Bd. of Richmond v. Baliles*, 829 F.2d 1308, 1314 (4th Cir. 1987) (rejecting claim for *Milliken II* funding); *Scott v. Virginia*, 443 S.E.2d 138 (Va. 1994) (upholding school finance scheme). Similarly, Atlanta is 93% minority, spends roughly \$1,500 per pupil over the state average, and receives no desegregation or any other court-ordered money. See *McDaniel v. Thomas*, 285 S.E.2d 156

Rather, for many districts, the explanation appears to lie in whether the district is receiving desegregation funding. Although I was unable to gather information for all seventy-four districts, the available evidence indicates that many predominantly minority districts with expenditure levels well above the statewide average receive money from the state or federal government for "desegregation" purposes. The state funds are typically part of *Milliken II* remedies, while the limited federal money comes from a federal program that provides financial support for magnet schools.³⁷ Districts such as Phoenix, Little Rock, Boston, Kansas City (Mo.), St. Louis, Cincinnati, Cleveland, and Los Angeles all receive desegregation funding, and all spend above their respective state averages.³⁸ The correlation is far from perfect, and there are some notable exceptions, such as Atlanta and Richmond, both of which spend a great deal over their respective state averages but neither of which receives desegregation funding.³⁹

(Ga. 1981) (upholding state finance scheme); BASELINE INDICATORS, *supra* note 34, at 81; *Quality Counts*, *supra* note 21, at 64, 66.

36. Another alternative explanation that cannot be completely ruled out, but which is also not facially persuasive, is that different property values and tax rates within these districts determine the different levels of funding. This explanation does not seem plausible, for several reasons. First, as a general matter, property values in central cities have been declining, particularly in the Northeast, as manufacturing and other businesses have left central cities. See Paul L. Tractenberg, *A Tale of Two States: A Comparative Study of School Finance and Educational Reform in California and New Jersey 8-9* (Dec. 5, 1997) (unpublished manuscript, on file with author). Yet some minority districts in the Northeast spend above the state average (Boston), whereas others in the Northeast spend below the state average (New York, Philadelphia). See *Quality Counts*, *supra* note 21, at 65-66. Second, and similarly, it is difficult to discern a pattern, geographical or otherwise, among the districts that would suggest property values are playing an important role — i.e., the districts on either side of the line come from all geographical regions and include cities of differing sizes. See *id.* Third, the possibility that cities receiving desegregation funding will be able to make up the loss of funds with increased property taxes seems slim, in light of the evidence indicating that tax rates in urban areas are already higher than state averages and that competing demands for social services in cities makes it difficult to raise additional resources for education. See MARK G. YUDOF ET AL., *EDUCATION POLICY AND THE LAW* 658 (3d ed. 1992); Tractenberg, *supra*, at 4-10.

37. See 20 U.S.C. § 3021 (1988).

38. See *Quality Counts*, *supra* note 21, at 64-67, 101 (Phoenix), 104 (Little Rock), 78-79 (Boston), 225 (Cleveland), 190-91 (Kansas City & St. Louis); BASELINE INDICATORS, *supra* note 34, at 81. For a number of the districts, I was able to gather information about desegregation funding from relevant education officials. See Telephone Interview with Mark Schrager, State Budget Office (June 29, 1998) (reporting that Los Angeles receives roughly \$400 million per year from the State to provide money for desegregation programs); Telephone Interview with John McDonough, State Board of Education (June 30, 1998) (reporting that Boston receives roughly \$5.5 million from the state for desegregation purposes); Telephone Interview with Jerry Klekamp, Cincinnati School District (June 30, 1998) (reporting that the State provides the Cincinnati School District roughly \$5 million annually for desegregation purposes); Telephone Interview with Richard Nielson, Director, Desegregation Program, Cleveland School District (July 7, 1998) (reporting that, as part of desegregation settlement, Cleveland will receive \$295 million from the State over a period of seven years).

39. See *Quality Counts*, *supra* note 21, at 66-67. Richmond appears to have benefited from a school finance formula that devotes additional aid to districts with impoverished stu-

The evidence nonetheless seems strong enough to discern a general trend, particularly when one examines the predominantly minority districts that spend below the state average. Among these twenty-three districts, I have been able to gather information about seventeen.⁴⁰ Of these seventeen districts, only three (Chicago, San Francisco, and Long Beach, California) were receiving desegregation funding.⁴¹ The other fifteen were not. Thus, large city districts like Baltimore, Philadelphia,⁴² New York, and Jersey City, all spent below the statewide average and none received desegregation money.⁴³ Although correlation does not prove causation, and although it is difficult to know whether these districts are suffering financially because of or despite their racial compositions, the pattern is still fairly striking.

To the extent that desegregation funding is responsible for bloating per-pupil expenditures in many predominantly minority districts, several significant points follow. The first is that the relatively high levels of spending among some predominantly minority districts may be misleading. Although the myth regarding minority districts and school funding is facially and currently inaccurate, it may actually be close to reality, insofar as the myth appears to rest on an accurate supposition regarding the political power of minority districts. That is to

dents. The school district's success is especially noteworthy in light of the fact that in 1987 it unsuccessfully sought *Milliken II* money, despite the fact that it had already been declared unitary. See *School Bd. of Richmond, Va. v. Baliles*, 829 F.2d 1308, 1314 (4th Cir. 1987) (holding that because "we have found no vestiges of state-mandated segregation . . . following a finding of unitary status, we affirm the court's refusal to order state funding of remedial and compensatory programs").

40. For the figures on expenditures, see *Quality Counts*, *supra* note 21, at 66-67. Through telephone interviews with state and local education officials, I was able to gather information about desegregation funding in the following 8 districts: Long Beach (Telephone Interview of Maureen Cruz, District Budget director) (July 1, 1998); San Francisco (Telephone Interview of Greg Bender, District Staff) (July 1, 1998); Chicago (Telephone Interview of Joanna Koh, District Staff) (June 30, 1998); East St. Louis (Telephone Interview of Richard Wells, District Staff) (June 30, 1998); Baltimore (Telephone Interview of Charles Grissett, Chief Financial Officer of District) (June 30, 1998); Oklahoma City (Telephone Interview of Sand Henry, District Treasurer) (July 1, 1998); Houston (Telephone Interview of Boon Chu, District Staff) (July 1, 1998); and Norfolk (Telephone Interview of Dr. Mark Snitzer, District Staff) (July 1, 1998). I was also able to gather information about the following nine districts: Camden, Jersey City, Paterson, Albuquerque, Providence, Bridgeport, New York, and Philadelphia. None of these districts, as far as I could tell, receives desegregation funding. The first seven listed have never been subject to a desegregation decree; for information on New York and Philadelphia, see *infra* notes 47-49 and accompanying text.

41. See *BASELINE INDICATORS*, *supra* note 34, at 79, 81; telephone interviews and related research, *supra* note 40.

42. See *Pennsylvanian Human Relations Comm'n v. School Dist. of Phila.*, 667 A.2d 1173, 1178 (Pa. Comm. Ct. 1995) (addressing funding of desegregation decree for first time); 651 A.2d 186, 188 n.4 (Pa. Comm. Ct. 1994) (postponing decision on desegregation funding).

43. See *BASELINE INDICATORS*, *supra* note 34, at 81 (Baltimore); *Quality Counts*, *supra* note 21, at 215-16 (New York).

say, underlying the myth that minority school districts are underfunded must be the assumption that heavily minority school districts fare worse than white school districts when state legislatures divide up school funds.⁴⁴ This assumption is supported by the evidence regarding the relative positions of minority school districts receiving and not receiving desegregation funding. The former, as a group, appear better off financially than the latter, but this advantage is traceable not to success in the political process but to federal court orders. When federal courts are absent from the scene, as is the case with the districts not receiving desegregation money, heavily minority districts do not seem to fare well in the political arena.

This dynamic is illustrated by contrasting several school districts: Little Rock, Arkansas, which receives desegregation funding, and Philadelphia and New York, which do not. Little Rock, partially as a result of desegregation money,⁴⁵ spends \$1100 per pupil more than the state average. The school district is sufficiently advantaged by this funding scheme that it actually intervened on the side of the state in a case challenging the state's school finance system, which was brought by white rural districts.⁴⁶

New York and Philadelphia, by contrast, are currently challenging their respective state financing schemes. Both cities have high percentages of minority students (79% and 83%, respectively), and both spend \$800 less per pupil than the state average (when costs are adjusted).⁴⁷ They are challenging their respective state's finance scheme not only on the typical ground that the scheme violates the state constitutional educational clause, but also on the ground that the funding scheme contravenes the regulations of Title VI of the 1964 Civil Rights Act. Title VI prohibits any state entity (including a school district) that receives federal funds from discriminating on the basis of race, and courts have interpreted implementing regulations as allow-

44. In referring to state legislatures dividing up school funds, I mean to include not only the distribution of state education funds, but also the selection and maintenance of a school finance scheme that relies on local property taxes for a large share of school funding.

45. See *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 839 F.2d 1296 (8th Cir. 1988) (ordering increased funding for Little Rock and other Pulaski county school districts); see also MICHAEL A. REBELL ET AL., *FISCAL EQUITY IN EDUCATION: A PROPOSAL FOR A DIALOGIC REMEDY*, at A-5 (1995) ("In 1989, the Legislature agreed, pursuant to an order in the Little Rock school desegregation case [*Pulaski*], to allocate an additional \$131 million to Little Rock and other Pulaski county school districts beyond the regular state aid to which the districts were entitled.").

46. See *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90 (Ark. 1983); see also *Magnolia Sch. Dist. No. 14 v. Arkansas State Bd. of Educ.*, 799 S.W.2d 791, 792 (Ark. 1990); REBELL ET AL., *supra* note 45, at A-5 (noting that "[s]chool desegregation costs have . . . affected fiscal equity reform in Arkansas").

47. See *Quality Counts*, *supra* note 21, at 64-67.

ing for disparate impact claims.⁴⁸ In both the New York and Philadelphia cases, the minority districts have alleged that they do not receive their fair share of state funding; both suits have survived motions to dismiss and are pending in trial courts.⁴⁹

The second, related point is that court-ordered desegregation funding is temporary and is only guaranteed during the period of court supervision. When desegregation decrees are lifted, this funding will likely be reduced or perhaps cut altogether.⁵⁰ Indeed, a number of districts and states have already entered into agreements under which the state has agreed to pay the district a substantial sum over a period of several years in exchange for being released from any further desegregation obligations — financial or otherwise. Typical of such agreements is the one struck in Kansas City, Missouri, where the state has agreed to pay the district \$314 million over three years in exchange for the elimination of any further desegregation-related duties. The agreement has already sent district officials scrambling to cut money from their budgets,⁵¹ and it has also sent white suburban students scrambling back to the suburbs.⁵² Wells and Crain, at the conclusion

48. See, e.g., *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 669-70 (N.Y. 1995). As the court in *Campaign for Fiscal Equity* described: "A validly stated cause of action under the Title VI regulations thus has two components: 'whether a challenged practice has a sufficiently adverse racial impact . . . and, if so, whether the practice is nevertheless adequately justified,' *id.* at 670 (quoting *Groves v. Alabama State Bd. of Educ.*, 776 F. Supp. 1518, 1523 (D. Ala. 1991)); *accord Quarles v. Oxford Mun. Separate Sch. Dist.*, 868 F.2d 750, 754 n.3 (5th Cir. 1989); *Georgia State Conferences of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985).

49. See *Powell v. Ridge*, 189 F.3d 387 (3d Cir. 1999) (holding that plaintiffs stated claim under Title VI and its implementing regulations); *Campaign for Fiscal Equity*, 655 N.E.2d at 670 & n.9 (noting that plaintiffs alleged that minority students in New York, as a result of state funding formula, received 12% less in state aid than state-wide average).

50. See Gary Orfield & David Thronson, *Dismantling Desegregation: Uncertain Gains, Unexpected Costs*, 42 EMORY L.J. 759, 769 (1993) ("School districts should further consider the loss of court-ordered funding, often called *Milliken II* funding, in deciding to file for declarations of unitary status." (footnote omitted)).

51. See Caroline Hendrie, *Falling Stars*, EDUC. WK. ON THE WEB (Feb. 25, 1998) <<http://www.edweek.org/ew/vol-17/24kc2.h17>>.

52. See Alison Morantz, *Money and Choice in Kansas City*, in GARY ORFIELD ET AL., *DISMANTLING DESEGREGATION* 241, 262 (1996); Jeanne Ponesse, *Missouri Is Trying to Free Itself from Subsidizing Costly Desegregation Programs in Kansas City and St. Louis*, in *Quality Counts*, *supra* note 21, at 190-93. Kansas City also provides a good illustration of the political dynamic that seems to be at work with regard to minority districts and funding. The Kansas City School District at one time was predominantly white, but eventually became majority black, despite the fact that the City population remained majority white. As Elaine R. Jones reports, "from almost precisely the moment the school district became majority black, the majority white electorate consistently voted against bond issues and tax levies, precipitating a catastrophic decline in the capital and educational resources of the school district." Elaine R. Jones, *Foreword* to ORFIELD ET AL., *supra*, at viii. This decline was arrested by the extensive "desegregation" remedies ordered by a federal court, which brought into the district a remarkable amount of additional funding. See *Missouri v. Jenkins*, 515 U.S. 70, 78-80 (1995). But now that the desegregation decree is terminating, it appears that the additional funding will be reduced, and the district may end up in the same place that it

of their St. Louis case study, predict a similar end to the St. Louis desegregation decree, asserting that “[t]he removal of the court order would no doubt be the beginning of the end of extra state resources to the city schools.”⁵³ An editorial writer in St. Louis was even more blunt: “Not many things in life are certain, but count on this much: If the desegregation program ends, and the sun rises in the east, the State of Missouri will most assuredly *not* gratuitously pump into the city the . . . extra desegregation dollars it now spends under the court order.”⁵⁴

Once court-ordered desegregation decrees are lifted, districts that have been receiving additional funding through court orders will likely be unable to secure the same level of funding from state legislatures. Given the lackluster performance of districts that have received additional desegregation funds,⁵⁵ state legislatures are not likely to be sympathetic to the argument that the flow of additional money should continue. Indeed, the reason states are seeking a court declaration of unitary status is presumably to be relieved of their desegregation obligations, including any attendant financial responsibilities. It thus seems implausible that state officials would turn around and devote the money saved from the termination of the desegregation plan to the schools that benefited from the plan.⁵⁶ In fact, it seems just as likely, if not more, that these districts will face a takeover by the state rather than increased funding if their achievement levels remain low.⁵⁷

started. That this majority black district received additional funding only because of court order cannot be gainsaid.

53. See AMY STUART WELLS & ROBERT L. CRAIN, *STEPPING OVER THE COLOR LINE: AFRICAN AMERICAN STUDENTS IN WHITE SUBURBAN SCHOOLS* 336 (1997). Wells and Crain tie this prediction specifically to racial politics: “The racial politics of Missouri, with its mostly white and rural constituents, makes it difficult for elected officials to fund urban educational programs in the absence of court orders that say they must.” *Id.* at 114; see also Caroline Hendrie, *Judge Ends Desegregation Case in Cleveland*, EDUC. WK. ON THE WEB (Apr. 8, 1998) <<http://www.edweek.org/ew/1998/30cleve.h17>> (court declares Cleveland “unitary,” but rules that state and district must fulfill earlier agreement to provide \$40 million a year in extra state funding until the year 2000).

54. Ray Hartman, *In Defense of Desegregation: Separate Won't Be Equal*, THE RIVERFRONT TIMES, Oct. 6-12, 1993, at 2.

55. See, e.g., Morantz, *supra* note 52, at 260; Ryan, *supra* note 9, at 289-93.

56. Wells & Crain make this point with regard to efforts by the State to terminate the desegregation plan in St. Louis. As they observe, “[s]tate and local politicians are on a mission to end the [desegregation] case for political and economic reasons. . . . Thus, the idea that any state money not spent on desegregation would be spent on schools, particularly urban schools, seems a little farfetched.” WELLS & CRAIN, *supra* note 53, at 336-37.

57. Twenty-one districts have already been taken over by state or city officials in recent years. See *Race and Takeovers*, EDUC. WK. ON THE WEB (Jan. 14, 1998) <<http://www.edweek.org/ew/vol-17/18mins1.h17>>. Of these districts, all but three are predominantly minority, and over half are more than 80% minority. See *id.* An additional eight districts have been threatened with a takeover, and six of these are predominantly minority districts. See *id.* State officials consistently deny that race plays any role in the takeovers, but black and Hispanic school board members just as consistently suggest that they are being

Insofar as minority districts do not fare particularly well in the political process when it comes to securing school funds, school finance litigation, which is designed to circumvent the political process and redirect the flow of funds to poorer districts, increases in importance. As the next two Parts reveal, however, school finance litigation has not proven very rewarding to minority school districts.

II. MINORITY DISTRICTS AND SCHOOL FINANCE LITIGATION

This Part examines the success, or lack thereof, experienced by minority districts in school finance litigation. It is important to emphasize at the outset that a number of urban minority districts have not participated in school finance challenges brought in their states.⁵⁸ Part of the explanation lies, again, in desegregation funding, which has tended to boost expenditure levels in minority districts and has rendered some districts poor candidates for plaintiffs in school finance litigation. Thus, urban districts such as Phoenix, Denver, Boston, Minneapolis, and St. Paul did not participate in the school finance challenges brought in their states. Little Rock and Nashville-Davidson County did participate in school finance cases — but as intervenors on the side of the state. This is not to say that all urban districts receiving desegregation funding stayed on the sidelines in school finance cases; the disparities between urban and suburban districts are sufficient enough in some states that some *Milliken II* districts signed on as plaintiffs in school finance challenges. But the urban (and rural) minority districts that did join school finance challenges — including Newark, Camden, Jersey City, Hartford, Philadelphia, New York, Baltimore, and Providence — typically were not receiving any desegregation funding.⁵⁹

singled out for discriminatory treatment. See Beth Reinhard, *Racial Issues Cloud State Takeovers*, EDUC. WK. ON THE WEB (Jan. 14, 1998) <<http://www.edweek.org/ew/1998/18minor.h17>>.

58. Most of the cases, as will be discussed below, have been brought by suburban or rural districts. Interestingly, the Supreme Court of Minnesota is under the impression that school finance challenges are typically brought by urban districts. See *Skeen v. State*, 505 N.W.2d 299, 302 (Minn. 1993) (“Unlike challenges to state financing of education in other states, which frequently have been initiated by property-poor inner-city districts, this case does not involve the three largest metropolitan school districts, Minneapolis, St. Paul, and Duluth.”). This may be reading too much into one errant comment, but that the Minnesota court would make this (incorrect) observation suggests both that popular perception may envision school finance plaintiffs as urban minority districts and that the type of district involved weighs on the minds of judges adjudicating these suits.

59. See *supra* note 40.

A. *Successful and Unsuccessful School Finance Plaintiffs*

Before examining the demographics of school districts involved in school finance litigation, it is necessary to provide a brief overview of school finance litigation as a whole. Commentators divide school finance litigation into three phases, or waves, which are not as monolithic as commentators suggest but which nonetheless help in explaining the basic progression of the litigation.⁶⁰ The first phase involved federal and state court challenges to education financing systems based on the federal Equal Protection Clause. This phase was short-lived. It began with a successful challenge in 1971 to California's financing scheme in *Serrano v. Priest*.⁶¹ It ended two years later with the Supreme Court's decision in *San Antonio Independent School District v. Rodriguez*, in which the Court held that school funding inequities do not violate the Equal Protection Clause.⁶² With the federal Constitution foreclosed as a source for their challenges, school finance plaintiffs turned to state constitutions.

The second phase began shortly after *Rodriguez*, when the New Jersey Supreme Court, in *Robinson v. Cahill*,⁶³ declared the education financing scheme in New Jersey unconstitutional on the ground that it violated the state constitution's "thorough and efficient education" clause. The cases in this phase generally focused on the education and equal protection clauses in state constitutions and generally sought equalized funding per pupil.⁶⁴ Court results in the second phase were

60. See, e.g., Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101 (1995); Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151, 1153-66 (1995) (describing three waves of school finance litigation); William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C. L. REV. 597, 598 n.4 (1994) (same); Julie K. Underwood & William E. Sparkman, *School Finance Litigation: A New Wave of Reform*, 14 HARV. J.L. & PUB. POL'Y 517, 520-35 (1991) (same).

61. *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) ("*Serrano I*") (finding that wealth is a suspect classification and education a fundamental right, and striking down property-based funding scheme on state and federal equal protection grounds).

62. 411 U.S. 1 (1973).

63. 303 A.2d 273 (1973).

64. See, e.g., *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90 (Ark. 1983) (holding that financing scheme violates state equal protection provision); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980) (holding state finance scheme in violation of state equal protection clause on the ground that education is a fundamental right and wealth a suspect classification); *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977) ("*Horton I*") (holding that state equal protection and education clauses require substantial equality in funding education); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976) ("*Serrano II*") (rejecting legislative response to *Serrano I* on the ground that it did not provide sufficient assurance of equalization; legislative scheme had to ensure that funding would vary no more than \$100 per pupil), *cert. denied*, 432 U.S. 907 (1977).

mixed: of the twenty challenges resolved by state supreme courts, thirteen were rejected,⁶⁵ and seven were successful.⁶⁶

The third and current phase of school finance litigation began in 1989 with a couple of significant court victories in Kentucky⁶⁷ and Montana.⁶⁸ The third wave cases are for the most part characterized by a strict focus on state education clauses and an emphasis on adequacy rather than equity — the claim made, in other words, is not that each student is entitled to equal funding, but rather that all students are entitled to funding sufficient to provide an “adequate” education.⁶⁹

65. Challenges were rejected in the following states: Arizona, *see* *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973) (rejecting equal protection challenge to financing scheme, despite declaring education a fundamental right); Colorado, *see* *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982) (holding that education is not a fundamental right and that state education clause does not require uniform expenditure levels); Georgia, *see* *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981) (upholding state financing scheme and concluding that “adequate education” clause requires more than minimum education, but that the Legislature must determine content of adequate education); Idaho, *see* *Thompson v. Engkeling*, 537 P.2d 635 (Idaho 1975) (upholding finance scheme against challenge based on state equal protection and education clauses); Maryland, *see* *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983) (rejecting challenge based on state equal protection and “thorough and efficient” education clauses); New York, *see* *Board of Educ. v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982) (upholding scheme on ground that education clause is not a mandate of equality and that education is not a fundamental right); North Carolina, *see* *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432 (N.C. Ct. App.), *appeal dismissed*, 361 S.E.2d 71 (1987) (upholding scheme on ground that “general and uniform” education clause only guarantees equal access to schools, and “equal opportunity” provision only bars racial segregation); Ohio, *see* *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979) (rejecting challenges based on equal protection and “thorough and efficient” education clauses on ground that Legislature has discretion in educational matters, with which court will not interfere where education appears adequate); Oklahoma, *see* *Fair Sch. Fin. Council v. State*, 746 P.2d 1135 (Okla. 1987) (rejecting challenge based on state equal protection and education clauses); Oregon, *see* *Olsen v. State*, 554 P.2d 139 (Or. 1976) (rejecting challenge based on state equal protection and education clauses); Pennsylvania, *see* *Danson v. Casey*, 399 A.2d 360 (Pa. 1979) (rejecting challenge based on state equal protection and “thorough and efficient” education clauses); South Carolina, *see* *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988) (rejecting challenge based on state education and equal protection clauses); Washington, *see* *Northshore Sch. Dist. No. 417 v. Kinnear*, 530 P.2d 178 (Wash. 1974) (rejecting challenge based on state constitution’s education and equal protection provisions).

66. Successful challenges were brought in the following states: Arkansas, *see* *Dupree*, 651 S.W.2d 90 (Ark. 1983); California, *see* *Serrano II*, 557 P.2d at 929; Connecticut, *see* *Horton I*, 376 A.2d 359 (Conn. 1977); New Jersey, *see* *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973) (“*Robinson I*”); Washington, *see* *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978) (invalidating school finance scheme, without reversing *Kinnear*, 530 P.2d 178, on the ground that education clause requires provision of basic education); West Virginia, *see* *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979) (holding that school financing scheme must be adequate, based on “thorough and efficient” education clause, and equal, based on equal protection clause); Wyoming, *see* *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980) (holding that school financing scheme failed to ensure equal educational opportunity as required by state equal protection and education clauses).

67. *See* *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989).

68. *See* *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989).

69. *See* Thro, *supra* note 60, at 603. Thro contends that in the current wave of cases, “instead of emphasizing equality of expenditures, the plaintiffs have argued that all children are entitled to an education of a least a certain quality and that more money is necessary to bring the worst school districts up to the minimum level mandated by the state education

The shift in focus from equality to adequacy was in some cases a matter of choice or strategy, and in other cases a matter of necessity, as litigants who had already lost on an equality claim returned to court for a second or third time. The results in the so-called third wave have also been mixed, although the win-loss ratio, at eleven wins⁷⁰ and eleven losses,⁷¹ is better than that of the second phase.⁷²

clause." *Id.*; see also Heise, *supra* note 60, at 1153 (noting that "the third wave illustrates the replacement of traditional 'equity' court decisions with 'adequacy' decisions").

70. Successful challenges have been brought in Alabama, see *Opinion of the Justices No. 338, 624 So.2d 107* (Ala. 1993) (advisory opinion directing state senate to follow trial court order, which found financing scheme unconstitutional); Arizona, see *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806* (Ariz. 1994) (invalidating system for funding school facilities after finding that funding scheme causes "gross disparities and creates inadequate educational opportunities"); Kentucky, see *Rose, 790 S.W.2d 186* (Ky. 1989) (invalidating the "whole gamut" of the state's education system, including its financing structure, on ground that it violated equality and quality requirements derived from the state constitution's education clause); Massachusetts, see *McDuffy v. Secretary of Educ., 615 N.E.2d 516* (Mass. 1993) (holding that property-tax based financing scheme violated state education clause, which requires the state to "cherish" the public schools); Montana, see *Helena Elementary, 769 P.2d at 690* (holding that substantial funding disparities violated state education clause, which guarantees equal educational opportunities); New Hampshire, see *Claremont Sch. Dist. v. Governor, 703 A.2d 1353* (N.H. 1997) (holding that financing scheme violated state constitution's education and taxation clauses); New Jersey, see *Abbott v. Burke, 575 A.2d 359* (N.J. 1990) ("*Abbott II*") (holding that revised funding scheme still violated the state education clause); Ohio, see *DeRolph v. State, 677 N.E.2d 733* (Ohio 1997) (holding that school finance scheme did not guarantee adequate education and therefore violated state education clause); Tennessee, see *Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139* (Tenn. 1993) (holding that state finance scheme, which resulted in funding disparities and was justified only by local control of education, violated rational basis test derived from state equal protection clause); Texas, see *Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391* (Tex. 1989) ("*Edgewood I*") (holding that finance scheme violated state's "efficient system" education clause, which the court interpreted to require substantially equal access to education funding); Vermont, see *Brigham v. State, 692 A.2d 384* (Vt. 1997) (holding that school finance scheme violated state equal protection and education provisions, which guarantee substantial equality of educational opportunity).

71. Challenges were rejected by the following state supreme courts: Florida, see *Coalition for Adequacy and Fairness in Sch. Funding v. Chiles, 680 So.2d 400* (Fla. 1996) (rejecting challenge on ground that judicial interference with school funding would violate separation of powers doctrine); Illinois, see *Lewis E. v. Spagnolo, 710 N.E.2d 798* (Ill. 1999) (holding that state education clause does not guarantee minimally adequate education); Committee for Educ. Rights v. Edgar, 672 N.E.2d 1178 (Ill. 1996) (rejecting challenge based on state education and equal protection clauses); Maine, see *School Admin. Dist. No. 1 v. Commissioner, Dept. of Educ., 659 A.2d 854* (Me. 1995) (holding that finance scheme did not violate state constitution's equal protection guarantee); Minnesota, see *Skeen v. State, 505 N.W.2d 299* (Minn. 1993) (rejecting challenge to financing scheme based on state equal protection and education clauses); Nebraska, see *Gould v. Orr, 506 N.W.2d 349* (Neb. 1993) (dismissing claims that spending disparities violated state constitutional rights on grounds that plaintiffs failed to allege that disparities caused educational inadequacies); North Dakota, see *Bismark Pub. Sch. Dist. #1 v. State, 511 N.W.2d 247* (N.D. 1994) (finding by a majority vote that finance scheme violated state equal protection clause, but upholding scheme because supermajority necessary to strike down legislation as unconstitutional); Oregon, see *Coalition for Equitable Sch. Funding, Inc. v. State, 811 P.2d 116* (Or. 1991) (rejecting challenges based on state constitutional provisions on grounds that recent constitutional amendment regulating local property taxation presupposes use of local revenues to fund schools); Rhode Island, see *City of Pawtucket v. Sundlun, 662 A.2d 40* (R.I. 1995) (holding that finance scheme did not violate either education clause or equal protection pro-

All told, then, eighteen state supreme courts have struck down their respective states' school finance schemes, while eighteen have upheld their states' schemes.⁷³ Of the eighteen successful cases, *only a single one* — in New Jersey — was brought by predominantly minority urban districts.⁷⁴ Two others, in Arizona⁷⁵ and Texas,⁷⁶ were brought

vision of state constitution); Virginia, *see* *Scott v. Commonwealth*, 443 S.E.2d 138 (Va. 1994) (holding that state constitution does not mandate substantially equal school funding); Wisconsin, *see* *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989) (rejecting challenge based on state equal protection and education clauses and holding that education is a fundamental right but equal funding is not).

72. At least four of the victories, however, came in cases based on equality rather than adequacy theories. *See* *Brigham*, 692 A.2d 384 (Vt. 1997); *Helena Elementary*, 769 P.2d 684 (Mont. 1989); *Tennessee Small Sch. Sys.*, 851 S.W.2d 139 (Tenn. 1993); *Edgewood I*, 777 S.W.2d 391 (Tex. 1989).

73. *See supra* notes 64-66 and 70-71, for a complete list of state supreme court decisions. It is worth noting that in three of the states where school finance litigation was initially unsuccessful, second-round suits have met with some limited success. The Supreme Courts of New York, North Carolina, and South Carolina upheld their respective state financing schemes against "equity" challenges. *See* *Board of Educ. v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982); *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432 (N.C. Ct. App. 1987), *appeal dismissed for lack of substantial constitutional question*, 361 S.E.2d 71 (N.C. 1987); *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988). In each of these three states, however, the supreme courts have allowed subsequent adequacy challenges to go forward, and litigation is still pending in lower courts. *See* *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661 (N.Y. 1995) (allowing plaintiffs to go forward in case claiming that school finance scheme denies students the right to a minimally adequate education and violates Title VI); *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997) (holding that students have a constitutional right to a sound, basic education and allowing suit to proceed); *Abbeville County Sch. Dist. v. State*, 515 S.E.2d 535 (S.C. 1999) (reversing dismissal of complaint and holding that state constitution guarantees minimally adequate education).

74. *See* *Abbott II*, 575 A.2d at 387 (noting that 71% of state's minorities were educated in plaintiff districts, which were themselves predominantly minority).

75. *See* *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994). The National Center for Education Statistics provides data on the racial and ethnic compositions of all school districts nationwide. *See* *School District Data Book Profiles: 1989-1990* (visited Mar. 22, 1999) <<http://govinfo.kerr.orst.edu/sddb-stateis.html>> [hereinafter *School District Data Book*]. Data on relevant school districts was obtained by identifying the plaintiff school districts, usually through a court decision, and then looking up the districts' demographics in the Data Book Profiles. For ease of reference, I will cite to the decisions and the Data Book for the relevant demographic figures. In the Arizona case, the lead plaintiff was the Roosevelt School District, which is 68% Hispanic, 24% black, and 8% white. Additional plaintiff districts were also predominantly Hispanic. *See* *Roosevelt*, 877 P.2d. at 806; *School District Data Book, supra*, at Arizona.

76. The Texas litigation was filed by 68 school districts. *See* *Edgewood I*, 777 S.W.2d at 391-92. Although the lead plaintiff district, Edgewood, was a predominantly white rural district, the majority of districts apparently were predominantly black or Hispanic. *See* *SHORTCHANGING CHILDREN, supra* note 20, at 23 (noting that "evidence in the record indicated that the plaintiffs, property-poor districts, had high concentrations of black and Hispanic and low-income children"). The fact that Edgewood was brought by a coalition not entirely composed of minority districts could justify classifying this case as one involving a mixed coalition rather than minority districts. But given that most of the districts were minority, and given the relation between ethnicity and school district poverty, of which there was evidence in the court record, it seems appropriate to classify this as a case brought and won by minority districts. *See id.* ("The record in Edgewood further indicated that Mexican-Americans comprised 95 percent of students in the poorest Texas districts, although they were only 30 percent of the total enrollment statewide.").

by suburban and rural minority districts. And a fourth, in Washington, was brought by an integrated urban district — Seattle.⁷⁷

The majority of successful challenges were brought by suburban or rural white districts, in states such as West Virginia,⁷⁸ Wyoming,⁷⁹ Connecticut,⁸⁰ Arkansas,⁸¹ Kentucky,⁸² Montana,⁸³ Tennessee,⁸⁴ New Hampshire,⁸⁵ Idaho,⁸⁶ and Vermont.⁸⁷ In Massachusetts, the challenge was brought by a coalition of sixteen rural and urban districts (excluding Boston); thirteen were predominantly white, and three were

77. See *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 78 (Wash. 1978) (identifying plaintiff district); *School District Data Book*, *supra* note 75, at Washington (reporting statistics on demographics of plaintiff district).

78. See *Pauley v. Kelly*, 255 S.E.2d 859, 861 (W. Va. 1979) (identifying plaintiffs as parents of children attending public schools of Lincoln County); *School District Data Book*, *supra* note 75, at West Virginia, Lincoln County (reporting statistics on the racial composition of the Lincoln County District).

79. See *Washakie County Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 310, 317 (Wyo. 1980) (identifying three districts involved); *School District Data Book*, *supra* note 75, at Wyoming (reporting statistics on the racial composition of the school districts involved).

80. The Connecticut litigation was initially brought by Canton, a predominantly white, rural district. See *Horton I*, 376 A.2d 359 (Conn. 1977); *School District Data Book*, *supra* note 75, at Connecticut, Canton School District. In *Horton I*, the Connecticut Supreme Court struck down the state's finance scheme. Plaintiffs were not satisfied with the subsequent legislative response and returned to court. See *Horton v. Meskill*, 486 A.2d 1099 (Conn. 1985) ("*Horton II*"). Lower courts allowed Hartford — a predominantly minority, urban district—to intervene, a decision which was upheld by the supreme court. See *id.* In the same decision, the supreme court also upheld the legislative response and rejected Canton and Hartford's challenge. See *id.*

81. See *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90, 91 (Ark. 1983) (listing eleven plaintiff school districts); *School District Data Book*, *supra* note 75, at Arkansas (reporting statistics on the racial composition of the school districts involved).

82. See *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 190 (Ky. 1989) (identifying districts involved); *School District Data Book*, *supra* note 75, at Kentucky (reporting statistics on the racial composition of the school districts involved).

83. See *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 684 (Mont. 1989) (identifying districts involved); *School District Data Book*, *supra* note 75, at Montana (reporting statistics on the racial composition of the school districts involved).

84. See *Tennessee Small Sch. Sys. v. McWhorter*, 851 S.W.2d 139, 141 (Tenn. 1993) (identifying districts involved); *School District Data Book*, *supra* note 75, at Tennessee (reporting statistics on racial composition of the school districts involved); see also Lewis R. Donelson, *School Finance Litigation: A Rural Perspective*, 61 TENN. L. REV. 445 (1994).

85. See *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353 (N.H. 1997); *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1377 (N.H. 1993) (identifying districts involved). New Hampshire has no majority minority districts. See *Quality Counts*, *supra* note 21, at 202-03.

86. See *Idaho Sch. for Equal Educ. Opportunity v. Evans*, 850 P.2d 724, 728 (Idaho 1993) (identifying districts involved). Idaho has no majority minority school districts. See *School District Data Book*, *supra* note 75, at Idaho.

87. See *Brigham v. State*, 692 A.2d 384 (Vt. 1997). Vermont has no majority minority school districts. See *School District Data Book*, *supra* note 75, at Vermont.

predominantly Hispanic.⁸⁸ In two states, Alabama⁸⁹ and California,⁹⁰ challenges were brought on behalf of all school children not receiving a constitutionally sufficient education. And in a third state, Ohio, the successful plaintiff was a huge coalition of 553 districts.⁹¹

On the other side of the ledger, in the eighteen states where plaintiffs were unsuccessful, there were nineteen relevant cases all told — with the Illinois Supreme Court twice rejecting school finance suits.⁹² Of the nineteen cases, seven were brought either exclusively by urban minority districts, or by a small group of plaintiffs that included at least one urban minority district. New York, Philadelphia, Baltimore, Milwaukee, East St. Louis (Ill.), Providence, and Richland County (S.C.) all sued and lost.⁹³ Predominantly Hispanic suburban and rural districts filed an unsuccessful case in Colorado, and a predominantly minority (African-American and Native American) rural district lost a school finance challenge in North Carolina.⁹⁴ Four of the other ten

88. See *McDuffy v. Secretary of Executive Office of Educ.*, 615 N.E.2d 516, 516 (Mass. 1993) (identifying school districts involved); *School District Data Book*, *supra* note 75, at Massachusetts (reporting statistics on the racial composition of the school districts involved).

89. See *Ex parte James*, 713 So.2d 869, 872 (Ala. 1997) (consolidating seven lawsuits brought by a coalition of 25 school systems and a statewide class of all children enrolled in those public schools providing less than a minimally adequate education).

90. See *Serrano I*, 487 P.2d 1241, 1244 (Cal. 1971) (identifying plaintiff class); see also RICHARD F. ELMORE & MILBREY WALLIN McLAUGHLIN, *REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM* (1982).

91. The case was filed by the Ohio Coalition for Equity and Adequacy, which “represent[ed] the 553 school systems that [were] party to the lawsuit.” Mark Skertic, *School Funding System Faces Big Test*, *CIN. ENQUIRER*, Sept. 9, 1996, at A1, available in 1996 WL 2258946; see also *DeRolph v. State*, 677 N.E.2d 733, 777 (Ohio 1997). It is worth noting that the first suit challenging the Ohio finance scheme was unsuccessful. See *Board of Educ. of Cincinnati v. Walter*, 390 N.E.2d 813 (Ohio 1999). That case was brought by students, parents, and administrators in the Cincinnati School District. See *id.* at 815.

92. See *Spagnolo*, 710 N.E.2d 798 (Ill. 1999); *Committee for Educ. Rights v. Edgar*, 672 N.E.2d 1178 (Ill. 1996). Two additional “school finance” cases were rejected by the Illinois Supreme Court but are not included here because they only tangentially touched on the issue and the court did not address the constitutionality of the entire funding scheme. The first, *People ex rel Jones v. Adams*, 350 N.E.2d 767 (Ill. 1976), was a suit brought by the state to collect taxes on farmers. In their defense, the farmers argued, *inter alia*, that the school funding formula was unconstitutional, but they failed to offer any proof. The Illinois Supreme Court rejected the claim “[b]ecause of this failure of proof.” *Id.* at 775-76. The second, *Blase v. Illinois*, 302 N.E.2d 46 (Ill. 1973), involved a claim that the state must pay at least 50% of education costs, which the court rejected.

93. See *Nyquist*, 439 N.E.2d 359 (N.Y. 1982); *Danson v. Casey*, 399 A.2d 360 (Pa. 1979); *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989); *Spagnolo*, 710 N.E.2d 798 (Ill. 1999); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 44 (R.I. 1995); *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988). Richland County, which includes Columbia, is predominantly urban. See *School District Data Book*, *supra* note 75, at South Carolina, Richland County; see also *School District Data Book*, *supra* note 75 (providing relevant statistics on racial composition of district).

94. See *Lujan v. State Bd. of Educ.*, 649 P.2d 1005, 1011 (Colo. 1982); *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432 (N.C. Ct. App. 1987), appeal dismissed for lack of substantial constitutional question, 361 S.E.2d 71 (N.C. 1987). In Colorado, plaintiffs were a group of 16 school districts: Alamosa, Center, Del Norte, Delta East Otero, Granada,

losing cases were filed by mainly rural white districts — in Georgia,⁹⁵ Nebraska,⁹⁶ Virginia,⁹⁷ and North Dakota.⁹⁸ Five were brought by fairly large coalitions of mainly white rural and suburban districts — in Oregon,⁹⁹ Oklahoma,¹⁰⁰ Minnesota,¹⁰¹ Florida,¹⁰² and Maine.¹⁰³ And one, finally, was brought by a large coalition of school districts in Illinois, which included rural white districts and urban minority districts, such as East St. Louis and Chicago.¹⁰⁴

Ignacio, Johnstown, Mazanola, Monte Vista, Montezuma, Montrose, Pueblo, Rocky Ford, South Conejos, and Trinidad. Eight of these were predominantly Hispanic, and another four were over 35% Hispanic. See *School District Data Book*, *supra* note 75, at Colorado (statistics on the racial composition of the school districts involved). One of the attorneys involved in the case stated that the attorneys specifically sought out Hispanic districts as plaintiffs. See Interview with David Long, Attorney for Plaintiffs (Feb. 26, 1998). In North Carolina, the challenge was brought by students and parents in the Robeson County School District, see *Britt*, 357 S.E.2d at 432, which was 28% African-American and 44% Native American. See *School District Data Book*, *supra* note 75, at Robeson County.

95. See *McDaniel v. Thomas*, 285 S.E.2d 156, 157 (Ga. 1981) (identifying school districts involved); *School District Data Book*, *supra* note 75, at Georgia (reporting statistics on racial composition of the relevant school districts);

96. See *Gould v. Orr*, 506 N.W.2d 349, 350 (Neb. 1993) (identifying districts involved); see also *School District Data Book*, *supra* note 75, at Nebraska (reporting statistics on the racial composition of the school districts involved).

97. See *Scott v. Commonwealth*, 443 S.E.2d 138, 139 n.2 (Va. 1994) (identifying districts involved); *School District Data Book*, *supra* note 75, at Virginia (reporting statistics on the racial composition of the school districts involved).

98. See *Bismark Pub. Sch. Dist. #1 v. State*, 511 N.W.2d 247, 247 (N.D. 1994) (identifying districts involved); *School District Data Book*, *supra* note 75, at North Dakota (reporting statistics on the racial composition of the school districts involved).

99. See *Coalition for Equitable Sch. Funding, Inc. v. State*, 811 P.2d 116, 117 n.1 (Or. 1991) (stating that a coalition of 55 districts sued the state). There are no majority-minority districts in Oregon, and Portland, the one large urban district, is “one of the state’s wealthier districts.” See *Quality Counts*, *supra* note 21, at 230; see also *School District Data Book*, *supra* note 75, at Oregon.

100. See *Fair Sch. Fin. Council v. State*, 746 P.2d 1135, 1137-38 (Okla. 1987) (noting that plaintiffs represented boards of education and students in 38 districts). According to Plaintiff/Appellant’s Brief, on file with author, plaintiff districts included a few urban districts. Aside from Tulsa, however, which enrolls over 40,000 students, the districts classified as “urban” are quite small — Norman and Sand Springs, for example, are “urban” districts, but enroll only 12,000 and 5,000 students respectively. See *School District Data Book*, *supra* note 75, at Oklahoma, at Tulsa, Norman, and Sand Springs Districts.

101. See *Skeen v. State*, 505 N.W.2d 299, 301, 302 (Minn. 1993) (describing 76 districts involved).

102. See *Coalition for Adequacy and Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 402 n.1 (Fla. 1996) (identifying districts involved); *School District Data Book*, *supra* note 75, at Florida (reporting statistics on the racial composition of the school districts involved).

103. See *School Admin. Dist. No. 1 v. Commissioner, Dept. of Educ.*, 659 A.2d 854, 855 (Me. 1995) (stating that 83 districts sued the state). Maine has no majority minority districts. See *School District Data Book*, *supra* note 75, at Maine.

104. See *Committee for Educ. Rights v. Edgar*, 672 N.E.2d 1178 (Ill. 1996). Ninety-seven districts were involved in the case. See *id.* at 1180. According to one of plaintiffs’ attorneys, the districts included both rural white and urban minority districts, such as Chicago and East St. Louis. See Telephone Interview with Patricia Brannan, Attorney for Plaintiff (Sept. 20, 1999).

B. *Assessing the Evidence*

In sum, predominantly minority districts have won only three of the twelve school finance challenges (25%) in which they were plaintiffs. Predominantly white districts, by contrast, have won eleven of fifteen cases (73%) if one excludes the cases involving large coalitions of districts, or twelve of twenty (60%) if one includes the five cases involving large coalitions of districts, most of which were predominantly white. While the different levels of success — 25% for minority districts versus 73% or 60% for white districts — seem significant in themselves, perhaps the most revealing evidence comes from isolating the performance of urban minority districts. In the eight states in which urban minority districts have been plaintiffs, only one state supreme court has overturned the state's financing scheme, for a success rate of 12.5%.

It is safe to say, then, that minority districts have not fared particularly well in court and that urban minority districts have fared especially poorly. Although other factors aside from the racial composition obviously could explain the results, it is possible at least to reject one alternative explanation: constitutional text. Education provisions in state constitutions differ in their formulation; some guarantee the right to a "thorough and efficient" education,¹⁰⁵ others the right to a "general and uniform" education,¹⁰⁶ and still others the right to an education described by one or a combination of the four terms thorough, efficient, general, and uniform.¹⁰⁷ Some commentators have suggested that the constitutional text is determinative in school fi-

105. *See, e.g.*, MD. CONST. art. VIII, § 1 ("The General Assembly . . . shall by Law establish throughout the State a thorough and efficient System of Free Public Schools . . ."); N.J. CONST. art. VIII, § 4, ¶1 ("The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools . . .").

106. *See, e.g.*, MINN. CONST. art. XIII, § 1 ("[I]t is the duty of the legislature to establish a general and uniform system of public schools."); OR. CONST. art. VIII, § 3 ("The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.").

107. *See, e.g.*, COLO. CONST. art. IX, § 2 ("The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools . . ."); DEL. CONST. art. X, § 1 ("The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools . . ."); FLA. CONST. art. IX, § 1 ("Adequate provision shall be made by law for a uniform system of free public schools . . ."). Other state constitutions simply call for the establishment of public schools. *See, e.g.*, HAW. CONST. art. X, § 1 ("The State shall provide for the establishment, support and control of a statewide system of public schools . . ."); ALA. CONST. art. XIV, § 256 ("The legislature shall establish, organize and maintain a liberal system of public schools.").

nance cases,¹⁰⁸ but even a brief comparison of the cases belies this assertion.¹⁰⁹

The constitutions of New Jersey, Maryland, Pennsylvania, Ohio, and West Virginia, for example, all guarantee the right to a "thorough and efficient" education.¹¹⁰ Suffice it to say that the outcomes of school finance cases in these states, as well as the courts' interpretations of what this vague constitutional language requires, have differed significantly.¹¹¹ Similarly, the strength or specificity of the constitutional language does not correspond with the outcomes in cases. The Georgia Supreme Court, for example, held that the education clause contained in the Georgia Constitution, which explicitly provides that "an adequate education" shall be "a primary obligation of the State," does not create a judicially enforceable right.¹¹² The Massachusetts Supreme Court, on the other hand, interpreted its state education clause — which admonishes the state to "cherish . . . public schools" — to impose upon the Legislature a duty to provide all students an adequate education, the components of which the court listed in detail.¹¹³

To the considerable extent that constitutional text is not responsible for the different outcomes in school finance cases, non-textual explanations obviously increase in importance.¹¹⁴ One explanation

108. See, e.g., Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS. 307, 309 n.3 (1991) ("The language of the education article plays a primary role in its interpretation.").

109. Other commentators, and at least one court, have reached the same conclusion. See, e.g., Jonathan Banks, Note, *State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?*, 45 VAND. L. REV. 129, 153-54 (1992) ("This lack of any discernible relationship between the strength of commitment to education in the state constitution and the success rate of school finance challenges makes it clear that the outcome of these cases does not depend on the interpretation of the constitution involved."); William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 ED. LAW REP. 19, 22 (1993) (acknowledging that "the distinctions between education clauses apparently have not made a difference in those school finance cases decided between 1973 and 1992," but suggesting that "there is no reason why the language of the educational clauses should not be an important factor in future school finance cases"); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 777-80 (Md. 1983) (canvassing the text of education clauses and the resulting school finance decisions from other states).

110. See N.J. CONST. art. VIII, § 4 ¶1; MD CONST. art. VIII, §1; PENN. CONST. art 3, § 14; OHIO CONST. art. VI, § 2; W. VA. CONST. art. 12, § 1.

111. See *Abbott II*, 575 A.2d 359 (N.J. 1990) (overturning finance scheme); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983) (upholding finance scheme); *Danson v. Casey*, 359 A.2d 360 (Penn. 1979) (upholding finance scheme); *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1979) (overturning finance scheme); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979) (overturning finance scheme).

112. *McDaniel v. Thomas*, 285 S.E.2d 156, 166 (Ga. 1981).

113. *McDuffy v. Secretary of Educ.*, 615 N.E.2d 516, 526, 554 (Mass. 1993).

114. See Paul W. Kahn, *State Constitutionalism and the Problems of Fairness*, 30 VAL. U. L. REV. 459, 468 (1996). Professor Kahn argues that it is "hard to find significant differences among the cases to explain the outcomes. Outcomes do not seem to depend upon differences in the state programs. Nor are the different outcomes explained by differences in con-

worth consideration and further study is the racial composition of the litigating school district.¹¹⁵ There may indeed be alternative explanations as to why urban minority districts almost never win school finance cases, while rural and suburban white districts win such cases more often than not. But race cannot be dismissed out of hand as a possible explanation of disparate court results, given the low rate of success among minority districts as compared to that among white districts. As described presently, neither can race be dismissed as inconsequential with regard to legislative responses to court decisions.

III. LEGISLATIVE RESPONSES

Court-ordered changes in school finance schemes entail increasing education expenditures overall, redistributing existing resources, or both. It is therefore not surprising that court decisions declaring school finance systems unconstitutional typically provoke some controversy and legislative opposition.¹¹⁶ This Part assesses whether there is any noticeable difference in either the degree of opposition or the quality of the legislative response when minority districts prevail in court. Measuring legislative recalcitrance is necessarily an imprecise endeavor, and, as with court decisions, there are a number of potential reasons why legislatures might actively oppose or remain unresponsive to court orders. But just as with court decisions, there is again a dis-

stitutional text, history, or some legal measure of the importance of education within each state." *Id.*

115. Another possible explanation is that the type of district matters most: the cases indicate that urban districts do poorly and suburban or rural districts do relatively well in school finance litigation. The difficulty with this explanation is that it is usually impossible to disentangle race from the type of district involved — i.e., urban districts are typically minority, and suburban or rural districts are typically white. Only one case was brought by an integrated urban district — Seattle, Washington — and there plaintiffs prevailed. Similarly, only four cases were brought by rural or suburban minority districts; two, in Texas and Arizona, were successful, and two, in Colorado and North Carolina, were unsuccessful. See *supra* notes 75, 76, and 94 for citation and discussion of these cases. This limited evidence points in different directions: rural and suburban minority districts were obviously more successful, in terms of percentages, than were urban minority districts, but so too were integrated urban districts. The mixed results, combined with the fact that the sample of cases is so small, makes it difficult to draw inferences. Whether racial composition or urbanicity is more significant, therefore, cannot be resolved from this admittedly crude approach of tallying wins and losses.

116. Part of the opposition is all but invited by the court decisions, which often wax grandiloquent in describing the rights involved and wane to the point of silence when it comes to specifying a remedy. See, e.g., George D. Brown, *Binding Advisory Opinions: A Federal Courts Perspective on the State School Finance Decisions*, 35 B.C. L. REV. 543, 544 (1994) (describing how "state supreme courts show [a] pattern of expansive declarations of right and duty coupled with an insistence that solutions must come from the legislative rather than the judicial branch"); Note, *Unfulfilled Promises: School Finance Remedies in State Courts*, 104 HARV. L. REV. 1072, 1072 (1991) (arguing that "legislative inertia and unwarranted judicial deference to political branches in the remedial phase hinder the school finance plaintiff's prospects for securing a constitutional remedy").

cernible pattern in legislative responses: minority districts that were successful in court faced protracted legislative battles that were more intense and longer-lasting than those typically faced by successful white districts. In addition, existing research regarding two of the states where school finance challenges were won by minority districts — New Jersey and Texas — suggests that significant segments of the public viewed subsequent legislative reforms in racial terms, regardless of the actual scope and targets of those reforms, and that whites and minorities differed significantly in their support of or opposition to equalization efforts. I will begin with the experience of minority districts, and then move on to contrast this experience with that of a number of white districts.

A. *When Minority Districts Win in Court*

Predominantly minority districts have successfully challenged school finance systems in three states — New Jersey, Texas, and Arizona. In each of the three states, which I will discuss in turn, protracted legislative battles ensued, prompting numerous returns to court. In New Jersey, the court and legislative battles over school finance reform have been ongoing for over twenty-five years and are by now legendary.¹¹⁷ There have been two different cases, *Robinson v. Cahill* and *Abbott v. Burke*, but they are both of a single piece.

The *Robinson* litigation began in 1970. In 1973, the New Jersey Supreme Court issued its first decision in the case, finding that the state's system of public school funding violated the constitutional guarantee of a "thorough and efficient" education.¹¹⁸ The case went before the supreme court on six additional occasions, primarily because the Legislature refused to comply with the court's order to ameliorate the disparities caused by the state's finance system.¹¹⁹ The Legislature finally enacted the Public School Education Act of 1975 ("Education Act" or "Act"), which the court upheld as facially valid.¹²⁰

117. The literature on the New Jersey case is large and grows with each new supreme court decision. See, e.g., RICHARD LEHNE, *THE QUEST FOR JUSTICE: THE POLITICS OF SCHOOL FINANCE REFORM* (1978); Tractenberg, *supra* note 36; Paul L. Tractenberg, *The Evolution and Implementation of Educational Rights Under the New Jersey Constitution of 1947* (1998) (unpublished manuscript, on file with author); Dorothy A. Brown, *The Invisibility Factor: The Limits of Public Choice Theory and Public Institutions*, 74 WASH. U. L.Q. 179 (1996).

118. See *Robinson I*, 303 A.2d 273 (N.J. 1973).

119. See *Robinson v. Cahill*, 306 A.2d 65 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1973) ("*Robinson II*"); *Robinson v. Cahill*, 335 A.2d 6 (N.J. 1975) ("*Robinson III*"); *Robinson v. Cahill*, 351 A.2d 713 (N.J. 1975), *cert. denied*, 423 U.S. 913 (1975) ("*Robinson IV*"); *Robinson v. Cahill*, 355 A.2d 129 (N.J. 1976) ("*Robinson V*"); *Robinson v. Cahill*, 358 A.2d 457 (N.J. 1976) ("*Robinson VI*"); *Robinson v. Cahill*, 360 A.2d 400 (N.J. 1976) ("*Robinson VII*").

120. See *Robinson V*, 355 A.2d at 139.

But the Legislature subsequently failed to fund the Education Act, despite a court order (with a deadline) to do so.¹²¹ The court then threatened to close the schools.¹²² Only after the court carried through with its threat and closed the schools for eight days (albeit during the summer), did the Legislature fund the Act — by passing a statewide income tax.¹²³ An order lifting the injunction that closed the schools was the court's last act in the *Robinson* litigation.¹²⁴

The *Abbott* litigation began in 1981. Students from four poor, urban minority districts — Camden, East Orange, Irvington, and Jersey City — challenged the constitutionality of the Education Act as applied, arguing that it did not sufficiently ameliorate the disparities between poor and wealthy districts.¹²⁵ After first remanding the case to an Administrative Law Judge to develop a record, the supreme court agreed with plaintiffs and held that the Act was unconstitutional as applied not only to the four original districts, but also as applied to 24 other poor urban districts in the state.¹²⁶ A thorough and efficient education, the court held, is “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,” which means, the court continued, “that poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students.”¹²⁷ The Act did not ensure that opportunity, and the court ordered that the Legislature provide substantial equality in funding between the 28 *Abbott* districts and the wealthiest suburban districts.¹²⁸ The court also ordered the state to devote additional funding to the *Abbott* districts to support programs to address the “special educational needs of these poorer urban districts.”¹²⁹

This time, and much to its later regret, the Legislature and Democratic Governor Florio moved quickly and enacted the Quality Education Act (“QEA”). The QEA increased funding not only for poor urban districts, but for the vast majority of school districts. The QEA also required property-rich school districts to shoulder the burden of

121. See *Robinson VI*, 358 A.2d at 457; see also Brown, *supra* note 117, at 191-92.

122. See *Robinson VI*, 358 A.2d at 457; LEHNE, *supra* note 117, at 156-63.

123. See LEHNE, *supra* note 117, at 160-63.

124. See *Robinson VII*, 360 A.2d at 400.

125. See *Abbott v. Burke*, 710 A.2d 450, 455 (N.J. 1998) (“*Abbott V*”).

126. See *id.*

127. See *Abbott II*, 575 A.2d 359, 372 (N.J. 1990) (citing *Robinson I*, 303 A.2d 273, 295 (N.J. 1973)).

128. See *Abbott II*, 575 A.2d at 408 (“We find that in order to provide a thorough and efficient education in these poorer urban districts, the State must assure that their educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts. . . .”).

129. See *id.*

teacher pension payments.¹³⁰ Despite the wide dispersion of funds that would have actually occurred under the QEA — school districts enrolling 85% of the state's students would have benefited — public opposition to the QEA was intense and widespread.¹³¹ Part of the opposition came from the largest teachers' organization, which opposed the handling of pension payments, and part came from a grassroots anti-tax group. Another portion of the opposition, however, stemmed from the (incorrect) public perception that the QEA would primarily benefit poor, minority urban districts, an opposition that some commentators suggest "was fueled by the fact that minority children from poorer urban districts were plaintiffs in the litigation."¹³²

In response to the opposition, the Legislature quickly amended the QEA. As a result, the poorest urban districts received only \$287 million of the \$800 million in new state aid distributed under the revised QEA.¹³³ Because the amended QEA left a large gap between the *Abbott* districts and the wealthy suburban districts, plaintiffs returned to court. In 1994, in *Abbott III*, the court found the statute unconstitutional as applied to the *Abbott* districts, both because it failed to assure parity and because it failed to provide supplemental programs to assist disadvantaged students.¹³⁴ The court established yet another deadline by which the Legislature had to assure parity of funding.¹³⁵ And the Legislature yet again ignored the deadline. When it finally did act in December 1996, it enacted legislation that made no attempt to achieve parity between the *Abbott* districts and the suburban districts; instead, the legislation substantively defined a "thorough and efficient" education and, using figures generated from a hypothetical district and computer model, provided the funds allegedly necessary to support that education.

In 1997, in *Abbott IV*, sixteen years after the start of the *Abbott* litigation and twenty-seven years after the start of the *Robinson* litigation, the court struck down the legislation and reinforced its earlier

130. See *Brown*, *supra* note 117, at 196.

131. See, e.g., *id.* at 197; Reed, *supra* note 3, at 209; Douglas S. Reed, *The People v. The Court: School Finance Reform and the New Jersey Supreme Court*, 4 CORNELL J.L. & PUB. POL'Y 137 (1994).

132. *Brown*, *supra* note 117, at 196-97; see also MARGARET E. GOERTZ, *THE ROCKY ROAD TO SCHOOL FINANCE REFORM 2* (Center for Educ. Pol'y Analysis Jan. 1993). As Douglas Reed has explained, "Governor Jim Florio designed the QEA (along with property tax rebates) to aid a broad range of lower-class and middle-class districts. The problem was that no one believed him." Reed, *supra* note 3, at 209. Thus, "[d]espite the pledges that middle and lower class districts would benefit under the new school finance regime — and budget allocations that fulfilled those pledges — middle class New Jerseyans quite literally took to the streets (and to the talk radio airwaves) to voice their opposition." *Id.*

133. See *Brown*, *supra* note 117, at 197-98.

134. See *Abbott v. Burke*, 643 A.2d 575 (N.J. 1994) ("*Abbott III*").

135. See *id.*

order requiring parity.¹³⁶ A year later, in *Abbott V*, the court — in its *twelfth* and most recent school finance decision — approved various additional programs for the *Abbott* districts.¹³⁷ At the moment, the Legislature appears to be complying with the court's latest orders to achieve parity and to fund additional programs. But given the Legislature's intense opposition throughout this saga, it is likely that the current repose is only temporary. Indeed, there is evidence that the Legislature is continuing to explore alternatives to parity in an effort to get out from under the court's remedy.¹³⁸

The Texas school finance saga has been less protracted than New Jersey's, but it still has been a long and complicated battle.¹³⁹ The Texas Supreme Court first struck down Texas's financing scheme in 1989, on the ground that the funding disparities created and tolerated by the scheme were not "efficient" as required by the state constitution.¹⁴⁰ The Legislature responded the next year by enacting legislation that the supreme court struck down in 1991 as insufficient; the court criticized the legislation for failing to "restructure the [financing] system."¹⁴¹ Then the litigation took an odd turn. The Legislature enacted legislation creating 188 county education districts ("CEDs"), solely for tax purposes; the idea was to group property-rich and property-poor districts together and have the former support the latter. Despite the fact that the Legislature certainly restructured the finance system, the supreme court struck this new scheme down on the ground that it created an unconstitutional ad valorem tax.¹⁴²

The Legislature then proposed a constitutional amendment that would allow for the creation of CEDs to levy, collect, and distribute the taxes.¹⁴³ Opponents dubbed the financing scheme and the necessary amendment the "Robin Hood" plan, because it involved recapturing money from the wealthier districts and redistributing it to the

136. See *Abbott IV*, 693 A.2d 417 (N.J. 1997).

137. See *Abbott V*, 710 A.2d 450 (N.J. 1998).

138. See, e.g., David P. Rebovich, *School Tax Threatens Whitman's Blueprint*, 7 N.J. LAW. 211 (1998); Author's Interviews with David Sciarra, Legal Director, Education Law Center, Newark, NJ (counsel for *Abbott* plaintiffs) (Feb. 3 & 10, 1998).

139. See Mark G. Yudof, *School Finance Reform in Texas: The Edgewood Saga*, 28 HARV. J. ON LEGIS. 499, 499 (1991) (remarking, in the context of discussing the Texas cases, that school finance reform "is like a Russian novel: it's long, tedious, and everybody dies in the end").

140. See *Edgewood I*, 777 S.W.2d 391, 397 (Tex. 1989).

141. *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1991) ("*Edgewood I*").

142. See *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 524 (Tex. 1992) ("*Edgewood III*").

143. See *Edgewood Indep. Sch. Dist. v. Meno*, 893 S.W.2d 450, 460 (Tex. 1995) ("*Edgewood V*").

poorer ones.¹⁴⁴ Voters in turn rejected the constitutional amendment by a wide margin — 63 percent to 27 percent.¹⁴⁵ The state then enacted legislation that capped property values at \$280,000 per pupil. Districts with property wealth above that amount must choose one or a combination of the following options: consolidate (physically or financially) with another district, detach territory for tax purposes, write the state a check, or educate nonresident students.¹⁴⁶ The financing scheme itself is two-tiered, with a foundation grant (tier one) that guarantees a set amount per pupil at a given tax rate, and a guaranteed yield plan (tier two) that guarantees an additional amount of funding per pupil for every additional cent in taxes above the minimum required for the foundation grant.¹⁴⁷

In 1995, the Texas Supreme Court upheld this legislation against challenges brought by property-poor districts (who objected to the fact that the legislation does not eliminate all disparities), as well as those brought by property-rich districts (who objected to the cap on property values).¹⁴⁸ Although this plan has existed for three years, its long-term stability is questionable. The Legislature debated competing proposals in 1997 either to eliminate the funding formula altogether or to raise the cap on assessed values, in order to reduce the “Robin Hood” effect of the current system.¹⁴⁹ The issue will be revisited in 1999, when the biennial legislature next convenes.¹⁵⁰

The litigation in Arizona is in its infancy by comparison to that in New Jersey and Texas, but it is already beginning to resemble its more mature companions. The plaintiff districts in Arizona are predominantly Hispanic, and in 1994, the Arizona Supreme Court invalidated the state’s system of funding school facilities.¹⁵¹ The court found that this aspect of the state’s finance scheme, which relies primarily on local property taxes, caused “gross disparities” and created “inadequate educational opportunities.”¹⁵² The Legislature’s first two responses were declared insufficient by the supreme court.¹⁵³ In a move reminiscent of the New Jersey litigation, the supreme court then threatened

144. See Douglas S. Reed, *Court-Ordered School Finance Equalization: Judicial Activism and Democratic Opposition* 10 (National Ctr. for Educ. Statistics Rep. 97-535) (last modified July 23, 1997) <<http://nces.ed.gov/pubs97/97535g.html>>.

145. See *id.*

146. See *Edgewood V*, 893 S.W.2d at 461.

147. See *id.*

148. See *id.* at 468-84.

149. See *Quality Counts*, *supra* note 21, at 250.

150. See *id.*

151. See *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994).

152. *Id.* at 814.

153. See *Hull v. Albrecht*, 950 P.2d 1141 (Ariz. 1997).

to cut off all public school funding if the Legislature did not enact responsive legislation.¹⁵⁴

The Legislature responded to the threat and enacted a plan that requires the state to spend \$374 million annually to build, equip, and maintain public schools.¹⁵⁵ Localities will still be able to spend above the state grant amounts through voter-approved local tax increases. The plan also requires the state to set adequacy standards for the facilities and to ensure that all public schools meet those standards within five years.¹⁵⁶ The plan, on its face, satisfied plaintiffs, who joined the state in requesting the Arizona court to declare the plan constitutional.¹⁵⁷ Plaintiffs did not wish the court to close the case and terminate jurisdiction, however, given that the standards have not yet been developed.¹⁵⁸ In mid-July, the supreme court approved the plan as constitutional and went ahead and terminated the case.¹⁵⁹ Whether this plan will succeed in closing the gap in facilities funding will not be known for another year or two, and plaintiffs have suggested that they will consider filing another suit if the gap is not eliminated.¹⁶⁰

B. *When White or Integrated Districts Win in Court*

Legislative recalcitrance and public opposition, to be sure, are not exclusive to states where minority districts succeed in court.¹⁶¹ A current example of legislative wrangling following court success by white school districts is found in New Hampshire, where the state supreme court, in December 1997, struck down the state's school finance system.¹⁶² That system relied to a larger extent than any other in the country on local funding, with the state share of school funding less

154. See *Quality Counts*, *supra* note 21, at 102.

155. See Hal Mattern, *Court OKs Students First, Closes Case*, THE ARIZONA REPUBLIC, July 21, 1998, at A1 [hereinafter Mattern, *Court OKs Students First*]; Hal Mattern, *School-Aid Partisans End Battle; Both Sides Petition Court for OK of Law*, THE ARIZONA REPUBLIC, July 16, 1998, at B1 [hereinafter Mattern, *School-Aid Partisans*].

156. See Mattern, *School-Aid Partisans*, *supra* note 155, at B1.

157. See *id.*

158. See *id.*

159. See Mattern, *Court OKs Students First*, *supra* note 155, at A1.

160. See *id.* (quoting the superintendent of one of the plaintiff districts, Jose Lebya, who stated: "I'd hate to see us back in court in two years, but if the gap isn't closed, as plaintiffs we would have to evaluate whether to file another suit").

161. See, e.g., Michael A. Rebell, *Fiscal Equality in Education: Deconstructing the Reigning Myths and Facing Reality*, 21 N.Y.U. REV. L. & SOC. CHANGE 691, 693 (1993) (suggesting that "few of the plaintiff victories have resulted in reforms that have demonstrably ameliorated the inequities," and that "overall, the record is disappointing").

162. See *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1354 (N.H. 1997).

than 10%.¹⁶³ In *Claremont School District v. Governor*, the New Hampshire Supreme Court held that students have a fundamental right to an adequate education and agreed with plaintiffs — five white rural districts — that property tax rates used to generate revenue for schools must be imposed uniformly across the state.¹⁶⁴

The Legislature and the Governor worked on responses for six months following the decision. Two proposals — one from the Governor and another from a state Senator — were declared insufficient by the supreme court, largely because both called for continued reliance upon varying real estate tax rates.¹⁶⁵ The Legislature recessed in the summer of 1998 without having agreed to a plan.¹⁶⁶ During the summer, Senator James M. Rubens, a Republican candidate for governor, tried to garner support for a constitutional amendment that would effectively overrule the supreme court's decision.¹⁶⁷ And then, finally, on April 29, 1999, the Legislature passed a bill that relied on a statewide property tax to raise the revenues necessary to satisfy the court's ruling.¹⁶⁸

An older example of public opposition to a school funding decision comes from California, although the interpretation of events there is not free from uncertainty. In California, shortly after the supreme court ruled in the *Serrano* litigation that spending disparities among districts could not exceed \$100, the voters approved Proposition 13.¹⁶⁹ This constitutional amendment capped local property taxes at one percent, rolled back property assessments, and required future state tax increases to be approved by a two-thirds vote of the Legislature.¹⁷⁰ In a well known article, and a subsequent follow-up, William Fischel argued that the tax revolt was caused by the equalization decisions; according to Fischel, the equalized financing took away any incentive

163. See Linda Jacobson, *School Finance Ruling Raises New Tax Questions in N.H.*, EDUC. WK., Jan. 14, 1998, at 26.

164. See *Claremont*, 703 A.2d at 1357-58.

165. See Linda Jacobson, *N.H. Lawmakers Go Home With No Funding Plan*, EDUC. WK., July 8, 1998, at 20, 24.

166. See *id.* at 20.

167. See *id.* at 24.

168. See Mary Ann Zohr, *At Long Last, N.H. Passes School Finance Plan*, EDUC. WK. ON THE WEB (May 5, 1999) <<http://www.edweek.org/cw/1994/34nn.n18>>. Although New Hampshire does demonstrate that school finance decisions in favor of white districts will certainly cause controversy in some states, it is nonetheless important to recognize that New Hampshire is relatively new to the school finance game. In *Claremont*, the court allowed the continuing funding system to remain in place until the end of 1998, recognizing that the Legislature would need a reasonable amount of time to change the system. Although the Legislature exceeded this time limit, and took close to a year and a half to enact responsive legislation, by New Jersey standards the Legislature acted quite quickly.

169. See REBELLET AL., *supra* note 45, at A-8.

170. See CAL. CONST. art. XIII A, §§ 1, 3 (1978).

among property-rich districts to continue taxing themselves at high rates because local districts would have to forfeit some local revenue to the state.¹⁷¹ Others have disagreed with Fischel's hypothesis, arguing that Proposition 13 was caused by a more generalized opposition to high property taxes.¹⁷²

Whatever its original cause, however, Proposition 13 has been devastating for the financing of California public schools, causing overall spending to plummet and California to drop from near the top in the nation in per-pupil expenditures to thirty-fifth.¹⁷³ At the same time, disparities among districts, although originally reduced by the *Serrano* litigation, have grown in recent years. The increasing disparities are due in part to student activities fees, desegregation funding, developer fees, private grants, and other means of raising revenue that are not covered by Proposition 13 or *Serrano*.¹⁷⁴

It is thus true, as New Hampshire and California illustrate, that school finance decisions won by white districts have not been met with enthusiasm in every state. At the same time, however, recalcitrant states like New Hampshire and California appear to be outweighed (and are certainly outnumbered) by those where the legislatures have been quite responsive to court mandates. This latter group includes Kentucky, Tennessee, Vermont, Massachusetts, Washington, and arguably Montana.¹⁷⁵ I will discuss each of these states briefly and in turn, beginning with the poster child of this group, Kentucky.

171. See Fischel, *How Serrano*, *supra* note 1, at 609 ("My research through scholarly articles, California newspapers and public documents shows that *Serrano* forced a legislature that was apparently eager to help poorer schools to adopt a particular response that was so far from California voters' demand for education that they brought Proposition 13 down on themselves." (footnote omitted)).

172. See, e.g., REBELL ET AL., *supra* note 45, at A-8 n.22 (quoting one of plaintiffs' attorneys in *Serrano*, who dismissed Fischel's argument as "silly" and suggested that the tax revolt resulting in Proposition 13 was a "force unto its own").

173. See *Quality Counts*, *supra* note 21, at 111.

174. See REBELL ET AL., *supra* note 45, at A-10. An unusual source of additional revenue exists in Beverly Hills; according to Fischel, the Beverly Hills school district "owns oil wells, whose revenues were not considered taxes and thus are not subject to either *Serrano*'s or Proposition 13's constraints." Fischel, *How Serrano*, *supra* note 1, at 621. For discussion and evidence of California's school finance experience after Proposition 13, see, e.g., Bradley W. Joondeph, *The Good, the Bad, and the Ugly: An Empirical Analysis of Litigation-Prompted School Finance Reform*, 35 SANTA CLARA L. REV. 763, 792-97, 813-14 (1995) (arguing that school finance litigation was a "Pyrrhic" victory in California because funding for the poorest school districts increased at half the rate of the national average in the years after the *Serrano* litigation); Tractenberg, *supra* note 36, at 72-75, 111-20.

175. Montana is representative of a small group of states, including West Virginia and Arkansas, where the legislatures were initially fairly responsive, but changes in the state economy combined with lack of continuing pressure for reform have stymied efforts to alleviate disparities or increase funding. See, e.g., REBELL ET AL., *supra* note 45, at A-4, A-44 to A-47, A-82 to A-87; see also Martin Schoppmeyer & Tommy Venters, *Arkansas' Disappearing Tax Base* (March 1993) (paper delivered at the American Ed. Finance Ass'n meeting) (on file with author); J.L. Flanagan, *West Virginia's Financial Dilemma: The Ideal School System in the Real World*, 15 J. EDUC. FIN. 229 (1989); *Quality Counts*, *supra* note 21,

In 1989, in response to a suit filed by predominantly white rural districts, the Kentucky Supreme Court declared the state's entire system of education (including its financing) unconstitutional.¹⁷⁶ Less than a year later, the Legislature enacted a sweeping and thorough reform package. The legislative package, known as the Kentucky Education Reform Act ("KERA"), both increased expenditures overall and reduced spending disparities.¹⁷⁷ In only three years, state funding increased by \$540.7 million, a 34% raise that boosted average per-pupil expenditures by over \$1,000.¹⁷⁸ During the same time period, the range between high- and low-spending districts dropped by 27%.¹⁷⁹ KERA, which has been hailed as "the nation's most comprehensive experiment in educational reform," also contained innovative provisions regarding school governance and accountability, created supplemental programs for at-risk children, and established academic standards.¹⁸⁰

Similarly responsive, if not as far-reaching, were legislative changes in both Tennessee and Vermont. A group of mostly rural, predominantly white school districts filed suit in Tennessee, alleging that existing funding disparities were unconstitutional.¹⁸¹ Interestingly, a group of metropolitan and urban districts, including Nashville-Davidson County and Memphis, intervened to contest the suit and express their opposition to having money diverted away from urban areas toward the rural districts.¹⁸² Plaintiffs won,¹⁸³ but even prior to the

at 265 (reporting that state court judge in West Virginia recently ordered Legislature again to equalize funding between poor and well-to-do school districts).

176. See *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989). Sixty-six poor school districts formed the Council for Better Education, and they were joined by seven other districts. Not among the plaintiffs was Louisville-Jefferson County. See Charles J. Russo, *School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?*, 83 KY. L.J. 123, 123 (1995). Surprisingly, no school district in Kentucky has a majority black enrollment. See *id.* For an entertaining discussion of the litigation (and Kentucky history), see Bert T. Combs, *Creative Constitutional Law: The Kentucky School Reform Law*, 28 HARV. J. ON LEGIS. 367 (1991). Combs, the former Governor of Kentucky, served as lead attorney for plaintiffs in the case.

177. For a useful discussion of the provisions and implementation of KERA, see Jacob E. Adams, Jr., *School Finance Policy & Students' Opportunities to Learn: Kentucky's Experience*, THE FUTURE OF CHILDREN, Winter 1997, at 79.

178. See REBELLE ET AL., *supra* note 45, at A-33 to A-34; Adams, *supra* note 177, at 81-84.

179. See Adams, *supra* note 177, at 81-84.

180. See *id.* at 79-80.

181. See *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993).

182. See Ernest G. Kelly, Jr., *School Finance Litigation: An Urban Perspective*, 61 TENN. L. REV. 471 (1994). For insight into the rural schools' perspective and the state's perspective on the case, see, respectively, Donelson, *supra* note 84, and Charles W. Burson & Jane W. Young, *School Finance Litigation: The State's Perspective*, 61 TENN. L. REV. 457 (1994).

183. See *McWherter*, 851 S.W.2d at 141.

supreme court decision in 1993, the Legislature revised Tennessee's school finance system.¹⁸⁴ The new formula targeted more money to the rural areas but required a six-year phase-in period and initially left out teachers' salaries as a cost that would be equalized.¹⁸⁵ The school districts returned to court to challenge the new law, and in 1995, the Tennessee Supreme Court ruled that the phase-in period was acceptable but that teachers' salaries had to be included within the equalization plan.¹⁸⁶ During the last six years, rural areas have received a greater proportion of state increases in funding, which has served to close the gap in spending between rural and suburban and metropolitan districts. All school districts, however, have seen some increase in state aid.¹⁸⁷ Indeed, over the six-year period that the new funding formula has been phased in, state spending on education has increased by \$1 billion — an 80% increase since 1992.¹⁸⁸ The Legislature, moreover, does not appear anxious to alter the revised system, which seems to be satisfying both rural and urban districts alike.¹⁸⁹

In Vermont, the Legislature reacted with remarkable alacrity to a state supreme court ruling in February 1997, which held that the disparities created by the state's reliance on local property taxes deprived children of their constitutional right to equal educational opportunities.¹⁹⁰ Within four months of the ruling, the Vermont Legislature enacted a bill that created a new statewide property tax earmarked for schools, and it also provided a funding mechanism that requires property-wealthy districts to share locally generated funds with other

184. See Linda G. Morra, *School Finance: Three States' Experience with Equity in School Funding*, GAO REP. HEHS-96-39, at 37 (Dec. 19, 1995). At the time that the Legislature acted, a lower state court had already declared the Tennessee finance system unconstitutional. The GAO Report suggests that the Legislature was motivated to act "by a potential court-imposed solution." *Id.* The Tennessee Supreme Court in its decision acknowledged the passage of the new legislation, but did not rule upon it and instead devoted its decision to the system that existed prior to its passage. See *McWhorter*, 851 S.W.2d at 147.

185. See Morra, *supra* note 184, at 40-46.

186. See *id.* at 45-46.

187. See *Quality Counts*, *supra* note 21, at 247 (reporting that a member of the state senate education committee acknowledged that the new aid targets the rural districts that brought the equalization suit, but also pointed out that all districts have seen their budgets increase).

188. See *id.*

189. See Morra, *supra* note 184, at 86 (reporting that "[n]early all the officials we interviewed [which included a small district superintendent] indicated that the impact of new money on small, rural districts had been significant," allowing these districts to "provide educational opportunities to their students that they could not offer before"); *Quality Counts*, *supra* note 21, at 244 ("While urban school officials say they wouldn't mind more money and less regulation, most are generally satisfied with how the state treats them.").

190. See *Brigham v. State*, 692 A.2d 384 (Vt. 1994).

districts.¹⁹¹ Under the plan, the State will ensure that each student receives a little more than \$5,000 in funding at a set tax rate. Localities can tax above the set rate and spend more than \$5,000, but wealthier districts will have to share additional tax revenues. Thus, under the plan, forty-one “gold towns,” many near ski resorts, will have to share tax revenues with 211 “receiving” towns. The Governor’s press secretary boasted that “no state has taken such broad steps in such a short amount of time as Vermont,” a claim that appears accurate.¹⁹² Despite the quick response, the legislation is still the subject of ongoing controversy and debate, with the wealthier towns objecting to what they call a Robin Hood approach.¹⁹³ Even novelist John Irving, who lives in a town that would lose money under the new plan, has entered the fray, calling the state’s plan Marxist and vowing either to open his own private school or leave the state.¹⁹⁴ At the moment, however, the plan is in place and functioning.

In Massachusetts and Washington, the legislatures were similarly quite eager to reform their state’s education finance system. The Massachusetts litigation, as mentioned above, was brought by sixteen school districts — thirteen of which were predominantly white, and three of which were predominantly Hispanic.¹⁹⁵ According to one of the attorneys who worked on the case, Boston was intentionally left out as a plaintiff, both because of the high spending in the district and because the attorneys believed it would have injected racial issues into the case, which would have been “too distracting.”¹⁹⁶ When the Massachusetts Supreme Court ruled that the state’s financing scheme violated the government’s duty to “cherish” the schools and failed to

191. See, e.g., Joetta L. Stack, *Vt. Lawmakers Include New State Property Tax in Finance Plan*, EDUC. WK., June 25, 1997.

192. See *id.*

193. For an interesting story on the political dispute, see generally Elinor Burkett, *Don't Tread on My Tax Rate*, N.Y. TIMES, Apr. 26, 1998 (Magazine), at 42. For an entertaining, if slightly inaccurate polemic against the legislation, see Amity Shlaes, *Vermont Levels Its Schools*, WALL ST. J., Apr. 22, 1998, at A22.

194. See Shlaes, *supra* note 193, at A22; Joetta Sack & Robert C. Johnson, *State Journal, The Author and Act 60*, EDUC. WK. ON THE WEB (June 24, 1998) <<http://www.edweek.org/ew/1998/4/stjour.h17>>.

195. See *supra* note 88 and accompanying text.

196. Telephone Interview with Mark D. Weisman, Esq. (counsel for plaintiffs) (Feb. 13, 1998). Massachusetts is classified with the “white” districts, despite the inclusion of three predominantly Hispanic districts as plaintiffs, for three reasons. First, the vast majority (13 of 16) plaintiff districts were predominantly white. Second, Massachusetts has traditionally had difficult relations between blacks and whites, as Boston’s desegregation experience painfully demonstrated, see, e.g., J. ANTHONY LUKAS, *COMMON GROUND* (1985); I am not aware of comparable difficulties between whites and Hispanics. Third, there is no indication that race or ethnicity was a factor in the litigation or legislation. Indeed, according to Mark Weisman, *supra*, plaintiffs’ attorneys intentionally structured their case to avoid injecting racial issues into the case.

assure an adequate education for all students,¹⁹⁷ legislation to reform the system was already sitting on the Governor's desk awaiting his signature.¹⁹⁸ Since enacted, that legislation has increased state education aid by over \$200 million a year for each of the last five years, raising the per-pupil spending in the poorest quartile of districts by 27%.¹⁹⁹ And the state's target of bringing all poor districts up to a "foundation" level based on student population and need by the year 2000 seems within reach.²⁰⁰

Washington is difficult to classify as a true success story, and it is perhaps best described as an example of the unintended consequences that can attend school finance litigation. The Washington experience is nonetheless quite consistent with the thesis of this Article, insofar as the Legislature acted quickly in response to litigation brought by an integrated urban district, but enacted legislation that ultimately worked to the disadvantage of high minority districts. The case was brought by the Seattle school district, which is composed of a diverse mix of students. As of 1993-94, 41% of students were white, 25% Asian-American, 23% African-American, 8% Hispanic, and 3% Native American.²⁰¹ After the trial court declared the state's financing system unconstitutional in 1976, but before the supreme court affirmed that ruling, the state government enacted legislation that defined the state's educational goals, placed a greater burden for funding on the state, and limited the amount that localities could spend beyond the state-provided amount.²⁰² According to one commentator, the state government was clearly anxious to reform the finance system, describing the Legislature at the time as a "consensus looking for a solution," and contending that the judicial decision merely "added momentum" to the Legislature's reform plans.²⁰³

Despite an early increase in state aid, however, in the two decades since the decision Washington's education spending has declined relative to other states.²⁰⁴ More importantly, while greater equalization

197. See *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993).

198. See *Enrich*, *supra* note 60, at 176.

199. See *Quality Counts*, *supra* note 21, at 175.

200. See *id.*; see also Clare Kittredge, *They Say Others' Examples Leave Room for a Solution Here*, BOSTON GLOBE, Jan. 18, 1998 (New Hampshire Weekly), at 1 (describing legislative responses to school finance decisions in Massachusetts and other states).

201. *Quality Counts*, *supra* note 21, at 262. •

202. See *REBELLET AL.*, *supra* note 45, at A-74 to A-77.

203. See ROBERT PALAICH ET AL., STATE LEGISLATIVE VOTING AND LEADERSHIP: THE POLITICAL ECONOMY OF SCHOOL FINANCE 233-34 (Education Governance Center Working Paper No. 1, 1983).

204. Washington's average per-pupil expenditures dropped from 12th in 1979 to 25th in 1991. See Jim Simon, *The State Budget: Battle of the Bulge — Crowded Classrooms Equal a Financial Squeeze*, SEATTLE TIMES, Mar. 22, 1993, at A1.

has occurred, most of the benefit has gone to rural districts.²⁰⁵ According to some accounts, the urban districts' greater needs for special education, bilingual education, and capital repairs have largely gone unmet and in fact have been hampered by the spending caps.²⁰⁶ Indeed, one study indicated that the legislation has reduced the share of education funds going to the districts with the highest percentage of poor and minority students.²⁰⁷

Rounding out the picture of legislative responses where successful suits were brought by white or integrated districts is Montana, which actually serves as a prototype for two other states, West Virginia and Arkansas. Sixty-seven predominantly white school districts,²⁰⁸ including Helena and Billings, challenged Montana's finance system in 1987.²⁰⁹ Relying on an explicit constitutional guarantee of equal educational opportunity, the supreme court upheld their challenge in 1989.²¹⁰ That same year, the Legislature enacted a "sweeping overhaul of the entire system," which included the largest single increase in education funding in Montana history.²¹¹ The legislation still allowed for significant disparities, however, which were addressed after plaintiffs filed another case and a coalition of rural districts initiated their own litigation.²¹² Although the new legislation did result in greater equalization, with rural schools receiving additional funding, it also cut funding for the schools by \$29 million because of a state recession.²¹³ The two additional lawsuits were dismissed after the latest legislative changes, but the state trial court has retained jurisdiction to allow the parties to amend their pleadings to challenge the new legislation.²¹⁴

205. See REBELLET AL., *supra* note 45, at A-78 to A-79.

206. See, e.g., *id.* at A-79.

207. See Neil D. Theobald & Faith Hanna, *Ample Provision for Whom?: The Evolution of State Control over School Finance in Washington*, 17 J. EDUC. FIN. 7 (1991). As Theobald and Hanna explain, prior to the equalization litigation, teachers' salaries in poor minority districts were about 2% above the state average. Since salaries have been equalized, the poor minority schools have received less money for their teachers. See *id.* at 24-25.

208. Whites comprise 92% of the entire state's population; the only sizable minority group consists of Native Americans, who make up 6% of the population and 10% of the K-12 student body. See *Quality Counts*, *supra* note 21, at 194.

209. See *Helena Sch. Dist. v. Montana*, 769 P.2d 684 (Mont. 1989).

210. See *id.* at 690.

211. See REBELLET AL., *supra* note 45, at A-44; THE JOINT INTERIM SUBCOMMITTEE ON SCHOOL FUNDING, 53D LEGIS., REPORT ON LEGISLATIVE RESPONSES TO REMAINING SCHOOL FUNDING EQUITY ISSUES (Mont. 1992) (prepared by Andrea L. Merrill).

212. See REBELLET AL., *supra* note 45, at A-45 to A-46; David Fenner, *Lawsuit Revised: Schools Challenge Funding Fix*, THE MISSOURIAN, Aug. 20, 1993.

213. See REBELLET AL., *supra* note 45, at A-47; cf. *Quality Counts*, *supra* note 21, at 194 (reporting that the Legislature cut \$50 million from the education budget).

214. See REBELLET AL., *supra* note 45, at A-47 to A-48.

Montana's example, like Washington's, is difficult to classify and provides further proof of the complexity of school finance reform. The Montana Legislature was prodded first by a court decision and then by the threat of additional litigation to make an apparently sincere and good-faith effort to reform the school finance system. The state's poor economy, however, ultimately dwarfed the legislative reforms. A similar dynamic has occurred in West Virginia and Arkansas, where the legislatures made attempts to equalize school spending in response to a court decision (and in West Virginia largely succeeded), but where the poor economies have kept overall spending quite low.²¹⁵ Although one could not call the school finance litigation in these states a complete success by any stretch, the failures do not seem directly attributable to legislative inaction or opposition to school finance reform.

C. *Assessing the Evidence*

This leads to the point one can reasonably make regarding the legislative responses in the states just surveyed. It is not true that court success by a white or integrated district will always translate into legislation that equalizes and increases expenditures. But the efforts made in these states, and the success stories of states like Kentucky, Tennessee, Vermont, and Massachusetts, stand in contrast to the tenor of the legislative and popular responses to court decisions in states like New Jersey, Texas, and Arizona. The level and quality of legislative recalcitrance and public opposition is palpably different in the latter states. The New Jersey Supreme Court has had to rule twelve times in order to force the Legislature to comply, the Texas Supreme Court five, and the Arizona Supreme Court four times. In two of these states, the courts have had to threaten to close the schools to prompt legislative action. And in each of these states, the legislature and/or the public has openly and often fiercely opposed devoting more resources to districts attended primarily by minority students.²¹⁶

The upshot of the evidence may be that school finance reform is typically a difficult and complicated process and that translating a court decision into significant equalization or increased resources will

215. See *Quality Counts*, *supra* note 21, at 104-06, 265.

216. See *Quality Counts*, *supra* note 21, at 102, 204-05, 252. According to a teacher from Phoenix, a predominantly Hispanic district, "[a] lot of the attitude is, 'It's a rat hole, so why pour more money down it.'" *Id.* at 100. In a report regarding education reform in Texas, Dallas was described as a scene of "bitter and open racial feuding" among blacks, whites, and Hispanics. *Id.* at 252. The same report quoted the Superintendent of Houston, who observed that it is difficult to garner public support for education in city schools because "[t]he district educates a student population that does not resemble the adult makeup of the city taxpayers in ethnicity or socioeconomic levels." *Id.* at 252. And in New Jersey, legislators have generally demonstrated a stronger interest in taking over urban minority districts than in complying with court orders to increase expenditures in those districts. See *id.* at 204-05.

usually be a challenge. But the experiences in Texas, New Jersey, and Arizona suggest that reform will be particularly difficult when legislatures are forced by court order to devote more resources primarily to minority districts. Thus, while a number of white districts may, like minority districts, also fail to capitalize on school finance court victories, that fact alone hardly makes school finance litigation a promising avenue for minority districts.

One final note on the evidence is in order, concerning the actual results of the cases in New Jersey and Texas. (Arizona is excluded because the Legislature only recently enacted valid legislation). In both cases, spending disparities have been reduced, and in New Jersey, the twenty-eight urban minority districts are currently funded at the same level as the wealthiest suburban districts — and this in the state that has the highest average per-pupil expenditure. The results are important, and they clearly run counter — at least at first glance — to my argument that urban minority districts do not fare particularly well in school finance reform. But there are three points to keep in mind when assessing these results, all of which help place the results in perspective and reduce, if not eliminate, their apparent inconsistency with my thesis.

First, New Jersey and Texas are clearly exceptional cases, insofar as they are only two of ten states where minority districts have brought school finance challenges. In seven other states, the challenge never made it past the court, and in the eighth — Arizona — the results are not complete. Second, the results were not achieved without extraordinarily long legislative fights and would not have been realized without strong judicial leadership. There are already signs in both New Jersey and Texas suggesting that judicial involvement may not be as strong or favorable in the future.²¹⁷ Third, and relatedly, there is no evidence that the saga will end soon in either state, as there is little sense that the legislatures are truly dedicated to implementing the court-ordered reform. On the contrary, in both New Jersey and Texas, there are signs of unrest and indications that the legislatures will revisit the issue soon. Although it is too early to predict the next stage in the New Jersey and Texas stories, the sense one has of the current situation in these states is quite different from the sense one has of the legislatures' dedication to school finance reform in states like Kentucky and Tennessee, where the court decisions were readily accepted and the remedies are being carried out apparently quite faithfully.

217. Chief Justice Wilentz, for example, who spearheaded the earlier *Abbott* decisions, has been replaced by Deborah Poritz, who formerly was Governor Whitman's Attorney General. In Texas, there was some backtracking in *Edgewood III* and *IV*, and there is continuing evidence of popular discontent with the funding scheme. See YUDOF ET AL., *supra* note 36, at 648; *Quality Counts*, *supra* note 21, at 250.

D. Race as an Explanation

Although the above evidence suggests that minority districts have faced a greater degree of legislative recalcitrance after winning in court, it does not necessarily follow that these districts suffered *because of* their racial composition. And it is certainly true that alternative explanations that do not rely on race could plausibly explain the legislative reactions in Arizona, New Jersey, and Texas. There are, after all, a number of factors not directly related to race that influence legislative attempts to reform school financing -- anti-tax sentiment within the state, general urban/suburban/rural power struggles, and the state's economy all play a role. Without discounting those factors, I would like to discuss in more detail the evidence gathered by Tedin and Reed, mentioned at the outset of the Article, which lends more direct support to the hypothesis that race does play a role in popular (and by presumption legislative) opposition to the equalization of resources.²¹⁸

Tedin surveyed roughly 1,000 whites in two predominantly white districts near Houston, one of which would gain funds under a legislative plan then being considered and one of which would lose funds.²¹⁹ He gauged their attitudes both toward school finance reform and toward blacks and Hispanics. He found first that 82% of whites assumed that school finance equalization would benefit predominantly Hispanic districts, and 83% believed it would also benefit predominantly black districts. Only 9% of whites surveyed thought white districts would benefit, and 73% thought white districts would lose money.²²⁰ This perception was incorrect in two ways: first, some white districts, including one of the two districts in which the respondents lived, would benefit under the plan, and, second, most blacks in Texas live in urban areas like Houston or Dallas, which happen to be property-rich and not likely to be helped by school finance reform.²²¹ Tedin then found that hostility or prejudice toward blacks, using measurements developed for gauging "symbolic" or "modern" racism,²²² had almost the same correlation with attitudes toward school

218. See *supra* notes 3-7 and accompanying text.

219. The polling occurred in August 1991. At the time, the Texas Legislature had recently enacted a plan that created 188 county educational districts ("CEDs"), which grouped together a number of school districts for financing purposes only. The CEDs had roughly equal property valuations, and within a CED, funds were designed to flow from wealthier school districts to poorer ones. See Tedin, *supra* note 3, at 630.

220. See Tedin, *supra* note 3, at 634 n.18.

221. See *id.* at 639 n.27.

222. The idea of symbolic or modern racism stems most directly from David Sears's work on whites' attitudes toward busing. Sears posits that symbolic racism has replaced much overt racism, and that the former arises out of a general hostility toward black demands for greater inclusion in the economic and political benefits of society, as well as from

finance equalization as did economic self-interest. In other words, Tedin found that a measurement indicating prejudice or hostility toward blacks was just about as likely to be correlated with opposition to school finance equalization as was living in the district that stood to lose funds.²²³

Reed's research, in turn, involved studying the results of a June 1990 poll of 800 New Jersey residents about their views regarding the recently enacted QEA. He found that, for the population at large, economic self-interest (i.e., would the respondent's property taxes rise or fall, or would respondent's school district receive more or less state aid) seemed to have the greatest influence on attitudes toward the QEA.²²⁴ Among parents of school children, however, he found that the QEA was viewed largely "through racial lenses," and that neither the perceived effects of the QEA nor the parents' income could explain attitudes toward the QEA.²²⁵ "Instead, race was a far better predictor of support or opposition. In general, white parents were far more likely to oppose the QEA and nonwhite parents were far more likely to support equalization, all other variables held constant."²²⁶ Indeed, even white parents within the 28 *Abbott* districts strongly opposed the QEA, despite the fact that their schools would receive additional funding.²²⁷

The analyses and methodologies of Tedin and Reed assuredly could be criticized, as seemingly all social science studies eventually are, and their inquiries and sample groups are fairly limited. But theirs are the only studies I have found, aside from the research on

the perception that blacks lack commitment to traditional values such as individualism, discipline, and self-reliance. See David O. Sears, *Symbolic Racism, in ELIMINATING RACISM: PROFILES IN CONTROVERSY* (Phyllis A. Katz & Dalmas A. Taylor eds., 1988); David O. Sears & H.M. Allen, *The Trajectory of Local Desegregation Controversies and Whites' Opposition to Busing, in GROUPS IN CONFLICT: THE PSYCHOLOGY OF DESEGREGATION* 123, 133 (Norman Miller & Marilyn B. Brewster eds., 1984). Tedin posed four questions that have been used in the past to measure symbolic racism, such as whether respondents agreed or disagreed with the statement that "[i]t's really a matter of some people not trying hard enough; if blacks would only try harder they could be just as well off as whites." Tedin, *supra* note 3, at 635 & n.22. He then compared scores on this measurement with attitudes toward school finance reform. Needless to say, the entire concept of "symbolic racism" is controversial, as are the means of measuring it. See, e.g., Paul M. Sniderman & Philip E. Tetlock, *Symbolic Racism: Problems of Political Motive Attribution*, 42 AM. J. SOC. ISSUES 129 (1986). To my untrained eye, the controversy seems well deserved, insofar as using four questions to determine if the respondent deserves to be deemed a racist — albeit a symbolic or modern one — appears a bit less than scientific. Nonetheless, the fact that a high score on the symbolic racism test explained nearly as much opposition to school equalization as did measurements of economic self-interest is not easily ignored.

223. See Tedin, *supra* note 3, at 638, 646-47.

224. See Reed, *supra* note 3, at 211.

225. See *id.* at 212.

226. *Id.*

227. See *id.* at 211-12; see also Reed, *supra* note 144, at 9.

Proposition 13 in California, seeking to explain popular support for or opposition to school finance reform, and they certainly support the notion that school finance reform is a racially divisive issue — even among whites and blacks who both stand to gain from the reform. Indeed, their research goes beyond my argument — that minority districts which will benefit from school finance decisions face an uphill legislative battle — and suggests that whites tend to perceive school finance reform as primarily benefiting minorities, even when inconsistent with reality, and that “racial hostility” appears to play a “major role in explaining the level of support for the reform of school financing.”²²⁸

That minority districts will have a difficult time securing legislative reform, even when successful in court, is also suggested by commentators who have asserted that school finance court decisions will lead to legislative reform only when those decisions coincide with an existing political consensus in favor of reform. Under such circumstances, these commentators suggest, court decisions can act as a prod or shield for legislators who favor reform but have not acted because of fear of voter reaction — e.g., voter backlash over increased taxes.²²⁹ The legislative successes in Kentucky, Massachusetts, and Washington bear out this observation; in each state, the legislature was poised to act even before the court decisions.²³⁰

To the extent that this political dynamic is an accurate predictor of legislative responsiveness, it is not surprising that the legislatures in New Jersey, Texas, and Arizona have been less than anxious to divert

228. Tedin, *supra* note 3, at 638.

229. See, e.g., ELMORE & McLAUGHLIN, *supra* note 90; Enrich, *supra* note 60, at 176-77; Clayton P. Gillette, *Reconstructing Local Control of School Finance*, 25 CAP. U. L. REV. 37 (1996); Michael Heise, *Schoolhouses, Courthouses and Statehouses: Educational Finance, Constitutional Structure, and the Separation of Powers Doctrine*, 33 LAND & WATER L. REV. 281, 305-06 (1998); Kahn, *supra* note 114, at 468 (“Successful [school finance] litigation has more often been the product, not the cause, of a political consensus that the schools need fundamental change.”).

230. See Enrich, *supra* note 60, at 176-77. Enrich observes that in Kentucky, Massachusetts, and Washington, at the time their state supreme courts ruled, the legislatures had already “taken significant steps to transform the educational system challenged in the case.” *Id.* at 176. The courts in these states, Enrich argues, thus served “as a goad or as a backstop to the legislature’s accomplishment.” *Id.* (footnote omitted).

Similarly, in other states, legislatures have acted in response to litigation that ultimately resulted in the state financing scheme being upheld. Minnesota, for example, reformed its school finance system while litigation (brought by rural districts) was pending. See Morra, *supra* note 184, at 48. Notably, similar legislative action did not occur in the states where litigation was brought by minority districts — e.g., New York, Illinois, Pennsylvania, or Michigan. Decades after unsuccessful school finance litigation, Michigan did reform its school finance system by largely dispensing with reliance on local property taxes. The effects this reform will have on poor districts, and on Detroit in particular, remain to be seen, and are being debated by proponents and foes of the reform. See Michael F. Addonizio et al., *Blowing Up the System: Some Fiscal and Legal Perspectives on Michigan’s School Finance Reform*, 107 EDUC. LAW. REP. 15 (1996).

resources to minority districts.²³¹ These districts simply do not have a great deal of political clout in their state legislatures, and it is hard to imagine that there was a political consensus in favor of benefiting them. What is true of minority districts in New Jersey, Texas, and Arizona seems generally true of minority districts elsewhere. It is therefore difficult to imagine a strong political consensus among state legislators to redistribute or raise resources for predominantly minority districts.²³² Moreover, the public opposition to the QEA in New Jersey, as well as Tedin's and Reed's studies, suggest that incorporating minority districts within a larger group of beneficiaries that includes white districts may not be sufficient to overcome popular perception that legislative reform will primarily assist minorities. Instead, it appears that this popular perception is shaped and fixed by the involvement of minority districts in school finance litigation, which in turn creates a dynamic that only increases legislative resistance to school finance reform.

IV. IMPLICATIONS

It seems safe to conclude from the evidence presented here that minority districts do not fare as well in school finance litigation as do white districts, and that school finance reform is at times seen through a racial lens. Race thus appears to be a salient issue in school finance reform and litigation. This fact is significant for at least three reasons — one academic, one historical, and one practical.

From a purely academic perspective, the evidence detailed in this Article offers additional proof that one cannot fully understand the dynamics and limitations of school finance reform without paying attention to the dynamics of race relations in general and school desegregation in particular. I suggested as much in an earlier article, and the evidence here bolsters that suggestion.²³³ School finance scholars seeking to make sense of the disparate outcomes in school finance litigation, understand the likelihood of legislative recalcitrance, and predict future trends in school finance would do well to consider the racial composition of the school districts challenging state funding schemes.

231. This dynamic is neatly demonstrated by the New Jersey Legislature's handling of the QEA, which ultimately devoted only a small portion of the additional state aid to the 28 Abbott districts. See Reed, *supra* note 3, at 211-12.

232. Cf. DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993). Massey and Denton contend that residential segregation has also led to political isolation of minority districts. Because these communities are isolated geographically, the argument goes, they have a difficult time forming coalitions with other groups that might otherwise share common goals. See *id.* at 153-62; see also GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 605-63 (1944).

233. See Ryan, *supra* note 9, at 255.

As for the historical implications of this evidence, it suggests that the NAACP's desegregation strategy was a sound one. This strategy was based on the principle of tying the fate of white and black students together in order to ensure that white legislators and school officials could not benefit white students without also benefiting black students. Put more crudely, the strategy was based on the notion that green follows white, and that black students would receive more educational resources if placed in white schools.²³⁴ As it turned out, many minority districts were able to secure additional funding, while remaining racially isolated, through the device of *Milliken II* funding. This funding, however, is of course dependent on court order and will likely disappear when desegregation decrees are dismantled.

The precarious financial position of *Milliken II* districts stands in sharp contrast to the relatively stable funding of the few integrated, metropolitan-wide school districts and their integrated or predominantly white urban counterparts. As for metropolitan-wide school districts, Charlotte-Mecklenberg in North Carolina, Louisville-Jefferson County in Kentucky, and Nashville-Davidson County in Tennessee are three excellent examples of well-integrated school districts that encompass both central cities and surrounding suburbs.²³⁵ Not only do they spend above their statewide averages, even when adjusted for relevant costs, but their funding — save for a tiny portion of Charlotte-Mecklenberg's²³⁶ — is not dependent on desegregation decrees.²³⁷

234. See *id.* at 258-59.

235. Each of the districts is majority white. Charlotte-Mecklenberg is 46% minority; Louisville-Jefferson County is 33% minority; and Nashville-Davidson County is 45% minority. See *Quality Counts*, *supra* note 21, at 64-65.

236. In 1993-94, Charlotte-Mecklenberg received \$3.28 million from the federal government to help fund magnet programs. See Telephone Interview with John Dean, District Staff (June 30, 1998). There were between 87,000 and 93,000 students enrolled in the district that year, which works out to between \$38 and \$35 per student. See *School District Data Book*, *supra* note 75, at North Carolina, Mecklenberg (reporting that in 1989-90 the district enrolled approximately 87,000 students); *Quality Counts*, *supra* note 21, at 219 (reporting that in 1996 Charlotte-Mecklenberg had 93,000 students). This obviously does not explain the \$300 per pupil that Charlotte-Mecklenberg spends above the state average. See *Quality Counts*, *supra* note 21, at 67.

237. Louisville-Jefferson County spent roughly \$500 over the state average in 1993-94, and Nashville-Davidson County spent roughly \$550 over the state average. See *Quality Counts*, *supra* note 21, at 66-67. Las Vegas, which is in the Clark County school district, is another good example of the benefits of a metropolitan district, but also an illustration that such districts may face pressure from wealthier communities to split apart. See *id.* at 198-99. Las Vegas is 37% minority and in 1993-94 spent slightly less (\$14 per pupil) than the state average when cost adjustments were made. See *id.* at 65, 67. Overall, Nevada has one of the most equitable financing systems in the country; indeed, a GAO report found that Nevada was the only state in which every district could make the average per-pupil expenditure with average tax effort. See SCHOOL FINANCE: STATE EFFORTS TO REDUCE FUNDING GAPS BETWEEN POOR AND WEALTHY DISTRICTS, GAO/HEHS-97-13, at 16 (1997). The fairness of the school finance scheme in Nevada stems from the district configurations in the state: there are only 17 districts, all county-wide. That poor areas are helped by such districting is

What is more; these districts have relatively fewer impoverished students than typical urban districts and thus do not face the difficulties caused by concentrated poverty.²³⁸

As for urban districts, Salt Lake City, Portland (Oregon), and Albuquerque are all city-only districts, and all have fairly well-integrated school systems.²³⁹ None receives desegregation funding. Both Salt Lake and Portland spent above their state averages in 1993-94. Albuquerque spent slightly less, but the city is nonetheless still seen as the "powerhouse" of the state. The Legislature, moreover, recently revamped the school financing policy to provide more funding to districts with at-risk students, which should benefit Albuquerque. As proof of Albuquerque's political strength, the Legislature made these changes to its school finance system despite the fact that a school finance challenge was unsuccessful in court. New Mexico's finance scheme is now considered to be one of the most equitable in the country.²⁴⁰

These counter-examples of relatively well-funded, integrated districts tend to vindicate the NAACP's desegregation strategy. The evidence from these districts suggests that "tying" has worked, at least at the level of school funding. The poorest neighborhoods, and the poorest students, do appear to benefit from having their fates tied to the fates of wealthier neighborhoods and students. As others have noted, in metropolitan districts, "[t]he children of the most powerful and least powerful sectors of the community depend on the same large institution, and all races and classes have a vital interest in its suc-

perhaps best demonstrated by the fact that some wealthier communities are attempting to secede from school districts. See *Quality Counts*, *supra* note 21, at 201.

238. Reports regarding each of the cities credit the merger of city and suburban districts for the relative good fortune of these school districts. The merger of Louisville with Jefferson County, which occurred as a result of one of the rare, successful interdistrict desegregation cases, bolstered "what were at the time bankrupt and troubled downtown schools. If the Jefferson County and Louisville schools had stayed separate, Kentuckians say, the Louisville school system would have the same, seemingly intractable problems found in urban systems in other states." *Quality Counts*, *supra* note 21, at 161. Similarly, the city of Charlotte's good fortune "is largely credited to its union with Mecklenberg County, with its wealthy subdivisions and its solid middle-class base." *Id.* at 220. The merger, according to those familiar with the system, "has meant equity of funding for urban and suburban schools alike and improved conditions for the poorest students. The combined system has also helped prevent the flight of affluent white residents from the urban center." *Id.*; see also Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825 (1996). Likewise, the merger of Nashville schools with the surrounding schools in Davidson County provided Nashville access to the resources of the wealthiest county in Tennessee. See *Quality Counts*, *supra* note 21, at 245.

239. Salt Lake has a surprising number of minority students — 30% — given that the entire public school enrollment is only 9% minority. See *Quality Counts*, *supra* note 21, at 65. Portland is 32% minority, in a state where public school enrollment is 14% minority. See *id.* Albuquerque has a majority (55%) of minority students, mostly Hispanic, in a state where public school enrollment has an even higher percentage of minority students (60%). See *id.*

240. See *Quality Counts*, *supra* note 21, at 208.

cess."²⁴¹ In addition, allocation decisions in states with metropolitan districts do not pit central cities against suburbs but instead feature a unified metropolitan area seeking resources with one voice.²⁴² Given the balance of power in many state legislatures, where suburban legislators dominate, this different political dynamic and the coalition between suburb and city seem crucial and undoubtedly explain why the funding in metropolitan districts seems on surer footing than does the funding in predominantly minority, urban districts. For the latter, reliance on the courts, either for desegregation funding or school finance reform, is often seen as the only alternative. As this Article reveals, however, such reliance has led to fleeting relief in the desegregation context and even less in the school finance context.

Finally, from a practical perspective, the evidence presented here indicates that school finance reform is not a perfect substitute for desegregation. As mentioned earlier, support for school desegregation appears to be on the wane among blacks and whites, liberals and conservatives. More and more, courts, advocates, and academics alike assert that desegregation is not the answer, and that poor, urban minority schools will succeed if given more resources to adopt one of several popular educational reforms.²⁴³ The current, conventional wisdom, in short, is that reform efforts should be directed solely at improving the education that minority students receive, regardless of whether those students are in integrated or segregated schools.²⁴⁴

241. Orfield, *supra* note 238, at 834. See generally James S. Liebman, *Desegregating Politics: "All-Out" School Desegregation Explained*, 90 COLUM. L. REV. 1463 (1990).

242. See Orfield, *supra* note 238, at 836.

243. The three reforms that are currently in fashion, and which overlap to a certain extent, are standards-based reform, whole-school or systemic reform, and site-based management. See, e.g., JEAN ANYON, GHETTO SCHOOLING: A POLITICAL ECONOMY OF URBAN EDUCATIONAL REFORM 9-12 (1997) (describing scope of current reforms and history of earlier waves of reform); ALLAN ODDEN & CAROLYN BUSCH, FINANCING SCHOOLS FOR HIGH PERFORMANCE: STRATEGIES FOR IMPROVING THE USE OF EDUCATIONAL RESOURCES (1998); Olatokunbo S. Fashola & Robert E. Slavin, *Schoolwide Reform Models: What Works?*, 79 PHI DELTA KAPPAN 370 (1998) (describing whole-school reform programs); James S. Liebman, *Implementing Brown in the 90s: Political Reconstruction, Liberal Recollection, and Litigatively Enforced Legislative Reform*, 76 VA. L. REV. 349, 371-78 (1990) (describing standards movement); Kenneth K. Wong et al., *Prospects: Special Analyses*, prepared for the U.S. Department of Education (1996). The precursor to today's reforms was the "effective schools" movement, which sought to identify the most essential traits — such as effective leadership and strong teacher preparation — of productive and successful schools. See, e.g., Stewart C. Purkey & Marshall S. Smith, *Effective Schools: A Review*, 83 ELEMENTARY. SCH. J. 427 (1983).

244. See, e.g., WELLS & CRAIN, *supra* note 53, at 336. In their case study of the St. Louis desegregation plan, which sends thousands of minority students from the city to suburban schools, Wells and Crain report that "[t]ime and time again educators, policy makers, parents, students, and 'people on the streets' of metropolitan St. Louis told us that the millions of dollars the state pays to bring nearly 13,000 African-American students to suburban schools would be better spent 'fixing up' the city schools." *Id.*; see also STEVE FARKAS & JEAN JOHNSON, *TIME TO MOVE ON: AFRICAN-AMERICANS AND WHITE PARENTS SET AN AGENDA FOR PUBLIC SCHOOLS 10* (1998) (reporting results of survey conducted by Public

I would like to suggest that it is not as easy as the conventional wisdom would suggest to separate the racial composition of a school district and the district's chances of receiving sufficient resources to support educational reform. I interpret the evidence collected in this Article as demonstrating that as long as race affects the decisionmaking of courts or legislatures, the racial make-up of school districts will continue to affect decisions regarding school funding. This reality has been absent from the debate about abandoning integration as a goal in education reform. It deserves to be included and seriously considered, particularly by those who advocate the creation or maintenance of single-race schools.²⁴⁵

I have argued elsewhere that it would be unwise as a matter of education policy to abandon integration, given the demonstrable benefits of integration and the dearth of evidence indicating that increasing expenditures in racially isolated schools is academically efficacious.²⁴⁶ This Article poses something of an argument in the alternative, in an effort to demonstrate that it may also be unwise, from a financial perspective, to abandon integration. In other words, even if increasing expenditures in urban minority schools would enable them to provide an education comparable to that provided in the average suburban district (a scenario I find implausible), we are still left with the question: What is the likelihood that minority schools will receive funds sufficient to carry out this task? Based on the evidence discussed above, the answer is not encouraging: many minority districts are going to lose their *Milliken II* funding in the near future, and the prospects of using school finance litigation to maintain or increase current expenditure levels appears dim.

CONCLUSION

Given the past difficulties with and current opposition to mandatory school desegregation, it is perhaps not surprising that integration is rarely mentioned these days by academics, school officials, or legislators as a worthwhile goal in education reform. Indeed, even the recent Presidential Commission on Race explicitly recognized the value of a racially diverse student body but, remarkably, failed to include in-

Agenda and the Public Education Network, which indicated that African-American parents, by an 80% to 9% margin, "say the higher priority for the nation's schools should be to raise academic standards and achievement rather than focus on achieving more diversity and integration").

245. See generally DERRICK BELL, JR., AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); Derrick A. Bell, Jr., *Brown and the Interest-Convergence Dilemma*, in SHADES OF BROWN: NEW PERSPECTIVES ON DESEGREGATION (Derrick A. Bell, ed. 1980); Alex Johnson Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again*, 81 CALIF. L. REV. 1401 (1993).

246. See Ryan, *supra* note 9, at 286-304.

creasing integration as an explicit goal for the future.²⁴⁷ In light of the current political mood, it is also understandable that those sincerely interested in improving the educational opportunities of poor minority students would look to alternative reforms, which do not strive to increase racial or socioeconomic integration.

I suggest that the evidence presented in this Article should be something of an alarm bell to those pursuing these alternative paths, and that it should prod advocates and academics to reconsider, if not redouble, efforts to increase integration. Not only does integration carry with it educational benefits that school finance reform fails to provide,²⁴⁸ it also appears to carry with it financial benefits and financial stability that school finance litigation has been unable to deliver to predominantly minority districts. Support for this assertion, again, is found in contrasting the financial instability of *Milliken II* districts with the relatively ample and stable funding of integrated city and metropolitan districts. Thus, even if one believes that minority students need money rather than more integration in order to improve their achievement, integration — unlike school finance litigation — is a demonstrably effective means of securing resources for poor minority students. Continued or increased racial isolation, by contrast, seems an especially poor financial strategy.

This is not to suggest that the public can be persuaded suddenly to accept busing and mandatory integration among urban and suburban schools. Rather, it is to suggest that, at the very least, the goal of integration must be decoupled from prior unsuccessful efforts to desegregate schools. For too long, integration and mandatory busing have been inextricably linked, such that public displeasure with the latter has tainted the perception of the former. The goal of integration, however, is quite distinct from the means of achieving it. Even if the traditional means of achieving integration must be abandoned, it does not follow that the goal itself must be abandoned. On the contrary, this Article suggests that our search should be for alternative methods to increase integration, not for an alternative goal.²⁴⁹

247. See THE ADVISORY BOARD TO THE PRESIDENT, THE PRESIDENT'S INITIATIVE ON RACE, ONE AMERICA IN THE 21ST CENTURY (Sept. 1998).

248. See Ryan, *supra* note 9, at 301-07.

249. For suggestions on two possible strategies for increasing racial and socioeconomic integration, see Ryan, *supra* note 9, at 307-15, and James E. Ryan, Sheff, *Segregation, and School Finance Litigation*, 74 N.Y.U. L. REV. 529 (1999).