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School Financing Plans: The Poor Get Poorer

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SCHOOL FINANCING PLANS: THE POOR GET POORER

INTRODUCTION

> The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and a people . . . . If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we may well have viewed it as an act of war. As it stands, we have allowed this to happen to ourselves.[1]

The growing societal concern over educational mediocrity can be attributed, in part, to the extensive disparities in funding among local school districts within our states.[2] Under the United States educational system, localities have traditionally been responsible for funding a significant portion of our children's education.[3] The financial inequities among school districts stem from reliance on local property taxes

1. THE NATIONAL COMMISSION ON EXCELLENCE IN EDUCATION, A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM (Washington D.C.: U.S. Department of Education, April 1983). In 1981, T.H. Bell, the U.S. Secretary of Education, created the National Commission on Excellence in Education. The Secretary directed the Commission to assess the quality of education in American schools. The preceding is the introduction to the Commission's report. *Id.*

2. In New Jersey during the 1984-85 school year, the amount of funding per pupil ranged from $4,755 per pupil in richer areas to $2,687 per pupil in poorer districts, a difference of $2,068 per pupil. Abbott v. Burke, 575 A.2d 359, 383 (N.J. 1990). Other states have similar disparities. For example, in 1987, Illinois had a rich district to poor district spending ratio of over three to one. In Texas, Ohio, and New York, the ratios were 2.8:1, 2.8:1, and 2.6:1 respectively. Julie Kosterlitz, *Schoolhouse Equality*, NAT. JOURNAL, July 21, 1990, at 1768. This difference in funding obviously has an impact on the facilities provided students. *Id.* For example, in Princeton, New Jersey, there is one computer for every eight children. *Id.* In Camden, however, there is one computer for every fifty-eight children. *Id.*

3. U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE STRUCTURE OF STATE AID TO ELEMENTARY AND SECONDARY EDUCATION 1 (1990)

to support our educational systems.[4] Predictably, the ability to raise revenue varies according to the property values within a school district.[5] Districts with lower property values must tax at a higher rate in order to obtain revenue equivalent to richer districts taxing at a lower percentage.[6] As a result, two school districts within a state can tax at the same rate yet yield significantly different revenues.[7]

During the educational awareness period of the 1980's, educators focused their attention on improving student performance, but ignored the inequities of local school budgets.[8] During this time, however, litigants challenged the wide disparities existing in their school financing programs. These litigants were successful in recent state supreme court decisions handed down in Montana,[9] Kentucky,[10] New Jersey,[11]

[hereinafter THE STRUCTURE OF STATE AID]. *See infra* note 60 for a breakdown of the relationship between the state, local, and federal government in education spending.

4. *Id.* at 11-17. States have placed the majority of the revenue raising task on localities. In order to raise the necessary funds, localities turn to the one tax that is not dominated by both the federal and state governments, the property tax. *Id.* at 16.

5. *See infra* notes 21, 128, 135, and 140-41 for examples of the disparity in tax bases for a given locality and its effects.

6. Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 393 (Tex. 1989). The *Edgewood* court referred to this dilemma as the "cycle of poverty." *Id.* In order to compete with wealthier school districts and meet minimum accreditation requirements, poorer districts have to charge a higher tax to offset their low tax base. *Id.* This poses several difficulties. First, higher tax rates will hinder economic growth. *Id.* If a district has high tax rates, it has trouble drawing new business and industry into the area. *Id.* Without these high value developments, it is difficult to improve the quality of living within the district. Thus, the high tax rates renders property-poor districts unable to improve their property values. *Id.*

In addition, a district with low property values can only impose a certain maximum taxing level in order to avoid oppressiveness. The *Abbott* court labeled this problem "municipal overburden." 575 A.2d at 393. A higher percentage of the property base is needed to raise the revenue to provide the community with its necessities. *Id.* These necessities include police, fire, and waste disposal services that richer districts can pay for with lower rates on higher property values. *Id.* Because poor districts must impose high tax burdens for these municipal services, they are reluctant to raise taxes for school purposes. *Id.*

7. *See infra* notes 140-41 and accompanying text for a discussion of inequities in tax rates.

8. Kosterlitz, *supra* note 2, at 1768. *See also* THE STRUCTURE OF STATE AID, *supra* note 3, at vii.

9. Helena Elementary Sch. Dist. v. State, 769 P.2d 684 (Mont. 1989). *See infra* notes 103-26 for a discussion of the *Helena* decision.

10. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989). *See infra* notes 127-35 for a discussion of the *Rose* decision.

and Texas.[12]

Part I of this paper focuses on the history and evolution of school finance reform litigation. Part II discusses three recent state court decisions signaling a new approach to evaluate school finance reform. Part III concentrates on two amended funding plans seeking judicial approval for a second time after courts declared them unconstitutional. Finally, Part IV attempts to interpret the impact of these judicial decisions and predict what the future may hold for school finance reform.

I. HISTORY OF SCHOOL FINANCE LITIGATION

Initially, opponents of school financing systems attacked the inequities in school funding on the basis of the United States Constitution's Equal Protection Clause.[13] Litigants argued that the substantial funding disparities caused by property wealth variance among school districts violated a fundamental right to education.[14] Early cases in Virginia[15] and Illinois[16] were unsuccessful because the courts were unwilling to determine the appropriate level of expenditures on the basis of student need.[17] In later cases, reform lawyers launched what is now

11. Abbott v. Burke, 575 A.2d 359 (N.J. 1990). *See infra* notes 157-89 for a discussion of the *Abbott* decision.

12. Edgewood Indep. Sch. Dist. v. Kirby (Edgewood I), 777 S.W.2d 391 (Tex. 1989) and Edgewood Indep. Sch. Dist. v. Kirby (Edgewood II), 804 S.W.2d 491 (Tex. 1991). *See infra* notes 136-56 and 190-214 for a discussion of *Edgewood I* and *Edgewood II*.

13. U.S. CONST. amend. XIV, § 1 provides in part that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *See generally* William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & EDUC. 219, 222-25 (1990) (describing the first wave of public school finance reformation) [hereinafter Thro, *The Third Wave*].

14. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 23-24 (1973).

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

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

17. Betsy Levin, *Current Trends in School Finance Reform Litigation: A Commentary*, 1977 DUKE L.J. 1099, 1100-01. The courts in both *Burruss* and *McInnis* expressed hesitancy in two regards. First, the courts had difficulty setting an appropriate constitutional standard to determine a violation. *Burruss*, 310 F. Supp. at 574; *McInnis*, 293 F. Supp. at 335. Second, the courts believed that this task was better suited to the legislature. "[T]he courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the State." *Burruss*, 310 F. Supp. at 574.

known as the "fiscal neutrality" theory.[18] This theory did not require the courts to deal with specific student needs, but with the equality of dollar output.[19] This development led to the first successful decision striking down a school financing plan under the federal Equal Protection Clause in *Serrano v. Priest*.[20]

In *Serrano*, the plaintiffs argued that educational opportunities available to children in poorer districts were substantially inferior to the opportunities for other children in the state.[21] These inequities allegedly violated the requirements of the United States Constitution's Equal Protection Clause of the Fourteenth Amendment.[22] The California Supreme Court determined that "the distinctive and priceless function of education in our society" mandated that education be treated as a fundamental right.[23] In addition, the court found that the

18. Levin, *supra* note 17, at 1101. *See also* William E. Thro, Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639, 1650 (1989) [hereinafter Thro, *To Render Them Safe*].

19. Levin, *supra* note 17, at 1101. This theory did not involve judicial intervention, but merely "focused on freeing the tie between the level of expenditures and district property wealth." *Id.*

20. 487 P.2d 1241 (Cal. 1971), *cert. denied*, 432 U.S. 907 (1977).

21. *Id.* at 1244. In Los Angeles County, for example, the Baldwin Park School District, where plaintiffs attend school, spent $577 per pupil on education during 1968-1969. On the other hand, the Pasadena School District spent $840 per student and the Beverly Hills School District spent $1,231 per child. *Id.* at 1248. The *Serrano* court reasoned that this disparity was directly attributable to the local property values. *Id.* In Baldwin Park, the property value per child equalled $3,706 while the values totalled $13,706 and $50,885 in Pasadena and Beverly Hills respectively. *Id.*

22. *Id.* at 1249.

23. *Id.* at 1258. The court stressed the indispensable role of education in modern society. *Id.* at 1258-59. The court reasoned that education played a vital role in determining a person's chances for "economic and social success in our competitive society." *Id.* at 1255-56. The court also found that "education is a unique influence on a child's development as a citizen and his participation in political and community life . . . . [E]ducation is the lifeline of both the individual and society." *Id.* at 1256.

The court expressed five reasons why it believed education was a fundamental right:

1. Education creates opportunities for individuals to compete successfully in today's marketplace regardless of a deprived childhood. *Id.* at 1258-59.

2. Everyone benefits from an education. Its application extends to every facet of life. *Id.* at 1259.

3. Individuals are in school for a good portion of their life — ten to thirteen years. "Few other government services have such sustained, intensive contact with the recipient." *Id.*

4. Education has a great impact on molding the personalities of today's youth. *Id.*

5. The state of California has reinforced the importance of education by requiring attendance until a certain age and assigning districts and specific schools. *Id.*

taxing system classified its recipients on the basis of wealth and therefore discriminated against a suspect class.[24] The court applied strict scrutiny analysis and struck down the financing plan because it was not necessary to achieve a "compelling state interest."[25]

Several courts subsequently followed *Serrano* and overturned their state financing plans under the federal Equal Protection Clause.[26] This argument's success came to an abrupt halt, however, when the United States Supreme Court announced its decision in *San Antonio Independent School District v. Rodriguez*.[27] In *Rodriguez*, school reformists argued that the Texas system's reliance on local property taxes favored the rich because disparate property wealth among school districts caused school funding and educational inequalities.[28] The district court agreed, holding the plan unconstitutional under the federal Equal Protection Clause.[29] The United States Supreme Court granted certio-

24. 487 P.2d at 1250. Because over one-half of the money used for education is raised through local property taxes, the court reasoned that those districts with low property values were unable to raise the revenue that affluent districts could raise with minimal tax rates. *Id.*

The defendant argued that even if the system did classify by wealth, the unequal treatment was not intentional. *Id.* at 1253. The court rejected this argument as illogical. *Id.* The court reasoned that previous United States Supreme Court decisions striking down wealth classifications concentrated on the discriminatory effect of the regulation, regardless of the purpose. *Id.* Moreover, the discrimination in *Serrano* was the direct result of government action. The state government enacted the funding scheme and also determined the district boundary lines. *Id.*

25. *Id.* at 1263. In applying a strict scrutiny analysis, the court placed the burden of proof on the state to establish " 'not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose.' " *Id.* at 1249 (citations omitted). The government articulated its compelling interest as strengthening and encouraging local control of public education. *Id.* at 1260. The court, however, found that the interest could not withstand the requisite strict scrutiny because the law "deals intimately with education [and] obviously touches upon a fundamental interest." *Id.* at 1263.

26. *See, e.g.*, Parker v. Mandel, 344 F. Supp. 1068, 1079 (D. Md. 1972) (subjecting the state financing plan to the "reasonable basis test" under the Equal Protection Clause of the Fourteenth Amendment); Rodriquez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280, 285 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973) (invalidating the state funding plan on the ground that the plan discriminates on the basis of wealth and thereby violates the Equal Protection Clause of the Fourteenth Amendment).

27. 411 U.S. 1 (1973).

28. *Id.* at 19, 23.

29. 337 F. Supp. 280, 285 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973). The Texas district court held that the Texas system discriminated on the basis of wealth by allowing richer districts to provide a higher quality education despite a lower tax rate. *Id.* The court found that the state failed to provide a compelling state interest that is pro-

rari to determine the applicability of the Equal Protection Clause of the Fourteenth Amendment.[30]

The *Rodriguez* Court first addressed whether the alleged classification on the basis of wealth constituted a "suspect class."[31] The Court found that the financing system did not discriminate against any suspect class,[32] reasoning that the disparity in school districts' property values did not directly correlate to discrimination against the poor.[33] The Court stated that the residents in each district had "none of the traditional indicia of suspectness,"[34] finding the class "large, diverse and amorphous," unified merely by the fact that they reside in districts with less taxable income than other districts.[35] The Court further stated that the alleged disadvantaged class did not suffer any absolute deprivation of an educational opportunity.[36] The Supreme Court rea-

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moted by the wealth classification. *Id.* at 284. Therefore, the court held that the plan violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 285.

30. 411 U.S. at 6.

31. *Id.* at 17. The *Rodriguez* Court criticized previous lower court decisions on school financing as using a "simplistic process of analysis" in finding wealth discrimination. *Id.* at 18-19. The Court found that these courts simply looked to the fact that children in poorer districts received less expensive educations than those in richer districts. *Id.* at 19. On that basis, the lower courts concluded that the funding schemes "discriminat[ed] on the basis of wealth." *Id.*

The Court emphasized that this simplistic analysis ignored two threshold questions. *Id.* First, the significance of the difficulty in defining or identifying the class of "poor" in ordinary equal protection terms; and second, "whether the relative — rather than the absolute — nature of the asserted deprivation is of significant consequence." *Id.*

32. *Id.* at 28.

33. *Id.* at 23. The Court had difficulty assuming that because a district had lower property values, it necessarily contained an abundance of poor persons. *Id.* "[T]here is no basis on the record in this case for assuming that the poorest people . . . are concentrated in the poorest districts." *Id.* The Court cited an exhaustive Connecticut study that concluded "[i]t is clearly incorrect . . . to contend that the 'poor' live in 'poor' districts . . . . Thus, the major factual assumption of *Serrano* — that the educational financing system discriminates against the 'poor' — is simply false in Connecticut." *Id.* (citing Note, *A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars*, 81 YALE L.J. 1303, 1328-29 (1972)).

34. 411 U.S. at 28. The Court found that this class did not embody the traditional factors used to evaluate a suspect class: "the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Id.*

35. *Id.*

36. *Id.* at 23-24. The Court noted that the plaintiffs did not allege that the Texas students received no public education; rather, the plaintiffs argued that the students in poorer districts were receiving a lower quality education than students in wealthier dis-

soned that although this class may receive a lesser quality of education, relative inequality does not create a constitutional violation.[37] The Court held that the Equal Protection Clause, in situations involving wealth, does not require absolute equality or precisely equal advantages.[38]

Next, in addressing whether education is a fundamental right, the Supreme Court expressly discounted the relative societal significance of education and focused on whether the Constitution explicitly or implicitly guarantees the right to an education.[39] The Court found that education is not a fundamental right,[40] refusing to raise education to a fundamental level simply because of its elevated societal importance.[41]

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tricts. *Id.* at 23. The Court acknowledged that an absolute deprivation of education may be an impairment of a fundamental right. *Id.* at 37. "Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right [here the Court is referring to the right to speak or vote], we have no indication that the present levels of educational expenditures in Texas provide an education that falls short." *Id.* at 36-37.

37. *Id.* at 24.

38. 411 U.S. at 24.

39. *Id.* at 33-34.

40. *Id.* at 35. The majority recognized the importance of education in our society, stating:

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

Id. at 29-30 (quoting Brown v. Bd. of Education, 347 U.S. 483, 493 (1954)).

41. 411 U.S. at 35. The Court stressed the well-founded notion that heightened social importance does not alter the Court's strict scrutiny analysis. *Id.* The majority was concerned about becoming a 'super-legislature' merely reacting to the current societal views on an issue. *Id.* at 41. The Court ignored this temptation and stated that it must comply with the constitutional demands and nothing further. *Id.*

The plaintiffs claimed that education was a fundamental right because it was essential to the proper use of First Amendment freedoms and the right to vote. *Id.* at 35-36. The plaintiffs argued that these rights were worthless if one could not utilize them intelligently. *Id.* The Court agreed that the Constitution guarantees a person's right to speak and vote; however, the Constitution does not guarantee the means to "*effective* speech or the most *informed* electoral choice." *Id.* at 36.

In his dissent, Justice Marshall agreed with the plaintiffs' argument. *Id.* at 112-13

The Court ascertained that education is not explicitly or implicitly guaranteed under the Federal Constitution.[42] Because neither a fundamental right nor a "suspect class" existed, the majority found the Texas system valid under the "rational basis test"[43] and held that the system rationally advanced a legitimate state interest.[44]

(Marshall, J., dissenting). Marshall stressed the importance of education in today's society:

> Education serves the essential function of instilling in our young an understanding of and appreciation for the principles and operation of our governmental processes. Education may instill the interest and provide the tools necessary for political discourse and debate. Indeed, it has frequently been suggested that education is the dominant factor affecting political consciousness and participation.

Id. at 113 (Marshall, J., dissenting).

42. 411 U.S. at 35.

43. *Id.* at 40-55. The Supreme Court has developed three tests under its equal protection analysis: (1) the rational basis test; (2) strict scrutiny; and (3) an intermediate standard often referred to as "heightened scrutiny."

Under the rational basis test, a state action is valid so long as it is reasonably related to a legitimate state purpose. *See generally* New York City Transit Authority v. Beazer, 440 U.S. 568 (1979) (upholding a state law unless the classification bears no rational relationship to state's objective).

Under strict scrutiny analysis, the Court will carefully examine a statute if it creates a classification that is suspect or impacts a fundamental right. If either is satisfied, the state must show a "compelling state interest" for the statute and the statute must be a means that is necessary to achieve the purpose. Serrano v. Priest, 487 P.2d 1241, 1249 (Cal. 1971). *See generally* Washington v. Davis, 426 U.S. 229, 243 (1976) (finding that a rule which renders a statute that is neutral on its face unconstitutional merely because it has a racially disproportionate impact is too burdensome and far reaching); Korematsu v. United States, 323 U.S. 214, 216 (1944) (stating that "[a]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect").

The Supreme Court has proffered a third level of review referred to as "heightened" or "intermediate" scrutiny. The courts apply intermediate scrutiny when a statute affects a "sensitive" classification not yet bordering on "suspect." Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 781-82 (Md. 1983). Courts may also apply this standard where a statute imposes upon important personal rights or vital benefits. *Id.* In order to survive this scrutiny, the statute "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated and circumstanced will be treated alike." *Id. See generally* Craig v. Boren, 429 U.S. 190, 197, 204 (1976) (finding that an Oklahoma gender-based statute violated the Fourteenth Amendment because the classification did not serve important governmental objectives and was not substantially related to its stated objectives).

44. 411 U.S. at 55. The Court found that Texas' financing plan was the result of qualified studies and thoughtful planning. *Id.* Many educators believed this plan was an "enlightened approach" to the educational financing problem in today's society. *Id.* Texas is constantly attempting to amend its plan in order to reduce wide disparities. *Id.* The Court recognized that its role was not to place itself in the position of educators and legislators who have already wrestled with the problem and possible solutions. *Id.*

Although many commentators viewed *Rodriguez* as a setback, its result did not deter school reformists. Shortly after the *Rodriguez* decision, the New Jersey Supreme Court supplied school finance reformists with a new plan of attack.[45] The decision in *Robinson v. Cahill*[46] transferred the battlefield for school finance reform from the Federal Constitution to state constitutions.[47] *Robinson* addressed two separate issues to determine whether the state's financing program was unconstitutional.

First, the court determined whether both the students and local taxpayers were denied equal protection under the New Jersey Constitution.[48] Instead of following the *Rodriquez* "fundamental right" test in its equal protection analysis,[49] the court applied its own standards of

45. States have always invoked stricter protections of individual rights through state constitutions than courts have granted under the Federal Constitution. *See supra* notes 71-72 and accompanying text for cases following this principle. The New Jersey Supreme Court has been noted for its aggressiveness, in light of the United States Supreme Court's strict interpretation of the Federal Constitution. Professor Laurence H. Tribe of Harvard University Law School stated that

> [t]he New Jersey court has most consistently advanced the idea . . . that state courts should take their Constitutions seriously and not regard them as pale shadows of the Federal Constitution . . . . [t]he court has been in the forefront of a move to take up the slack in so far as the Federal Court has flagged and wavered in its commitment to human rights.

Joseph F. Sullivan, *New Jersey Court Seen as Leader on Rights*, N.Y. TIMES, July 18, 1990, at B1. The New Jersey Supreme Court's decision in Abbott v. Burke, 575 A.2d 359 (N.J. 1990), provided further evidence of the court's aggressiveness. *See infra* notes 163-82 and accompanying text for a discussion of the *Abbott* decision. Despite New Jersey spending the second highest amount on education of any state, the *Abbott* court found that the state failed to provide a thorough and efficient education. *Abbott*, 575 A.2d at 412.

46. 303 A.2d 273 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1973).

47. *Id.* at 282. The New Jersey Supreme Court prepared the *Robinson* opinion before the United States Supreme Court handed down the *Rodriguez* decision. *Id.* at 279. In its preparation, the court addressed both the federal and state equal protection issues. *Id.* at 282. Following the *Rodriguez* decision, the court accepted the United States Supreme Court's position with respect to the federal issue. *Id.* The court did not, however, apply the federal test of fundamentality to its state equal protection analysis. *Id.*

48. *Id.*

49. *Id.* The New Jersey Supreme Court found the federal fundamental right test inadequate, stating that:

> No one has successfully defined the term for this purpose. Even the proposition discussed in *Rodriguez*, that a right is "fundamental" if it is explicitly or implicitly guaranteed in the constitution, is immediately vulnerable, for the right to acquire and hold property is guaranteed in the federal and state constitutions, and surely that right is not a likely candidate for such preferred treatment.

equal protection analysis to the state constitution.[50] In assessing the applicable level of scrutiny, the *Robinson* court determined that classification according to students' wealth did not constitute a suspect class.[51] The court reasoned that the state legislature does not condition the ability to attend school upon any minimum income level.[52] The court recognized two factors which determine each district's fund: the size of the tax base; and the judgment of local authorities.[53]

Next, the *Robinson* court addressed whether education qualified as a fundamental right under the New Jersey Constitution.[54] While the court stressed the importance of education, the court declined to elevate it above any other essential government service.[55] The court reasoned that a state's obligation to provide a service does not automatically render it fundamental.[56] The court found that local rev-

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Id.

50. *Id.* at 283. The court reluctantly applied an equal protection analysis. *Id.* The court believed that the equal protection clause is unworkable when dealing with human needs and attempting to characterize their importance. *Id.*

51. 303 A.2d at 283.

52. *Id.* at 283.

53. *Id.* The court hesitated to consider this a classification according to wealth because all public services varied in a similar manner. Courts have always assumed that " 'taxes in different taxing districts in the State need not be uniform.' " *Id.* (quoting 1 COOLEY, TAXATION § 313, at 649 (Nichols, 4th ed. 1924)).

54. *Id.* at 283-84.

55. *Id.* at 284. The court quoted Brown v. Bd. of Educ., 347 U.S. 483 (1954) as affirming the importance of education in today's society. *Id.* *See supra* notes 39-44 and accompanying text for discussion of the Supreme Court's emphasis on education. The *Robinson* court stated that it was significant that the Supreme Court never cited *Brown* in a decision involving a "fundamental right" claim. *Id.* The *Robinson* court conceded that education is vital to society, but found that it would be difficult "to find an objective basis to say the equal protection clause selects education and demands inflexible statewide uniformity in expenditure." *Id.*

56. *Robinson*, 303 A.2d at 285. The plaintiffs argued that if a state chose to provide a service, that service became a fundamental right. *Id.* The state education article of the New Jersey Constitution provided that the state "shall provide for . . . free public schools . . . ." N.J. CONST. art. VIII, § 4, ¶ 1. Plaintiffs alleged that this created an obligation for the state to provide "uniform dollar input." *Id.*

The court rejected the argument that funding should not be left to the local school districts on the ground that education is indistinguishable from other locally provided services. *Id.* at 285-86. The court also found it irrelevant that the state constitution mandates education. *Id.* Other state mandated services, such as the judicial system, relied on local property values to provide revenue, and court systems were not financed equally throughout the state. *Id.* at 286. The court believed that education was just another example of a state service placing an unequal burden in some areas. *Id.* at 286-87.

enues fund a multitude of state government services and that these services frequently are not spread equally throughout the state.[57]

The *Robinson* court further articulated that even if wealth was a suspect class or education was a fundamental right, the United States Supreme Court has never held that a state's interest in the institution of local government is not a "compelling state interest."[58] The court believed that the public is best served by allowing localities to voice their views regarding the amount of services provided.[59] In nearly all states, local contributions provide a significant percentage of the education budget.[60] Thus, the court reasoned that the state has a compelling interest in using local governments in the manner which it deems best.[61]

The second argument proffered in *Robinson* focused on the state education article of New Jersey's Constitution.[62] Article VIII of the New Jersey Constitution states that "the legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."[63] This provision raised the question whether the state funding plan provided a "thorough and efficient" education despite the existence of disparities in funding among districts.[64]

The court interpreted "thorough and efficient" as guaranteeing children an equal opportunity to fulfill their role as citizens and compete in the labor market.[65] The court attempted to measure the state's compliance with this mandate by looking at the level of "dollar input."[66] The *Robinson* court found that monetary expenditures have a significant

57. *Id.*

58. *Id.* at 286.

59. *Id.*

60. On average in the United States, local funding accounts for 45% of the revenue for public schools, the state provides 50%, and the federal government 5%. THE STRUCTURE OF STATE AID, *supra* note 3, at 1. *See also* Kosterlitz, *supra* note 2, at 1769.

61. *Robinson*, 303 A.2d at 286.

62. *Id.* at 287.

63. N.J. CONST. art. VIII, § 4, ¶ 1.

64. 303 A.2d at 295.

65. *Id.*

66. *Id.* The court used dollar input as the criterion in evaluating whether New Jersey's educational system was "thorough and efficient" because of its obvious relevance and the absence of any other measure. *Id.*

impact on the quality of educational opportunities.[67] Therefore, the court surmised that the present financing system in New Jersey, with its wide disparity in funding, did not satisfy the state education article.[68] The court's holding compelled the state to insure a "thorough and efficient" education to all children within the state.[69]

Although *Rodriguez* rendered the federal equal protection argument as moot, *Robinson* shifted the focus to state constitutions and state courts.[70] State courts have jurisdiction to interpret state constitutional

67. *Id.* at 277. Although the court recognized that equal distribution of funds will not necessarily guarantee equal educational results, the court did find that the level of spending plays an important role in the quality of an education. *Id.*

68. *Id.* at 297.

69. 303 A.2d at 298. The steps toward legislative reform in New Jersey traveled a long and arduous path. Not until 1975 did the legislature enact a new funding plan. This new legislative action was surrounded by six other *Robinson v. Cahill* decisions. *See* Robinson v. Cahill (II), 306 A.2d 65, 66 (N.J. 1973) (giving the New Jersey legislature a December 31, 1974 deadline to enact new legislation in accordance with the views of *Robinson I*), *cert. denied*, 414 U.S. 976 (1973); Robinson v. Cahill (III), 335 A.2d 6 (N.J. 1975) (reacting to the legislature's failure to meet the December 31, 1974 deadline, but refusing to order any changes in statutory funding for the 1975-76 school year); Robinson v. Cahill (IV), 351 A.2d 713, 722 (N.J. 1975) (ordering various state aid to be distributed according to the equalization aid formula of the 1970 Act for the 1976-77 school year), *cert. denied*, 423 U.S. 913 (1975); Robinson v. Cahill (V), 355 A.2d 129 (1976) (finding the new plan enacted by the legislature constitutional on its face); Robinson v. Cahill (VI), 358 A.2d 457, 459 (N.J. 1976) (enjoining any public school from opening until the funding was in compliance with the state education clause); Robinson v. Cahill (VII), 360 A.2d 400 (N.J. 1976) (removing the injunction in response to the full funding provided by the legislature).

70. Thro, *The Third Wave*, *supra* note 13, at 225-26. In fact, courts have interpreted *Rodriguez* as leaving school finance reform to the states themselves. The following are examples of statements by the Supreme Court in *Rodriquez* that have affected state courts in their analysis of state financing plans:

> We have here nothing less than a direct attack on the way in which Texas has chosen to raise and disburse state and local tax revenues. We are asked to condemn the state's judgment in conferring on political subdivisions the power to tax local property to supply revenue for local interests. In so doing, appellees would have the Court intrude in an area in which it has traditionally deferred to state legislatures.

San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1, 40 (1973).

> [W]e continue to acknowledge that the Justices of this Court lack both the expertise and familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues.

411 U.S. at 41.

The *Rodriquez* Court expressed concern for the relationship between national and state power under the federal system:

> [I]t would be difficult to imagine a case having a greater potential impact on our

provisions.[71] Moreover, when analyzing provisions of their own constitutions, state courts are not obligated to follow United States Supreme Court interpretations of the federal Constitution.[72] Thus, a state court is not bound by the Supreme Court's decision in *Rodriguez* when determining whether education is a state constitutional right entitled to equal protection guarantees.

Following *Robinson*, a deluge of cases hit state courts, arguing that their state financing plans were unconstitutional.[73] Litigants used both

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federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every state. 411 U.S. at 44.

71. *See* Serrano v. Priest (II), 557 P.2d 929, 950 (Cal. 1976) (declaring that a state supreme court is subject only to the requirement that its interpretations do not interfere with any rights or guarantees under the Constitution), *cert. denied*, 432 U.S. 907 (1977); Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, 332 (Wyo. 1980) (noting that a state provision can enlarge an individual's rights granted under the Federal Constitution), *cert. denied*, 449 U.S. 824 (1980).

72. *Serrano II*, 557 P.2d at 950. State courts can look to United States Supreme Court decisions defining fundamental rights under the Federal Constitution as persuasive authority. *Id.* They are not, however, required to follow them unless they provide more individual protection than state law. *Id. See also* Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005, 1016 n.11 (Colo. 1982) (stating that state courts are "free to consider the merits of a constitutional challenge under their own constitutional provisions . . . independently of United States Supreme Court opinions, even when the State and Federal Constitutions are similarly or identically phrased").

73. Between 1973 and 1989, numerous cases addressing educational funding in light of state constitutions were decided in state courts. *See, e.g.*, Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90, 93 (Ark. 1983) (deeming Arkansas' state financing plan unconstitutional, reasoning that the disbursement of state funds to school districts according to local tax bases denies equal educational opportunities to students); Serrano v. Priest (II), 557 P.2d 929, 952-53 (Cal. 1976) (finding the plan unconstitutional "because it establishes and perpetuates a classification based upon district wealth which affects the fundamental interest of education"); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005, 1022-25 (Colo. 1982) (holding that the state financing plan was constitutional under the rational basis standard of review and that the state plan satisfied the state education article); Horton v. Meskill, 376 A.2d 359, 374 (Conn. 1977) (holding that the state financing plan "cannot pass the test of 'strict judicial scrutiny' "); McDaniel v. Thomas, 285 S.E.2d 156, 168 (Ga. 1981) (holding that the state financing plan bears "some rational relationship to legitimate state purposes and is therefore not violative of state equal protection"); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 780, 789 (Md. 1983) (upholding the school financing plan on the grounds that it does not violate state equal protection guarantees and that the state education article does not require equality of expenditures among school districts); Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 439 N.E.2d 359, 370 (N.Y. 1982) (upholding state financing plan under the state equal protection clause and the state education article); Britt v. North Carolina State Bd. of Educ, 357 S.E.2d 432, 436 (N.C. App. 1987) (concluding that the state education article stating that "equal opportunities shall be pro-

arguments enunciated by the New Jersey Supreme Court.[74] In *Robinson*, the plaintiffs argued that disparities in educational funding constituted a violation of the state's equal protection guarantees and the state's education article.[75] Although school reformists who followed this reasoning found some success in the era between *Robinson* and 1989, their victories were few.[76] The courts that did strike down the financing plans relied primarily on the state's equal protection guarantees.[77]

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vided for all students" only guarantees state citizens equal access to participate in the school system and does not guarantee a substantially equal education to all children); Board of Educ. v. Walter, 390 N.E.2d 813, 822, 825 (Ohio 1979) (upholding the state financing plan in light of both the state equal protection guarantees and the state education article), *cert. denied*, 444 U.S. 1015 (1980); Fair Sch. Fin. Council of Okla., Inc. v. State, 746 P.2d 1135, 1149 (Okla. 1987) (holding that equal expenditures per pupil are not guaranteed by the state education article); Olsen v. State, 554 P.2d 139, 148 (Or. 1976) (upholding funding plan in light of both state equal protection guarantees and the state education article); Danson v. Casey, 399 A.2d 360, 367 (Pa. 1979) (holding that the state did not violate its duty to provide a "thorough and efficient" education); Richland County v. Campbell, 364 S.E.2d 470, 472 (S.C. App. 1988) (holding the state financing plan constitutional under both the state education article and equal protection guarantees); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 104 (Wash. 1978) (relying exclusively on the state education article to strike down the state's financing plan); Pauley v. Kelly, 255 S.E.2d 859, 878 (W. Va. 1979) (holding that the state financing plan is subject to both the equal protection guarantee and the education article of the West Virginia Constitution and that the plan could not survive equal protection analysis unless the state could justify the unequal classification); Kukor v. Grover, 436 N.W.2d 568, 578-80 (Wis. 1989) (upholding state financing system, stating that the plan satisfied the state education article and did not violate equal protection guarantees under the rational basis standard); Washakie County Sch. Dist. Number One v. Herschler, 606 P.2d 310, 334-35 (Wyo. 1980) (declaring Wyoming's educational financing plan unconstitutional because it failed to satisfy the state's equal protection guarantee). For a breakdown of the history of the school finance reform litigation, *see generally* Thro, *The Third Wave*, *supra* note 13 (classifying the case law into three separate time periods).

74. *See supra* notes 48-61 and accompanying text for a discussion of the state equal protection clause argument. *See supra* notes 62-69 and accompanying text for a discussion of the argument concerning the state education article.

75. *See supra* notes 48-69 and accompanying text for a discussion of the *Robinson* court's reasoning.

76. Between 1973 and 1988, only seven litigants, including the plaintiffs in *Robinson*, were successful on their claims to strike down school financing plans. *See, e.g.*, Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90 (Ark. 1983); Serrano v. Priest (II), 557 P.2d 929 (Cal. 1976); Horton v. Meskill, 376 A.2d 359 (Conn. 1977); Robinson v. Cahill (I), 303 A.2d 273 (N.J. 1973); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71 (Wash. 1978); Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979); Washakie County Sch. Dist. Number One v. Herschler, 606 P.2d 310 (Wyo. 1980).

77. *See supra* note 76 for cases that struck down their state's financing plans. The

State equal protection clauses vary from state to state.[78] As a result, state courts' analyses and interpretations of their equal protection provisions vary according to each state as well.[79] Courts typically react in one of three ways when faced with an equal protection argument.[80] First, courts simply apply the federal standard of equal protection[81] and determine whether a fundamental right or a suspect class exists under the Federal Constitution; if so, then the court applies a strict scrutiny analysis.[82]

Second, courts may adopt a federal analysis, but apply their own independent state standards.[83] For example, in the second *Serrano v. Priest*[84] decision, the court adopted the *Rodriquez* court's test for determining a fundamental right, but applied it to the California Constitution.[85] The *Serrano II* court recognized that equal protection analysis under a state constitution may differ from the federal standard.[86] The *Serrano II* court reasoned that a state fundamental right existed if explicitly or implicitly guaranteed by the state constitution[87]

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only states that did not utilize equal protection analyses and relied solely on their state education article were New Jersey and Washington.

78. Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195, 1196 (1985). Most state constitutions do not have explicit equal protection clauses. *Id.* For examples of state constitutions that do contain equal protection clauses, see GA. CONST. art. I, § 1, para. II; ILL. CONST. art. I, § 2; OHIO CONST. art. I, § 2. For a comparison between federal and state equality provisions, see generally Williams, 63 TEX. L. REV. 1195 (1985).

79. *Id.* at 1196-97.

80. *See* Williams, *supra* note 78, at 1219; Thro, *The Third Wave*, *supra* note 13, at 230 n.50.

81. Williams, *supra* note 78, at 1219. *See supra* notes 28-44 and accompanying text for a discussion of federal equal protection analysis.

82. Williams, *supra* note 78, at 1219. *See supra* notes 41-43 and accompanying text for a discussion of strict scrutiny.

83. Williams, *supra* note 78, at 1219. *See also* Thro, *The Third Wave*, *supra* note 13, at 230 n.50.

84. 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907 (1977).

85. *Id.* at 949-50. For a discussion of the *Rodriguez* fundamental right test, see *supra* note 39 and accompanying text.

86. *Serrano II*, 557 P.2d at 950. The *Serrano II* court stated that:

> [O]ur state equal protection provisions, while "substantially the equivalent of" the guarantees contained in the Fourteenth Amendment to the United States Constitution, are possessed of an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were applicable.

Id.

87. *Id.* at 949-50. The *Serrano II* court interpreted the California Constitution and

whereas *Rodriquez* required the Federal Constitution to guarantee that right.[88] *Serrano II* held that education is a state fundamental right subject to strict scrutiny.[89]

Finally, courts may reject the federal analysis entirely and adopt their own standard.[90] In *Robinson*, the court completely abandoned the federal fundamental right test.[91] In its place, the *Robinson* court invoked a balancing test weighing the nature of the restriction against the apparent public justification to determine if the state action was arbitrary.[92] The court refused to subject education to an equal protection analysis because of its impracticality when applied to the broad spectrum of important human needs.[93] The *Robinson* court eventually struck down New Jersey's financing plan solely on the ground that the financing plan did not comply with the state education article.[94]

Prior to 1989, only one other court relied exclusively on its state education article. In *Seattle School District No. 1 of King County v. State*,[95] the Washington Supreme Court relied on Article IX, section 1 of the Washington Constitution which states: "it is the paramount duty of the state to make ample provisions for the education of all

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specifically followed two provisions as equivalent to the federal equal protection clause: CAL. CONST. art. IV, § 16: (a) ". . . all laws of a general nature have uniform operation;" CAL. CONST. art. I, § 7(b): "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the legislature, nor shall any citizen or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

88. *See supra* note 39 and accompanying text for a discussion of the *Rodriguez* requirements of a fundamental right.

89. *Serrano II*, 557 P.2d at 951. The court interpreted the equality provision in the California Constitution as "substantially the equivalent" to the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 950. However, the court rejected the Supreme Court's application of strict scrutiny to state public school financing in light of the California Constitution. *Id.* at 951. Instead, the court applied judicial scrutiny more rigorously and critically. *Id.*

90. Williams, *supra* note 78, at 1220-21. *See also* Thro, *The Third Wave*, *supra* note 13, at 230 n.50.

91. Thro, *The Third Wave*, *supra* note 13, at 230 n.50. *See supra* notes 48-53 and accompanying text for an analysis of *Robinson*.

92. Robinson v. Cahill, 303 A.2d 282, 273 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1973). The court noted that the State may be required to justify the need for the restriction. *Id.*

93. *Id.* at 283.

94. *Id.* at 295. *See supra* notes 62-69 for a discussion of the state education article.

95. 585 P.2d 71 (Wash. 1978).

children residing within its borders."[96] The *Seattle School District* court interpreted "paramount" as a clear indication of the state's constitutionally imposed "duty" to provide children with an ample opportunity for an education.[97] The court inferred from this language that education is a top state priority.[98] The court held that the state must provide the minimum level of education that will allow children to compete in the "political system, in the labor market, or in the market place of ideas."[99]

II. RECENT DECISIONS UTILIZING THE NEW APPROACH

Although no state court overturned a state educational financing

96. WASH. CONST. art. IX, § 1. *See* Thro, *To Render Them Safe*, *supra* note 18, at 1661-70. The author, William Thro, placed the varying state education provisions into four categories:

Category I: Minimal Education Standards: these typically do not mention any standard of quality of public education. Thro listed Oklahoma's education clause as an example. *Id.* at 1662 n.107. *See* OKLA. CONST. art. XIII, § 1 which states that "[t]he Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated."

Category II: Minimum Standards of Quality (i.e. "thorough and efficient"): Thro listed several examples of Category II provisions. *See, e.g.*, ARK. CONST. art. XIV, § 1; COLO. CONST. art IX, § 2; DEL. CONST. art. X, § 1; FLA. CONST. art. IX, § 1; IDAHO CONST. art. IX, § 1; KY. CONST. § 183; MD. CONST. art. VIII, § 1; MINN. CONST. art. XIII, § 1; MONT. CONST. art. X, § 1; N.J. CONST. art. VIII, § 4; N.D. CONST. art. VIII, § 1; OHIO CONST. art. VI, § 3; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; TENN. CONST. art. XI, § 12; TEX. CONST. art. VII, § 1; VA. CONST. art. VIII, § 1; W. VA. CONST. art. XII, § 1; WIS. CONST. art. X, § 3. Thro, *To Render Them Safe*, *supra* note 18, at 1663 n.110.

Category III: Thro found that these provisions were more promising for educational reformers because they contained stronger and more specific language than Categories I and II. Thro, *To Render Them Safe*, *supra* note 18, at 1666-67. Thro cited South Dakota's provision as an example of this type. *Id.* at 1666 n.119. S.D. CONST. art. VIII, § 1 states, in part, that "it shall be the duty of the Legislature . . . to adopt all suitable means to secure to the people the advantages and opportunities of education."

Category IV: Thro found that these provisions imposed the largest obligation on legislatures. These clauses typically label education as "primary" or "paramount." *Id.* at 1668. A good example is the preamble of Washington's Constitution. *Id.* at 1668 n.127. WASH. CONST. art. IX, § 1 which provides that education of all children is "the paramount duty of the state . . . ." *See also* Gershon M. Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 TEX L. REV. 777, 815-16 (1985), and Erica B. Grubb, *Breaking the Language Barrier: The Right to Bilingual Education*, 9 HARV. C.R.-C.L. L. REV. 52, 66-70 (1974) (similarly categorizing state education into four areas).

97. *Seattle School District*, 585 P.2d at 91.

98. *Id.*

99. *Id.* at 94-95.

plan between 1983 and 1989, interest in education reform did not wane.[100] Responding to unfavorable statistics regarding American education, states ignored the financing issue and concentrated on other educational reforms such as increased compensation for teachers and the decentralization of school management.[101] In 1989, school financing again became a prominent issue as a result of courts' new approach declaring state plans unconstitutional.[102]

A. *Helena Elementary School District One v. State*

The Montana Supreme Court declared the State's educational funding system unconstitutional in *Helena Elementary School District One v. State*.[103] The court relied solely on the state education article and expressly rejected applying any equal protection analysis.[104]

In *Helena*, several school districts alleged that the public school funding plan violated Montana's state education article.[105] Article X, section 1 of the Montana Constitution provides, in part, that "[e]quality of educational opportunity is guaranteed to each person of the state."[106] The plaintiffs alleged that spending disparities, ranging as high as eight-to-one, created unequal educational opportunities for Montana citizens.[107]

Upon reviewing the lower court's decision, the Montana Supreme Court first noted that the district court declared education as a funda-

100. THE STRUCTURE OF STATE AID, *supra* note 3, at vii.

101. *Id.*

102. *Id.* at viii.

103. 769 P.2d 684 (Mont. 1989).

104. *See infra* notes 124-26 and accompanying text discussing the court's rationale behind its holding.

105. 769 P.2d at 685.

106. MONT. CONST. art. X, § 1 provides in full:

(1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

107. 769 P.2d at 686.

mental right under the Montana Constitution.[108] In addition, the district court found categorical differences between wealthy and poor school districts.[109] The district court opined that the availability of funds clearly affected the extent and quality of educational opportunities.[110] Not only were richer districts able to offer a greater range of curricula, they had better textbooks and facilities.[111] Based on these disparities, the district court found the state plan inadequate because it failed to even pass the less rigid "rational basis test" under an equal protection analysis.[112]

On appeal, the State proffered three arguments attacking the district court decision. First, the State claimed that its current system satisfied the constitutional requirements[113] because the constitution limited the legislature's duty to guarantee equal education.[114] The court rejected this argument, relying instead on the plain meaning of the constitution.[115] The court concluded that the equality of educational opportunity guarantee applies to each person and binds the state, local, and school district levels of government.[116]

Second, the State argued that the quality of education is a better indicator of educational equality than the level of spending.[117] The court rejected this argument on the ground that the State failed to sup-

108. *Id.* at 688.

109. *Id.* at 687. The Court relied on the findings of "study team." The Montana Supreme Court affirmed the district court's finding that spending differences between the rich and poor districts resulted in unequal education. *Id.* at 686. The court reasoned that wealthier school districts were able to generate a greater amount of revenue with which to provide better curricula and facilities. *Id.* at 687-88. The richer districts also had greater flexibility in budgeting to enable them to better address current educational needs. *Id.* at 687.

110. *Id.* at 688.

111. 769 P.2d at 687-88.

112. *Id.* at 688.

113. *Id.* at 689. The State argued that Art. X, § 1, subsection (1) of the Montana Constitution which states that: "[e]quality of educational opportunity is guaranteed to each person" is merely an aspirational goal. *Id.* The court rejected this argument and relied on the plain meaning of the constitution. *Id.* The court stated that the word "goal," although used in the first sentence of subsection (1), was not used in the second sentence. *Id.* Instead, the framers used the word "guaranteed." *Id.* Thus, the court reasoned that each person in the state is "guaranteed" an equal opportunity for an education. *Id.*

114. *Id.*

115. 769 P.2d at 689.

116. *Id.* at 690.

117. *Id.*

port its "output theory" with sound evidence.[118] Instead, the Montana Supreme Court found that spending differences among school districts had a direct impact on the level of a student's educational opportunity.[119]

Third, the State interpreted the Montana Constitution's grant of control to the local school districts as express approval of the spending disparities among districts.[120] Article X, section 8 states: "[t]he supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law."[121] Although supervision is granted locally, the court declared that funding is still a function of the State.[122] The court concluded that funding may be delegated to localities, but the State is ultimately responsible for funding equality.[123]

The *Helena* court neither determined whether education is a fundamental right nor considered the equal protection issue.[124] Basing its decision solely on the education article of the Montana Constitution, the court found the current funding plan inadequate.[125] According to the Montana Supreme Court, the plan's spending disparities denied each student an equal opportunity for an education.[126]

B. *Rose v. Council for Better Education, Inc.*

In *Rose v. Council for Better Education, Inc.*,[127] the Kentucky

118. *Id.* The Montana Supreme Court agreed with the district court which found insufficient evidence that equality can be measured by analyzing the success of students from different school districts. *Id.*

119. 769 P.2d at 686-88. The Montana Supreme Court affirmed the district court's findings that wealthier school districts did not share the educational deficiencies experienced at the poorer schools. *Id.* For example, the wealthier districts had more computers and well-equipped labs which the court reasoned directly related to "hands on" learning. *Id.* at 687-88.

120. *Id.* at 690.

121. MONT. CONST. art. X, § 8.

122. 769 P.2d at 690.

123. *Id.* The court further noted that the present inequality of funding may even restrict local control. *Id.* Obviously, if a district has minimal resources, its options are also limited. *Id.*

124. *Id.* at 691. The court reasoned that "[b]ecause we have concluded that the school funding system is unconstitutional under Art. X, Sec. 1, MONT. CONST., we do not find it necessary to consider the equal protection issue." *Id.*

125. *Id.* at 690.

126. 769 P.2d at 690.

127. 790 S.W.2d 186 (Ky. 1989).

Supreme Court struck down the State's financing program because it failed to provide each child with "an equal opportunity to have an adequate education."[128] The court determined that education was a fundamental right under the Kentucky Constitution,[129] but it did not address the equal protection issue. Instead, the court relied on the State education article mandating that the State "provide an efficient system of schools throughout the State."[130]

The court focused its attention solely on whether the Kentucky Legislature had established an efficient school system.[131] In addressing this issue, the court primarily concentrated on determining the definition of "efficient."[132] The court concluded that an "efficient" system must provide each child with an equal opportunity to an education regardless of the child's place of residence or economic circumstances.[133] The court held that the present Kentucky system failed to

128. *Id.* at 212. In *Rose*, the plaintiffs brought an action against the State of Kentucky alleging that the school financing system was inadequate because it excessively relied on local resources. *Id.* at 190. The trial court found that this emphasis resulted in inequitable disparities throughout the state. *Id.* at 197. Specifically, the court found that achievement scores were lower in poorer districts than in wealthier districts and that the curricula varied greatly between the richer and poorer districts. *Id.* For example, poorer districts did not have the strength of the affluent in areas such as foreign language, science, mathematics, and the arts. *Id.* Further, student-teacher ratios were lower in wealthier districts. *Id.*

In striking down the plan, the trial court deemed education a fundamental right. *Id.* at 192. The trial court further found that the plan was discriminatory because the level of funding was based on a student's place of residence. *Id.* The trial court held that this constituted a suspect class based on wealth. *Id.*

129. *Id.* at 206. In determining the fundamentality of education, the court reasoned that the framers of the Kentucky Constitution "emphasized that education is essential to the welfare of the citizens of the Commonwealth." *Id.* The court relied on the constitutional debates over § 183 of the Kentucky Constitution. *Id.* at 205-06. Section 183 provides that: "[t]he General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State." KY. CONST. § 183.

130. 790 S.W.2d at 214. *See supra* note 129 citing KY. CONST. § 183 in full.

131. 790 S.W.2d at 213.

132. *Id.* at 211-13.

133. *Id.* at 212. The court articulated nine minimal, essential characteristics which schools must meet in order to have an "efficient" system. They are as follows:

meet this standard.[134] The *Rose* court, however, did not limit its action to Kentucky's financing program, but overturned the entire public education system within Kentucky.[135]

C. *Edgewood Independent School District v. Kirby*

In *Edgewood Independent School District v. Kirby*,[136] the Texas Supreme Court addressed the constitutionality of the State's school financing program.[137] The plaintiffs argued that the system was wrought with huge inequities.[138] In Texas, the State provides about forty-two percent of education costs, whereas individual school districts are responsible for raising over fifty percent through local property taxes.[139] Incredibly, the average property wealth ranged from

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(1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.

(2) Common schools shall be free to all.

(3) Common schools shall be available to all Kentucky children.

(4) Common schools shall be substantially uniform throughout the state.

(5) Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances.

(6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence.

(7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education.

(8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education.

(9) An adequate education is one which has as its goal the development of the seven capacities recited previously.

Id. at 212-13.

134. *Id.* at 214.

135. 790 S.W.2d at 214. The court expressed disappointment at Kentucky's overall effort to improve its educational system. *Id.* at 213. The system is "inadequate and well below the national effort." *Id.* at 197. The court found that 35% of Kentucky's adult population are drop-outs and only 68.2% of ninth graders graduate high school. *Id.* The evidence showed that every district suffered, not just the poorer localities. *Id.*

In response to these findings, the court declared the entire statutory system unconstitutional in the face of § 183 of the Kentucky Constitution. *Id.* at 215.

136. 777 S.W.2d 391 (Tex. 1989).

137. *Id.* The Texas financing system consists of state funding in a two-tiered structure known as the "Foundation School Program." *Id.* at 392. *See infra* note 201 for a description of this plan.

138. *Id.* at 392-93.

139. *Id.* This is not an unusual structure for states. In the following 23 states, localities are responsible for raising more revenue than the state itself: Colorado, Connecticut, District of Columbia, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michi-

$14,000,000 per student in one district to $20,000 per student in another.[140] Because of these extreme differences, poorer districts needed to tax at a higher rate than the affluent districts to accumulate equal funding.[141]

Sixty-eight school districts and others subject to these inequities brought this suit, arguing that the Texas financing plan was unconstitutional.[142] The trial court struck down the plan, finding that education was a fundamental right; that wealth was a "suspect classification;" and that the system was "inefficient" under Article VII, section 1 of the Texas Constitution.[143] The State court of appeals reversed the district court on the ground that education was not a fundamental right.[144] In addition, the appellate court determined that the definition of "efficient" under Article VII was a political question and not subject to

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gan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Wisconsin, and Wyoming. *The Structure of State Aid*, *supra* note 3, at 12. For a breakdown of the spending among states, localities, and the federal government, see *supra* note 60.

140. 777 S.W.2d at 392. The 300,000 students of the poorest districts have 3% of the state's property wealth whereas the 300,000 students of the richest districts have over 25% of the wealth. *Id.*

141. *Id.* at 393. Local property tax rates in the state of Texas fell between nine cents and $1.55 per $100 valuation in 1985-86. *Id.* The one hundred richest districts had an average tax of $.47 while spending $7,233 per student. *Id.* The one hundred poorer districts, however, had an average tax rate of $.745 and spent only $2,978 per child. *Id.*

142. *Id.* at 391-92. Individual parents and children were also plaintiffs in the action. *Id.* at 392.

143. Kirby v. Edgewood Indep. Sch. Dist., 761 S.W.2d 859, 860 (Tex. Ct. App. 1988), *rev'd*, 771 S.W.2d 391 (Tex. 1989). Art. VII, § 1 of the Texas Constitution provides: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the legislature of the state to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." TEX. CONST. art. VII, § 1.

144. 761 S.W.2d 859, 863 (Tex. Ct. App. 1988), *rev'd*, 777 S.W.2d 391 (Tex. 1989). The appellate court adopted the federal equal protection analysis under *Rodriguez* and found that although the Texas Constitution mentions "education," it does not rise to the level of a fundamental right. *Id.* at 862-63. The appellate court reasoned that there is a distinction between the Federal Constitution and the Texas Constitution. *Id.* at 862-63. Through prior decisions the Texas Supreme Court has adopted a narrow interpretation of a fundamental right, stating that " '[f]undamental rights have their genesis in the express and implied protections of personal liability recognized in federal and state constitutions.' " *Id.* at 863 (quoting Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex. 1985)). The appellate court concentrated on the word "liberty" and determined that a right to education does not give rise to any interference with a person's liberty. *Id.*

judicial review.[145]

On appeal, the Texas Supreme Court did not address the issue of equal protection, limiting its review solely to a determination of the state education article's intent.[146] The court rejected the appellate court's deference to the legislature, stating that the language of article VII, section 1 imposes an affirmative duty on the legislature to provide free education to the public.[147] The Texas Supreme Court ruled that it could review legislative enactments in order to ensure that the legislature complied with its constitutional mandate.[148] The court found that the legislature must provide an "efficient" system for the "essential" purpose of a "general diffusion of knowledge."[149]

The court decided the case based on its interpretation of the word "efficient" within Article VII. The State argued that the framers merely intended "efficient" to connote a simple and inexpensive system.[150] The court addressed this argument by looking to the intent of Article VII and interpreting "efficient" to mean "effective or productive of results."[151] The court reasoned that the framers of the constitution did not anticipate the gross disparities that exist in today's system.[152] The court noted that although the original purpose of an "efficient system" was to effectuate a "general diffusion of knowledge," the current system failed to generally diffuse, and instead advanced a limited and unbalanced education.[153]

The *Edgewood* court held that Texas' present financing system failed to meet the level of efficiency required by the state constitution.[154] The

145. *Id.* at 867. The court reasoned that the provision does not offer the courts any indication of the proper interpretation of "efficient." *Id.* The court therefore decided that this question is best left for the legislature to determine. *Id.*

146. 777 S.W.2d at 398.

147. *Id.* at 394.

148. *Id.*

149. *Id.*

150. 777 S.W.2d at 394. The State based its argument on the notion that under the 1875 Constitutional Convention, delegates intentionally used the word "efficient" to prevent the continuance of a highly centralized school system. *Id.* Prior to 1875, the State used an unpopular system exercising complete control over the children and the state argued that the use of "efficient" was meant to diffuse this type of system. *Id.*

151. *Id.* at 395.

152. *Id.* Delegates at the 1875 Convention stressed the importance of education for all citizens, rich and poor. *Id.*

153. *Id.* at 396.

154. 777 S.W.2d at 397. The court expressly found that the plan failed to provide both adequate financing and education. *Id.*

court further enumerated that a direct and close correlation between a district's taxing system and the available educational resources must exist.[155] In other words, children who live in either poor districts or in rich districts are entitled to a substantially equal opportunity to educational funds.[156]

III. Legislative Action and State Courts' Reaction

A. *Abbott v. Burke*

The New Jersey Supreme Court's decision in *Abbott v. Burke*[157] distinguishes itself as the first court to review a state financing plan amended in response to a judicial mandate.[158] Following *Robinson v. Cahill (IV)*,[159] the New Jersey Legislature enacted a new funding mechanism designed to satisfy the "thorough and efficient" provision.[160] The court in *Robinson v. Cahill (V)*[161] subsequently recognized that although the act was constitutional on its face, it was possible that some districts would be unable to provide a thorough and efficient education.[162] The *Abbott* court now faced the issue of whether the legislative action was constitutional when applied to poorer districts.[163]

An important shift in emphasis occurred during the evolution of New Jersey case law.[164] In *Robinson v. Cahill (I)*,[165] the court focused on the amount of funds necessary to provide each student with a minimum educational opportunity.[166] The focus of *Robinson (V)* centered

155. *Id.*

156. *Id.*

157. 575 A.2d 359 (N.J. 1990).

158. *Id.* at 363.

159. 351 A.2d 713 (N.J. 1975).

160. 575 A.2d at 369. In addition to administrative measures, the legislature also provided a new financing plan to maintain a "thorough and efficient" education. *Id.* The new plan placed responsibility on the state to maintain a thorough and efficient level of education in each district. *Id.* Despite this requirement, the *Abbott* court believed that the plan still allowed disparity among the rich and poor districts. *Id.* For a summary of the evolution of the litigation involving New Jersey's school financing plan, see *supra* note 69 and *infra* notes 164-69.

161. 355 A.2d 129 (N.J. 1976).

162. *Id.* at 144.

163. 575 A.2d at 365-66.

164. *Id.* at 369. *See supra* note 69 for the progression of *Robinson*.

165. 303 A.2d 273 (N.J. 1973), *cert. denied*, 414 U.S. 976 (1973).

166. *Id.* at 276-77. The court in *Robinson I* concentrated not on the equality of

not on the level of funding, but on the sufficiency of the funding to support the goal of a "thorough and efficient" educational system.[167] Funding quality was only important if it had an impact on the level of substantive education within a district.[168] In *Abbott*, the New Jersey Supreme Court focused on the quality of the education received, not the level of monetary input.[169] The court declared that an educational system is only "thorough and efficient" if poorer students receive the same substantive education as the students in richer districts.[170]

Although the *Abbott* court emphasized the quality of substantive education within a district, it also considered the level of monetary input a significant factor.[171] The court found a direct causal relationship between the amount of money invested in education and its resulting quality.[172] Under the New Jersey system, local school districts relied heavily on revenue from property taxes to fund their schools.[173] A poorer district's low property values combined with "municipal overburden" severely limited that district's ability to raise an adequate amount of money for education.[174] Because this limitation hampered

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education but on the quality of education. *Abbott*, 575 A.2d at 368. The New Jersey Constitution required that each student be provided a minimum level of education. *Id.* The court in *Robinson I* believed that if the lowest expenditure was producing a thorough and efficient education, then the constitution was satisfied no matter how many districts spent above the minimum amount. *Id.* The *Robinson I* court merely required that the excess spending not dilute the ability of the state to provide a thorough and efficient education to all districts. *Id.*

167. 575 A.2d at 370. The *Abbott* court interpreted the *Robinson V* decision as rendering equal expenditure "per pupil relevant only if it impacts" on the quality of education in a district. *Id.* If a district failed because of money, "the remedy was not to change the statute but to implement it by forcing the district to spend more by supplying further state funds." *Id.*

168. *Id.* at 370.

169. *Id.* at 372.

170. *Id.*

171. 575 A.2d at 374. The court stated that any evidence regarding the substance of education is largely circumstantial and therefore is not enough to prevent consideration of dollar input disparity. *Id.* Further, the court later stated that money is indeed one of the many factors necessary to assess the quality of education. *Id.* at 406. The court reasoned that money would not guarantee a "thorough and efficient" education, but it was a starting point to insure that schools have an equal opportunity to provide a "thorough and efficient" education. *Id.*

172. *Id.* at 387. The court found that "the poorer the district and the greater its need, the less the money available, and the worse the education." *Id.*

173. *Id.* at 377-78.

174. *Id.* at 378. Municipal overburden occurs when the local costs of government are so high that municipalities become reluctant to raise taxes. *Id.* Poorer districts are

all hopes of educational quality in poorer districts, the court concluded that these districts will never be able to provide a "thorough and efficient" education for its students.[175]

In its analysis, the *Abbott* court assumed that children of poorer areas are as intellectually capable as their richer counterparts.[176] The court reasoned that the educational discrepancies between the groups merely resulted from their socioeconomic status.[177] Therefore, the court concluded that a "thorough and efficient" education would close this gap.[178] The court then defined a "thorough and efficient" education as providing students with the ability to fully participate in all societal functions.[179] Applying this standard, the *Abbott* court held that the present system precluded students from poorer districts from entering the same market or the same society as their peers educated in wealthier districts.[180]

Based on this conclusion, the court took an aggressive stance. The court believed that the quality of education within the poorer districts was so inadequate that it necessitated significant changes in the educa-

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already taxed at a high rate in order to pay for police, firefighters, road maintenance, and garbage collection. *Id.* The *Abbott* court found that social and economic pressures on municipalities are so steep "that tax increases in any substantial amount are almost unthinkable." *Id.* at 394.

175. 575 A.2d at 394. The court expressly found that "[t]he funding mechanism of the Act will never achieve a thorough and efficient education because it relies so heavily on a local property base already over-taxed to exhaustion." *Id.*

176. *Id.* at 385-86. This was an important premise of the court in deciding this case. The court reasoned that the students in poorer districts could perform as well as other students if given the proper education. *Id.* at 386. The court stated that the New Jersey Constitution does not allow poor children to receive an inferior education on the theory that the children could neither afford a better education nor benefit from one. *Id.*

177. *Id.*

178. *Id.* at 395-97 (assessing the differences between courses and extracurricular activities offered in rich and poor districts).

179. 575 A.2d at 397. The court stated that:

> Thorough and efficient means more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one's role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one's community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.

Id.

180. *Id.* at 400.

tional system.[181] The court reiterated that students from poorer urban districts are constitutionally entitled to a "thorough and efficient" education which will afford them the opportunity to properly function in today's society.[182] To accomplish this, the totality of the poorer districts' educational conferment must possess elements over and above the regular education programs in the affluent suburban districts.[183] The court reasoned that a student in a poorer district is so disadvantaged that simply receiving a "regular education" will be insufficient to overcome these disadvantages.[184] The court asserted that even if poor and wealthy districts receive an equal amount of funding, the poorer districts will never overcome the socioeconomic disadvantages.[185] In support of this assertion, the court articulated that poorer urban districts require more than a regular education in order to overcome their inherent disabilities and receive a thorough and efficient education under the Constitution.[186]

Therefore, the court ordered the legislature to amend the act to guarantee that the educational funding of poorer districts is "substantially equal" to that of richer districts.[187] Although the *Abbott* court allowed the legislature to devise any remedy it desired, the court directed the legislature to adequately provide for the special needs of poorer urban districts in light of their disadvantages.[188] This remedy, the court concluded, would assure a thorough and efficient education

181. *Id.* at 401. The court realized that substantive changes in the system were necessary:

> The nation has come to recognize the education of the urban poor as a most difficult and important problem. While opinions concerning the methods, approaches, and techniques differ concerning their effectiveness, their advantages and disadvantages, there is solid agreement on the basic proposition that conventional education is totally inadequate to address the special problems of the urban poor. Something quite different is needed, something that deals not only with reading, writing, and arithmetic, but with the environment that shapes these students' lives and determines their educational needs.

Id.

182. *Id.* at 402-03.

183. 575 A.2d at 402.

184. *Id.* at 402-03.

185. *Id.*

186. *Id.* at 403.

187. 575 A.2d at 408. The court stated that the level of funding must provide for the special needs of students in poorer urban districts. *Id.* In addition, the court expressly limited its finding of an inefficient education only to certain poorer districts. *Id.* at 409.

188. *Id.* at 408-09. The court held that the legislative remedy must provide poorer

for New Jersey students.[189]

B. *Edgewood Independent School District v. Kirby — Edgewood II*

The Texas Supreme Court also had an opportunity to address the constitutionality of a school financing plan revised by the Texas Legislature. Following the initial decision in *Edgewood Independent School District v. Kirby (Edgewood I)*[190] striking down Texas' education financing system, the State legislature enacted Senate Bill 1 on June 7, 1990.[191] Immediately following the enactment of the new law, the plaintiffs in *Edgewood I* brought an action seeking a declaration that the system remained unconstitutional.[192] The district court found that, notwithstanding the changes in the statute, the new financing plan was unconstitutional.[193] Despite this finding, the district court vacated the injunction granted in *Edgewood I* by the Texas Supreme Court and denied plaintiffs any further relief.[194]

The Texas Supreme Court granted certiorari to review the constitutionality of Senate Bill 1.[195] The court in *Edgewood Independent School District v. Kirby (Edgewood II)*[196] found that the main improvement in the plan was the legislature's ability to evaluate fund allocations biennially.[197] Although this monitoring effort was a positive step, the *Edgewood II* court found that the system remained unconstitutional.[198] The *Edgewood I* court initially struck down the plan because

districts a budget "that is approximately equal to the average" budget of the richer districts. *Id.*

189. *Id.*

190. 777 S.W.2d 391 (Tex. 1989). *See supra* notes 136-56 and accompanying text for discussion of the *Edgewood I* analysis.

191. Act of June 7, 1990, 71st Leg., 6th C. S., ch. 1, 1990 Tex. Gen. Laws 1. Following the *Edgewood I* decision, four sessions of the legislature failed to enact the new funding plan. Edgewood Indep. Sch. Dist. v. Kirby (*Edgewood II*), 804 S.W.2d 491, 493 n.3 (Tex. 1991). The legislature finally approved a new plan during the fifth special session which began on May 2, 1990. *Id.* The governor vetoed this bill on May 22, 1990 and the legislature enacted Senate Bill 1 in the sixth special session. *Id.*

192. 804 S.W.2d at 493.

193. *Id.*

194. *Id.* The district court stated that it would not grant any further relief until it was obvious that the Texas Legislature would not enact a constitutional funding system effective September 1, 1991. *Id.*

195. *Id.*

196. 804 S.W.2d 491 (Tex. 1991).

197. *Id.* at 494-95.

198. *Id.* at 498.

it failed to provide "a direct and close correlation between a district's tax effort and the educational resources available to it."[199] The *Edgewood II* court found that the amended plan did not alleviate this structural problem.[200] The court reasoned that the new plan did not provide students with the efficient educational system guaranteed under the Texas Constitution.[201] The court stated that a constitutionally efficient system connotes a funding plan that obtains revenue from all property at substantially similar rates.[202] As a result, the *Edgewood II* court held that the plan still forced most property owners to bear a heavier tax burden to fund a less expensive education and was therefore unconstitutional.[203]

The Texas Supreme Court recognized that it was not within its power to mandate specific means of adopting an efficient system.[204] This remedy was solely within the powers of the legislature.[205] The court did, however, suggest several methods that could possibly lead to

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199. *Edgewood I*, 777 S.W.2d at 397. *See supra* notes 136-56 and accompanying text for a discussion of the rationale in *Edgewood I*.

200. *Edgewood II*, 804 S.W.2d at 496-97.

201. *Id.* at 498. The court found fault with the revised plan because it retained the two-tiered structure of the plan overturned in *Edgewood I*. *Id.* at 495. The state financing program guarantees a minimum level of funding per student. *Id.* The first tier is the base allotment given to schools to provide a minimum education. *Id.* The amount of funding in the first tier is determined by the level of local tax; if a school taxes at a certain percentage, it is entitled to a base amount from the state. *Id.* The second tier of funding is designed to equalize the amount of funds among districts according to their ability to raise local revenues. *Id.* The second tier provides the funds to cover the difference between what the district is able to raise and the state guaranteed level per student. *Id.*

The problem with this system is that the program does not begin to cover the necessary costs. *Edgewood I*, 777 S.W.2d at 392. Local districts are still forced to raise a substantial amount of revenue through the property tax. *Id.* The new plan offered in Senate Bill 1 excluded the top 5% of the wealthiest districts from the formula. *Edgewood II*, 804 S.W.2d at 495-96. The court did not address the appropriateness of the exclusion, but instead concentrated on the material changes in the system since *Edgewood I*. *Id.* at 496.

202. *Id.* at 496-97.

203. *Id.* at 496. The court stated that the new plan remained inefficient because of the legislature's overall failure to restructure the system. *Id.*

204. *Edgewood II*, 804 S.W.2d at 498. The court emphasized that it was not summarily striking down the legislative plan. *Id.* The court was aware of the difficulty in devising an efficient educational system. *Id.* The court reasoned, however, that it had a constitutional duty to ensure the adherence of the public school system to the constitutionally prescribed standard. *Id.*

205. *Id.* at 497.

a constitutionally efficient system.[206] First, the Texas Supreme Court suggested that the legislature consolidate school districts to reduce administrative costs.[207] Second, the court suggested taxing the districts at a similar rate in order to give the system additional revenue for education.[208]

The *Edgewood II* court also suggested realigning school districts as a positive step toward an efficient educational system.[209] The court recognized the legislature's authority to arrange school districts according to county lines.[210] The court reasoned that revenue derived from a county-wide tax base could then be distributed equally among all schools within the county.[211]

The *Edgewood II* court affirmed the district court's conclusion that the new system was not in compliance with Article VII, section 1 of the Texas Constitution.[212] In addition, the Texas Supreme Court found that the district court abused its discretion by refusing to enforce the *Edgewood I* injunction.[213] The *Edgewood II* court reinstated the injunction and ordered the Texas Legislature to take action to remedy the defect.[214]

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206. *Id.* at 496-97.

207. *Id.* at 497.

208. *Edgewood II*, 804 S.W.2d at 497. The court reasoned that the varying tax rates lead to a failure to maximize tax revenue. *Id.* at 496-97. If richer districts were taxed at a level similar to poorer districts, the state could raise millions of dollars of additional revenue. *Id.* at 497. Equalizing the tax rates may ease the state's burden or lower a district's tax rate. Whatever the result, the court believed that this proposal would lead to an efficient system. *Id.*

209. *Id.*

210. *Id.* at 497-98. The court stated that the Texas Constitution grants the legislature broad discretion in the creation of school districts. *Id.* at 497. Article VII, section 3 of the Texas Constitution authorizes the legislature to organize school districts "composed of territory wholly within a county or in parts of two or more counties." TEX. CONST. art. VII, § 3.

211. *Edgewood II*, 804 S.W.2d at 497. The court did, however, express concern that the proposed tax base consolidation system may pose constitutional problems. *Id.* The court cited its decision in Love v. City of Dallas, 40 S.W.2d 20 (Tex. 1931), in which it held that the legislature cannot compel a district to levy taxes and provide an education for non-resident students. 40 S.W.2d at 27.

212. *Edgewood II*, 804 S.W.2d at 498.

213. *Id.*

214. *Id.* at 498-99.

IV. THE IMPACT OF RECENT DECISIONS AND THE FUTURE OF REFORM LITIGATION

The recent state court decisions striking down their school financing plans have once again thrust financing reform into the spotlight of national concern.[215] The courts' sole reliance on their states' education articles represents a marked shift in school finance reform decisions.[216] Only two decisions had relied exclusively on the state education article prior to the recent trend triggered by the *Helena*, *Rose,* and *Edgewood* decisions.[217] Previously, most courts relied, at least in part, on state equal protection guarantees assessing school financing plans.[218]

The shift from the Equal Protection Clause to the state education article should create new hope for reformists.[219] The recent decisions indicate that a court can strike down a funding plan more easily under the state education article than under the equal protection provisions.[220] Decisions dealing with a state education article are usually limited in scope; their impact has been restricted to the state education system.[221] Concentrating on the states' education article does not set a dangerous precedent, whereas a decision labeling education as a fundamental right or creating wealth as a suspect class could have a great impact on other areas of law.[222] Judges will obviously tread carefully

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215. THE STRUCTURE OF STATE AID, *supra* note 3, at vii-viii.

216. *See generally* Thro, *The Third Wave*, *supra* note 13, at 238-49 (discussing the impact of *Helena*, *Rose*, and *Edgewood* on financial reform for education).

217. *See* Robinson v. Cahill (I), 303 A.2d 273 (N.J. 1973); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71 (Wash. 1978). *See supra* notes 46-69 and accompanying text for a discussion of *Robinson I*. *See supra* notes 95-99 and accompanying text for a discussion of *Seattle Sch. Dist.*.

218. *See supra* note 73 for cases that relied on state equal protection guarantees (excluding *Seattle Sch. Dist.*).

219. *See* Thro, *The Third Wave*, *supra* note 13, at 243-249 for a discussion of the categories of the state education articles and their significance to the success of reform litigation.

220. For courts assessing constitutionality claims under their state education articles, see generally Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); Helena Elementary Sch. Dist. v. State 769 P.2d 684 (Mont. 1989); Abbott v. Burke, 575 A.2d 359 (N.J. 1990); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); and Edgewood Indep. Sch. Dist. v. Kirby (II), 804 S.W.2d 491 (Tex. 1991).

221. Thro, *The Third Wave*, *supra* note 13, at 241.

222. *Id.* at 241-42. As evident from the scant success school reformists experienced prior to 1989, courts are reluctant to apply equal protection analysis to education. *Id.* at 240-41. The primary reason for this reluctance is due to the hesitation of many courts to classify wealth as a suspect class. *Id.* at 241-42. As Thro stated, this concern stems from the fear that this suspect class will shift into other areas outside the educa-

in this area.

Another reason reformists may cheer is that they can take advantage of today's current societal views on education. Educational improvement is a high priority in America today.[223] Under an equal protection analysis, a court's freedom is limited by the standard that heightened social importance shall not be considered in determining fundamentality.[224] When analyzing a state education article, however, judicial opinions may be affected by current societal views. At a minimum, our current educational problems will be on the judge's mind when he is evaluating the framer's intent and the importance attributed to education.

Over the past twenty-five years, educational expenditures have increased, while students' average scores on standardized tests have steadily decreased.[225] Clearly, simply throwing money at our educational problems without reforming the financing system is not the answer. The court in *Abbott v. Burke* recognized that there are inherent societal problems that lead to unequal opportunities for our children.[226] The New Jersey Supreme Court emphasized the important role education plays in reducing these inequalities.[227] The court

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tion arena. A decision rendering wealth as a suspect class or education as a fundamental right could have far reaching effects, invalidating many state programs. *Id.* at 242.

223. In 1989, President Bush held an "Education Summit Conference" for our nation's governors in Charlottesville, Virginia. The President and the governors left the conference with six goals for education. By the year 2000:

*all children in America will start school ready to learn.

*the high school graduation rate will increase to at least 90 percent.

*. . . every school in America will ensure that all students learn to use their minds well, so that they will be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

*U.S. students will be first in the world in science and mathematics achievement.

*every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

*every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

Six Goals for Year 2000, THE CHRISTIAN SCIENCE MONITOR, Jan. 2, 1991, at 14.

224. *See* San Antonio Indep. Sch. Dist. v. Rodriquez, 411 U.S. 1, 35 (1973) (finding that education's importance will not cause the court to stray from its standard of review). *See supra* note 41 and accompanying text for discussion of this standard.

225. *See* Abbott v. Burke, 575 A.2d 359, 366 (N.J. 1990) (finding poorer students' education inadequate despite monumental per pupil expenditures).

226. *Id.* at 384-86.

227. *See supra* notes 176-80 and accompanying text for the *Abbott* court's reasoning.

shifted its analysis away from monetary input and concentrated on the quality of educational output.[228] The *Abbott* court recognized, however, that there is a direct relationship between the amount of money invested in education and its resulting quality.[229] It is apparent that the lack of quality output — education — clearly calls for reform in the methods of input — school financing.

Disparity in property wealth exists; it is embedded in our society.[230] There will always be a class structure — the rich and the poor. The true inequity in school financing lies in the disparities in tax efforts among the richer and poorer districts.[231] Many current systems require a minimum funding level to ensure an "adequate" education.[232] Under these programs, the State supplements poorer school districts that cannot raise the minimum level of funding through local tax revenues.[233] Unfortunately, this system does not alleviate the inequality in available funds. Wealthier districts have the luxury of raising money well in excess of the minimum funding level while maintaining a lower tax rate than poorer districts.[234] However, poorer districts, already overwhelmed by the costs of providing other essential public services, must maintain excessive tax rates in order to attempt to meet the minimum level. Thus, the disparity in the quality of education among richer and poorer districts persists under this system.[235]

Increased state responsibility in providing funds appears to be a potential avenue of success to battle the disparities in school financing. As the court in *Edgewood II* suggested, an efficient educational system mandates that each district tax at the same rate.[236] Currently, because of the varying property values, richer districts are taxed at a lower rate than poorer districts. Consequently, millions of dollars are lost.[237] If

228. *See supra* notes 164-75 and accompanying text for discussion of the concentration on the quality of education.

229. *Abbott*, 575 A.2d at 387.

230. *See supra* notes 21, 128, 135, and 140-41 for examples of the disparity in property wealth among districts.

231. *See supra* notes 140-41.

232. For a description of state plans which utilize the minimum funding level, *see* Abbott v. Burke, 575 A.2d 359, 377-81 (N.J. 1990); Edgewood Indep. School Dist. v. Kirby (II), 804 S.W.2d 491, 495 (Tex. 1991).

233. *Abbott*, 575 A.2d at 377-81; *Edgewood II*, 804 S.W.2d at 495.

234. *See supra* note 141 for an example of this inequality.

235. *Abbott*, 575 A.2d at 394.

236. *Edgewood II*, 804 S.W.2d at 496-97 (Tex. 1991).

237. *Id.* at 497.

all districts were taxed at the same rate, states could garner millions more in revenue for education.[238] It is unlikely that state constitutions would allow local tax revenues to be collected for use throughout the state;[239] however, the legislature may realign school districts in order to decrease the current disparities among districts.[240] The court in *Edgewood II* recommended a realignment of school district boundaries.[241] If the legislature realigned according to county lines, for example, a county-wide tax could replace separate local district taxes. Consequently, all the revenue collected would then be divided equally among the school districts.[242] Because a county may currently consist of many poor and wealthy districts, this method would alleviate the differences in educational opportunities among districts. Moreover, this same procedure could be extended by using the entire state as a single tax base.[243]

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238. *Id.*

239. The constitutional analysis of allowing states to collect local taxes is beyond the scope of this Note. Briefly, however, the court in Edgewood Indep. Sch. Dist. v. Kirby (III), No. D-0378, 1991 Tex. LEXIS 21, at *2 (Tex. Feb. 25, 1991) stated that the Texas Constitution mandated "that local tax revenue is not subject to state-wide recapture."

240. *Edgewood II*, 804 S.W.2d at 497-98. In response to *Edgewood II*, the Texas legislature enacted Senate Bill 351. Instead of consolidating school districts, the Texas legislature artificially consolidated the taxing power by forming 188 county education districts. Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist. (Edgewood IV), No. D-1469, 1992 Tex. LEXIS 7, at 20 (Tex. Jan. 30, 1992). Although the state argued that it was merely following the *Edgewood II* court's proposal, the Texas Supreme Court struck down Senate Bill 351 as unconstitutional in *Edgewood IV*. *Id.* at 59. The court had difficulty with the plan because taxpayers were obligated to support the costs of schools in other districts over which they had no control. *Id.* at 58. The *Edgewood IV* court held that the state cannot unilaterally impose tax base consolidation without voter approval. *Id.* School district consolidation and taxing power consolidation are distinguishable. Under the former, taxpayers still have control over the schools their funds are supporting, even though this control is greatly diluted.

241. *Id.* *See supra* notes 209-11 and accompanying text for a discussion of district realignment.

242. *Id.*

243. Kosterlitz, *supra* note 2, at 1768. Some commentators have argued that there may be a need for federal action. Professor Allen Odden of the University of Southern California stated that "[w]e have to question now the way we've traditionally implemented local control, . . . There's a growing realization among all sectors and educators that education is key to increased [economic] strength and survival. We still want local school implementation [of education policies], but there's a growing consensus that we need nationwide goals." *Id.* There has been congressional activity in response to these concerns. Legislation has been introduced which would require states that receive federal aid to provide equality among their school districts. *Id.* In the past, federal activity

The affluent school districts will obviously disagree with this method, arguing that the new alignment is taking both money and control away from the traditional source of educational revenue — the localities.[244] Under the proposed system, a locality would be entitled to a fixed percentage of the total revenue raised throughout the county. An affluent community would raise much more money than it would receive for its educational budget, whereas a poorer district would receive more funding than it raises. The new plan would also place, in effect, a cap on the amount of money a locality could expend on its schools.[245] If an affluent locality desired to raise its educational expenditures, a currently routine tax increase of one percent would have to be approved by the entire county. Arguably, this effect would result in a spiraling downward of educational standards.[246] Although the proposed standard levels the playing field, the wealthier districts will argue that the playing field has actually been lowered, sacrificing the educational opportunities available to their children.

Currently, the inequities present in our educational systems sacrifice the educations of children in poor urban districts while children in wealthier areas enjoy financing adequate to provide a "thorough and efficient" education. Clearly, these inequities must be resolved. The realignment of districts proposed by the Texas Supreme Court will not result in a "spiraling downward" of educational standards. Instead, realignment will result in a system where children in poorer areas receive the same educational opportunities found in wealthier districts. Moreover, the realignment will not hinder students in the wealthier school districts. Although citizens in wealthier areas will have to pay a tax rate higher than they are currently paying, the size of the new county-wide tax base should garner revenues sufficient for wealthier areas to maintain their current programs. Furthermore, the percentage paid by the entire county will be lower than the rate currently paid by citizens in poorer districts. An increased tax rate for citizens in wealthier districts should not be difficult to implement where the education of our children is at stake.

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looked not only to ensuring equality within the states, but also equality between them. Both Presidents Dwight D. Eisenhower and John F. Kennedy proposed such systems, but neither were seriously considered. Edward B. Fiske, *Historic Shift Seen in School Finance*, N.Y. TIMES, Oct. 4, 1989, at B9.

244. Kosterlitz, *supra* note 2, at 1768.

245. *Id.*

246. *Id.*

CONCLUSION

Although the current state systems rely heavily on local control and local revenue raising, the state is the entity most responsible for education.[247] Nearly all state education articles include the phrase "the *state* shall provide for a school system."[248] It is possible that our nation has reached the point where it is no longer efficient to leave our decisions to the localities. These current educational systems were implemented in the nineteenth century when the population was proportionate throughout the state. Twentieth century urbanization created densely populated areas, resulting in poor, disadvantaged neighborhoods. This unequal growth renders the current system unworkable. Perhaps it is time for the states to ignore tradition and reform our educational financing systems.

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247. *See supra* notes 120-23 and accompanying text for an example of a state constitution granting the responsibility for education to the state.

248. *See supra* note 96 for citations to several state constitutions' education articles.

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COMMENTS