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COMMENT

Campaign for Fiscal Equity v. State: A Template for Education Transformation in New York

ANDREW A. WASHBURN[†]

INTRODUCTION

New York State's system of financing public education is in the midst of a long and bitter legal battle—a battle that is being fought to improve the conditions of our schools, and the quality of our children's education.¹ This battle got serious when the New York Court of Appeals handed down a denial of a motion to dismiss, in *Campaign for Fiscal Equity v. State of New York*.² In this landmark decision, New York's high court held that it would consider

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1. Though far from over, this battle has seen two important developments since the initial draft of this Case Note. On January 9, 2001, following a long, hard-fought trial, *see infra* note 167, State Supreme Court Justice Leland DeGrasse ordered New York State to develop a new funding system, giving Campaign for Fiscal Equity a sweeping trial court victory. Campaign for Fiscal Equity, Inc. v. State, 719 N.Y.S.2d 475 (N.Y. County 2001). One week later, New York Governor George Pataki announced that he would appeal the Supreme Court's decision. *See, e.g.*, Tom Precious, *Pataki Will Appeal School Funds Ruling*, BUFFALO NEWS, Jan. 17, 2001, at 1A. Indeed, the scope of this battle and its importance to New York's public education system will not be seen for some time. *See infra* note 12 and accompanying text.

2. 655 N.E.2d 661 (N.Y. 1995).

whether the state's public school financing system is unconstitutional, thereby propelling New York State into the midst of an already active nationwide movement to hold states accountable for inequities in public school funding, inequities which leave poorer students—often minorities—with an inadequate education.³

This movement began in 1973, when the United States Supreme Court held in *San Antonio v. Rodriguez*⁴ that variations in spending among Texas school districts did not violate the equal protection clause of the U.S. Constitution, because education is not a fundamental right under the U.S. Constitution.⁵ Education finance reformers then took their battles to the states, where they fought on grounds of equal protection as well as on the specific education articles embedded in the states' own constitutions.⁶ Several challenges to school finance systems were successful, with high courts in several states in the 1970s, 1980s, and 1990s invalidating finance schemes that resulted in inequalities in education.⁷

In New York, the first school finance challenge to reach the state's highest court came in 1978, when the Levittown school district sued the state, claiming that aid disparities among districts were unconstitutional.⁸ The Court of Appeals held that the inequities were not unconstitutional because the state constitution does not require equal funding in education.⁹ But it was in *Levittown* that the court opened the door to future school finance litigation by affirming that the New York State Constitution does entitle students at a minimum to "sound basic education," even though, in that case, there was no claim that minimal standards were not being met.¹⁰ Then, in 1995, the group called the Campaign for Fiscal Equity, a not-for-profit coalition of parent organizations, community school boards,

3. See generally Kent K. Anker, *Differences and Dialogue: School Finance in New York State*, 24 N.Y.U. REV. L. & SOC. CHANGE 345, 369-70 (1998).

4. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

5. See *id.* at 35.

6. See generally R. CRAIG WOOD & DAVID C. THOMPSON, *EDUCATIONAL FINANCE LAW: CONSTITUTIONAL CHALLENGES TO STATE AID PLANS—AN ANALYSIS OF STRATEGIES* 54-56 (2d ed. 1996).

7. See *id.*

8. See *Board of Educ. of Levittown v. Nyquist*, 439 N.E.2d 359, 364-65 (N.Y. 1982).

9. See *id.* at 47-48.

10. *Id.* at 48.

citizens and advocacy groups, filed a lawsuit claiming, *inter alia*, that a sound basic education was exactly what many students in New York City's poorer schools were not getting.¹¹

Until all appeals of *Campaign for Fiscal Equity* are heard, the potentially momentous results of this case are yet to be seen.¹² However, regardless of the ultimate outcome of *Campaign for Fiscal Equity II*, the initial 1995 Court of Appeals case has already made a lasting and significant impact on the education reform movement in New York worth discussing.

The goal of this note is to examine the substantive educational concerns and the procedural actions that have led up to *Campaign for Fiscal Equity*, analyze the Court of Appeals' reasoning for allowing the constitutional challenge to go forward, and discuss the significance of this case both in the national context of school finance reform and specifically within New York State.¹³

I. BACKGROUND

A. Concerns Over Public Education in New York State

New York State got a relatively late start on productive school finance reform litigation. By 1995, when *Campaign for Fiscal Equity* reached the Court of Appeals, high courts in twelve other states had already issued rulings on the constitutionality of their education finance systems.¹⁴ Nevertheless, in New York City leaders have recognized the need for school reform for years,¹⁵ and the struggle to realize

11. See Anker, *supra* note 3, at 370. For a good overview of the Campaign for Fiscal Equity, see the organization's Web site, at <http://www.cfequity.org/ns-about.htm>.

12. See *supra* note 1. For updates on the case's progress, see Campaign for Fiscal Equity, at <http://www.cfequity.org/ns-about.htm>.

13. The goal of this paper is not to compete with the vast amount of material that has thoroughly analyzed the seriously complicated public school funding system itself, whether nationally or within New York State; rather, the focus of this casenote is limited to discussion of the importance of this one case in the plight of school reform in New York State.

14. See Deborah A. Verstegen, *The New Wave of School Finance Litigation*, PHI DELTA KAPPAN, Nov. 1994, at 243.

15. See generally Marilyn Gittell, *School Reform in New York and Chicago*, in STRATEGIES FOR SCHOOL EQUITY: CREATING PRODUCTIVE SCHOOLS IN A JUST SOCIETY 147 (Marilyn J. Gittell ed., 1998).

meaningful reform has been marked by failure.¹⁶ On the heels of the civil rights movement, community organizations began to abandon a “failed school-integration agenda[,] . . . frustrated by the school system’s resistance to change.”¹⁷ The city was steeped in a hard-fought battle for school decentralization since 1967, but the plan adopted in 1969 by the state legislature “reflected an already defeated community agenda for political decentralization.”¹⁸

Meanwhile, other problems associated with insufficient and inequitable funding practices and which have led to the litigation in New York—“underpaid teachers, disadvantaged students, crumbling buildings and overcrowded classrooms”¹⁹—have been a concern in New York for many years.²⁰ Several school officials have articulately testified to the perpetually egregious school conditions in New York City.²¹ The president of the United Federation of Teachers, Randi Weingarten, testified that the “[New York C]ity school system has all ‘the ingredients for disaster.’ ”²² State Education Commissioner Richard Mills testified that “dim lighting, faulty wiring and a lack of ventilation . . . ‘signal failure’ ” and that “ ‘[t]he surroundings convey a message to kids and teachers that their work is not important.’ ”²³

The main concerns about the inequitable and unfair conditions in New York City schools today are: (1) poorly trained teachers—nearly one third of the city’s teachers failed their own required exams at least once, whereas only 5.9% of suburban teachers have failed;²⁴ (2) poorly paid

16. *See id.* at 156-59.

17. *Id.* at 156.

18. *Id.* at 159.

19. Dareh Gregorian, *Union Chief: Apple’s Rotten For Teachers*, N.Y. POST, Nov. 5, 1999, at 22 [hereinafter *Union Chief*].

20. *See, e.g., Standing For Children: Educators Do the Right Thing*, SYRACUSE HERALD-JOURNAL, Oct. 26, 1999, at A6.

21. *See generally* Campaign for Fiscal Equity, at <http://www.cfequity.org/ns-about.htm>.

22. *Union Chief*, *supra* note 19, at 22.

23. Liz Willen, *Mills: School Conditions ‘Signal Failure’*, NEWSDAY, Oct. 21, 1999, at A29.

24. Jessica Kowal, *A Grade Below/Study: City Teachers’ Pay Makes for Inferior Faculties*, NEWSDAY, Nov. 16, 1999, at A03; *see also* Willen, *supra* note 23, at A29 (noting a high correlation between uncertified teachers and low-performing schools). In one Brooklyn school district, according to the superintendent, more than half the teachers are either uncertified, teaching out of license, have less than three years of experience, or are rookies. *See* JoAnne

teachers—teachers with master’s degrees in the affluent Nassau and Suffolk counties generally earn \$200,000 to \$300,000 more over a 20-year teaching career than teachers in New York City, and suburban districts offer wages as much as 25% higher than the city schools;²⁵ (3) overcrowded schools—only 43,563 of the city’s 688,984 kindergarten through eighth-graders are in classes of fewer than 20 students, and almost half of those students are in classes of 28 or more;²⁶ and (4) the decay of school buildings—many of the city’s school buildings are in serious need of repair.²⁷

B. Procedural History

1. *San Antonio v. Rodriguez*. Concerns over inequities and insufficiencies in public education were, of course, not limited to New York, and in 1973 the U.S. Supreme Court spoke on an equal protection challenge to education spending in Texas in *San Antonio v. Rodriguez*.²⁸ There,

Wasseiman & Carolina Gonzalez, *B’klyn School Big Says Teachers Fail the Basics*, N.Y. DAILY NEWS, Oct. 14, 1999, at 31.

25. Kowal, *supra* note 24, at A03. Retention of teachers is a similar problem in New York City. Fifty-five percent leave within five years, compared to 25 percent in the rest of the state, according to one study; see also *Union Chief*, *supra* note 19, at 22.

26. See Dareh Gregorian, *Study Faults Overcrowding in Classrooms*, N.Y. POST, Jan. 6, 2000, at 20 (citing a report SUNY Buffalo Professor Jeremy Finn prepared for the Campaign for Fiscal Equity); see also *Union Chief*, *supra* note 19, at 22 (noting the more than 1,000 complaints of overcrowding in New York City Schools, mostly against classes with more than 34 students, during the first two months of the 1999-2000 school year alone); Tara George & Joanne Wasserman, *Crowded Schools Using Churches, Official Testifies*, N.Y. DAILY NEWS, Dec. 3, 1999, at 4 (describing a situation where problems of overcrowding forced one school district to use a Lutheran church as a makeshift school, in apparent violation of the constitutionally required separation of church and state, even though church officials refused to allow mandated sex education and AIDS curriculums to be taught there).

27. See, e.g., Juan Gonzalez, *Reading, Writing and Rats*, N.Y. DAILY NEWS, Nov. 16, 1999, at 12. This example illustrates the horrendous conditions of the Satellite Academy, which was moved from a municipal office building across from City Hall to the an office and factory building at 269 W. 35th St. that formerly was home to West Side High School. The building is surrounded by “disheveled addicts” who attend a methadone program, a pornography shop, prostitutes, and a sidewalk described as “crusty with filth and garbage and jammed with garment workers lugging racks of clothes here and there. Inside, one student described the school as a “rathole” with “mice and rats all over the place.” Parents described the school as having no fire exits, no phone lines, no labs, and no gym. *Id.*

28. 411 U.S. 1. (1973).

plaintiffs claimed that Texas had violated the Equal Protection Clause of the Fourteenth Amendment by allowing disparities in funding, which discriminated against poor students.²⁹ The Court used a minimum rationality standard of review to find that the disparities in spending among Texas school districts were rationally related to the legitimate interest in preserving local control of education.³⁰ Therefore, the Court held that education was not a fundamental right under the U.S. Constitution and that the Texas finance system did not discriminate against the poor.³¹ The decision "effectively halted school aid challenges in federal courts,"³² but only moved the stage to the state courts.

2. Levittown. In New York, the first school finance challenge to reach the Court of Appeals was *Levittown*, which was decided in 1978.³³ There, the plaintiffs consisted of 27 property-poor school districts, four big-city boards of education, and several school children and parents.³⁴ State Supreme Court held that the 1974 school financing system violated the Equal Protection Clauses of both the Federal and State Constitutions and the Education Article of the State Constitution.³⁵ The Appellate Division struck down the Federal equal protection claim but otherwise upheld the decision.³⁶ The Court of Appeals, however, struck down both the equal protection claim and the Education Article challenge modifying the decision, declaring "that the present statutory provisions for allocation of State aid to local school districts for the maintenance and support of elementary and secondary public education are not violative of either Federal or State Constitution."³⁷ The court rejected the federal and state equal protection claims

29. *Id.*

30. *See id.*

31. *See id.* at 28-29.

32. Verstegen, *supra* note 14, at 243; *see also* Julie K. Underwood and Deborah A. Verstegen, *School Finance Challenges in Federal Courts: Challenging Equal Protection Analysis*, in *THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE* 177-92 (Harper & Row 1990).

33. *Board of Educ. of Levittown v. Nyquist*, 439 N.E.2d 359, 364-65 (N.Y. 1982).

34. *See id.*

35. *See id.* at 362.

36. *See id.*

37. *Id.* at 370.

by following the same rational basis test that the U.S. Supreme Court applied in *San Antonio School District v. Rodriguez*.³⁸ And the court rejected the Education Article challenge simply because the plaintiffs failed to advance a claim that students were being deprived of their constitutionally guaranteed right to "education."³⁹

However, the court in *Levittown* did interpret the term "education" to connote "a sound basic education" and also acknowledged that there were in fact "significant inequalities in the availability of financial support for local school districts, ranging from minor discrepancies to major differences, resulting in significant unevenness in the educational opportunities offered."⁴⁰ The plaintiffs attacked the disparate educational opportunities but had not alleged the deprivation of any kind of minimal educational standard, and were thus left powerless by the court's decision.⁴¹

3. *Post-Levittown Litigation*. After *Levittown*, there was no education finance litigation in New York for over a decade.⁴² But in the early 1990s, three more cases emerged.⁴³ In the first suit, *City of New York v. State*,⁴⁴ the city, the city's board of education, and a number of local community boards sued the state on behalf of the city's school children.⁴⁵ There, the plaintiffs sought relief under the Education Article of the state constitution, the Equal Protection Clause of both the state and federal constitutions, and the disparate impact provisions of Title VI.⁴⁶ However, the Court of Appeals dismissed the suit for a lack of capacity to sue.⁴⁷ In the second suit, *Reform Educational Financing Inequities Today v. Cuomo*,⁴⁸ the plaintiffs argued that spending disparities that had developed since *Levittown* had caused a "gross and glaring

38. *See id.*

39. *Id.* at 368-69.

40. *Id.* at 363.

41. *See id.*

42. *See Anker, supra* note 3, at 369.

43. *See id.*

44. 655 N.E.2d 649 (N.Y. 1995).

45. *See Anker, supra* note 3, at 369.

46. *See id.*; *City of New York v. State*, 655 N.E.2d at 650.

47. *See id.*; *City of New York v. State*, 655 N.E.2d at 650.

48. 655 N.E.2d 647 (N.Y. 1995).

inadequacy” in the city’s schools.⁴⁹ However, the Court of Appeals rejected their claims under the Education Article, holding that, without proving the lack of a sound basic education, “extreme disparities” alone do not constitute a violation.⁵⁰ The Court of Appeals also rejected the plaintiffs’ Equal Protection claim, holding that local control continued to provide the “requisite rational basis” for upholding the state’s school finance system.⁵¹ But, also in 1995, the Campaign for Fiscal Equity (CFE) took its case to the Court of Appeals with a more refined constitutional argument, and won.⁵²

II. CAMPAIGN FOR FISCAL EQUITY IN THE COURT OF APPEALS

A. *The Parties*

The plaintiffs in *Campaign for Fiscal Equity* consist of (1) the Campaign for Fiscal Equity, Inc. (CFE), (2) fourteen of New York City’s thirty-two school districts, and (3) a number of individual New York City public school students and their parents.⁵³ The CFE, a not-for-profit corporation, is a coalition of parent organizations, community school boards, concerned citizens and advocacy groups.⁵⁴ Its stated goals are “to reform New York State’s education finance system to ensure adequate resources and the opportunity for a sound basic education for all students in New York City” and through these efforts to “also help secure the same opportunity for students throughout the state who are not currently receiving a sound basic education.”⁵⁵ During trial, CFE hopes to “further develop a constitutional standard for a sound basic education, demonstrate the extent to which poor and minority students are being denied equal educational opportunities, and propose a remedy that will ensure the opportunity for a sound basic

49. *Id.* at 648.

50. *Id.*; see also Anker, *supra* note 3, at 369-70.

51. Anker, *supra* note 3, at 370.

52. See *Campaign for Fiscal Equity v. State of New York*, 655 N.E.2d 661, 663 (N.Y. 1995).

53. *Id.*

54. See *id.*; see also *Campaign for Fiscal Equity*, at <http://www.cfequity.org/ns-about.htm>.

55. See *Campaign for Fiscal Equity*, at <http://www.cfequity.org/ns-about.htm>.

education for all students in the state.”⁵⁶ Its main objectives in reaching a remedy are to make the State: (1) determine the cost of providing all students a sound basic education, (2) cover at least 50% of that total, and (3) further boost aid for poor districts and for students who are at risk because of poverty, disability or limited English language skills.⁵⁷

The defendants are New York State, the Governor, the Commissioner of Education, the Commissioner of Taxation and Finance, and the Majority and Minority Leaders of the Senate and Assembly.⁵⁸

B. *The Plaintiffs’ Winning Argument*

In court, CFE argued that if it could prove that New York State’s financing system deprived students of a minimally sound, basic education, then it had a viable cause of action under the Education Article of the State Constitution, the Equal Protection Clauses of the State and Federal Constitutions, and title VI of the Civil Rights Act of 1964 and its implementing regulations.⁵⁹ Three defendants—the State of New York, the Senate Majority Leader, and the Assembly Minority Leader—moved to dismiss. Supreme Court upheld CFE’s claims under the Education Article and title VI’s implementing regulations, but the Appellate Division held that the plaintiffs had not stated a valid cause of action under the Education Article, the Antidiscrimination Clause, and the title VI implementing regulations and fully granted defendants’ motion to dismiss.⁶⁰ The Court of Appeals dismissed the federal and state Equal Protection causes based on *Levittown* and *San Antonio v. Rodriguez*, using the rational basis test,⁶¹ and dismissed the Title VI cause because there was no showing of “intentional discrimination.”⁶² But the court upheld two key causes of action: (1) CFE’s allegation that the state has violated the Education Article of the State Constitution and (2) CFE’s allegation that the state

56. *Id.*

57. Peter Simon, *Group Challenging State’s School Funding Formula to Call Mills, Sobol to Testify*, BUFFALO NEWS, Feb. 6, 1999, at C4.

58. *See Campaign for Fiscal Equity*, 655 N.E.2d at 663.

59. *See id.*

60. *See id.* at 664.

61. *See id.* at 667-69.

62. *Id.* at 669.

has violated the title VI implementing regulations of the Civil Rights Act of 1964.⁶³

1. *The Education Article.* Article XI, § 1, of the New York State Constitution provides that “[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”⁶⁴ The *Levittown* court, after considering the legislative history of the Education Article, concluded that to satisfy the article’s constitutional mandate, the state must assure that “minimum acceptable facilities” and “a sound basic education” are available to its students.⁶⁵ The Court of Appeals in *Campaign For Fiscal Equity* took the idea of a sound basic education one step further by giving it somewhat of a definition. The court held that a sound basic education

should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury [and that] . . . [t]he state must assure that some essentials are provided. Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonable current textbooks. Children are also entitled to minimally adequate teaching of reasonable up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.⁶⁶

This definition is the essence of the what the court called its “template,” which articulates “what the trier of fact must consider in determining whether defendants have met their constitutional obligation.”⁶⁷ Although the court

63. *See id.* at 663.

64. N.Y. CONST. art. XI, § 1; *Campaign for Fiscal Equity*, 655 N.E.2d at 664.

65. *Campaign for Fiscal Equity*, 655 N.E.2d at 665.

66. *Id.* at 666.

67. *Id.* at 666-67. The plaintiffs argued that the Board of Regents had already established minimum statewide educational standards, and that the violation of any of the Regents’ standards should be the equivalent of a constitutional violation. The court, however, reasoned that many of the Regents’ and Commissioner’s standards go beyond the notions of minimally adequate education and are sometimes “aspirational” in nature. Therefore, the court held that “[p]roof of noncompliance with one or more of the Regents’ or

was careful to assert that it was not “definitively” specifying what the “constitutional concept” of a sound basic education is,⁶⁸ it did offer specific instructions for what the plaintiffs would have to prove with respect to the court’s notion of a sound basic education. First, the plaintiffs will have to show that the students are not “being provided the opportunity to acquire the basic literacy, calculating and verbal skills necessary to enable them to function as civic participants capable of voting and serving as jurors.”⁶⁹ Second, the plaintiffs will have to show a causal link between the present funding system and any proven failure to provide a sound basic education.⁷⁰ The court also specifically stated that the correlation between funding and educational opportunity is a “relevant issue.”⁷¹

But, most significantly, the court held that the *Levittown* decision does not preclude constitutional challenges based on the Education Article. As the court said in *Campaign for Fiscal Equity*, “We think it is beyond cavil that the failure to provide the opportunity to obtain such fundamental skills as literacy and the ability to add, subtract and divide numbers would constitute a violation of the Education Article.”⁷²

2. *Title VI’s Implementing Regulations.* Title VI prohibits discrimination because of race or national origin in any programs that receive Federal assistance.⁷³ It provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁷⁴ To bring a cause directly under Title VI, there must be a showing of intentional discrimination,⁷⁵ and CFE did not offer any showing of

Commissioner’s standards may not, standing alone, establish a violation of the Education Article.” *Id.* at 666.

68. *Id.*

69. *Id.* at 667.

70. *Id.*

71. *Id.*

72. *Id.*

73. See 42 U.S.C. § 2000d (1994).

74. *Id.*

75. See *Campaign for Fiscal Equity*, 655 N.E.2d at 669 (citing *Guardians Ass’n. v. Civil Serv. Comm’n.*, 463 U.S. 582 (1983)).

intentional discrimination in its complaint.⁷⁶

However, under title VI's implementing regulations, proof of "discriminatory effect" is sufficient to establish liability.⁷⁷ A valid cause of action under the title VI implementing regulations has two components: (1) the practice produces a "sufficiently adverse racial impact"—one that "falls significantly more harshly on a minority racial group than on the majority," and (2) the practice is not "adequately justified."⁷⁸ CFE alleges that the state's practice of allocating education aid discriminates against students based on their race.⁷⁹ Based on that claim, the court held that the plaintiffs had indeed stated a valid cause of action under the title VI implementing regulations.⁸⁰

III. IMPACT AND SIGNIFICANCE

Campaign for Fiscal Equity is a very significant decision in New York State for a number of reasons. In its narrowest sense, the case is pivotal for its rule that New York students are guaranteed by the state's constitution a "sound basic education" and for framing a definition of what a sound basic education must entail.⁸¹ The case is also groundbreaking in its ruling that discriminatory effects of unequal school funding practices can constitute a valid cause of action.⁸² Naturally, if the plaintiffs are successful, the case will "have far-reaching ramifications—including the possible institution of strongly defined statewide education standards and changes in the way money is distributed to school districts and the amount of money the

76. *See id.* at 669.

77. *Id.*

78. *Id.* at 670 (quoting *Groves v. Alabama State Bd. of Educ.*, 776 F. Supp. 1518, 1523 (M.D. Ala. 1991)).

79. *See id.* at 670-71. CFE based this claim on statistics that show that 74% of the State's minority students attend City schools, that minorities make up 81% of the City's public school enrollment—as opposed to 17% outside the city—and that minority students receive 12% less State aid per pupil. *Id.* at 670.

80. *Id.* After the plaintiffs establish a prima facie case, the burden of persuasion shifts to the defendant, who must show give a legitimate nondiscriminatory reason to defend its practice. If the defendant does so, the plaintiffs can still "prevail by showing that 'less discriminatory alternatives' were available to further the purportedly legitimate interest." *Id.*

81. *See id.* at 665.

82. *See id.* at 669-70.

state pays to counties every year."⁸³ But even if the plaintiffs are unsuccessful at trial court and on the successive appeals, this case has already established itself by generating a much-needed wake-up call—a spark that has already instigated some real reform and may very well be the push that finally provides the impetus that will bring about the overhaul school finance reform needs. In this section, this casenote will discuss the several positive results that have already taken shape because of the legitimacy the court's decision has lent to the issue of school finance reform in New York, while considering the context in which the case fits into the national scene.

A. CFE's Place in School Finance Litigation Across the Country

1. *The Waves of Finance Reform: A Context for CFE.* Those analyzing school finance litigation have described two separate waves of state actions.⁸⁴ During the first wave, between 1971 and 1983, there were several hard-fought cases: school finance systems were found unconstitutional in Arkansas, California, Connecticut, New Jersey, Washington, West Virginia, and Wyoming, requiring those states to make changes to their existing systems.⁸⁵ Meanwhile, however, finance systems in Colorado, Georgia, Idaho, Illinois, Maryland, Michigan, Ohio, Oregon, and Pennsylvania were found constitutional by those states' respective high courts.⁸⁶ And, in 1982, New York was added to the list of states whose high courts upheld the existing school finance system when the Court of Appeals handed down its *Levittown* decision.⁸⁷ These cases were based either on equal protection claims or on claims that the finance systems violated a constitutional education clause, and

83. Dareh Gregorian, *Lawsuit Could Mean Revolution in Schools*, N.Y. POST, Oct. 10, 1999, at 18.

84. See Betsy Levin, *Equal Educational Opportunity in School Finance Reform: What Went Wrong? Can (Should) It Be Fixed?*, in QUALITY EDUCATION FOR ALL IN THE 21ST CENTURY: CAN WE GET THERE FROM HERE 145-49 (1993); Verstegen, *supra* note 14, at 243-44.

85. See John G. Augenblick, et al., *Equity and Adequacy in School Funding*, in FINANCING SCHOOLS: THE FUTURE OF CHILDREN 63, 67 (Richard E. Behrman ed., vol. 7, no. 3, Winter 1997).

86. *Id.*

87. See *id.*; Board of Educ. of Levittown v. Nyquist, 439 N.E.2d 359, 363 (N.Y. 1982).

many of the cases incorporated both claims.⁸⁸

After somewhat of a cool-down period in school finance litigation, during which time educational efforts were directed more toward school improvement outside the courts,⁸⁹ the "second wave" of litigation arrived in 1989.⁹⁰ Between 1989 and 1990, five state courts ruled on the constitutionality of state funding systems.⁹¹ Major decisions were handed down in Kentucky, Montana, New Jersey, and Texas, where the courts rejected the constitutionality of existing finance systems.⁹² During those two years, only Wisconsin upheld the constitutionality of its state's education finance system.⁹³

These more recent cases, which set the table for New York's re-entry into state finance litigation, reveal a movement by many states to focus on adequacy claims more than claims of inequity.⁹⁴ Most successful school finance cases have addressed both adequacy claims and inequalities in school finance systems at the same time.⁹⁵ But, since 1989, all but two have based their decision on an adequacy claim, and in three cases—Massachusetts, New Hampshire, and Idaho—the court has focused exclusively on adequacy arguments.⁹⁶ For example, the courts in Kentucky, Montana, and New Jersey interpreted their state constitutions as "mandating a minimum or adequate education for all children in the state, rather than equalization of inputs."⁹⁷ The reasons for this shift are not difficult to understand. For one thing, state courts would rather rule on the state's education clause than on the

88. See Augenblick, *supra* note 85, at 68. New York would appear to be a good candidate for reform, as it ranks among the states with the greatest inequalities in education, despite the fact that its early attempts at school finance reform litigation failed. See Noreen Connell, *Underfunded schools: why money matters*, DOLLARS & SENSE, March 13, 1998, at 14 (Special Issue: "The Great Schools Debate").

89. See Augenblick, *supra* note 85, at 68.

90. Levin, *supra* note 84, at 146; see Augenblick, *supra* note 85, at 68.

91. Augenblick, *supra* note 85, at 68.

92. See *id.*

93. See *id.*

94. See Molly S. McUsic, *The Law's Role in the Distribution of Education: The Promises and Pitfalls of School Finance Litigation*, in LAW AND SCHOOL REFORM 88, 116 (Jay P. Heubert ed., 1999).

95. See *id.*

96. *Id.*

97. Levin, *supra* note 84, at 148.

equal protection clause, because they don't want to "set broad precedents that could be equally applicable to the state's other, non-education activities."⁹⁸ But even within the education clause, courts are often more willing to rule on adequacy claims than on claims of inequity because it puts them in "their more comfortable role of enforcing an educational norm created by the political majority rather than creating from the bench a norm that overrides the public choices reflected in the legislative process."⁹⁹

Once again, New York State hit the wave a little late in its formation, but this time the results were worth the wait. In 1995, *Campaign for Fiscal Equity* picked up where *City of New York and Reform Educational Financing Inequities Today* left off, bringing New York into the national dialogue on school finance reform litigation.¹⁰⁰

2. *The Qualified Success of Finance Reform.* The pioneering cases in Texas and Kentucky offer insights into the effect litigation has had in overhauling state finance systems in those states.¹⁰¹ In Texas, which picks up about the same proportion of education expenses as New York, the state now spends three times as much on poor school districts as it does on wealthy ones, following years of litigation.¹⁰² There, litigation moved the equalization agenda forward because taking the movement to court legitimated the cause.¹⁰³ Litigation identified prospective litigation-oriented groups to take the lead in legal matters, educated legal experts on the workings of the Texas funding system, analyzed the legal strategies, and collected the required data.¹⁰⁴ But in Texas, litigation was only one part of a

98. Augenblick, *supra* note 85, at 68.

99. McUsic, *supra* note 94, at 118.

100. See, e.g., WOOD, *supra* note 6, at 93 & n.200; Tamara Henry, *Three R's, 11 lawsuits: Parents, students demand a quality basic education*, USA TODAY, March 4, 1999, at 01D.

101. See generally MARILYN J. GITTELL, STRATEGIES FOR SCHOOL EQUITY 177-209 (1998) (comparing post-litigation reform in Texas and Kentucky).

102. Connell, *supra* note 88, at 14. It must be noted, however, that Texas has been roundly criticized as an example that "more money" does not make a difference, at least in student performance. Richard Whitmire, *School funding debate: More not always better: Spending money wisely can make difference in test scores, experts say*, DETROIT NEWS, Nov. 7, 1999, at A12.

103. See Albert Cortez, *Power and Perseverance: Organizing for Change in Texas*, in STRATEGIES FOR SCHOOL EQUITY 195-96 (Marilyn J. Gittell ed., 1998).

104. *Id.* at 196.

multifaceted strategy.¹⁰⁵ Reform in Texas has been attributed to a mix of "long-term involvement, focused research, the organization and orchestration of equalization advocacy, and the use of litigation to spur legislative action."¹⁰⁶

In Kentucky, the sweeping high court's 1989 decision in *Rose v. Council for Better Education*¹⁰⁷ declared the entire state's educational system unconstitutional, which led to drastic legislative reform of the state's mechanisms of school governance, the state education department, and state educational standards and assessment systems.¹⁰⁸ By 1992, the gap between the richest 20% of Kentucky's school districts and the poorest was narrowed by 52%.¹⁰⁹ Also by 1992, teachers' salaries rose from \$26,292 to \$31,025, bringing Kentucky from thirty-eighth in the country to twenty-ninth in the country in that category.¹¹⁰ But here too, litigation was only part of the successful movement to overhaul the state's finance system.¹¹¹ Kentucky's success is due also to the work of organizations such as the Prichard Committee for Academic Excellence, the Partnership for Kentucky Schools, Kentucky Youth Advocates, the Kentucky League of Cities, the Kentucky Education Association, and the Kentucky Chamber of Commerce, which have persistently worked together to raise the public's awareness concerning the need for education reform, provided ideas that made sense, and encouraged reform.¹¹²

But the problem with looking at other states' results to find a context for New York's school finance reform is that there is no clear consensus on what successful reform actually means.¹¹³ On one side of the debate, critics point to

105. *See id.*

106. *Id.*

107. 790 S.W.2d 186 (Ky. 1989).

108. Augenblick, *supra* note 85, at 68.

109. Connell, *supra* note 88, at 14.

110. *See id.*

111. *See generally* Robert F. Sexton, *The Prichard Committee and Kentucky School Reform*, in STRATEGIES FOR SCHOOL EQUITY 200 (Marilyn J. Gittell ed., 1998) (describing the "legs" necessary to carry reform from public frustration to legislation and from legislation to the classroom).

112. *See id.* at 206-08.

113. *Compare* Connell, *supra* note 88, at 14 (noting the benefits of increasing school funding), *with* Whitmire, *supra* note 102, at A12 (criticizing increased spending in schools).

the substantial analysis that has historically shown that “[t]here is no systematic relationship between school expenditures and student performance.”¹¹⁴ Such critics point out that the equalization of school funding has yet to produce increased student performance.¹¹⁵ Kentucky has been praised for turning around student performance.¹¹⁶ In the four years between 1993 and 1997, reading scores for elementary students almost doubled, while high school students’ scores shot up an impressive 167%.¹¹⁷ Math scores meanwhile went up by 101% for elementary students, 136% for middle school students, and 125% for high school students.¹¹⁸ Scores in science, social studies, art, and writing all increased as well, and overall student scores at all levels increased more than one third over the four-year interval.¹¹⁹ Still, as recent as 1999, some critics are even skeptical of Kentucky’s progress, declaring that “widespread gains in student achievement in Kentucky have yet to be demonstrated.”¹²⁰

In analyzing the gains in New York with respect to in *Campaign for Fiscal Equity*, therefore, two points are important to bear in mind. First, “the success of such [reform] efforts requires considerable time and patience.”¹²¹ Robert Jackson, one of the New York City school parents involved in the *Campaign for Fiscal Equity* case, remarked that he didn’t even mind that his three children may very well graduate before the lawsuit produces any substantial gain to city schools, because he is in it “for the long haul.”¹²²

114. Eric A. Hanushek, *When School Finance “Reform” May Not Be Good Policy*, 28 HARV. J. ON LEGIS. 423, 425-35 (1991) (pointing to “a total of 187 distinct qualified studies” on public schools across the country that fail to show a positive relationship with “the key inputs” between increased funding and student performance).

115. See Whitmire, *supra* note 102, at A12 (comparing the Austin school district, which spends \$5,866 per student but whose students score relatively low on Texas assessments, with the Amarillo school district, which spends \$5,474 per student but whose students score higher on the tests).

116. See Connell, *supra* note 88, at 14 (noting that “[t]he Bluegrass State’s new commitment to adequate and equitable school funding and increased staff training has already paid off”).

117. *Id.*

118. *Id.*

119. *Id.*

120. Marjorie Coeyman, *Is this place crowded or is it just me?*, CHRISTIAN SCIENCE MONITOR, Jan. 26, 1999, at 15, 21.

121. *Id.*

122. *Id.*

As Stewart G. Pollock, Justice for the New Jersey Supreme Court, put it, “[t]he results of a judicial decision, like the results of a classroom discussion, may take years to manifest themselves.”¹²³ Second, the New York Court of Appeals is less concerned about proof of increasing student performance. In *Campaign for Fiscal Equity*, the court demanded proof of a correlation between funding and educational opportunity—not between funding and student performance.¹²⁴ That should make it easier for the plaintiffs to make their case,¹²⁵ and easier for reformers to effect the kinds of basic improvements—investment in building repair and new computers, for instance—that may not directly improve student performance.¹²⁶

B. *Transforming Education in New York*

If, as Justice Pollock said, the results of a judicial decision take years to manifest themselves, *Campaign for Fiscal Equity* is right on track. In the four years between the Court of Appeals’ decision and the beginning of trial on remand in New York Supreme Court, the case has already been associated with (1) subsequent legal actions challenging school funding statewide,¹²⁷ (2) proposed new increases in state funding,¹²⁸ (3) a call for a federal inquiry into New York State’s public school finance system,¹²⁹ (4)

123. The Honorable Stewart G. Pollock, *Financing Our Future Education Improvements for the 21st Century*, 1998 ANN. SURV. AM. L. 133, 142 (discussing the effects of school reform litigation in New Jersey).

124. See *Campaign for Fiscal Equity v. State of New York*, 655 N.E.2d 661, 667 (N.Y. 1995).

125. The plaintiffs need only prove that inequitable funding is causing students to be deprived of a sound basic education and that directing more funding to those students would afford them a sound basic education; the plaintiffs do not have to prove that increased funding will boost those students’ test results. See *id.*

126. See Connell, *supra* note 88, at 14. In Kansas City, for instance, the media has criticized the city as an example of how increased funding for schools “doesn’t work” because student test scores hadn’t improved. But the investments went to repair school buildings; in that sense, the investment did work, but since there was no parallel investment in teaching, student achievement should not have been expected to improve anyway. *Id.*

127. See Stephanie McCrummen, *New Strategies In Old Fight for Funds*, NEWSDAY, Oct. 19, 1999, at A37.

128. See Andrew Brownstein, *Regents Seek \$1.3B Spending Increase*, TIMES UNION (Albany), Dec. 18, 1999, at B2.

129. See Vivian S. Toy, *Manhattan Official Seeks Inquiry on Schools*, N.Y.

new organizations across New York State supporting school finance reform,¹³⁰ and (5) a general increase in attention and focus on the unequal education funding in New York State and its effect on our schools.¹³¹

1. *Spin-off Litigation in New York State.* In December 1998, the New York Civil Liberties Union filed the first of two complementary lawsuits to *Campaign for Fiscal Equity*, claiming that the State discriminates against students in fourteen school districts—Buffalo, Rochester, Syracuse, Albany, six in Nassau County and two each in Suffolk and Westchester counties—that have high percentages of minority students.¹³² These suits follow CFE's lead in alleging that thousands of students who attend schools in high-minority districts are not receiving an equal education in violation of the 1964 Civil Rights Act.¹³³ The first suit was filed in federal court¹³⁴; the second will be in state court, filed on behalf of low-wealth districts in general, and will argue that funding formulas violate the state constitutional guarantee of an adequate education.¹³⁵

2. *Proposals for Increased Spending From Albany.* The Albany Times Union reported that, after being “[s]tung” by the *Campaign for Fiscal Equity* suit, the New York State Board of Regents asked for a record amount of money—a \$1.3 billion increase in education spending, including \$813

TIMES (Abstracts), May 28, 1999, at 10; Liz Willen, *Test Scores Spark Cry for Change/Politician Wants Federal Probe*, NEWSDAY, May 28, 1999, at A37.

130. See Paul Riede, *New Funding System Urged For Schools: A Coalition Proposes A Plan That Would Add \$3 Billion At Some Cost To Taxpayers*, POST-STANDARD (Syracuse), Nov. 25, 1999, at E1 [hereinafter *New Funding System*]; Paul Riede, *An Impossible Puzzle: Frustrated School Officials Try To Solve The State Aid Mystery*, SYRACUSE HERALD AMERICAN, Feb. 1, 1998, at A1 [hereinafter *Frustrated School Officials*].

131. See, e.g., Henry, *supra* note 100, at 01D.

132. See Paul Riede, *Schools Claim State Aid Illegal: Syracuse and 13 Other Districts Say Formulas are a Form of Discrimination*, POST-STANDARD (Syracuse), Dec. 2, 1998, at B3.

133. See *id.* The first suit, in federal court, alleges that the rights of as many as 100,000 students in 150 schools in 14 high-minority districts are being violated. See *id.*

134. Peter Simon, *State Sued Over Schools With Bulk Of Minorities*, BUFFALO NEWS, Dec. 3, 1998, at B1.

135. McCrummen, *supra* note 127, at A37.

million for the state's poorest schools—in December 1999.¹³⁶ Although the Education Commissioner, Richard Mills, denied that the budget request was linked to the suit,¹³⁷ the report noted that the request came “after years in which Regents urged lawmakers to target poor and urban schools that repeatedly perform poorly on tests and employ higher numbers of uncertified teachers.”¹³⁸

3. *A Call for a Federal Inquiry.* Manhattan Borough President C. Virginia Fields called for a federal civil rights investigation in May 1999 to look into the “persistent and chronic failure” of New York City’s public school system.¹³⁹ Ms. Fields is a supporter of the *Campaign for Fiscal Equity* suit,¹⁴⁰ and the intent of her action is similar to that of the Campaign for Fiscal Equity, though on a federal level.¹⁴¹ Ms. Fields’ complaint asked federal officials to examine why a disproportionate number of black and Latino students are performing poorly in school, and called for an examination of the “chronic pattern of schools in minority communities in decrepit conditions, lacking libraries, labs and other essential facilities.”¹⁴² Schools Chancellor Rudy Crew commended Fields’ decision to request the probe, while commenting that “[i]t’s clear to us that minority children fared poorly on the latest state tests, and we know our school system, which is predominately minority, is shortchanged by the state.”¹⁴³

4. *Outgrowth of Upstate Finance-reform Organizations.* In 1998, the Onondaga Citizens League became active in examining the equity of school funding.¹⁴⁴ The coalition, which includes one-hundred-sixty upstate school districts, argues that the existing school finance system discriminates against the upstate districts as well as the

136. Brownstein, *supra* note 128, at B2.

137. *See id.* Commissioner Mills asserted that “[w]e’re not responding to a court case. . . . What we’re doing here is responding to the basic needs of government.” *Id.*

138. *Id.*

139. Toy, *supra* note 129, at 10.

140. *See Willen, supra* note 129, at A37.

141. *See Toy, supra* note 129, at 10.

142. Willen, *supra* note 129, at A37.

143. *Id.*

144. *See Frustrated School Officials, supra* note 130, at A1.

New York City and Long Island districts.¹⁴⁵ Another group, a grassroots committee in Marcellus led by members of the Marcellus school board, also came forward in 1998 to try to disentangle the inequitable state funding formulas.¹⁴⁶ Particularly, the groups argue that the complex funding formulas provide greater percentage increases to suburban districts downstate.¹⁴⁷ For instance, in Oswego County, the Hannibal district is consistently unable to offer advanced high school courses, such as fourth-year language instruction, that students in wealthier districts routinely get.¹⁴⁸ Still, Hannibal received only a 0.2% increase in state aid in 1999 as compared to 1998.¹⁴⁹ By comparison, Monroe County, a relatively wealthy county, got average aid increases of 6.9%, and Nassau County, which is wealthier than Monroe County, got an average 7.3% increase.¹⁵⁰

In November 1999, a similar coalition that also involved 160 upstate school districts, the Midstate School Finance Consortium, made concerted efforts to change the funding system.¹⁵¹ This coalition, with the help of a variety of experts, including scholars from Syracuse University's Maxwell School, actually proposed a new, and potentially more understandable funding system.¹⁵² This system would pump \$3 billion into education funds—a 25% increase to the 1999 school aid total of approximately twelve billion dollars.¹⁵³ The coalition argues that its formula would save \$881 million statewide by reducing local property taxes.¹⁵⁴ The plan would create a base of about \$8000 per student of operating aid for each district, and districts would be required to apply a property tax of at least \$13 per \$1000 of true property value, unless they could reach the base of \$8000 at a lower rate.¹⁵⁵ Districts taxing at the \$13 rate that still don't reach the \$8000-per-pupil mark would get state aid to make up the difference.¹⁵⁶ Districts would still be free

145. *Id.*

146. *See id.*

147. *See id.*

148. *Id.*

149. *See id.*

150. *See id.*

151. *See New Funding System, supra* note 130, at E1.

152. *See id.*

153. *See id.*

154. *Id.*

155. *Id.*

156. *Id.*

to raise their local tax rates as high as they wish above the \$13 floor, however.¹⁵⁷ “Overall, a larger proportion of school funding would come from the state budget instead of local property taxes.”¹⁵⁸

5. *A Wake-up Call: Increased Attention on Reform.* In a national newspaper in 1999, Mary Fulton of the Education Commission of the States called suits such as *Campaign for Fiscal Equity* “a warning that states . . . must decide what responsibility leaders and educators have in helping kids meet these standards.”¹⁵⁹ In Buffalo in 1998, the Buffalo News ran an editorial decrying the “dismaying gap in academic performance between students from urban and non-urban schools.”¹⁶⁰ The editorial highlighted the *Campaign for Fiscal Equity* suit, and then added that “[w]hatever the legal merits of [the] lawsuit, there can be no question that urban schools—located in cities with declining tax bases and heavy concentrations of poor families, among other burdens—require enriched state aid to cope more successfully with unusual challenges.”¹⁶¹ The Buffalo News ran a subsequent editorial in October, 1999, calling attention to the “huge implications” *Campaign for Fiscal Equity* has for Buffalo and across the state.¹⁶² The editorial hopes that “the new standards and a new funding process could finally do what the politicians have long failed to do: adequately educate all of the state’s students.”¹⁶³ A November, 1999, column in Columbia University’s U-WIRE called for students to become more active in the school reform movement, following a march on city hall by Washington Heights resident Robert Jackson, one of the parents who is part of the Campaign for Fiscal Reform’s battle.¹⁶⁴ The author of the column, Julie Gilgoff, argued that

[a]s students at Columbia University, we must not let the ivory

157. *Id.*

158. *Id.*

159. Henry, *supra* note 100, at 01D.

160. Editorial, *Earmark Extra State Aid for Needy Urban School Districts*, BUFFALO NEWS, Jan. 20, 1998, at B2.

161. *Id.*

162. *Rooting for New York City*, BUFFALO NEWS, Oct. 19, 1999, at B2.

163. *Id.*

164. Julie Gilgoff, *Listening to the Injustice Around Us*, U-WIRE, Nov. 5, 1999.

towers grow so high that we are blind to the inequities that exist all around our city and deaf to the cries of justice. We must actively support this court case by writing letters, exercising [sic] our voice and presence at city hall, and demonstrating that we will not stand idly by while education is subject to disastrous fiscal policies made at the arbitration of irresponsible politicians.¹⁶⁵

These are just a few examples of the attention that *Campaign for Fiscal Equity* has brought across New York State. This attention is important, for, if Kentucky and Texas taught us anything, increasing public awareness and organizing advocacy are as important as the litigation itself.¹⁶⁶

CONCLUSION

When *Campaign for Fiscal Equity II* is finally sorted out, probably in the Court of Appeals after a hard fought battle in trial court,¹⁶⁷ there is a chance that it might overshadow the initial case. After all, it is simply the denial of a motion to dismiss, which allowed the rest of the case to go forward. But the significance of the original case is worth noting. To truly transform a state's education finance system, much more is needed in addition to successful litigation. One thing litigation can do is legitimate the need for reform in the minds of legislators, educational leaders, and citizens across the state. That has been true in Kentucky and Texas,¹⁶⁸ and *Campaign for Fiscal Equity* has added legitimacy to the need for reform in New York.

Legally, Campaign for Fiscal Equity will be remembered for the rule that the deprivation of a sound basic education is a constitutional violation in New York.¹⁶⁹ Legally, the Court of Appeals provided a template for what must be established to prove such a constitutional

165. *Id.*

166. For a comprehensive overview of the many components that go into successful school reform, see GITTELL, *supra* note 101, at 177-229.

167. The State Supreme Court trial lasted 111 court days—a span of over 7 months—featuring 72 witnesses and more than 4,300 documents. Anemona Hartocollis, *The Ruling on the Schools: The Classrooms; Legal Portrait of System That Cheats Its Pupils*, N.Y. TIMES, Jan. 12, 2001, at B6.

168. GITTELL, *supra* note 101, at 177-209.

169. See *Campaign for Fiscal Equity v. State of New York*, 655 N.E.2d 661, 666 (N.Y. 1995).

violation.¹⁷⁰ But in actuality, the Court of Appeals provided a template for what the people of New York State can do to join states like Kentucky by transforming its system of financing public education.

170. *See id.* at 666-67.