

Fall 2014

## Illinois Gets an “F” in Public School Financing, 48 J. Marshall L. Rev. 141 (2014)

Matthew Locke

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# ILLINOIS GETS AN “F” IN PUBLIC SCHOOL FINANCING

MATTHEW A. LOCKE

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## INTRODUCTION

In the television show *The West Wing*, Sam Seaborn, an idealistic aide to the President, explained his position on public education as such:

Education is the silver bullet. Education is everything. We don't need little changes, we need gigantic, monumental changes. Schools should be palaces. The competition for the best teachers should be fierce; they should be making six-figure salaries. Schools should be incredibly expensive for government and absolutely free of charge to its citizens, just like national defense. That's my position. I just haven't figured out how to do it yet.<sup>1</sup>

The simile is correct. Yet, we have not figured out how to finance our elementary and high schools to give each child a chance to be the best he or she can be. Standing in the way of

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1. *West Wing: Six Meetings Before Lunch* (NBC television broadcast Apr. 5, 2000).

public education-finance reform at the national level is that, unlike national defense, the job of financing public education is left to the individual states, not the federal government. There is no explicit or implicit grant of the right to an education in the Federal Constitution. The United States Supreme Court declined the opportunity to intervene and federalize the issue in *San Antonio Independent School District v. Rodriguez*.<sup>2</sup> In that case, parents of public school students challenged Texas' school financing system based on property taxes because of the huge disparities that resulted between high-wealth and low-wealth districts.<sup>3</sup> A sympathetic Court described the Texas system as "chaotic and unjust" and emphasized the need for reform in a tax system that "relied too long and too heavily on the local property tax."<sup>4</sup> In the end, however, the Court concluded that this was an issue beyond the scope of the Federal Constitution, and effectively ended any possibility of a national solution to the problem of public education finance reform.<sup>5</sup>

Contrary to the Federal Constitution, almost every state constitution, including Illinois's, specifically guarantees its citizens' the right to a free and efficient education provided by the state. The Illinois Constitution provides: "The State shall provide for an efficient system of high quality public educational institutions and services . . . . The State has the primary responsibility for financing the system of public education."<sup>6</sup> However, despite state constitutional mandates, nearly all fifty states are struggling with how to finance public education. Forty-five of the fifty states have experienced litigation on school financing.<sup>7</sup> New Hampshire was one of the first states to see its school funding system struck down by the courts in 1993.<sup>8</sup> Illinois has not been immune from the challenges surrounding school funding. In fact, Illinois is currently ranked 50th in terms of state contribution to public education according to data provided by the U.S. Department of Education.<sup>9</sup> This article will advocate for a number of reforms, which will minimize spending disparities

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2. 411 U.S. 1 (1973).

3. *Id.* at 4–6.

4. *Id.* at 58.

5. *Id.* at 59.

6. ILL. CONST. art. X, § 1.

7. Daniel Thatcher, *State Role in Education Finance*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/education/state-role-in-education-finance.aspx> (last visited September 24, 2014).

8. Molly Hunter, *New Hampshire Court Declares Funding System Unconstitutional*, ACCESS QUALITY EDUCATION (Mar. 13, 2006), available at <http://www.schoolfunding.info/news/litigation/3-13-06nhsummjdgmt.php3>.

9. ILL. STATE BD. OF EDUC., FACT SHEET: ILLINOIS RANKS LAST IN STATE CONTRIBUTION TO P-12 FUNDING; EFAB "FOUNDATION LEVEL" NOT APPROVED SINCE FY02 (2013), available at <http://www.isbe.state.il.us/budget/FY14/fact-sheet4-efab.pdf> [hereinafter, ISBE FACT SHEET].

across the state, enhance equality in per-pupil funding, and lower overall operating cost. The article will begin with a comprehensive overview of the current public school funding scheme and the problems that result from it. In addition, the article will examine the recent history of litigation aimed at reforming the system. Next, this article will examine the proposed reform recommendations made by the Illinois Senate Education Funding Advisory Committee and the Illinois Speaker of the House. The article will also address arguments against reform and in favor of keeping the emphasis on local financing. Finally, the article shall make the case for dismantling the current funding system in favor of one that places more responsibility on the state, rather than local districts.

## I. ILLINOIS PUBLIC SCHOOL FINANCING

States utilize a number of different state education financing plans, although the majority still delegate a large portion of the financing responsibility to local school districts. In turn, the local school districts rely heavily on local property tax revenue for funding.<sup>10</sup> Two common approaches favored by states that rely primarily on location taxation are the District Power Equalization (DPE) method and the Foundation Support method. The DPE method is designed to guarantee that all local school districts will receive the same property tax yield for the same tax rate.<sup>11</sup> The Foundation Support method measures local tax contributions against predetermined per-pupil expenditure levels, and then requires the state to cover the balance.<sup>12</sup>

### A. *Education Funding Advisory Board*

Illinois currently operates a multi-layered system for public education financing known as a modified Foundation Level approach.<sup>13</sup> The Illinois General Assembly sets the Foundation Level, which is the minimum amount that all school districts are supposed to have the ability to expend per pupil. The funding comes from a combination of state aid and local property tax revenue. One of the traditional problems with the Foundation Level is that it was historically tied to available General Revenue

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10. CENTER FOR TAX AND BUDGET ACCOUNTABILITY, ISSUE BRIEF: ILLINOIS' SCHOOL FUNDING FORMULA AND GENERAL STATE AID 3 (2006), available at [http://www.ctbaonline.org/sites/default/files/reports/ctba.limereid\\_staging.com/node/add/repositoryreport/1386537570/IB\\_2006.08.01\\_Issue%20Brief-Illinois%27%20School%20Funding%20Formula.pdf](http://www.ctbaonline.org/sites/default/files/reports/ctba.limereid_staging.com/node/add/repositoryreport/1386537570/IB_2006.08.01_Issue%20Brief-Illinois%27%20School%20Funding%20Formula.pdf) [hereinafter GSA BRIEF].

11. *Id.*

12. *Id.*

13. *Id.*

funds, and not to any objective measure of the cost of an adequate education.<sup>14</sup> In order to address this problem, Gov. Edgar signed Public Act 90-548 in 1997, which created the Illinois Education Funding Advisory Board (EFAB).<sup>15</sup> The EFAB is a nonpartisan board made up of representatives from education, business and the public.<sup>16</sup> The statutory mandate for the board states that in consultation with the State Board of Education (ISBE), the board shall “make recommendations . . . to the General Assembly for the foundation level.”<sup>17</sup> In other words, the advisory board’s mission each year is to identify a minimum per-pupil funding level, based, not on available state General Revenues, but on the actual cost of providing an adequate education. The metric used to define an adequate education is an education that is sufficient in quality so that at least 67% of Illinois’s non-at-risk children will pass state mandated standardized tests.<sup>18</sup> At-risk children who come from concentrated poverty, broken homes or have special needs are far more expensive to educate and therefore the state provides additional funding for them. As such, they are excluded from this particular metric.<sup>19</sup>

The EFAB uses a methodology for computing the cost per child of meeting this “adequate education” standard and makes that amount its recommended Foundation Level.<sup>20</sup> The methodology looks at per-child spending in school districts that were already meeting the standard of having two-thirds (67%) of their non-at-risk children passing the required standardized tests. However, in order to not inflate the Foundation Level, the EFAB based its recommendation on “the basic education expenditures of low-spending schools exhibiting a high academic performance.”<sup>21</sup> That is to say, the EFAB isolated the spending of so-called “efficient” school districts where both at least two-thirds of the non-at-risk children passed standardized tests, and spending per child was at or below what local economic cost factors indicated they should spend to achieve those results. These “efficient” spending school districts were identified using quantitative analysis provided by the nationally recognized education-consulting firm Augenblick & Myers. In order to be considered “efficient”, the district had to satisfy a number of criteria, “such as: (1) level of success in meeting state standards; (2) socio-economic

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14. *Id.* at 5.

15. 105 ILL. COMP. STAT. 5/18-8.05 (1998).

16. EDUCATION FUNDING ADVISORY BD., ILLINOIS EDUCATION FUNDING RECOMMENDATIONS 2 (2013), *available at* <http://www.isbe.net/EFAB/pdf/final-report-01-13.pdf> [hereinafter EFAB REPORT].

17. *Id.*

18. GSA BRIEF, *supra* note 10, at 5.

19. *Id.* at 6.

20. *Id.* at 5.

21. *Id.*

characteristics such as district wealth or proportion of pupils from low-income families; and (3) efficiency in terms of spending.”<sup>22</sup> This approach excluded high spending school districts in affluent communities, particularly those found along the North Shore.

Although the EFAB was created for the purposes of developing a Foundation Level that was based on the actual cost of efficiently educating students and not simply available funds, the Illinois General Assembly has only adopted the recommended Foundation Level once since the board’s first recommendation in January 2001 for FY02.<sup>23</sup> As of January 2013, Illinois would need an additional \$4.7 billion in GSA funding to meet the current EFAB recommended Foundation Level.<sup>24</sup>

### B. General State Aid Formulas

The second element to the public school financing scheme in Illinois is the General State Aid formula (GSA). The purpose of the GSA is to determine how much State money will be sent to the individual school districts to help them meet the Foundation Level set by the General Assembly for a given fiscal year.<sup>25</sup> There are three variations of the GSA formula used to make that determination. Not every district has the ability to pay for its own educational expenses. For example, districts such as East St. Louis School District 18, Cicero School District 99 and Joliet School District 86 are unable to raise enough property tax revenue to meet the statutory Foundation Level.<sup>26</sup> The goal of the GSA, through formula grants, is to ensure that districts like these have enough funding to meet the per-pupil Foundation Level. The Illinois State Board of Education (ISBE) determines which of the three formula variations to use for each district based on that district’s available local property tax revenue.

The first formula variation is the “Foundation Level” Formula. To qualify as a Foundation Level district, a local school district must have available local property tax resources that will only cover 93% or less of the Foundation Level amount set by the General Assembly.<sup>27</sup> The formula calculates local resources by looking at the assessed value of the local property multiplied by 2.3% for elementary districts (elementary and middle schools), 1.05% for high school districts, and 3.0% for unit districts (districts

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22. *Id.*

23. ISBE FACT SHEET, *supra* note 7.

24. EFAB REPORT, *supra* note 13, at 1.

25. GSA BRIEF, *supra* at 10.

26. ILL. STATE BD. OF EDUC., GENERAL STATE AID, FY2013 GSA CALCULATION VARIABLES (2013), *available at* <http://www.isbe.net/funding/html/gsa.htm>.

27. ISBE FACT SHEET, *supra* note 3.

which include K–12).<sup>28</sup> Added to this number is any revenue generated from the Corporate Personal Property Replacement Tax (CPPR).<sup>29</sup> Finally, the figure is divided by the school district's average daily attendance figure. In FY2013, District 189 (East St. Louis) was an example of a foundation district. The District was only able to raise \$891 per-pupil from local property tax revenue. Therefore, the State provided funding for the \$5,228 per-pupil funding needed to meet the required level.<sup>30</sup> There are 620 foundation districts, which account for about 71% of Illinois public school students.<sup>31</sup>

If a district can cover between 93% and 175% of the foundation level from its own local property tax revenue, that school district will have its GSA calculated by using the Alternative Formula.<sup>32</sup> The Alternative Formula is based on the General Assembly's Foundation Level, multiplied by the ADA, and then multiplied again by the available local resources.<sup>33</sup> It provides 5% to 7% of the Foundation Level amount, while the rest of the funding comes from local property taxes. The Alternative Formula covers about 15% of all schools in Illinois.<sup>34</sup>

The last formula variation is the Flat Grant. Flat Grant districts have available local property tax revenue that is 175% or greater than the Foundation Level. These districts have, at a minimum, the capacity to spend around \$5,000 per student, which is almost three times the current Foundation Level.<sup>35</sup> Although Flat Grant districts are capable of spending above the foundation level, they still receive some extra funding from the State.<sup>36</sup> The Flat Grant formula multiplies the district's ADA by \$218 (Flat Grant = (ADA X \$218)) in order to determine how much GSA funding to which the district is entitled.<sup>37</sup> New Trier High School District 203, which serves a number of affluent communities just north of Chicago, along the North Shore, is an example of a flat grant district.<sup>38</sup> It raises about \$14,716 in local property taxes per

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28. GSA BRIEF, *supra* note 10, at 7.

29. *Id.*

30. Ted Dabrowski, et al., *Understanding Illinois' Broken Education Funding System*, ILLINOIS POLICY INSTITUTE 8 (2013), available at [http://www.illinoispolicy.org/wp-content/files\\_mf/1380814767Ed\\_finance\\_1.pdf](http://www.illinoispolicy.org/wp-content/files_mf/1380814767Ed_finance_1.pdf) [hereinafter Dabrowski].

31. ILL. STATE BD. OF EDUC., *Data Analysis and Accountability*, available at <http://www.isbe.net/research/FallEnrollmentCounts>.

32. EFAB REPORT, *supra* note 13, at 3.

33. GSA BRIEF, *supra* note 8, at 7.

34. *Id.*

35. CENTER FOR TAX AND BUDGET ACCOUNTABILITY, MONEY MATTERS: HOW THE ILLINOIS SCHOOL FUNDING SYSTEM CREATES SIGNIFICANT EDUCATION INEQUITIES THAT IMPACT MOST STUDENTS IN THE STATE 11 (2009) [hereinafter, MONEY].

36. *Id.* at 6.

37. GSA BRIEF, *supra* note 8, at 7.

38. ILL. STATE BD. OF EDUC., *supra* note 26.

pupil.<sup>39</sup> Statewide, there are only 72 Flat Grant school districts, making up 6% of Illinois public school students.<sup>40</sup> Statewide, Flat Grant districts are clustered north of interstate 80, with only three school districts “downstate” or south of I-80 (2 districts in Peoria and 1 district in Logan).<sup>41</sup>

In addition to the GSA formula grants, the state recognizes that districts with high concentrations of poverty face additional challenges in educating their students. Therefore, the state provides supplemental funding for at-risk or low-income students in the form of Supplemental General Aid, commonly referred to as the “Poverty Grant.”<sup>42</sup> The state does not allocate funds simply based on the actual number of students that fail, but rather uses family income to predict how many are likely to fail. The rationale behind this is that the state does not want to create a monetary incentive for school districts to fail kids, and studies have shown that family income is associated with student performance.<sup>43</sup> The formula allocates funds at a greater amount per-pupil as the percentage of low-income students increases. To illustrate, a district with a low percentage (0%–15%) of low-income pupils would receive about \$355 per-pupil in supplemental funding.<sup>44</sup> On the other hand, a district with a very high percentage of low-income students would receive about \$3,000 per-pupil.<sup>45</sup>

### C. Subsidies

In addition to the already complicated school-funding formulas described above, there are subsidies that affect the funding system. These subsidies present unique challenges that most other state school financing system do not face. In order to limit the property tax increases that accompanied rising home values in the 1980s, legislators in Springfield passed the Property Tax Extension Limitation Law (PTELL).<sup>46</sup> The law gives all Illinois counties the ability to hold referendums to determine whether to cap countywide property tax growth. PTELL limits a local government’s increase in yearly tax revenues to 5% or the rate of inflation, whichever is lower.<sup>47</sup> In order to levy taxes

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39. *Id.*

40. Dabrowski, *supra* note 29, at 8.

41. MONEY, *supra* note 30, at 13.

42. See EFAB REPORT, *supra* note 13, at 2 (discussing the Poverty Grant as a funding stream for at-risk students).

43. GSA BRIEF, *supra* note 10, at 7–8.

44. ILL. STATE BD. OF EDUC., FACT SHEET: GENERAL STATE AID (2014), available at <http://www.isbe.net/budget/FY14/fy14-budget.pdf>.

45. *Id.*

46. 35 ILL. COMP. STAT. 200/18 (2014).

47. ILL. DEPT. OF REVENUE, PROPERTY TAX LIMITATION EXTENSION LAW: TECHNICAL MANUAL 7 (2013), available at <http://www.revenue.state.il.us/publications/LocalGovernment/PTAX1080.pdf>.



greater than the capped amount, local referendums must take place. Today, nearly 40 percent of Illinois counties, including Cook County, are under tax caps.<sup>48</sup> While the PTELL legislation was enacted to help property owners deal with rising property tax bills, it has had an adverse affect on the local school districts within those counties because it limits their access to property tax revenues.<sup>49</sup>

In order to address the problem this created for school districts in PTELL counties, the state created the PTELL Adjustment. The PTELL Adjustment allows districts operating under property tax caps to essentially underreport the true amount of their property values using a complex series of formulas and calculations intended to reflect the impact of the property tax caps.<sup>50</sup> As a result, counties that have enacted property tax caps tend to receive more funding from the GSA, because the formula focuses on a school district's ability to meet the Foundation Level via local property tax revenue.<sup>51</sup>

The best example of how PTELL Adjustments work is the largest school district in Illinois, Chicago School District 299 (which includes all of Chicago Public Schools). District 299 has more than \$88 billion worth of property within its borders.<sup>52</sup> However, because of Cook County's property tax cap, the funding formula assumes Chicago has only \$54 billion worth of property.<sup>53</sup> A 2011 study conducted by the EFAB found that the Cook County PTELL accounted for a loss of \$443.5 million for Chicago School District 299.<sup>54</sup> In the last thirteen years, the amount of GSA funds to PTELL districts has grown substantially, from \$46 million in FY2000 to \$502 million in FY2013—an increase of 519 percent.<sup>55</sup>

Another unique challenge facing the school financing system is the affect of Tax Increment Financing (TIF) districts. There is heated debate on whether TIF districts have an overall positive or negative impact on local school districts, particularly in Chicago.<sup>56</sup> TIFs are tools used by cities and towns to help spur economic

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48. ILL. DEPT. OF REVENUE, HISTORY OF PTELL (2012), *available at* <http://tax.illinois.gov/LocalGovernment/PropertyTax/PTELLcounties.pdf>.

49. Dabrowski, *supra* note 29, at 13–15.

50. *Id.*

51. *Id.*

52. *Id.* at 12.

53. *Id.*

54. AUGENBLICK, PALAICH & ASSOCS., OVERVIEW OF THE STRUCTURE OF THE ILLINOIS SCHOOL FINANCE SYSTEM (2013) [hereinafter AUGENBLICK].

55. AUGENBLICK, *supra* note 54, at 23.

56. See Frank Manzo IV, *To Divert or Not To Divert: The Impact of TIF's on Chicago Public Schools*, CHICAGO POLICY REVIEW (2012), *available at* <http://chicagopolicyreview.org/2012/03/29/to-divert-or-not-to-divert-the-impact-of-tifs-on-chicago-public-schools> (stating “[i]n the City of Chicago, where the public school system and other taxing jurisdictions are coping with large budget deficits, much attention and criticism has been focused on a particular economic development tool . . .”).

growth. When a TIF is established, the City creates a baseline property value: property taxes on this baseline amount will continue accruing to the city while taxes on increases in property value above the baseline go to the TIF district to fund economic development.<sup>57</sup> To better understand how TIFs work, consider the following illustration from *Chicago Magazine*:

When the city council creates a TIF district, it freezes the value of property in that district for up to 24 years. If your property’s assessable is \$100 when the TIF is created, it will remain at \$100 for the following 24 years—at least as far as the schools, parks, county and other taxing bodies are concerned.<sup>58</sup>

There are currently 165 TIF districts in Chicago, and the City estimates that between 2013–2017, TIF districts will fund \$1.5 billion of projects throughout Chicago’s neighborhoods.<sup>59</sup> Opponents of TIFs argue that those funds are being diverted away from Chicago Public Schools (CPS), forcing the state to give more in GSA.<sup>60</sup> On the other hand, proponents point to the fact that, overall, TIFs have provided nearly \$800 million in CPS capital improvement projects.<sup>61</sup> In 2011, the University of Illinois Labor Education Program published a report that addressed the intense debate on TIFs. The report produced a middle-of-the-road conclusion that TIF districts do in fact divert some money away from public schools, but that TIFs also provide at least some benefit to CPS.<sup>62</sup> The ambiguous conclusion underlines the complexity caused by using local property tax revenue to fund both economic development and public education.

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57. *Id.*

58. Whet Moser, *How Much Do TIFs Cost the Chicago Public Schools?*, CHICAGO MAGAZINE (Apr. 12, 2012), available at <http://www.chicagomag.com/Chicago-Magazine/The-312/April-2012/How-Much-Do-TIFs-Cost-the-Chicago-Public-Schools>.

59. *TIF Projection Report*, CITYOFCHICAGO.ORG [http://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/tif\\_projection\\_reports.html](http://www.cityofchicago.org/city/en/depts/dcd/supp_info/tif_projection_reports.html) (last visited Jan. 15, 2015).

60. *Id.* at 17–18.

61. See Frank Manzo IV, *To Divert or Not To Divert: The Impact of TIFs on Chicago Public Schools*, CHICAGO POLICY REVIEW (Mar. 2012), available at <http://chicagopolicyreview.org/2012/03/29/to-divert-or-not-to-divert-the-impact-of-tifs-on-chicago-public-schools> (stating, “However, tax increment financing is not all bad for Chicago Public Schools. The report shows that TIFs provided more than \$813 million for CPS capital improvement projects.”).

62. Robert Bruno & Alison Dickson Quesada, *Tax Increment Financing and Chicago Public Schools: A New Approach to Comprehending a Complex Relationship*, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN LABOR EDUCATION PROGRAM 19 (2011).

## II. INADEQUATE FUNDING, INADEQUATE EDUCATION

Illinois provided \$6.7 billion in education funding to schools during the 2013–2014 fiscal year, with 41% distributed through the various General State Aid formulas<sup>63</sup> discussed above. The state provided 26% of the \$6.7 billion in funds to at-risk students through the supplemental Poverty Grant<sup>64</sup>. The remaining funds were distributed through various grants to programs for bilingual students, special education, transportation, early childhood education, the Chicago Block Grant, and other small categorical programs, which are not distributed based on need. For FY13, only 45 percent of state education dollars were equalized based on a district's relative wealth.<sup>65</sup> It is clear that the current school funding system does not meet its purpose of equalizing funding disparities caused by the great variations in property wealth between Illinois school districts. To make matters worse, there is not enough general revenue for the state to close the per-pupil funding gap.<sup>66</sup>

### A. *Growing Disparities*

A study commissioned by the General Assembly found that local revenue was negatively associated with district need and strongly associated with district wealth.<sup>67</sup> The imputed local tax rate was 3.27% of property wealth in FY12, which represented a decline from 3.89% in FY07 and 3.61% in 2002. In other words, the local tax rate is declining despite a growing reliance on local revenue to fund public school districts.<sup>68</sup> The downward trend in local property tax rates hurts property-poor districts far more than it does property-wealthy ones. Property-wealthy districts are able to implement lower tax rates while still raising a substantial amount of revenue. On the other hand, property-poor districts are unable to meet their district's financial needs, despite having higher property tax rates.<sup>69</sup>

Due to the disparity in funding, Illinois school districts have wide variations in the amount of per-pupil spending. The fact that the variations in spending are related to district wealth—and not district need—is troubling. One would expect that a district with a greater amount of students would need spending more. However, in Illinois, the relationship is between spending and revenue from

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63. ILL. STATE BD. OF EDUC., *supra* note 26.

64. *Id.*

65. ILLINOIS GENERAL ASSEMBLY, SENATE EDUCATION FUNDING ADVISORY COMMITTEE REPORT 4 (2014) [hereinafter, SENATE REPORT].

66. EFAB REPORT, *supra* note 13, at 7.

67. AUGENBLICK, *supra* note 54, at 2–3.

68. *Id.* at 43–44.

69. *Id.* at 46.

property wealth, not need.<sup>70</sup> The Chicago Tribune illustrated an example of the funding disparities in 2011, when it compared the per-pupil spending of two elementary school districts in the Chicagoland area. Taft elementary school in Lockport spent \$7,023 per student in 2010, while Roundout elementary school, in affluent Lake Forest, spent \$24,244 per student.<sup>71</sup> To say it another way, elementary school children at Roundout received more than three times the funding that the children at Taft elementary received.<sup>72</sup> In fact, it is not uncommon in Illinois to see a spending gap between districts of \$15,000 or more.<sup>73</sup> An analysis of district spending per-pupil shows there is a strong, positive correlation between local revenue per student and spending per student.<sup>74</sup> The reliance on local revenue, and its strong association with district wealth, undermines the fiscal equity across districts in Illinois. Additionally, state aid is insufficient to alleviate the impact of local revenue on spending.

### B. The Consequences

The disparity in school district funding resulting from a heavy reliance on local property taxes undermines the State’s fundamental goal of providing quality education to Illinois students. It can sometimes be difficult to quantify the relationship between spending and a child’s academic success, because of the number of variables that go into determining the overall academic success of a child. However, a comprehensive study by the Illinois Center for Tax and Budget Accountability (CTBA) offered substantial evidence that there is a quantifiable correlation between per-pupil spending and a child’s educational success.<sup>75</sup>

The CTBA study tracked academic performance against instructional expenses. While the data is five years old, it remains one of the most complete studies on the nexus between academic performance and spending in Illinois. The analysis focused on districts with low concentrations of poverty.<sup>76</sup> At spending levels up to \$5,000 in per-pupil in instructional expenses, nearly half the school districts achieved the expected outcomes or better, and the other half performed worse than the expected outcomes. When

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70. *Id.* at 34–45.

71. Lisa Black, *Spending Gap Between State’s Rich, Poor Schools is Vast*, CHI. TRIB. (Nov. 7, 2011), available at [http://articles.chicagotribune.com/2011-11-07/news/ct-met-school-funding-gaps-20111107\\_1\\_spending-gap-taft-s-district-poorest-schools](http://articles.chicagotribune.com/2011-11-07/news/ct-met-school-funding-gaps-20111107_1_spending-gap-taft-s-district-poorest-schools).

72. *Id.*

73. *Id.*

74. See AUGENBLICK, *supra* note 54, at 48–49 (discussing the local revenue versus per-pupil spending in schools).

75. See MONEY, *supra* note 30, at 11–12 (using ISAT performance testing to determine correlation).

76. *Id.* at 12.

instructional spending increased, however, so did the student's performance. At a spending level of \$7,000 per-pupil, nearly all of the districts performed at or above the predicted levels.<sup>77</sup> Therefore, an increase in per-student spending of approximately \$2,000 had a noticeable impact on student achievement. It should be noted that on average, Flat Grant districts in Illinois spent \$2,324 a year more per child than did Foundation Level districts.<sup>78</sup>

A compelling aspect of the regression analysis is that the study controls for family environment.<sup>79</sup> That is to say, the students in the school districts analyzed in the CTBA study live in little to no poverty. The students have supportive families and have education reinforced at home.<sup>80</sup> This is significant because these factors are cited as being especially important for predicting academic success.<sup>81</sup> The CTBA study shows that in the debate regarding the impact of additional funding for school districts, a meaningful improvement in academic performance correlates directly with an added investment in instruction, even when equalizing the impact of outside the classroom socio-economic factors.

### *C. Disparate Impact*

It is important to acknowledge the disparate impact that reliance on local revenue has on African-American children in Illinois. Currently 55% of African-American children live in the state's 5% of school districts with the highest rates of poverty and the lowest property tax revenue.<sup>82</sup> Moreover, 93% of African-American children live in school districts where the concentrated poverty rate is at least 30 percent.<sup>83</sup> Over the last 40 years, the Prairie State has spent, on average, \$1,500 less per student on African-American children than their white peers.<sup>84</sup>

## III. HISTORICAL OVERVIEWS OF ATTEMPTED REFORMS

The problems facing public education funding in Illinois are not recent developments. Politicians and ordinary citizens alike have made a number of attempts at serious reform. Notably, Dawn Clark Netsch, one of the architects of the 1970 Constitution, made

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77. *Id.* at 11.

78. *Id.*

79. *Id.* at 12.

80. *Id.*

81. *Id.*

82. Ellyn Fortino, *Ralph Martire: Illinois School Funding Reform Must Include Changes to Tax Policy*, PROGRESS ILLINOIS (Feb. 12, 2014), <http://www.progressillinois.com/quick-hits/content/2014/02/11/ralph-martire-illinois-school-funding-reform-must-include-changes-tax->

83. *Id.*

84. *Id.*

education finance reform a centerpiece of her gubernatorial campaign.<sup>85</sup> Also, the Illinois courts have heard a number of challenges from local citizens arguing the need for a reformed system.

### A. Reform Through the Courts

The current Illinois Constitution was ratified on December 15, 1970 and went into effect on July 1, 1971. In the last forty-three years, there have been several notable challenges to the state’s school financing system based on Article X, Section 1 of the State Constitution.<sup>86</sup>

Only two years after its ratification in 1970, a challenge regarding the word “efficient”, which is used in the second sentence of Section 1, was brought.<sup>87</sup> The word was carried over from the previous 1870 Constitution. Previous challenges under the old Constitution had left the definition of “efficient” to the legislature and the school districts, a view continued by the court with the 1970 Constitution.<sup>88</sup>

In 1995, a group of Chicago Public School parents brought an equal protection claim against the school board and the State. The parents argued that as a result of low performing schools in Chicago, their children were being denied equal protection and that, as parents, they were denied the right to guide the education of their children.<sup>89</sup> The plaintiffs asked the Court to order the creation of a voucher system from the funds intended for the low performing schools.<sup>90</sup> The parents intended to use the vouchers to send their kids to private schools. Like the United States Supreme Court in *Rodriguez*, the Illinois Court was sympathetic, but it found that being in a state of poverty did not create a suspect class.<sup>91</sup> The Court also stated that the “right to a high quality education” is not a fundamental right.<sup>92</sup>

Four years later, students from public schools in East St. Louis, one of the State’s poorest cities, brought a unique challenge stemming from the physically unsafe schools in the district. The students argued that the mandatory school attendance law deprived them of their “liberty.” Therefore, it was the State’s duty

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85. Rick Pearson, *GOP Kills Edgar’s School Tax Plan*, CHI. TRIB. (Mar. 28, 1996), available at [http://articles.chicagotribune.com/1996-03-28/news/9604030073\\_1\\_jim-edgar-rank-and-file-legislators-tax-increase](http://articles.chicagotribune.com/1996-03-28/news/9604030073_1_jim-edgar-rank-and-file-legislators-tax-increase).

86. ILL. CONST. art. X, § 1 (stating that “[t]he State shall provide for an efficient system of high quality public educational institutions and services . . .”).

87. *Id.*

88. *Allen v. Maurer*, 286 N.E.2d 135, 140 (Ill. App. Ct. 4th Dist. 1972).

89. *Jenkins v. Leininger*, 659 N.E.2d 1366, 1372–73 (Ill. App. Ct. 1st Dist. 1995).

90. *Id.* at 1376.

91. *Id.* at 1374.

92. *Id.* at 1373.

to provide them with a safe school environment.<sup>93</sup> The Illinois State Supreme Court held that their claim was insufficient to give rise to a due process claim under the Federal Constitution, and that under the “lockstep” doctrine, it was also insufficient under the Illinois Constitution.<sup>94</sup> The “lockstep doctrine” holds that a state constitutional provision should be interpreted identically with its counterpart under the Federal Constitution.<sup>95</sup>

There has been significant litigation regarding the fifth sentence of Section 1, as well. The controversy revolves around whether it is a judicially enforceable mandate, or simply a hortatory statement of a goal.<sup>96</sup> In 1973, just three years after ratification, the Illinois Supreme Court held that a lawsuit compelling the State to cover at least 50% of the cost of public-subsidized university education could go forward and was not a political question.<sup>97</sup> However, the Illinois Supreme Court also said that the debate records from the constitutional convention showed that the delegates intended the sentence to be a mere statement of a goal, and thus found in favor of the State.<sup>98</sup> In the State’s favor was the testimony of the principle sponsor of the fifth sentence, who saw it as a non-binding substitute for a defeated proposal.<sup>99</sup>

The seminal case is *Committee For Education Rights v. Edgar*, a 1996 case in which the Illinois Supreme Court affirmed dismissal of all counts brought in the complaint. Two of the counts were based on the equal protection clause of the Illinois State Constitution, Article 1, Section 2. The plaintiffs alleged that the statutory school financing system violated the equal protection clause.<sup>100</sup> The Court, however, said that it would decide Illinois equal protection claims “in lockstep with” the equal protection clause of the Federal Constitution. Citing the landmark U.S. Supreme Court’s decision in *Rodriguez*, the Illinois Supreme Court determined that there is no fundamental right to an education under the Illinois Constitution.<sup>101</sup> The Court noted that the language of Article X, Section 1 of the state Constitution says that

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93. *Lewis E. v. Spagnolo*, 710 N.E.2d 798, 809 (Ill. 1999).

94. *Id.* at 819.

95. ANN M. LOUSIN, *THE ILLINOIS STATE CONSTITUTION: A REFERENCE GUIDE* 213 (2010).

96. *Id.*

97. *Blase v. State*, 302 N.E.2d 46, 48 (Ill. 1973).

98. *Id.*

99. DAWN CLARK NETSCH, 5 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 4145 (August 13, 1970) (stating “I concede that the language I have put down is, in the Convention’s usual fashion, hortatory. I do not believe that it states a legally enforceable duty on the part of the State through the General Assembly or otherwise. I do not intend that it states a legally enforceable duty.”).

100. *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1193 (Ill. 1996).

101. *Id.*

education is “a fundamental goal,” not a “fundamental right.”<sup>102</sup> The Court applied the rational basis test pursuant to *Jenkins v. Leininger*, and held that it could not say that the value of equal financial resources outweighed the value of local control over schools.<sup>103</sup> The Court said that the current means by which Illinois achieved that fundamental goal “might be thought unwise, undesirable, or unenlightened” but it was an issue for the political process, not the courts.<sup>104</sup> Clearly, the Illinois Supreme Court was unwilling to enter the thicket of school financing.

In 2012, the Illinois Supreme Court agreed to hear another case challenging the state’s school financing system.<sup>105</sup> The plaintiffs, Carr and Newell, challenged the use of local tax assessments as a key variable in the provisioning of state education payments to school districts.<sup>106</sup> To avoid direct conflict with the Court’s ruling in *Committee For Education Rights*, the plaintiffs argued that the education finance system violates the equal protection clause of the Illinois Constitution by forcing property owners in districts with low property values to pay a higher property tax rate than those in similar districts with higher property values.<sup>107</sup>

In the case, Carr, a homeowner in Homewood Flossmoor Consolidated High School District 233 in Cook County (a Foundation Level district), paid annual school property taxes at a rate of 4.10% in 2006. This generated instructional expenditures of \$7,292 in FY07.<sup>108</sup> In contrast, argued Carr, a similarly situated property owner in New Trier High School District 203 (a Flat Grant district also in Cook County), was taxed at a rate of 1.66 percent.<sup>109</sup> That is a rate almost two and half times lower than Carr’s tax rate. Nonetheless, students at New Trier High School received \$10,641 in per-pupil funding, \$3,349 more than students at Homewood-Flossmoor High School.<sup>110</sup> Additionally, New Trier students still received \$218 per-pupil in GSA Flat Grant Funds.<sup>111</sup>

Likewise, Newell, a homeowner in Cairo Unified School District 1 (a Foundation Level district) paid annual school property taxes at rate of 6.95% (2006) in order to generate instructional expenditures of \$6,192.<sup>112</sup> In nearby Jo Daviess County, a similarly situated homeowner in Scales Mound CUSD 211 (a Flat Grant district) was taxed at a rate of 3.33%, or less

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102. *Id.* at 1200.

103. *Id.* at 1195.

104. *Id.* at 1204.

105. Carr v. Koch, 981 N.E. 2d 326 (2012).

106. *Id.*

107. Carr v. Koch, 981 N.E.2d 326, 328 (2012).

108. *Id.* at 328.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*



than half that paid by Newell in 2006.<sup>113</sup> However, the students at Scales Mound received over \$2,400 more per-pupil in instructional expenditures.<sup>114</sup>

The plaintiffs further argued that the Federal No Child Left Behind Act and the Illinois Learning Standards, which impose penalties on districts that do not meet the standards, have changed the focus of education. Specifically, the present funding system is no longer rationally related to the current structure of public education.<sup>115</sup> Carr and Newell pointed out that Springfield mandates exams for all students, and have increased their control over what were once local school district powers and functions.<sup>116</sup> Consequently, their argument was that the financing of schools could no longer be a predominately local responsibility.

The Illinois Supreme Court ultimately rejected the arguments made by Carr and Newell, and concurred with the appellate court's decision that Carr and Newell did not have standing to sue the state.<sup>117</sup> The Court reasoned that the education funding statute is "not a taxing statute," but rather a funding statute.<sup>118</sup> Further, the Court pointed out that although the statute assumes a certain local property tax rate in calculating available local resources, the statute does not require school districts to tax at those rates as a precondition for receiving the statutorily determined amount of general state aid.<sup>119</sup> The Court noted that school districts are not rewarded or penalized for taxing above or below the statutorily assumed property tax rate. In other words, school districts receive the statutorily determined general state aid regardless of the local property tax rate actually imposed.<sup>120</sup> "It is entirely within the discretion of the school districts to determine the actual rate of local property taxes."<sup>121</sup>

The Court also rejected the argument that Illinois Learning Standards have fundamentally altered the nature of education in the state.<sup>122</sup> The Court noted that the amount of general state aid a school district receives is not at all tied to performance.<sup>123</sup> The penalties associated with the Illinois Learning Standards are

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113. *Id.*

114. *Id.*

115. *Id.* at 335.

116. *Id.* at 329.

117. *Id.* at 336.

118. *Id.* at 332. The education funding statute is simply that: a funding statute; not a taxing statute. *Id.*

119. *Id.* (stating that although the education funding statute assumes a certain local property tax rate in calculating Available Local Resources, the statute does not require districts to impose that tax rate in order to receive the statutorily determined amount of general state aid.)

120. *Id.* at 333.

121. *Id.*

122. *Id.* at 334.

123. *Id.*

found in an entirely different statute, separate from the school funding statute.<sup>124</sup> The Illinois Supreme Court's decision in *Carr* reinforced the non-interventionist philosophy regarding public education financing previously articulated in the *Edgar* decision.

### B. Reform Through the Political Process

Attempts at reforming the school funding scheme via the political process have also been unsuccessful. In 1992, Illinois voters narrowly defeated a proposed constitutional amendment that would have required Springfield to pick up more than half of school funding bill statewide.<sup>125</sup> During her 1994 gubernatorial campaign, Dawn Clark Netsch made public school finance reform a centerpiece of her campaign. Her platform included a 1.25% income tax increase in order to reduce local property taxes and implement a system of statewide financing.<sup>126</sup> Jim Edgar, who vocally opposed her education plan, defeated Netsch in the 1994 race. Ironically, by 1996, Gov. Edgar had changed his stance, and proposed a plan for education reform that mirrored many of the elements offered by Netsch that he had previously opposed.<sup>127</sup> However, only portions of the changes were implemented, and local financing remained a cornerstone of the scheme.<sup>128</sup>

Perhaps the best chance at widespread reform came in 2006, when Democratic Governor Rod Blagojevich was re-elected and Democrats captured all of the statewide elected offices. Rather than adopting a version of earlier plans, Gov. Blagojevich instead proposed a gross receipts tax to fund public education.<sup>129</sup> The plan was quite unpopular with the General Assembly and public at large, and was soon abandoned.<sup>130</sup> The financial crisis that began

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124. *Id.* at 334.

125. Bob Sexter, *Reliance on Local Money Drives School Funding Imbalances*, CHI. TRIB. (Mar. 30, 2010), available at [http://articles.chicagotribune.com/2010-03-30/news/ct-met-school-funding-20100330\\_1\\_school-funding-reliance-on-local-money-local-control-state](http://articles.chicagotribune.com/2010-03-30/news/ct-met-school-funding-20100330_1_school-funding-reliance-on-local-money-local-control-state).

126. Thomas Hardy, *State's Big Teachers Union Puts Weight Behind Netsch*, CHI. TRIB. (Jul. 3, 1994), available at [http://articles.chicagotribune.com/1994-07-03/news/9407030254\\_1\\_jim-edgar-education-reform-illinois-education-association](http://articles.chicagotribune.com/1994-07-03/news/9407030254_1_jim-edgar-education-reform-illinois-education-association).

127. Rick Pearson, *Edgar Links School-Reform Money with Accountability*, CHI. TRIB. (Apr. 15, 1997), available at [http://articles.chicagotribune.com/1997-04-15/news/9704150137\\_1\\_accountability-jim-edgar-reform](http://articles.chicagotribune.com/1997-04-15/news/9704150137_1_accountability-jim-edgar-reform).

128. Rick Pearson, *GOP Kills Edgar's School Tax Plan*, CHI. TRIB. (Mar. 28, 1996), available at [http://articles.chicagotribune.com/1996-03-28/news/9604030073\\_1\\_jim-edgar-rank-and-file-legislators-tax-increase](http://articles.chicagotribune.com/1996-03-28/news/9604030073_1_jim-edgar-rank-and-file-legislators-tax-increase).

129. Ray Long and Jeffery Mietrodt, *House Set for Tax Plan Faceoff, Blagojevich pitches gross-receipts idea*, CHI. TRIB. (May 10, 2007), available at [http://articles.chicagotribune.com/2007-05-10/news/0705091461\\_1\\_house-speaker-michael-madigan-gross-receipts-tax-business-tax](http://articles.chicagotribune.com/2007-05-10/news/0705091461_1_house-speaker-michael-madigan-gross-receipts-tax-business-tax).

130. *The Black Knights of Illinois*, CHI. TRIB. (May 18, 2007), available at [http://articles.chicagotribune.com/2007-05-18/news/0705170840\\_1\\_tax-scheme](http://articles.chicagotribune.com/2007-05-18/news/0705170840_1_tax-scheme).

in 2008 put additional strain on state resources, and shifted the focus from school finance reform towards jobs and the state's looming pension crises.

### *C. Illinois Senate Leads Current Action*

On January 31, 2014, the bi-partisan Senate Education Funding Advisory Committee released a report that provides a number of recommendations regarding the distribution of funds to school districts. In July 2013 the Illinois Senate created the Committee, which comprises State Senators from both sides of the aisle. The Committee heard testimony from at least eighteen different public interest groups, including some school districts. In addition, the Committee engaged Augenblick, Palaich and Associates, the consulting group that helped develop the current system, and the Massachusetts Department of Education.<sup>131</sup>

The Committee devised a set of recommended reforms for funding public education in the state. The Committee sought to ensure that the education-funding scheme recommendations would meet four essential goals: (1) adequacy; (2) equity; (3) student success; (4) support for teachers and leaders.<sup>132</sup>

The Committee recommended that the state replace the three formulas that currently make up the GSA with a single foundation funding formula. The formula would include all current educational funding programs, except for early childhood grants, funding for capital projects, and high-cost special education.<sup>133</sup> The formula change would mean that 96% of state operational dollars for public education would flow through a single school funding formula. The formula would be equalized depending on each district's relative wealth.<sup>134</sup> In addition, the Committee stated that the new formula must provide a minimum level of funding to all districts. The amount of the minimum funding should be tied to the increase or decrease of overall state funding for education.<sup>135</sup>

The move toward a single formula would also eliminate the Supplemental GSA, which currently provides additional funding based on the school district's number at-risk students. Under the new proposal, at-risk students would be given an additional weight of 0.5, which means that they would be funded at a rate 50% higher than general education students would.<sup>136</sup> In addition to a weighting for at-risk students, the Committee recommends additional weighting for English Language Learners (ELL),

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gross-receipts-tax-sales-or-income-taxes.

131. SENATE REPORT, *supra* note 53, at 1.

132. *Id.* at 2.

133. *Id.* at 3.

134. *Id.*

135. *Id.* at 4.

136. *Id.* at 6.

Special Education, High-Cost Special Education, and Gifted & Talented (G&T).<sup>137</sup> Each of the weights are intended to be additive, meaning that if a district has a student who qualifies as both at-risk and ELL, that district would receive payment based on the sum of both weights.<sup>138</sup> Furthermore, because the additional funds will be included in the single formula, the funds will be equalized based on wealth.<sup>139</sup>

The Committee also expressed support for including higher expectations and accountability for schools, students and spending. However, the Committee was unable to reach a full consensus on what “expectations should be and what intervention, if any, would be used by the state for districts that did not meet expectations.”<sup>140</sup> Instead, they recommended that the State Board continue to work on their own proposal for the implementation and execution of reform measures and a process for district intervention.<sup>141</sup> Regarding spending accountability, the Committee suggested that school districts be required to account for education spending at the school level instead of at the district level, as is currently done.<sup>142</sup> Their rationale was that this will make school level accounting more transparent and will help uncover improper funding disparities within districts.<sup>143</sup>

The Committee also tried to address the challenge of PTELL adjustments and local tax rates. Regarding PTELL, the Committee pointed out that no other state in the union has “anything similar to the PTELL adjustment and that it was inappropriate to use the education funding formula for property tax relief.”<sup>144</sup> Despite this, the Committee was unable to come up with a concrete recommendation for the problem. Rather, they determined that additional time was needed to find a solution. In the meantime, temporary measures, such as constraints on the upper limits for adjustments, could offer some relief.<sup>145</sup>

Regarding property tax rates, the Committee pointed out that the current school code establishes maximum tax rates by fund/purpose of each district based on organization type, whether the district is a unit district (elementary, middle, and high school) or a single district.<sup>146</sup> The current total of all operating rates for both elementary and high school districts is greater than the total for unit districts.<sup>147</sup> That is, both elementary and high school districts

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137. *Id.*

138. *Id.* at 5.

139. SENATE REPORT, *supra* note 53, at 4.

140. *Id.* at 7.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* at 8.

145. *Id.*

146. SENATE REPORT, *supra* note 53, at 9.

147. *Id.*

have greater local property tax revenue potential than unit districts. This provides a disincentive for dual-districts to consolidate into unit districts.<sup>148</sup> The difference in the rates provides a disincentive for dual-districts to consolidate into unit districts. This is problematic because unit districts provide some level of scale, which lowers fixed cost.<sup>149</sup> Therefore, the Committee determined that elementary, middle, and high school districts should not have taxing authority that exceeds that of unit districts.<sup>150</sup>

The reforms proposed by Senate Education Funding Advisory Committee represent a step in the right direction. The move to include 96% of state funds in a single formula that equalizes for wealth could help ensure a greater level of equity in state funding. Currently, only 45% of state education dollars are equalized based on a district's relative wealth. Funding at-risk students through the equalized primary funding formula is also an improvement over the current system, which does not consider district wealth.<sup>151</sup> The proposed changes to tax rates may help incentivize school districts to unify into unit districts, which could lower cost.

In the end, however, the proposed reforms still leave Illinois with a school funding system based on local property tax revenue. As long as funding relies primarily on local property wealth, disparities in financial resources and student achievement will persist. The Committee also failed to sufficiently address the State's budget gap, which over the past several years has resulted in school districts only seeing 89% of the funding they would normally be entitled to under current law.<sup>152</sup> The recommended reforms show that legislatures recognize the problem, but the reality is that any formula driven changes are pointless unless there is adequate state funding to combat the hugely disparate property wealth present in state school districts.

In advance of the upcoming 2014 statewide election, powerful Illinois House Speaker Michael Madigan proposed a ballot measure that would allow voters to decide on whether to increase taxes by 3% on incomes over a million dollars.<sup>153</sup> The proposed tax increase would generate more than \$1 billion in additional funds for elementary and high schools, which would translate into roughly \$550 per-pupil.<sup>154</sup> The proposal is controversial and sparked retorts along partisan lines. Some warned that this was

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148. *Id.*

149. AUGENBLICK, *supra* note 54, at 19.

150. SENATE REPORT, *supra* note 53, at 9.

151. *Id.* at 6.

152. See AUGENBLICK, *supra* note 54, at 19.

153. Ray Long et al., *Illinois Democrats Go All-in on Class Warfare Theme*, CHI. TRIB. (Mar. 21, 2014), available at [http://articles.chicagotribune.com/2014-03-21/news/chi-speaker-madigan-proposes-asking-voters-to-raise-taxes-on-wealthy-20140320\\_1\\_tax-hike-bruce-rauner-income](http://articles.chicagotribune.com/2014-03-21/news/chi-speaker-madigan-proposes-asking-voters-to-raise-taxes-on-wealthy-20140320_1_tax-hike-bruce-rauner-income).

154. *Id.*

an attempt to move toward state-funded education, which would take away local control. Some speculate that the proposal is more of a political move in advance of the Illinois general election, than a serious attempt at school-finance reform.<sup>155</sup>

#### IV. ARGUMENTS AGAINST REFORM

The most facially persuasive argument against changes and in favor of the current tax and funding structure is the desire to retain local administration and control. The issues of local control and local funding have always been controversial and a roadblock for school finance reform. The recent concerns among some portions of the electorate regarding the “size of government” and “redistribution of wealth” have only served to exacerbate the controversy. The general argument made by advocates of local control note the connection between community interests and finance. They argue that districts with a strong interest in education can control the local tax rate and implement more funding, when parents desire it.<sup>156</sup> There is also a concern that an increased role by the state in school finance will correspond to an increased role by the state in school administration and regulation.<sup>157</sup>

##### A. Local Funding Allows Spending to Reflect Values

The idea that local communities will be the most responsive to the educational needs of their students through locally assessed property taxes is a laudable theory that has sometimes proven to be true. It has also been shown that pooling local revenues into a statewide fund that is then redistributed among districts eliminates the connection that parents feel between taxation and their local schools.

However, there are a number of flaws with this view of local funding, particularly as it relates to Illinois. The idea that there is a nexus between a community’s interests or value in education and school finance assumes that all districts are relatively equal in terms of wealth. This is clearly not the case in Illinois. The lower property tax rates paid by residents in affluent school districts such as Lake Forest and New Trier do not mean that they value education less than residents in other districts do. Rather, the

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155. *Id.*

156. TED DABROWSKI, et al., UNDERSTANDING ILLINOIS’ BROKEN EDUCATION FUNDING SYSTEM: A PRIMER ON GENERAL STATE AID, ILL. POLICY INST. 2 (Oct 3, 2013), available at [http://www.illinoispolicy.org/wp-content/files\\_mf/138213\\_1296PP\\_Ed\\_Finance.pdf](http://www.illinoispolicy.org/wp-content/files_mf/138213_1296PP_Ed_Finance.pdf).

157. See, e.g., *Rodriguez*, 411 U.S. at 52–53 (noting the concern of people in the state of Texas that “along with increased control of the purse strings at the state level will go increased control over local policies”).

students in those communities benefit from a district with a high concentration of property wealth that allows them to collect ample funding at lower rates.

The doctrine of local control may also have significant negative impacts in communities with a high number of retirees, or families with children in private schools. In those communities, the interests of the taxpayers may not always align with the best interests and needs of the public school students.<sup>158</sup> Furthermore, the data shows that in districts that are property-poor, no matter how high the tax rate and the corresponding “value” the community places on education, their property tax revenue will never be sufficient to provide an adequate education.

The reality is that the idea of a connection between local fiscal control and the value that community places on education does not truly reflect the options parents have in Illinois in choosing school districts. In theory, parents who place a very high value on education will choose to live in a district with a high property tax rate and a high level of per-student spending. However, evidence shows that property-wealthy districts are able to generate a substantial amount of local revenue at a very low tax rate, while property-poor districts cannot. In Illinois, parents with the economic ability to make substantive choices regarding the communities in which to live do not need to accept a high tax rate in live in an area that spends heavily on. It is clear that in Illinois there is no nexus between local financial control and a community’s commitment to high-quality education.

### *B. The Myth of Local Control*

The second flawed argument against reform is that an increased role for the State in education finance will lead to greater state administrative and regulatory control. States have already started to assume greater control over local districts in the form of standards and mandates. The last twenty years have seen an increase in state and federal mandated learning standards that have created uniform curriculums in the state. The Illinois Learning Standards define what all students should know and be able to do in seven core areas as a result of their elementary and secondary schooling.<sup>159</sup> This has effectively removed a large portion of what local districts originally managed. However, assuming local state control is still a legitimate government interest,<sup>160</sup> local districts can still have decision-making power

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158. Kirk J. Stark, *Rethinking Statewide Taxation of Nonresidential Property for Public Schools*, 102 YALE L.J. 805, 813–15 (1992).

159. ILL. STATE BD. OF EDUC., *Illinois Learning Standards*, <http://www.isbe.state.il.us/ILS/> (last visited Dec. 31, 2014).

160. *Edgar*, 672 N.E.2d at 1196.

over non-curriculum related matters, even if the state decides to adopt a statewide finance system. In other words, centralization of all authority in Springfield does not have to be an absolute when it comes to state versus local funding.

## V. CONCLUSION

The current school funding system in Illinois results in vast disparities in the instructional money that local school districts spend on students. Even with the proposed Senate changes, the formula-driven Foundation Level system is not enough to overcome the vast disparities in property wealth among state school districts. The continued use of local property tax revenue means that affluent school districts will always be able to garner additional funding and enhance any gap that temporarily closes with additional GSA funds.<sup>161</sup> The relative small size of districts in the state compounds the problems caused by demographic and wealth concentrations throughout the state. This results in funding imbalances that unfairly disadvantage students in property-poor districts. Students in property-poor districts are stuck in a "cruel joke" where their parents end up paying property tax rates that far exceed those in property-wealthy districts, yet they remained mired in a substandard educational environment.<sup>162</sup> These students do not have access to the same resources that their fellow students in more affluent districts have. The data shows that the results of this unequal and unjust system are wide disparities in academic achievements, particularly among African-American students.<sup>163</sup> The only reasonable conclusion that can be drawn from this outcome is that the current system that relies on local property tax revenue to fund education in Illinois is defective, and we must replaced it with a system that is more equitable.

One possible solution is for Illinois to move toward a statewide property tax system and a consolidation of school districts at the county level. A statewide property tax would give Springfield greater control over the funding distributions that have led to such significant disparities over the past two decades. State control would also lessen the burden on property-poor districts caused by the high tax rates levied just to make ends meet.

By contrast, the arguments in favor of retaining the current

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161. See generally Laurie Reynolds, *Uniformity of Taxation and the Preservation of Local Control in School Finance Reform*, 40 U.C. DAVIS L. REV. 1835 (2007) (stating that using only state funds to finance education would democratize it and therefore make all districts on a more even playing field, rather than the affluent having the most funding because of property taxes).

162. *Serrano v. Priest*, 487 P.2d. 1241, 1260 (1971).

163. MONEY, *supra* note 34 at 18.



system of patchwork school districts, funded at the district level by local property taxes, are flawed. There is no nexus between the value residents of a district place on education and their level of funding. Too many property-poor districts tax at higher rates, yet see no educational benefit, while property-wealthy districts commit “less,” and collect huge sums of money for their abundantly wealthy schools.

Consolidating school districts at the county level will also promote savings, because the cost of providing an education can be characterized by economies of scale. Economies of scale exist in education whenever the per-pupil cost of education declines as the number of pupils rises.<sup>164</sup> In other words, economies of scale exist if spending on education per student declines as the number of students goes up, controlling for school district performance.<sup>165</sup>

Economies of scale arise in school district consolidations for a number of reasons. First, services provided to each student by education professionals may not diminish as the number of students increase.<sup>166</sup> For example, all districts require a superintendent and a school board. This same central administration may be able to serve a significant increase in the number of enrolled students, with little change to actual operating cost.<sup>167</sup> Educating students requires certain physical capital or fixed overhead, such as heating systems, air conditioning, computer labs, sports facilities, and science labs. These all require a certain scale to operate efficiently, and therefore have a higher cost per student in smaller districts.<sup>168</sup> Larger districts are in a better position to employ specialized teachers, making it easier to provide the wide range of courses required by state exams and expected by students, parents, and colleges.<sup>169</sup>

An alternative to the statewide property tax is to move to a countywide property tax. The biggest driver of school finance inequality is the state’s patchwork of school districts, which are often segregated by wealth. A greater distribution of property tax revenue can be achieved by consolidating school districts at the county level. This, in turn, will lead to a greater equalization of per-pupil funding within a newly consolidated district. For example, within Lake County, District 60 in Waukegan spends about \$8,059 on per-pupil instruction alone (excluding operational

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164. William D. Duncombe & John M. Yinger, *School District Consolidation: The Benefits and Costs*, 67 *THE SCHOOL ADMINISTRATOR* 10 (2010), available at <http://www.aasa.org/SchoolAdministratorArticle.aspx?id=13218>.

165. *Id.*

166. *Id.*

167. *Id.*

168. William D. Duncombe & John M. Yinger, *Does School District Consolidation Cut Costs?*, 2 *EDUC. FIN. AND POL’Y* 341, 345 (2007).

169. *Id.*

cost),<sup>170</sup> while eight miles down the road District 115 in Lake Forest spends over \$12,000.<sup>171</sup> The residents of Waukegan do not spend less on educating their children because they value education less; they spend less because they have less. Therefore, a countywide system would ensure greater parity between schools within the district.

A move toward countywide school districts would also create a link between PTELLs and school districts. Currently, PTELL referendums take place at the county level, but have a disproportionately negative impact on property-poor districts within that county. Now, all parents in a county considering a PTELL will be treated the same by the outcome of their vote.

In addition to consolidating school districts at the county level and shifting property tax authority to Springfield or the county, the State should continue to pursue the Senate’s proposals. This includes continuing to explore the difficult question of PTELLs and TIFs. Further, representatives in Springfield should be bold and adopt the funding levels recommended by the EFAB. This may mean implementing a small increase in statewide taxes along the lines of the proposal that Dawn Clark Netsch made.<sup>172</sup> Tax increases are never popular, but education is too important to ignore. The correlation between success in elementary and high school and success later on in life is irrefutable, and we must address it as a state.

A move toward a statewide or countywide property tax and consolidated districts would begin to reverse the inequality and inadequacy that is so apparent in the Prairie State’s public education system. A child’s access to a quality education should not be dependent on his or her zip code. It is time for Springfield to commit fully to the goal of providing educational development to all Illinoisans through an efficient system of high equality public schools. As Sam Seaborn said in *The West Wing*, “education is the silver bullet . . . [it] is everything.”<sup>173</sup>

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170. *Waukegan CUSD 60*, ILLINOIS REPORT CARD 2013-2014, <http://illinoisreportcard.com/District.aspx?districtId=34049060026> (last visited Feb. 1, 2015).

171. *Lake Forest CHSD 115*, ILLINOIS REPORT CARD 2013-2014, [http://illinoisreportcard.com/SearchResult.aspx?SearchText=\\$lake%20fore\\$&type=NAME](http://illinoisreportcard.com/SearchResult.aspx?SearchText=$lake%20fore$&type=NAME) (last visited Feb. 1, 2015).

172. Hardy, *supra* note 105.

173. *West Wing: Six Meetings Before Lunch* (NBC television broadcast Apr. 5, 2000).

