Foreword to Symposium on School Finance Litigation: Emerging Trends or New Dead Ends?

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INTRODUCTION

Equality of educational opportunity is an elusive goal. Advocates for underprivileged students have pursued it relentlessly in the courts since the landmark decision fifty years ago in *Brown v. Board of Education*.[1] Yet children across the United States still attend schools that are both separate and unequal. The United States contains approximately 15,000 school districts.[2] This fragmentation, along with the Supreme Court's decision in *Milliken v. Bradley*[3] to prohibit mandatory busing across district lines, allows patterns of residential segregation to produce segregated schools. In 2000-01, seventy-two percent of African-American and seventy-six percent of Latino students attended predominantly minority schools.[4] Thirty-seven percent of African-American[5] and Latino[6] students attended schools that were 90-100% minority. One-sixth of African-American and one-ninth of Latino students attended schools that were 99-100% minority.[7]

Fragmentation of districts also produces fiscal inequities and inadequacies.[8] In 2000-01, Ascension Parish, Louisiana spent 41.6% more per pupil than neighboring Livingston Parish,[9] and New Hanover County, North Carolina

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1. 347 U.S. 483 (1954).

2. JENNIFER HOCHSCHILD & NATHAN SCOVRONICK, THE AMERICAN DREAM AND THE PUBLIC SCHOOLS 61 (2003).

3. 418 U.S. 717 (1974).

4. ERICA FRANKENBERG, CHUNGMEI LEE & GARY ORFIELD, CIVIL RIGHTS PROJECT, HARVARD UNIV., A MULTIRACIAL SOCIETY WITH SEGREGATED SCHOOLS: ARE WE LOSING THE DREAM? 33 (2003), *available at* http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingtheDream.pdf.

5. *Id.* at 28.

6. *Id.* at 33.

7. *Id.* at 28.

8. For a description how these funding disparities impact schools, see JONATHAN KOZOL, SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS 27-32, 52-57, 73-74, 76-80, 83-85, 119-23, 133-41, 149-50, 203-05, 220-26 (1991).

9. *See* U.S. CENSUS BUREAU, PUBLIC EDUCATION FINANCES 2001, at 31 tbl.15, 33 tbl.15 (2003), *available at* http://www.census.gov/govs/school/01fullreport.pdf.

spent 45.3% more per pupil than Onslow County.[10] Beaufort County, South Carolina spent $2112 more per pupil than neighboring Charleston, which amounts to an extra $42,240 for each class of twenty students.[11] Sarasota County, Florida spent $46,980 more per class of twenty than nearby Polk County.[12]

The persistence of disparities among school districts has prompted litigants to file school finance cases in forty-five states, with some states experiencing multiple rounds of litigation.[13] Despite a mixed record of success, the trend shows no sign of abating.[14] The Essays in this symposium examine school finance cases in four states. Lauren Wetzler looks at the experience of Connecticut in *Buying Equality: How School Finance Reform and Desegregation Came to Compete in Connecticut.*[15] She traces how the legislature and governor transformed a desegregation order into a monetary remedy and identifies the resulting trade-off between funding the remedy and meeting the needs of other struggling school districts in the state. Tico Almeida analyzes the experience of North Carolina in *Refocusing School Finance Litigation on At-Risk Children:* Leandro v. State of North Carolina.[16] He discusses the movement away from comparing district-level inequalities to focusing on the needs of at-risk students, as illustrated by the decision of a trial court judge to order free preschool for all at-risk four-year-olds in the state. Tom Saunders examines the experience of Maryland in *Settling Without "Settling": School Finance Litigation and Governance Reform in Maryland.*[17] He evaluates the decision to settle a lawsuit against the state and the

10. *See id.* at 39 tbl.15, 41 tbl.15.

11. *See id.* at 43 tbl.15, 45 tbl.15 (2003).

12. *See id.* at 27 tbl.15, 29 tbl.15.

13. Molly A. Hunter, Litigations Challenging Constitutionality of K-12 Funding in the 50 States, *at* http://www.accessednetwork.org/litigation/In-ProcessLitigations-01-2004.pdf (last modified Jan. 7, 2004).

14. Lawsuits are active in approximately half the states. *See id.* In the first four months of 2004, trial courts in Massachusetts, *see* Anand Vaishnav, *School Financing Unfair, Judge Rules*, BOSTON GLOBE, Apr. 27, 2004, at A1, and Montana, *see* Columbia Falls Elementary Sch. Dist. No. 6 v. State, No. BDV-2002-528, slip op. at 56 (Mont. 1st Jud. D. Ct. Apr. 15, 2004) (on file with authors), found their respective systems of school finance unconstitutional. In the same period, a trial was held in the South Carolina case of *Abbeville v. State*. Molly A. Hunter, Trials, Appeals, and Compliance Questions in South Carolina, New Jersey, Montana, Massachusetts, Kansas, and Arkansas, *at* http://www.accessednetwork.org/litigation/3-30-04LitreviewSC.htm (last modified Mar. 30, 2004). In Kansas, the State is appealing the ruling in *Montoy v. State*, No. 99-C-1738, 2003 WL 22902963 (Kan. Dist. Ct. Dec. 2, 2003), which struck down the state's school finance system. In Arkansas, the state supreme court appointed a special master after the legislature missed a deadline to restructure the state's school finance system. John Gehring, *As Arkansas Legislature Stalls, Court Takes Action*, EDUC. WK., Feb. 4, 2004, at 16.

15. Lauren A. Wetzler, *Buying Equality: How School Finance Reform and Desegregation Came to Compete in Connecticut*, 22 YALE L. & POL'Y REV. 481 (2004).

16. Tico A. Almeida, *Refocusing School Finance Litigation on At-Risk Children:* Leandro v. State of North Carolina, 22 YALE L. & POL'Y REV. 525 (2004).

17. Thomas Saunders, *Settling Without "Settling": School Finance Litigation and Governance Reform in Maryland*, 22 YALE L. & POL'Y REV. 571 (2004).

accompanying restructuring of the Baltimore school system, emphasizing the flexibility associated with suing on behalf of a class of students rather than a school system. Alexandra Greif studies the experience of New Jersey in *Politics, Practicalities, and Priorities: New Jersey's Experience Implementing the* Abbott V *Mandate*.[18] She investigates how politics, the economy, logistical difficulties, district-level administrative capacity, and strategic decisions by the litigants slowed the implementation of a sweeping remedy ordered by the New Jersey Supreme Court.

The Essays were written and workshopped as part of a full-year seminar at Yale Law School. The project started with the recognition that school finance litigation neither begins nor ends in the courthouse. Through interviews, court documents, reports, and press accounts, the authors explored the impact of political currents on the success of school finance litigation both in court and during the creation and implementation of a remedy. One of the general lessons to emerge is, ironically, the danger of making broad generalizations about school finance litigation: All four authors found that state-specific factors and historical contingencies profoundly influenced the course of litigation in the states they studied.

That said, the Essays in this symposium, together with the experiences of other states, suggest a number of trends within school finance litigation that merit attention. First, a handful of courts have displayed a halting but noticeable willingness to interpret state constitutions as mandating vertical equity—the idea that students with greater needs should be provided with greater resources. This trend has the potential to refocus school finance litigation on the neediest students. Second, courts have continued to rely on existing state academic standards to define the constitutional requirement of an adequate education. Third, the practice of ordering a formal study to calculate the costs of an adequate education, often called "costing out," is becoming increasingly common to the point where it may soon become a standard component of any school finance remedy. Fourth, a few courts have begun experimenting with mandating specific programs, such as preschool, with a proven track record of boosting student achievement. Finally, the existing trend away from focusing on racial integration and toward focusing on increasing resources to struggling schools has continued, and given current political resistantance to redrawing district lines or busing students, even integration orders have tended to be transformed into financial remedies.

I. THE WAVE METAPHOR AND ITS LIMITS

The history of school finance litigation is generally divided into three

18. Alexandra Greif, *Politics, Practicalities, and Priorities: New Jersey's Experience Implementing the* Abbott V *Mandate*, 22 YALE L. & POL'Y REV. 615 (2004).

waves.[19] The first wave began in the late 1960s with a series of lawsuits brought under the Equal Protection Clause of the federal constitution. It briefly gained momentum after plaintiffs in *Serrano v. Priest I* succeeded in having the California funding system declared unconstitutional on both state and federal equal protection grounds,[20] but it came to an abrupt halt after the Supreme Court issued its landmark 5-4 ruling in *San Antonio Independent School District v. Rodriguez*.[21] The *Rodriguez* Court refused to recognize education as a "fundamental right" under the federal constitution[22] and held that the state interest in local control justified spending disparities among school districts.[23]

In the second wave, plaintiffs turned to state constitutions for relief. Every state constitution contains some form of equal protection guarantee.[24] In addition, every state constitution contains an education clause mandating the provision of a free, public education.[25] The strength of these education clauses varies, but the most common versions require states to provide a "thorough and efficient" or "general and uniform" education. Despite the shift in focus toward state constitutions, plaintiffs during the second wave continued to rely predominantly on equity theories, seeking either the equalization of school funding across districts or the creation of a system of "fiscal neutrality" in which the same tax effort would raise the same amount of revenue in all districts regardless of local property wealth.[26] Their efforts produced mixed results. Equity suits brought between 1973 and 1989 succeeded in eight states.[27] They failed in fifteen.[28]

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19. William Thro originated the wave metaphor. *See* William E. Thro, *The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation*, 19 J.L. & EDUC. 219 (1990). It has subsequently become ubiquitous.

20. 487 P.2d 1241 (1971).

21. 411 U.S. 1 (1973).

22. *Id.* at 29-39.

23. *Id.* at 49-50.

24. *See* R. CRAIG WOOD & DAVID C. THOMPSON, EDUCATIONAL FINANCE LAW: CONSTITUTIONAL CHALLENGES TO STATE AID PLANS—AN ANALYSIS OF STRATEGIES app. (2d ed. 1996) (quoting provisions for equal treatment in forty-nine state constitutions). Although Wood and Thompson fail to list an equal protection clause for New Jersey, the New Jersey Supreme Court has interpreted its state constitution as containing a guarantee of equal treatment. *See* Sojourner A. v. N.J. Dep't of Human Servs., 828 A.2d 306, 314 (N.J. 2003) (discussing N.J. CONST. art. I, para. 1).

25. For a list of state education clauses, see Anna W. Shavers, *Rethinking the Equity vs. Adequacy Debate: Implications for Rural School Finance Reform Litigation*, 82 NEB. L. REV. 133, 150 n.62 (2003).

26. The theory of fiscal neutrality gained salience after publication of JOHN E. COONS, WILLIAM H. CLUNE III & STEPHEN D. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970).

27. *See* Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90 (Ark. 1983); Serrano v. Priest (Serrano II), 557 P.2d 929 (Cal. 1976); Horton v. Meskill, 376 A.2d 359 (Conn. 1977); Helena Elementary Sch. Dist. No. 1 v. State, 769 P.2d 684 (Mont. 1989); Robinson v. Cahill (Robinson I), 303 A.2d 273 (N.J. 1973); Edgewood Indep. Sch. Dist. v. Kirby (Edgewood I), 777 S.W.2d 391 (Tex. 1989); Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979); Washakie County Sch. Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980).

28. *See* Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981); Thompson v. Engelking, 537 P.2d

The third wave began, according to traditional accounts, in 1989 when the Kentucky Supreme Court declared the entire state system of education unconstitutional under the state education clause.[29] The Kentucky Supreme Court relied on an adequacy theory rather than an equity theory. Adequacy focuses on bringing all schools up to a certain standard of quality, but once this standard is met, adequacy allows districts with greater means to supplement their local schools. Early observers tended to assume that adequacy would leave intact significant disparities between property-wealthy and property-poor districts. Arthur Wise wrote "I do not greet the emergence of the principle of educational adequacy as necessarily a good turn of events. . . . it represents a lowering of our ideals."[30] Even in arguing for a shift from equity to adequacy, Peter Enrich referred to the "more achievable, but more modest, goals of adequacy."[31] Nevertheless, a series of adequacy victories in the wake of the Kentucky decision cemented its role as the dominant legal theory in school finance litigation today.[32]

The shift toward adequacy, however, has been neither as sudden nor as complete as the wave metaphor suggests. Plaintiffs won early adequacy victories in Washington in 1978[33] and West Virginia in 1979,[34] and plaintiffs

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635 (Idaho 1975); People *ex rel.* Jones v. Adams, 350 N.E.2d 767 (Ill. App. Ct. 1976); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983); E. Jackson Pub. Schs. v. State, 348 N.W.2d 303 (Mich. 1984); Bd. of Educ., Levittown v. Nyquist, 439 N.E.2d 359 (N.Y. 1982); Britt v. N.C. State Bd. of Educ., 357 S.E.2d 432 (N.C. Ct. App. 1987); Bd. of Educ. v. Walter, 390 N.E.2d 813 (Ohio 1979); Fair Sch. Fin. Council v. State, 746 P.2d 1135 (Okla. 1987); Olsen v. State, 554 P.2d 139 (Or. 1976); Danson v. Casey, 399 A.2d 360 (Pa. 1979); Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988); Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989).

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

30. Arthur E. Wise, *Minimum Educational Adequacy: Beyond School Finance Reform*, 1 J. EDUC. FIN. 468, 479 (1976).

31. Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 182 (1995).

32. *See, e.g.*, Opinion of the Justices, 624 So. 2d 107 (Ala. 1993); McDuffy v. Sec'y of the Executive Office of Educ., 615 N.E.2d 516 (Mass. 1993); Claremont Sch. Dist. v. Governor (Claremont II), 703 A.2d 1353 (N.H. 1997); DeRolph v. State (DeRolph I), 677 N.E.2d 733 (Ohio 1997). *Bismarck Public School District No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994), is not counted as a plaintiff victory even though three of the five justices on the North Dakota Supreme Court voted to invalidate the school finance system, because a super-majority is required to strike down a statute in North Dakota. More recently, courts in Alabama and Ohio have retreated from their earlier adequacy decisions. The Alabama Supreme Court dismissed further proceedings in 2002 based on separation of powers concerns, stating "it is the Legislature, not the courts, from which any further redress should be sought." *Ex parte* James, 836 So. 2d 813, 815 (Ala. 2002). The Ohio Supreme Court granted a writ of prohibition in 2003 forbidding the trial court from exercising further jurisdiction over the case. State v. Lewis, 789 N.E.2d 195 (Ohio), *cert. denied*, 124 S. Ct. 432 (2003).

33. Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71 (Wash. 1978).

34. Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979). The Supreme Court of West Virginia decided *Pauley* on both adequacy and equity grounds. The court later reinterpreted Pauley exclusively as an adequacy case. *See* State *ex rel.* Bds. of Educ. v. Chafin, 376 S.E.2d 113, 121 (W. Va. 1988) ("We find the true focus of *Pauley* to be whether the State has complied with its constitutional duty to provide school financing in a manner, and at a level, that is thorough and efficient. . . . Is the basic foundation program, the minimum level of funding guaranteed by the State, constitutionally sufficient to meet the county's education needs?").

have continued bringing equity challenges deep into the third wave.[35] There has also been renewed interest in returning to the early roots of school finance litigation in the civil rights movement by seeking racial and socio-economic integration.[36] Moreover, individual lawsuits sometimes defy clear categorization, since the ability to plead multiple causes of action in the same complaint allows plaintiffs to embrace several theories at once.[37]

The persistence of multiple legal theories has been matched by significant variation among cases brought under the same legal theory. The lawsuits in North Carolina, Maryland, and New Jersey were all "adequacy" cases, but they have followed strikingly different trajectories. The Essays in this symposium highlight the impact a single judge can have on the nature of a court decision,[38] the complex political dynamics surrounding the passage and implementation of a remedy,[39] the capacity of local officials to thwart or facilitate the implementation of reform,[40] and the ability of individual lawmakers committed to the cause of equal educational opportunity to push changes through a reluctant legislature.[41] In short, they demonstrate that even so-called "adequacy" cases are not alike, and that the progress and success of each case depends on local context.

II. VERTICAL EQUITY

Although the importance of state-specific factors cautions against overbroad generalizations, the Essays in this symposium highlight several important trends within school finance litigation. First, they document a limited movement toward vertical equity. Horizontal equity refers to the equalization of funding across districts without adjustment based on student need. Arthur Wise described it as a "one pupil, one dollar" principle.[42] Under horizontal

35. *See, e.g.*, Matanuska-Susitna Borough Sch. Dist. v. State, 931 P.2d 391 (Alaska 1997); Unified Sch. Dist. No. 229 v. State, 885 P.2d 1170 (Kan. 1994); Sch. Admin. Dist. No. 1 v. Comm'r, Dep't of Educ., 659 A.2d 854 (Me. 1995); Skeen v. State, 505 N.W.2d 299 (Minn. 1993); Tenn. Small Sch. Sys. v. McWherter (Tennessee Small School Systems III), 91 S.W.3d 232 (Tenn. 2002); Tenn. Small Sch. Sys. v. McWherter (Tennessee Small School Systems I), 851 S.W.2d 139 (Tenn. 1993); Brigham v. State, 692 A.2d 384 (Vt. 1997); *see also* Avidan Y. Cover, *Is "Adequacy" a More "Political Question" than "Equality?": The Effect of Standards-Based Education on Judicial Standards for Education Finance*, 11 CORNELL J.L. & PUB. POL'Y 403, 420 (2002) ("Reports of the demise of the equality standard and claim have been greatly exaggerated.").

36. *See* Sheff v. O'Neill, 678 A.2d 1267 (Conn. 1996); James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249 (1999).

37. *See, e.g.*, *Sheff*, 678 A.2d at 1271-72; *DeRolph I*, 677 N.E.2d at 740 & n.5; *Tenn. Small Sch. Sys. I*, 851 S.W.2d at 141.

38. *See* Almeida, *supra* note 16, at 535; Wetzler, *supra* note 15, at 499 & nn.121-22.

39. Greif, *supra* note 18, at 628-43; Saunders, *supra* note 17, at 591-93, 607-09; Wetzler, *supra* note 15, at 499-503.

40. Greif, *supra* note 18, at 650-52.

41. Saunders, *supra* note 17, at 595, 609.

42. *See* ARTHUR WISE, RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY 156 (1967). Although Wise has become associated with the one scholar, one dollar

equity, "every individual is treated the same and all students are considered equivalent."[43] Vertical equity, in contrast, recognizes that a dollar spent in a troubled urban school is not likely to produce the same result as a dollar spent in a stable suburban community. It calls for resources to be distributed in accordance with need in order give students an equal opportunity to achieve the same outcome.

Considerations of horizontal equity and vertical equity are not confined to cases brought on equal protection grounds. Adequacy and equity may be distinct legal theories, but they blur considerably in practice. All else equal, improving the adequacy of struggling schools will tend to reduce disparities and produce a more equal system of education. Likewise, equalization that levels-up will improve the adequacy of schools at the bottom.[44] The line between adequacy and equity becomes especially hazy when a court acknowledges that underprivileged children may need more resources to succeed than other children. This conception of "adequacy as vertical equity" has the potential to invert traditional spending patterns that currently relegate the neediest students to schools unable to bear the cost of their education.

Despite its promise, the movement toward vertical equity has been slow. Although school finance litigation was partially motivated by a desire to assist poor students, those students have not been the focus of many school finance remedies. In the past, courts rarely even discussed whether poor students might be entitled to additional funding to address their special needs. Even those that did discuss the issue hardly ever ordered that states provide such funding.[45] The cases discussed in the Essays that follow suggest that this practice may be changing, as litigants and courts are beginning to pay more attention to the special needs of disadvantaged students.

New Jersey has taken the biggest step toward vertical equity. In *Abbott v. Burke II*, the New Jersey Supreme Court ordered the State to lift property-poor school districts to the spending levels of property-wealthy districts.[46] It then instructed the state to provide additional money to meet the special needs of Abbott districts.[47] The court continued along the same vein in *Abbott V* when it

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formulation, he recognized that "[t]o offer students of different ability similar amounts of resources, as measured in dollars, may, in fact be to treat them unequally." *Id.* He stated "it would be most unfortunate if the present study were to be read as a call for 'one student, one dollar'" *Id.* at xiii.

43. Julie K. Underwood, *School Finance Adequacy as Vertical Equity*, 28 U. MICH. J.L. REFORM 493, 495 (1995).

44. This relationship between adequacy and equity does not always hold. Margeret Goertz has explained, "A school funding system can be equitable, yet not adequate, if the level of support is low. An educational system, however, can be adequate, yet inequitable, if wealthier communities are free to provide additional educational services that poorer communities cannot afford." Margaret E. Goertz, *Program Equity and Adequacy: Issues from the Field*, 8 EDUC. POL'Y 608, 609 (1994).

45. ANNA LUKEMEYER, COURTS AS POLICYMAKERS: SCHOOL FINANCE REFORM LITIGATION 95 (2003).

46. Abbott v. Burke (Abbott II), 575 A.2d 359, 408 (N.J. 1990).

47. *See* Greif, *supra* note 18, at 621.

mandated half-day preschool for three- and four-year-olds in Abbott districts and instructed the state to fund certain supplemental programs requested by individual districts.

A similar shift toward vertical equity occurred in North Carolina. The *Leandro* litigation began as a traditional adequacy suit aimed at correcting interdistrict disparities, but the trial judge reoriented the litigation on remand in 2001 to focus on at-risk students, as defined by a series of risk factors ranging from poverty and poor health to family instability and low parental education.[48] The judge attempted to compensate for these disadvantages by ordering quality preschool for all at-risk four-year-olds.

Maryland also incorporated principles of vertical equity into its remedy, even in the absence of a clear judicial mandate. Although the original suit was filed on behalf of a class of at-risk children, the class remained geographically constrained and only included students in Baltimore. After settlement of the suit, lawmakers expanded its reach beyond Baltimore to provide supplemental funding for at-risk students in other school systems. The State then set in motion a process that culminated in the passage of a new funding formula weighted to provide twice the normal amount of funding for poor, disabled, and Limited English Proficiency students.[49]

It is still too early to assess the success of vertical equity in New Jersey, North Carolina, and Maryland: The failure to adopt a clear definition of "supplemental programs" and an economic downturn have slowed the implementation of vertical equity in New Jersey;[50] the remedy in Maryland has not been fully funded in the long term;[51] and the North Carolina case was still pending on appeal at the time this symposium went to print. Nevertheless, the early indications from New Jersey and Maryland are positive. Between 1999 and 2002, the gap between New Jersey fourth graders in Abbott and non-Abbott districts on the language arts portion of the Elementary School Proficiency Assessment narrowed by fifteen points.[52] The percentage of students in Abbott districts scoring at the lowest level on the test declined from 66.2% to 29.6%.[53] Baltimore has also posted impressive achievement gains, with students making steady progress across all subject areas and improving at a rate faster than the state as a whole.[54]

Apart from its impact on achievement, vertical equity has the potential to

48. Almeida, *supra* note 16, at 538.

49. Saunders, *supra* note 17, at 605.

50. *See* Greif, *supra* note 18, at 635.

51. Saunders, *supra* note 17, at 609.

52. Educ. Law Ctr., Achievement Data Presented to Supreme Court by Dr. Bari Erlichson and Dr. Robert Slavin (Apr. 9, 2003), http://www.edlawcenter.org/ELCPublic/Alert_0403_DataSummary.htm.

53. *Id.*

54. Saunders, *supra* note 17, at 611-12.

shift the focus of school finance litigation from school districts to individual students. Although the *Abbott* remedy in New Jersey has remained geographically bounded and reaches students in only thirty districts, the programs in North Carolina and Maryland apply to at-risk students wherever they reside. This practice of targeting at-risk students within a statewide class holds substantial promise, both for the political appeal of school finance reform and for the targeted students.

School finance litigation can pit the interests of school districts against each other. Wetzler discusses how the flow of resources into Hartford after the *Sheff* litigation left other cities in Connecticut struggling to provide an adequate education and eventually prompted those districts to file suit against the state.[55] Almeida explores the potential tension between rural and urban school districts.[56] Saunders examines attempts by Montgomery County, the wealthiest district in Maryland, to intervene in the school finance case on behalf of the state.[57] Greif notes a lawsuit brought by non-Abbott districts complaining about their exclusion from the Abbott remedy.[58]

Focusing on at-risk students can help bridge these divides. Almost every school district in a state contains some at-risk students. A statewide remedy directed toward helping at-risk students accordingly distributes at least some money to almost all legislative districts. The experiences of Maryland and North Carolina indicate that this expansion can pay political dividends. In North Carolina, urban and rural districts managed to come together after some early tensions to adopt a lockstep litigation strategy based on helping at-risk students.[59] In Maryland, both the original remedy and subsequent funding formula became stuck in the General Assembly until lawmakers expanded the bills to cover students across the state.[60] Although pursuit of vertical equity is not a necessary prerequisite to such political horse-trading, vertical equity's tendency to look at students rather than districts provides a theoretical underpinning for the decision to broaden a remedy.

At the same time, a focus on at-risk students has the potential to make school finance litigation more effective by targeting the neediest students. The traditional focus of school finance litigation on district-level property wealth has been roundly criticized. The *Rodriguez* Court noted, "there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts."[61] William Fischel has more recently argued, "It is time to

55. Wetzler, *supra* note 15, at 516-18.
56. Almeida, *supra* note 16, at 555-56.
57. Saunders, *supra* note 17, at 585.
58. Greif, *supra* note 18, at 626 n.85.
59. Almeida, *supra* note 16, at 555-56.
60. Almeida, *supra* note 16, at 557; Saunders, *supra* note 17, at 593, 609.
61. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 23 (1973).

abandon the false equations of poor people with poor districts and rich people with rich districts."[62] A statewide system of vertical equity responds to these criticisms by channeling resources where they are most needed.

The shift toward vertical equity does not guarantee political success, of course, as some districts still will receive more funding than others, depending on their student populations. Vertical equity also presupposes a baseline of adequacy for all students without special needs, and in some states achieving even this level of adequacy may require significant redistribution of wealth to some districts. In addition, the very thing that could make vertical equity somewhat attractive politically—the wide dispersal of funds throughout a state—may also limit its effectiveness. In the absence of funding increases or efficiency gains, a trade-off exists between the breadth and depth of any school finance remedy. Expanding the remedy risks diluting its impact by spreading resources too thinly and thus compromising their effectiveness.[63]

Any attempt to achieve vertical equity also requires tackling some difficult issues that have already plagued efforts to achieve adequacy. Defining what constitutes an adequate education first requires determining what set of knowledge and skills schools should teach to each student. The answer to this question requires a clear conception of the purpose of public education. What skills should a high school graduate possess? Should graduates be equipped to compete in a local, national, or international economy? What knowledge is required to produce good citizens? For financial remedies, these abstract findings must then be translated into dollars and cents. Achieving vertical equity requires yet another step, namely determining what types of supplemental assistance students with special needs require, and how much that assistance will cost. All of these tasks strain the competency of the courts.

This does not mean that courts are without any recourse. The Essays in this symposium discuss several promising responses to the difficulties described above: reliance on existing state standards; expert calculation of the cost of an adequate education; input remedies, particularly the creation of preschool programs; and desegregation remedies that aim to combat the unique disadvantages associated with concentrations of poverty. These strategies are discussed in turn.

III. SCHOOL FINANCE LITIGATION AND THE STANDARDS MOVEMENT

One response to concerns about the competency of courts to define an

62. WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS 135 (2001).

63. Title I, the federal government's largest education aid program, which is ostensibly supposed to assist poor students, has been criticized on precisely this ground. *See, e.g.*, Erik W. Robelen, *Off Target?*, EDUC. WK., Sept. 5, 2001, at 1 (describing ongoing debate over whether to target federal money or disburse it widely).

adequate education has been reliance on existing state standards.[64] Adequacy vaulted to prominence as a legal theory at the same time the standards movement was gaining momentum. Observers were quick to point out the potential link between the two movements. In 1987, Julius Chambers, the Director-Counsel of the NAACP Legal Defense and Educational Fund, noted that the standards movement presented "an affirmative opportunity to define a right to a minimally adequate education."[65] In 1990, James Liebman argued that "by enacting specific and universally applicable minimum standards, state legislators have made the hard policy decisions, leaving the courts with an enforcement role that conforms to traditional visions of the judicial function."[66] Others scholars have sounded similar themes.[67] In fact, the use of standards to help define adequacy has become so common that it is easy to forget that alternatives exist.

One alternative option pioneered by the Kentucky Supreme Court in *Rose v. Council for Better Education, Inc.* is for the judiciary to generate a list of capabilities students must possess. Several courts followed the lead of Kentucky,[68] but the willingness of courts to craft their own definitions of an adequate education appears to have waned. In addition to the obvious legitimacy concerns, court-created standards tend to proceed at such a high level of generality that it is difficult to translate them into enforceable benchmarks for measuring the progress of implementation. How is a court to tell whether a student will "live up to his or her full human potential" or has the background necessary "to appreciate his or her cultural and historical heritage?"[69] By contrast, legislatively created standards tend to be associated with detailed accountability and testing regimes that express broad goals in terms of measurable outcomes.

Another option, embraced most clearly by the New Jersey Supreme Court,

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64. *See* Almeida, *supra* note 16, at 543-49; Saunders, *supra* note 17, at 579.

65. Julius Chambers, *Adequate Education for All: A Right, An Achievable Goal*, 22 HARV. C.R.-C.L. L. REV. 55, 61 (1987) (emphasis removed).

66. James S. Liebman, *Implementing* Brown *in the Nineties: Political Reconstruction, Liberal Recollection, and Litigatively Enforced Legislative Reform*, 76 VA. L. REV. 349, 415-16 (1990) (emphasis removed).

67. *See, e.g.*, Molly S. McUsic, *The Law's Role in the Distribution of Education: The Promises and Pitfalls of School Finance Litigation*, *in* LAW & SCHOOL REFORM: SIX STRATEGIES FOR PROMOTING EDUCATIONAL EQUITY 88, 117 (Jay P. Heubert ed., 1999); Michael Heise, *State Constitutions, School Finance Litigation and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151, 1175 (1995) ("[A]dequacy court decisions largely cohere with the emerging educational standards movement.").

68. Opinion of the Justices, 624 So. 2d 107, 107-08 (Ala. 1993); McDuffy v. Sec'y of the Executive Office of Educ., 615 N.E.2d 516, 554 (Mass. 1993); Claremont Sch. Dist. v. Governor (Claremont II), 703 A.2d 1353, 1359 (N.H. 1997).

69. *See* Opinion of the Justices, 624 So. 2d at 108 (requiring "[s]ufficient support and guidance so that every student feels a sense of self-worth and ability to achieve, and so that every student is encouraged to live up to his or her full human potential" and "[s]ufficient understanding of the arts to enable each student to appreciate his or her cultural heritage and the cultural heritages of others").

defines adequacy in relative terms by looking for guidance to the opportunities provided in thriving school districts.[70] This approach is based on the premise that "[a]n educational system that precluded the students of poorer districts from competing in the same market and society as their peers could not, by definition, be providing an adequate education."[71] This approach has much to commend it. To the extent that adequacy is a relative term, and what is an adequate education in one school or district depends on the quality of education provided elsewhere, comparing educational opportunities across districts makes sense. Nonetheless, relative definitions of adequacy encounter difficulty when high-spending school districts go beyond core educational goals to provide extras like swimming pools and artificial turf fields.[72]

Depending on the benchmark for comparison, moreover, defining adequacy through comparability could essentially require leveling up to the highest spending districts, which is both practically and politically infeasible in many states. In light of the problems associated with this approach to adequacy, and given the ubiquity of standards and their relative popularity, standards will continue to play a prominent role in adequacy lawsuits.

But growing reliance on standards is not an entirely positive development. Abstract lists of capabilities created by the courts may prompt jokes,[73] but they usually look at a broader set of criteria than state standards. Critics have accused the standards movement of focusing too narrowly on core academic subjects and testable skills at the expense of social studies, art, and other subjects.[74] A recent survey of 956 elementary and secondary school principals in five states revealed a marked shift away from teaching subjects not covered

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70. *See* Deborah A. Verstegen & Terry Whitney, *From Courthouses to Schoolhouses: Emerging Judicial Theories of Adequacy and Equity*, 11 EDUC. POL'Y 330, 347 (1997) ("What was adequate was largely determined by the education resources and learner outcomes evident in the best or highest spending districts.").

71. McUsic, *supra* note 67, at 116-17.

72. Swimming pools and high-quality athletic facilities are often cited to illustrate disparities among districts. *See, e.g.*, Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806, 808 (Ariz. 1994); J. Steven Farr & Mark Trachtenberg, *The Edgewood Drama: An Epic Quest for Education Equity*, 17 YALE L. & POL'Y REV. 607, 607 (1999). But critics do not necessarily believe equalizing such amenities is worth the expense. *See* Noreen O'Grady, Comment, *Toward a Thorough and Efficient Education: Resurrecting the Pennsylvania Education Clause*, 67 TEMP. L. REV. 613, 634 n.123 (1994) ("Defining this minimum level of education challenges courts to perform the difficult task of drawing a line between academic essentials and services which are only tangentially related to basic education, such as Astroturf stadiums and heated swimming pools. Attempts to equalize such frills would probably be pointless and prohibitively expensive.").

73. In reaction to the *McDuffy* decision in Massachusetts, the *Boston Herald* quipped that Harvard "probably wishes *its* graduates possessed all the skills and knowledge" described by the court. Enrich, *supra* note 31, at 175 n.348 (quoting Editorial, *The SJC's Wishful Thinking*, BOSTON HERALD, June 16, 1993, at 28).

74. *See, e.g.*, ALFIE KOHN, THE CASE AGAINST STANDARDIZED TESTING: RAISING THE SCORES, RUINING THE SCHOOLS (2000); SUSAN OHANIAN, ONE SIZE FITS FEW: THE FOLLY OF EDUCATIONAL STANDARDS (1999); PETER SACKS, STANDARDIZED MINDS: THE HIGH PRICE OF AMERICA'S TESTING CULTURE AND WHAT WE CAN DO TO CHANGE IT (1999).

on standardized tests. Twenty-five percent of principals reported decreasing time allocated to arts instruction since 2000, and thirty-three percent anticipated future decreases over the next two years.[75] For foreign language study, only thirteen percent reported declines in instructional time, but nineteen percent anticipated future cuts.[76] Exclusive reliance on standards risks constraining the constitutional guarantee to an adequate education with the same tunnel vision that afflicts the standards movement.

Another danger is that lawmakers will set standards too low initially or respond to the threat of litigation by lowering them. Molly McUsic has expressed optimism that lawmakers will not interfere. She wrote, "it would seem politically perilous for the legislature to inoculate themselves [sic] from lawsuits by creating low standards."[77] But recent manipulation in response to the No Child Left Behind Act has reignited concern about relying too heavily on standards in the context of school finance litigation.[78]

IV. CALCULATING THE COST OF AN ADEQUATE EDUCATION

Reliance on state standards may help courts determine whether schools are providing a high-quality education, but standards do not necessarily tell courts what remedial steps are needed to improve educational opportunity. Significant disagreement exists about the extent to which resources influence student achievement.[79] Navigating the uncertainty proves particularly difficult under a system of vertical equity in which input levels must be adjusted to accommodate for different student needs. It is inherently hard for courts, or even legislatures, to say with any degree of precision what resources a poor student from a broken home needs to receive the same educational opportunity as a middle-class student raised in a two-parent household.

Recognizing their own technical limitations, courts and legislatures have displayed a growing willingness to commission expert reports calculating the cost of an adequate education. Indeed, reliance on costing-out studies promises to be one of the most important trends in school finance litigation over the next decade. The idea of creating an expert commission to draft a school finance

75. CLAUS VON ZASTROW, COUNCIL FOR BASIC EDUC., ACADEMIC ATROPHY: THE CONDITION OF THE LIBERAL ARTS IN AMERICA'S PUBLIC SCHOOLS 16 (2004), *available at* http://www.c-b-e.org/PDF/cbe_principal_Report.pdf.

76. *Id.* at 17.

77. McUsic, *supra* note 67, at 117.

78. Almeida, *supra* note 16, at 546; Greif, *supra* note 18, at 629 & n.107.

79. *See, e.g.*, DOES MONEY MATTER?: THE EFFECT OF SCHOOL RESOURCES ON STUDENT ACHIEVEMENT AND ADULT SUCCESS (Gary Burtless ed., 1996); John Dayton, *Correlating Expenditures and Educational Opportunity in School Funding Litigation: The Judicial Perspective*, 19 J. EDUC. FIN. 167, 169 & nn.10-11 (1993) (listing state courts that have accepted and courts that have rejected the correlation between expenditures and educational opportunity); Michael Heise, *The Courts, Education Policy, and Unintended Consequences*, 11 CORNELL J.L. & PUB. POL'Y 633, 656 n.148 (2002) (collecting sources debating whether money matters).

remedy is not new, but requiring the creation of such a commission in a court order is of more recent origin. The practice began in 1995 when the Wyoming Supreme Court ordered the legislature to conduct a "cost of education study" to "inform the creation of a new funding system."[80] The Arkansas Supreme Court followed suit in 2002.[81] In response to a 1994 lower court decision pointing out the lack of reports calculating the cost of a "a general, suitable and efficient" education, the General Assembly had called on the State Board of Education to conduct an adequacy study by the end of 1996.[82] But the analysis had never been conducted. Although the Arkansas Supreme Court stopped short of ordering a full costing out as part of the school finance remedy, it stated, "the fact that the Department of Education has refused to prepare an adequacy study is extremely troublesome and frustrating to this court."[83] The message was unmistakable, and a year later Arkansas released a report.[84]

The most recent order to conduct a costing-out study came from the New York Court of Appeals.[85] It criticized the legislature for allowing politics rather than student need to drive the state funding formula.[86] Evidence in the record indicated that state officials regularly struck political compromises divvying up state aid and then worked backwards to create funding formulas that produced the desired result.[87] The court effectively ordered the State to reverse the process by "determin[ing], to the extent possible, the actual costs of the resources needed to provide the opportunity for a sound basic education in all school districts in the state" and then "ensur[ing] that at a minimum every school district has the necessary funds to provide an opportunity for a sound basic education to all of its students."[88]

In addition to studies conducted under court order, more than a third of the states have initiated their own studies in the past eight years.[89] Several were commissioned in the wake of school finance rulings. In his Essay, Saunders examines the Maryland study completed in 2002.[90] The study combined the two most popular approaches to calculating the cost of an adequate education: "successful schools" and "professional judgment." The successful schools

80. Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995).

81. *See* Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 486 (Ark. 2002).

82. *Id.*

83. *Id.*

84. *See* ALLAN ODDEN ET AL., AN EVIDENCE-BASED APPROACH TO SCHOOL FINANCE ADEQUACY IN ARKANSAS (2003), *available at* http://www.arkleg.state.ar.us/data/education/FinalArkansas Report.pdf.

85. *See* Campaign for Fiscal Equity, Inc. v. State (CFE II), 801 N.E.2d 326, 360 (N.Y. 2003).

86. *Id.* at 357.

87. *Id.*

88. *Id.* at 360.

89. Molly A. Hunter, Status of Adequacy "Costing-Out" Studies in the 50 States, *at* http://www.accessednetwork.org/research/Costing-OutChart.pdf (last modified Apr. 15, 2004).

90. Saunders, *supra* note 17, at 602-07

method looks to individual schools or school districts meeting state standards and then carefully analyzes their spending patterns. In many ways, it resembles the New Jersey approach of using high-quality suburban school districts as a benchmark, except that the successful schools method tries to limit the comparison to resources directly linked to high achievement. The professional judgment approach asks panels of experienced educators to design model programs they believe will be sufficient to provide an adequate education. Experts then calculate the cost of implementing the model programs. In Maryland, the two methods complimented each other and produced relatively similar figures,[91] but such a harmonious result in not guaranteed. In New York, a study initiated by the plaintiffs but conducted independently relied primarily on the professional judgment approach[92] and concluded that providing an adequate education across the state would require an additional investment of $6.21 and $8.40 billion per year.[93] The official state commission used the successful schools approach[94] and produced a lower range of $2.5 to $5.6 billion.[95]

Saunders also discusses the tendency of politics to creep into the work of costing-out commissions.[96] Although political manipulation can undermine a commission's objectivity, Saunders argues that political involvement in calculating of the cost of an adequate education can be an asset in some circumstances.[97] The presence of politicians on a commission can improve the chances of producing a politically viable plan. It also gives those politicians a sense of ownership over the proposal that emerges. One problem with the official state commission in New York is that it did not include any lawmakers, representatives from the mayor's office, plaintiffs, or members of the state or city departments of education.[98] The report was accordingly received as only a "starting point" for debate rather than a comprehensive legislative roadmap.[99]

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91. *Id.* at 605.

92. AM. INSTS. FOR RESEARCH & MGMT. ANALYSIS & PLANNING, INC., THE NEW YORK ADEQUACY STUDY: DETERMINING THE COST OF PROVIDING ALL CHILDREN IN NEW YORK AN ADEQUATE EDUCATION 1 (2004), *available at* http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf.

93. *Id.*

94. N.Y. STATE COMM'N ON EDUC. REFORM, FINAL REPORT 22 (2004), *available at* http://www.state.ny.us/pdfs/finalreportweb.pdf.

95. *Id.* at 24.

96. Saunders, *supra* note 17, at 606.

97. Saunders, *supra* note 17, at 606-07.

98. Al Baker, *How to Obey Schools Ruling? Pataki and Bloomberg Differ*, N.Y. TIMES, Nov. 27, 2003, at B1.

99. *See* Al Baker, *Panel Reports on Cost of "Sound Basic Education," But Many Say the Question Remains*, N.Y. TIMES, Mar. 30, 2004, at B4.

V. THE PRESCHOOL REMEDY

To the extent courts do not trust lawmakers to assess the needs of schools objectively and pass an acceptable remedy, they may be tempted to order the state to undertake more specific remedial steps. One possibility explored by courts in New Jersey and North Carolina is to mandate preschool programs for at-risk students. In New Jersey, as a result of the *Abbott* litigation, three- and four-year-olds who live in *Abbott* districts are entitled to attend a publicly funded preschool. In North Carolina, the trial court judge, in a ruling currently on appeal, has similarly ordered the state to provide preschool to all at-risk four-year-olds in the state.

The growing interest in preschool has been fueled by social science evidence strongly and consistently demonstrating the benefits of early childhood education. As Almeida describes in his Essay on North Carolina, "research findings from a spectrum of academics, think tanks, government agencies, and even one of the twelve Federal Reserve Banks have consistently shown strong benefits resulting from preschool education."[100] This research, moreover, is generally considered stronger and more reliable than similar research on the broader question of the relationship between expenditures and academic achievement.[101] The relative strength of the social science evidence might provide encouragement and confidence to other courts contemplating mandating preschool as part of a school finance remedy, although questions remain in the research as to whether the successful programs studied could be replicated on a larger scale.[102]

Even putting aside questions about the strengths and limitations of the research about preschool, some courts may remain reluctant to order preschool programs on separation of powers grounds. When the Arkansas Supreme Court overturned a trial court decision mandating preschool, it wrote

> [T]he trial court could not order the implementation of pre-school programs in any event. That is a public-policy issue for the General Assembly to explore and resolve. It is elementary that the powers of our state government are divided into three separate branches of government. The state constitution further provides that one branch of government shall not exercise the power of another.[103]

In light of these concerns, courts may refrain from ordering specific remedies like preschool until the political branches have demonstrated a pattern of non-responsiveness to judicial school finance rulings. After all, it took twenty-five years of bouncing remedies between the court and the legislature for the New Jersey Supreme Court to issue its opinion in *Abbott V.*

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100. Almeida, *supra* note 16, at 562 (citations omitted).

101. *Id.* at 562-63.

102. *Id.* at 563.

103. Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 501 (Ark. 2002) (citations omitted).

Moreover, as Greif argues in her Essay, ordering a specific remedy does not guarantee it will be implemented as the court intended. Although observers frequently criticize courts for issuing vague opinions in school finance litigation cases,[104] Greif demonstrates that the same political and logistical difficulties associated with insufficient judicial guidance can hinder implementation of a detailed order. In New Jersey, political noncompliance forced the plaintiffs to return to court in 1999[105] and once again in 2001[106] to obtain further instructions. Practical difficulties, such as a shortage of qualified teachers, further delayed implementation.[107] New Jersey thus serves as a cautionary tale for courts thinking about ordering preschool as a remedy in school finance litigation. It reminds them that enforcing a positive constitutional right can require substantial and ongoing oversight. But for courts willing to stay the course, preschool represents a promising option with a proven track record of raising student achievement.

VI. DESEGREGATION

As the name implies, school finance litigation tends to focus on revenue and expenditures, and most school finance cases do not directly address the problems associated with racial and socioeconomic isolation. But doubts about the efficacy of monetary remedies and evidence of the ability of integration to improve the achievement of disadvantaged students without reducing the achievement levels of other students have prompted calls to reorient school finance litigation by seeking integration.[108] Recognizing the political difficulties associated with mandatory busing, scholars have focused instead on magnet schools,[109] interdistrict school voucher plans,[110] and the redrawing of school district boundaries[111] as potential remedies in school finance cases.

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104. *See, e.g.*, Josh Kagan, Note, *A Civics Action: Interpreting "Adequacy" in State Constitutions' Education Clauses*, 78 N.Y.U. L. REV. 2241, 2251-53 (2003) (criticizing the Ohio and Alabama Supreme Courts for failing to provide sufficient guidance to the legislature); Erin E. Buzuvis, Note, *"A" for Effort: Evaluating Recent State Education Reform in Response to Judicial Demands for Equity and Adequacy*, 86 CORNELL L. REV. 644, 670 (2001) ("Lack of guidance from the court . . . can be problematic during the remedy phase."). *But see id.* ("Conversely, courts that define adequacy too extensively run the risk of constraining the legislature."); Aaron Saiger, Note, *Disestablishing Local School Districts as a Remedy for Educational Inadequacy*, 99 COLUM. L. REV. 1830, 1839 (1999) (characterizing Abbott V as "presposterous in its specificity").

105. Greif, *supra* note 18, at 631.

106. *Id.* at 633.

107. *Id.* at 648-69.

108. *See* Molly S. McUsic, *The Future of* Brown v. Board of Education*: Economic Integration of the Public Schools,* 117 HARV. L. REV. 1334 (2004); Ryan, *supra* note 36.

109. Ryan, *supra* note 36, at 309.

110. *Id.* at 310-15; James E. Ryan, Sheff, *Segregation, and School Finance Litigation*, 74 N.Y.U. L. REV. 529, 560-62 (1999).

111. Angela Ciolfi, Note, *Shuffling the Deck: Redistricting to Promote a Quality Education in Virginia*, 89 VA. L. REV. 773 (2003).

In her Essay about Connecticut, Wetzler studies *Sheff v. O'Neill*, a rare case ordering desegregation under a state constitution. Her findings cast doubt on the prospect of states achieving a meaningful degree of integration in the near future. Just as political pressure transformed a prior generation of federal desegregation cases into monetary remedies, Wetzler describes how political maneuvering in Connecticut has limited interdistrict mixing and largely replaced it with an infusion of resources into Hartford and other "priority" school districts.[112] What began as a potentially radical new approach has thus been transformed into a more traditional school finance suit, albeit with some modest goals for increasing integration. In this sense, Connecticut is actually following a path similar to the ones being laid down in New Jersey, Maryland, and North Carolina. The Essays that follow make clear that fifty years after *Brown v. Board of Education*, litigants fighting for better educational opportunities for poor and minority students are now relying primarily on money rather than integration to improve the quality of the nation's most troubled schools. Perhaps more than anything, the shift away from integration reflects public weariness with fifty years of trying to force students from different racial and economic backgrounds to attend school together. In a 1994 Gallup poll, sixty percent of African-Americans considered higher funding to be the best way to help minority students, compared to twenty-five percent who selected integration.[113] Sixty-four percent said they would choose local schools over integrated schools outside their community.[114]

Despite these sentiments, the verdict remains out on whether increasing resources in the absence of meaningful racial or socioeconomic integration is an effective way to improve academic achievement. In the coming years, Connecticut, Maryland, North Carolina, and New Jersey will serve as test cases. All four states are in the process of implementing finance systems and programs that have the potential to achieve a remarkable degree of vertical equity. Some early evidence regarding the impact of these reforms on student achievement is promising, but it remains to be seen whether these initial gains will be sustained.

112. Wetzler, *supra* note 15, at 519-20.

113. *See* James Bock, *"Resegregated" Schools Not All Bad, Some Say*, BALT. SUN, May 20, 1996, at 1A.

114. *Id.*