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NEW YORK'S EDUCATIONAL FINANCE SCHEME: SHOULD IT BE DECLARED UNCONSTITUTIONAL?

*"Today, education is perhaps the most important function of state and local governments . . . [and s]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."*¹

INTRODUCTION

Americans have long recognized the importance of having the opportunity to receive a free and equal public education.² In addition, it is well known that New York State is regarded as a forerunner in providing such an education.³ One must question, however, whether New York's educational finance scheme should remain constitutional under the Education Article of the

1. *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

2. See R. Stephen Browning & David C. Long, *School Finance Reform and the Courts after Rodriguez*, in *SCHOOL FINANCE IN TRANSITION, THE COURTS AND EDUCATIONAL REFORM* 82 (1974). The authors note that equal educational opportunity has different meanings to different individuals. Some view it as equality in teaching personnel and resources, while others see it as achievement by student performance, and still others view equality in terms of racial and economic composition. *Id.* Equality in education is an ever changing and evolving concept within the legislative and judicial branches. The meaning of equality has been addressed primarily through cases involving the Equal Protection Clause of the Fourteenth Amendment. *Id.* The authors point out that the following inequalities have been examined:

1. Equal services and facilities among racial groups (e.g., in school plant, per-pupil expenditures, teacher experience);
2. Equal intangible factors among racial groups (e.g., morale, prestige, expectations in the school);
3. Equal or balanced racial compositions of the school;
4. Equal consequences of the school for individuals from rich and poor backgrounds;
5. Equal public resources to the schools regardless of the wealth or poverty of the school district.

Id. at 82-83.

3. See *Board of Educ. v. Nyquist*, 57 N.Y.2d 27, 48, 439 N.E.2d 359, 369, 453 N.Y.S.2d 643, 653 (1982).

State's Constitution,⁴ and the Equal Protection Clause of the State⁵ and Federal Constitutions,⁶ after an examination of the recent trends in this area of law.

Over the years, significant attempts at reform have been made with regard to the various school financing systems throughout the nation. Both state and federal courts have examined the constitutionality of an educational financing system wherein funding is primarily accomplished through local property taxes.⁷ Such funding systems are generally statewide, which permits

4. N.Y. CONST. art. XI, § I. This provision states that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." *Id.*

5. N.Y. CONST. art. I, § 11. This provision provides that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

6. U.S. CONST. amend. XIV, § 1, cl. 4. The Equal Protection Clause provides: "No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

7. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973); *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973); *Dupree v. Alma Sch. Dist.*, 651 S.W.2d 90 (Ark. 1983); *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971), *cert. denied sub nom.*, *Clowes v. Serrano*, 432 U.S. 907 (1977); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982); *Horton v. Meskill*, 486 A.2d 1099 (Conn. 1985); *People ex rel. Jones v. Adams*, 350 N.E.2d 767 (Ill. App. Ct. 1976); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989); *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983); *Milliken v. Green*, 203 N.W.2d 457 (Mich. 1972), *vacated*, 212 N.W.2d 711 (Mich. 1973); *Helena Elementary Sch. Dist. No. 1 v. Montana*, 784 P.2d 412 (Mont. 1990); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Robinson v. Cahill*, 303 A.2d 273, *cert. denied sub nom.*, *Dickey v. Robinson*, 414 U.S. 976 (1973); *Board of Educ. v. Nyquist*, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982); *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); *Fair Sch. Fin. Council of Okla. v. Oklahoma*, 746 P.2d 1135 (Okla. 1987); *Olsen v. Oregon*, 554 P.2d 139 (Or. 1976); *Danson v. Casey*, 382 A.2d 1238 (Pa. 1978), *aff'd*, 399 A.2d 360 (1979); *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Seattle Sch. Dist. No. 1 v. Washington*, 585 P.2d 71 (Wash. 1978); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo.), *cert. denied sub nom.*, *Hot Springs County Sch. Dist. No. 1 v. Washakie County Sch. Dist. No. 1*, 449 U.S. 824 (1980).

educational resources to differ between school districts according to the taxable wealth of an individual district. Much controversy has been generated over this type of funding system because of the extreme disparities between property-poor and property-rich districts.⁸ Over the past several years, twenty-four states have evaluated whether such disparities render their state's financing system unconstitutional.⁹ Of these twenty-four states, fourteen state supreme courts have found such financing schemes constitutional;¹⁰ only ten of the states' highest courts have found them unconstitutional.¹¹

Although the majority of states have held their respective financing schemes constitutional,¹² since 1989 there has been a growing awareness of the inequities in school finance systems that rely primarily on property taxes as a funding source.¹³ This

8. *See supra* note 7.

9. *See* Tricia Bevelock, *Public School Financing Reform: Renewed Interest in the Courthouse, But Will the Statehouse Follow Suit?*, 65 ST. JOHN'S L. REV. 467, 467 (1991).

10. *See* *Abbott v. Burke*, 575 A.2d 359, 373 n.5 (N.J. 1990); Bevelock, *supra* note 9, at 467 n.1. The states upholding their financing schemes are: Arizona, Colorado, Georgia, Idaho, Illinois, Maryland, Michigan, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Wisconsin. *Id.*

11. *See* *Abbott*, 575 A.2d at 373 n.6-7; Bevelock, *supra* note 7, at 467 n.1. The following states declared their educational financing schemes unconstitutional: Arkansas, California, Connecticut, Kentucky, Montana, New Jersey, Texas, Washington, West Virginia, Wyoming. *Id.*

12. *See supra* note 10.

13. *See* *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 211-12 (Ky. 1989) (striking down funding system by finding that the legislature failed to provide an efficient system as mandated by the state education article and declaring education a fundamental right); *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 691 (Mont. 1989) (finding the school finance system unconstitutional because disparities between wealthy and poor school districts created inequities in educational opportunity); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990) (holding funding system unconstitutional as applied to poorer school districts since a "thorough and efficient" system was not provided); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989) (holding that its funding system was unconstitutional under the education provision of the Texas State Constitution due to the vast disparities existing among school districts).

Comment explores the history of the educational finance movement and its effect on the New York system, as well as the recent changes and trends in this area of law. This Comment concludes that the New York Court of Appeals must recognize the wide range of disparities existing in the state education system today and re-examine the constitutionality of the current system, as it serves to perpetuate such disparities. If New York is to remain a national leader in education, changes must be made within the current system.

HISTORY

A. Beginning The Battle Of Reform In State Court

The public school financing issue was first addressed by a state's highest court in *Serrano v. Priest*.¹⁴ In *Serrano*, the California Supreme Court considered whether its school funding system, which depended primarily upon property taxes, was constitutional under the Equal Protection Clause of the Fourteenth Amendment.¹⁵ The California court held that the

14. 487 P.2d 1241 (Cal. 1971). Subsequent to *Serrano*, litigation in the school funding area began to emerge. Both state and federal courts examined inequities among school districts. See *supra* notes 9-11; see also *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973); *Milliken v. Green*, 203 N.W.2d 457 (Mich. 1972), *vacated*, 212 N.W.2d 711 (Mich. 1973); *Van Duzart v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971); *Spano v. Board of Educ. of Lakeland Sch. Dist. No. 1*, 68 Misc. 2d 804, 328 N.Y.S.2d 229 (Sup. Ct. Westchester County 1972); *Sweetwater County Planning Comm. v. Hinkle*, 491 P.2d 1234 (Wyo. 1971). The New Jersey Supreme Court took a different approach than that employed by the court in *Serrano*. The decision was not based on equal protection grounds, but rather on the grounds of a "thorough and efficient" system as mandated by the state education provision. See *Robinson v. Cahill*, 303 A.2d 273, 298 (N.J. 1973); see also *infra* notes 133-139 and accompanying text.

15. *Serrano*, 487 P.2d at 1244. During the 1968-69 school year, the California system was funded in the following manner: local property taxes, 55.7%; state aid, 35.5%; federal funds, 6.1%; miscellaneous sources, 2.7%. *Id.* at 1246 n.2.

“funding scheme invidiously [sic] discriminates against the poor because it makes the quality of a child’s education a function of the wealth of his parents and neighbors.”¹⁶ In rendering this decision, the court accepted the plaintiffs’ contention that this system of financing, which resulted in a wide range of educational disparities, classified on the basis of wealth.¹⁷ The court recognized that, although tax revenue is primarily a “function of the rate at which the residents of a district are willing to tax themselves,” it is also logical that those districts with a lower tax base are unable to levy taxes in a manner comparable to the more affluent districts.¹⁸

In addition to classifications based on wealth, the plaintiffs asserted another claim, namely that education was a fundamental right that could not be conditioned on wealth.¹⁹ In resolving this issue, the court recognized the importance of education not only on an individual level, but also on a societal level,²⁰ noting that education is not only necessary for effective participation in a democracy, but is also important in shaping values.²¹ Since the finance system classified on the basis of wealth and was directly related to education, the court applied the strict scrutiny standard of review.²² The court concluded that since no compelling state interest was served by a funding system which perpetuated disparities in educational opportunity, the California system could not withstand this level of review and was found unconstitutional.²³

16. *Id.* at 1244.

17. *Id.* at 1250.

18. *Id.*

19. *Id.* at 1255.

20. *Id.* at 1256.

21. *Id.* at 1258.

22. *Id.* at 1263.

23. *Id.* It should be noted that the *Serrano* court, in a footnote, made clear that this decision was also based on state constitutional grounds. The court found that the school funding system violated Article 1, §§ 11 and 21 of the California Constitution. *Id.* at 1249 n.11. Article 1, § 11 provides in pertinent part: “All laws of a general nature shall have uniform application.” CAL. CONST. art 1, § 11. Article 1, § 21 provides: “No special privileges or

Subsequent to *Serrano*, other courts also declared their public school funding systems unconstitutional based on equal protection grounds. For example, in *Van Dusartz v. Hatfield*,²⁴ the United States District Court for the District of Minnesota held that the Minnesota funding system was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.²⁵ The plaintiffs challenged the constitutionality of the "system of financing public elementary and secondary education," alleging that "the number of dollars per pupil spent in their school districts is a function of the amount of taxable wealth per pupil located within the boundaries of those districts" ²⁶

Again, the court utilized a strict scrutiny standard, finding education to be a fundamental interest and classification based on "district wealth" to be suspect.²⁷ In its decision, the court relied heavily on the "persuasive analysis" rendered by the *Serrano* court which, according to the district court, had "correctly inferred from relevant expressions of the United States Supreme Court and from the nature of education itself that this interest is truly fundamental in the constitutional sense."²⁸

The district court rejected the state's assertion that "maintaining the strength of local government by preserving local choice in school spending" was a compelling interest.²⁹ The court stated that "[t]o promote such an erratic dispersal of privilege and burden on a theory of local control of spending would be quite impossible."³⁰ Furthermore, the court maintained that "if the state chooses to emphasize local control, it remains free to do so to whatever degree it wishes . . . except that of

immunities shall ever be granted . . . nor shall any citizen or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." CAL. CONST. art 1, § 21.

24. 334 F. Supp. 870 (D. Minn. 1971).

25. *Id.* at 877.

26. *Id.* at 872. The court noted that "some districts have almost no taxable wealth while others range up to and even above \$30,000 per pupil." *Id.*

27. *Id.* at 874.

28. *Id.* at 875.

29. *Id.* at 876.

30. *Id.*

distributing education according to wealth.”³¹ The court concluded its opinion by holding that “a system of public school financing which makes spending per pupil a function of the school district’s wealth violates the equal protection guarantee of the Fourteenth Amendment of the United States Constitution.”³²

In addition, in *Robinson v. Cahill*,³³ a New Jersey superior court also found a state funding system to be violative of the Equal Protection Clause of the Constitution.³⁴ The public school system at issue was “funded primarily by local real property taxes,” which resulted in “wide disparities in education expenditures” within the districts.³⁵ The court determined that the system must be scrutinized under the strict scrutiny test, noting that “[e]ducation is one of the most important functions of state governments, and educational opportunities, where the state has undertaken to provide them, [are] a right that must be made available to all on equal terms.”³⁶

The court determined that no compelling state interest existed that would justify the present system, stating that “[w]hile local control is desirable, discriminations should not be tolerated if they are not necessary for achieving the stated purpose.”³⁷ In finding the system violative of the Fourteenth Amendment, the court noted that the state could develop a finance system that

31. *Id.*

32. *Id.* at 877.

33. 287 A.2d 187 (N.J. 1972), *modified*, 303 A.2d 273 (1973). On appeal, the Supreme Court of New Jersey modified the lower court decision. While the supreme court affirmed the lower court’s decision with regard to the unconstitutionality of the system, relying on the United States Supreme Court decision in *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), it held the funding system only to be violative of the New Jersey Constitution. *See Robinson*, 303 A.2d at 279-82; *see also infra* notes 133-139 and accompanying text.

34. *Robinson*, 287 A.2d at 214-15.

35. *Id.* at 189-91.

36. *Id.* at 214 (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)).

37. *Id.*

"affords equal protection to all pupils without precluding local control over public education."³⁸

B. How The Fourteenth Amendment Was Eliminated As A Means To Reform Educational Funding

In *San Antonio School District v. Rodriguez*,³⁹ the United States Supreme Court examined the educational adequacy of the Texas public school funding system.⁴⁰ In rendering its decision, the majority acknowledged that financial disparities existed among the various school districts within the state.⁴¹ The Court, however, in a 5-4 decision, reversed the lower court,⁴² holding that disparities in Texas state school funding, as they existed under the educational finance system, did not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.⁴³

The challenge was made on behalf of Mexican-American children who resided in districts with lower property tax bases.⁴⁴ The plaintiffs' contention was that the Texas funding system⁴⁵ denied them equal protection of the laws under the State and Federal Constitutions and was violative of the Texas Education Code.⁴⁶ The district court initially concluded that the large disparities in school expenditures were attributable to the vast differences in the amount of revenue collected through property

38. *Id.*

39. 411 U.S. 1 (1973).

40. *Id.* at 4.

41. *Id.* at 54-55.

42. *Id.* at 6.

43. *Id.* at 55. U.S. CONST. amend. XIV, § 1. This section provides in pertinent part that "[no] State [shall] . . . deny to any person . . . the equal protection of the laws." *Id.*

44. *Rodriguez*, 411 U.S. at 4-5.

45. In 1947, the Texas Legislature established the Texas Minimum Foundation School Program. During the 1970-71 school year, this program accounted for 48% of the state's education funds, whereas local taxation generated 41.1%, and 10.9% was provided by federal aid. *Id.* at 9 n.21.

46. See *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280, 281 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973).

taxes.⁴⁷ The court determined that a funding system that actually discriminated on the basis of wealth was suspect.⁴⁸ Since a classification based on wealth and a fundamental interest were at stake, the court determined that the rational basis test could not be applied.⁴⁹ The court stated that “[b]ecause of the grave significance of education both to the individual and to our society, the defendants must demonstrate a compelling state interest that is promoted by the current classifications created under the financing scheme.”⁵⁰

According to the court, the state’s assertion of “granting decisionmaking power to individual districts, and . . . permitting local parents to determine how much they desire to spend on their children’s schooling,” failed to rise to the level of a compelling state interest which could justify the classifications created by the funding system.⁵¹ The court stated that “[n]ot only are defendants unable to demonstrate [a] compelling state interest for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications.”⁵² As a result, the court held that Texas’ school funding system denied children of poorer districts equal protection of the laws, and therefore, violated the Fourteenth Amendment of the United States Constitution.⁵³

47. *Id.* at 282.

48. *Id.*

49. *Id.* at 283; *see also* JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 14.3, at 580 (4th ed. 1991). The rational basis test is applied when a fundamental right is not at stake, and wherein the Court does not find that special protection is required for a certain class of persons. *Id.* This test provides: “the classification only has to have a rational relationship to any legitimate government interest in order to comply with the equal protection guarantee.” *Id.*

50. *Rodriguez*, 337 F. Supp. at 283.

51. *Id.* at 284.

52. *Id.*

53. *Id.* at 281. The court relied on the analysis in the earlier California decision in *Serrano*, finding that the state itself was responsible for the differences in wealth of the school districts. *Id.* at 281 n.1; *see also* *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971). The district court also found that the plaintiffs had been denied equal protection under the Texas State Constitution

Upon reviewing the lower court's decision, the Supreme Court was forced to resolve the question of whether Texas' school funding system functioned to the disadvantage of some suspect class, or infringed on a fundamental right, thereby requiring strict scrutiny.⁵⁴ If the system did not disadvantage a suspect class or infringe upon a fundamental right, then the Court had to apply a rational basis test.⁵⁵ If the Court found, however, that a suspect class or a fundamental interest was at stake, then the lower court decision would be upheld.⁵⁶

Justice Powell, writing for the majority in *Rodriguez*, found the reasoning of the district court to be misguided.⁵⁷ He held that the lower court's analysis of suspect classification and fundamental rights was less than convincing.⁵⁸ Rather, the Court felt the correct undertaking was to resolve whether the Texas funding system discriminated: "(1) against 'poor' persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally 'indigent,' or (2) against those who are relatively poorer than others, or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer school districts."⁵⁹ If the financing system discriminated against any of the foregoing, only then would the Court have to determine whether the classification should be deemed suspect.⁶⁰

In order to decide whether the Texas system had a discriminatory effect, the Court looked at prior case law to

and that the system violated the Education Provision of the Texas State Constitution. *Rodriguez*, 337 F. Supp. at 285.

54. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

55. *Id.*

56. *Id.*

57. *Id.* The Court noted that the lower court relied on decisions that dealt with equal treatment of indigents at a criminal trial and during the appellate process. *Id.* In addition, the lower court considered cases dealing with the right to vote in its determination that wealth was a suspect class requiring strict scrutiny. *Id.* The Supreme Court held that such decisions were not controlling with respect to the issue at hand. *Id.*

58. *Id.* at 18-40.

59. *Id.* at 19-20.

60. *Id.* at 20.

determine the characteristics of a suspect class.⁶¹ Individuals who constituted the discriminated class shared the following characteristic: "because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit."⁶² Upon examination, however, the Court decided that this characteristic was not present.⁶³ First, they determined that there was no demonstration that the funding system disadvantaged any class of indigents.⁶⁴ The Court remarked that the poorest families may not even reside in the poorest districts.⁶⁵ Second, the Court held that there was no "absolute deprivation of [a] desired benefit"⁶⁶ because the children in these poorer areas did receive a public education, despite the fact that it was not of the same quality as that provided to students in the wealthier districts.⁶⁷ Since the Equal Protection Clause of the Fourteenth Amendment does not demand equal advantages or absolute equality, the Court accepted this result.⁶⁸

61. *Id.*

62. *Id.*

63. *Id.* at 24-25.

64. *Id.*

65. *Id.* at 25.

66. *Id.* at 23.

67. *Id.* at 26.

68. *Id.* at 23; *see also* *Bullock v. Carter*, 405 U.S. 137, 149 (1972) (holding a Texas filing fee unconstitutional on Equal Protection grounds when used for a candidate to get on the ballot, however, "reasonable candidate filing fees or licensing fees in other contexts" may be held valid); *Mayer v. City of Chicago*, 404 U.S. 189, 194 (1971) (holding that state must supply indigent with a "record of sufficient completeness" for appellate review, however, this does not mean a "complete verbatim transcript" available to those who may be able to afford it); *Griffin v. Illinois*, 351 U.S. 12, 20 (1970) (holding that a state need not "purchase a stenographer's transcript in every case where a defendant cannot buy it" as there are "other means of affording adequate and effective appellate review to indigent defendants"); *Draper v. Washington*, 372 U.S. 487, 495 (1963) (holding that the state need not provide every defendant with a full stenographic transcript when "[a]lternative methods of reporting trial proceedings . . . place before the appellate court an equivalent reporter of

In *Rodriguez*, the Court held that this matter was not a proper one in which to apply strict judicial scrutiny.⁶⁹ In its reasoning, the Court noted that “the traditional indicia of suspectness” were not present.⁷⁰ There had been no history of discriminatory treatment, nor was the class in a position of political powerlessness. As a result, the Court upheld the constitutionality of the property funding system.⁷¹

Whether education should be deemed a fundamental right was another issue which required resolution.⁷² The importance of education was manifested in *Brown v. Board of Education*,⁷³ and the Court in *Rodriguez* emphasized that its decision would not detract from this importance.⁷⁴ However, the Court held that the mere importance of education does not, by itself, justify it as a fundamental right requiring strict judicial scrutiny under the Equal Protection Clause.⁷⁵

Instead, the *Rodriguez* Court stated that the key to determining whether education is a fundamental right must come from the

the events at trial from which the appellant’s contentions arose); *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955) (finding State not required to provide absolute equality as long as there is no “invidious discrimination” or violation of due process).

69. *Rodriguez*, 411 U.S. at 28.

70. *Id.*

71. *Id.*

72. *Id.*

73. 347 U.S. 483 (1954). The plaintiffs in *Brown* were black children representing various school districts from several states. *Id.* at 486-87. They argued that segregated public schools were inherently unequal and deprived them of equal protection of the laws. *Id.* at 488. The Court found that the segregation of white and black children in public schools violated the Equal Protection Clause of the Fourteenth Amendment, stating that “[t]oday, education is perhaps the most important function of state and local governments.” *Id.* at 493.

74. *Rodriguez*, 411 U.S. at 30.

75. *Id.* at 33. The Court refused to weigh the importance of education against the fundamental right to travel, stating “[i]t is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws.” *Id.*; see also *Shapiro v. Thompson*, 394 U.S. 618 (1969) (holding the right to interstate travel to be fundamental and stating that any law which impinged on this right must be subject to strict judicial review).

Constitution itself.⁷⁶ A determination must be made as to whether education is a right that is implicitly or explicitly derived from the Constitution.⁷⁷ The Court found that it was neither.⁷⁸ Although recognizing education as indisputably important, since it is neither implicitly nor explicitly guaranteed by the United States Constitution, the Court refused to depart from the rational basis standard of review typically applied to a state's social and economic legislation.⁷⁹ The Court held that, as long as a school system provides a child with the basic minimal skills necessary for the enjoyment of free speech, as well as the ability to participate in the political process, the financing system will be deemed constitutional.⁸⁰ According to the Court, it was not illegal to bestow differing benefits or burdens on people because of their wealth; "[i]t has simply never been within the constitutional prerogative of this Court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live."⁸¹

In a notable dissent, Justice Marshall criticized the majority opinion and held that education was a fundamental interest.⁸² He pointed out that the majority chose to simply classify cases into two categories, mere rationality or strict scrutiny.⁸³ However, Justice Marshall found these arbitrary classifications to be inconsistent with the Court's previous decisions in the area of equal protection.⁸⁴ In reviewing prior cases involving discrimination, Justice Marshall noted that the Court had applied a variation of standards, depending upon the constitutional or

76. *Id.* at 33-34.

77. *Id.* at 35.

78. *Id.*

79. *Id.*

80. *Id.* at 36-37.

81. *Id.* at 54.

82. *Id.* at 116 (Marshall, J., dissenting).

83. *Id.* at 98 (Marshall, J., dissenting).

84. *Id.* (Marshall, J., dissenting).

societal importance of the issue.⁸⁵ Justice Marshall also took issue with the majority's contention that fundamental interests are either implicitly or explicitly guaranteed by the Constitution.⁸⁶ According to Justice Marshall, in previous decisions of the Court, there were rights that were not guaranteed by a constitutional provision, but nonetheless the Court applied strict judicial scrutiny.⁸⁷ He suggested that the right to procreate, for example, was neither implicitly nor explicitly guaranteed by the Constitution.⁸⁸ He also noted that other rights previously declared fundamental included the right to vote and the right to appeal from a criminal conviction.⁸⁹

Justice Marshall proposed his own test for determining whether an interest is fundamental.⁹⁰ He stated that:

Although not all fundamental interests are constitutionally guaranteed, the determination of which interests are fundamental should be firmly rooted in the text of the Constitution. The task in every case should be to determine the extent to which constitutionally guaranteed rights are dependent on interests not mentioned in the Constitution. As the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the nonconstitutional interest becomes more fundamental and the degree of judicial scrutiny applied when the interest is

85. *Id.* at 98-99 (Marshall, J., dissenting).

86. *Id.* at 99-100 (Marshall, J., dissenting).

87. *Id.* at 100-02 (Marshall, J., dissenting).

88. *Id.* at 100 (Marshall, J., dissenting); *see also* *Skinner v. Oklahoma*, 316 U.S. 535 (1942). The *Skinner* Court invalidated a statute authorizing sterilization of persons convicted of three or more felonies of "moral turpitude." *Id.* at 541. However, this statute did not apply to certain white collar crimes. *Id.* at 538-39. As a result, the Court objected to such discrimination and reasoned that strict scrutiny applied because "[m]arriage and procreation are fundamental to the very existence and survival of the race." *Id.* at 541.

89. *Rodriguez*, 411 U.S. at 100. (Marshall, J., dissenting); *see also* *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (holding that the right to vote is "of the essence of a democratic society"); *Griffin v. Illinois*, 351 U.S. 12 (1956) (holding that the denial of trial transcripts to indigent defendants which are necessary to hear an appeal denied them equal protection and due process of law).

90. *Rodriguez*, 411 U.S. at 102 (Marshall, J., dissenting).

infringed on a discriminatory basis must be adjusted accordingly.⁹¹

For example, with respect to procreation, though the Constitution itself did not guarantee this right, it is closely related to the right to privacy, and therefore requires heightened judicial scrutiny.⁹² Justice Marshall believed that the only way to ensure the integrity of a constitutional right was to prevent discrimination of any of the related interests.⁹³

C. How The New York Court Of Appeals Applied Rodriguez

When New York State's educational financing system was placed at issue in *Board of Education v. Nyquist*,⁹⁴ the New York Court of Appeals relied on the Supreme Court's decision in *Rodriguez* and found the system constitutional. The court held that the statutory provisions for allocating state aid to local districts for education purposes did not violate the Equal Protection Clauses of either the Federal or State Constitutions.⁹⁵

91. *Id.* (Marshall, J., dissenting).

92. *Id.* at 103 (Marshall, J., dissenting).

93. *Id.* (Marshall, J., dissenting).

94. 57 N.Y.2d 27, 41, 439 N.E.2d 359, 364, 453 N.Y.S.2d 643, 649 (1982).

95. *Id.* at 46, 439 N.E.2d at 367-68, 453 N.Y.S.2d at 652. In rendering this decision, the court of appeals reversed the appellate division. *Id.*; see also *Board of Educ. v. Nyquist*, 83 A.D.2d 217, 269, 443 N.Y.S.2d 843, 845 (2d Dep't 1981). Judge Lazer, writing for the second department, held that New York's method of funding education violated both the Equal Protection Clause and the Education Article of the New York State Constitution. The court recognized the existing disparities and noted that for poorer districts to attain education programs comparable to affluent districts, these poorer districts must be taxed at relatively high rates. As a result, there are difficulties in getting budgets approved or, worse yet, it requires imposition of austerity budgets. The consequence of this is "limited transportation, supplies, library and textbook purchases . . . rises in rates of mortgage foreclosure and community instability." *Id.* at 227, 443 N.Y.S.2d at 850. In addressing the equal protection issue, the second department stated that the question was not whether there was an absolute deprivation of education, but rather, the issue was whether the evidence clearly indicates that "less educational opportunity

Additionally, the court determined that the provisions were constitutional under the Education Article,⁹⁶ which provides in relevant part that “[t]he legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this state may be educated.”⁹⁷

In *Nyquist*,⁹⁸ an action for a declaratory judgment was brought by the Boards of Education of twenty-seven school districts throughout the state and a dozen students attending those schools. The plaintiffs’ contention was that the educational funding system⁹⁹ was unconstitutional because it resulted in “grossly disparate financial support and . . . educational opportunities” within the various districts.¹⁰⁰ In addition, the plaintiffs argued that the affluent districts were better able to raise revenue through property taxes, thereby allowing them to provide educational opportunities not available to poorer districts.¹⁰¹ In conjunction therewith, representatives of four major cities intervened, asserting the same violations of federal and state constitutional provisions.¹⁰² The intervenors’ position was that,

based on wealth discrimination establishes a violation of the equal protection provision.” *Id.* at 246, 443 N.Y.S.2d at 861. The court answered affirmatively. On the Education Article issue, Judge Lazer compared New York’s provision to that of New Jersey and Washington, and found that “the State must provide its children at least as much as what others must furnish pursuant to constitutional directives such as ‘thorough and efficient’ or ‘ample.’” *Id.* at 248, 443 N.Y.S.2d at 863.

96. *Id.*

97. N.Y. CONST. art. XI, § I.

98. 57 N.Y.2d 27, 35, 439 N.E.2d 359, 361, 453 N.Y.S.2d 643, 645 (1982).

99. During the 1981-82 school year, \$9.6 billion was expended for public elementary and secondary education. Of this \$9.6 billion, \$5.6 billion was revenue generated in the form of local taxes; the remaining \$4 billion was supplied through State aid. *Id.* at 37 n.2, 439 N.E.2d at 363 n.2, 453 N.Y.S.2d at 647 n.2.

100. *Id.* at 35, 439 N.E.2d at 361, 453 N.Y.S.2d at 646.

101. *Id.* at 36, 439 N.E.2d at 362, 453 N.Y.S.2d at 646.

102. *Id.* The intervenors were members of the boards of education, officials, taxpayers, students of the cities of New York, Buffalo, Rochester, Syracuse, and Parent-Teacher Association Federations of the City of New York. *Id.*

although cities could easily raise local tax revenue from local sources, there were special financial burdens which were present only within city areas.¹⁰³

New York's highest court recognized the existence of a wide disparity in financial support through property tax assessment.¹⁰⁴ However, in addressing the Fourteenth Amendment issue, the court determined that this case was similar to *Rodriguez* and therefore found no violation of the Fourteenth Amendment.¹⁰⁵ When confronted with the issue of the New York State Equal Protection Clause, the court utilized the rational basis test and found no impermissible discrimination toward students who resided in the poorer districts.¹⁰⁶ The court justified the use of the rational basis test by stating that simply because education was a high priority, it did not mean that the same should be classified as a "fundamental constitutional right triggering a higher standard of judicial review for purposes of equal protection analysis."¹⁰⁷ In addition, the court explained that each community has the power to take control of such educational opportunities through its voters. In approving school funding through local taxes, districts are able to minimize existing

103. *Id.* The intervenors asserted four major areas of special burden which included: 1) "[m]unicipal overburden," 2) diminished purchasing power of the municipal education dollar, 3) greater student absenteeism, and 4) larger concentrations of pupils with special educational needs. *Id.*

104. *Id.* at 40, 439 N.E.2d at 364, 453 N.Y.S.2d at 648.

105. *Id.* at 41, 439 N.E.2d at 365, 453 N.Y.S.2d at 649. The intervenors argued separately that inequality resulted not from low property wealth, but from "metropolitan overburden," which served to reduce financial resources. *Id.* The court responded to this argument by stating that, although education and other public services compete for municipal money, the cities get financial help from additional sources which are not available to non-city districts. *Id.*

106. *Id.* at 41, 439 N.E.2d at 365, 453 N.Y.S.2d at 650; *see also In re Levy*, 38 N.Y.2d 653, 345 N.E.2d 556, 382 N.Y.S.2d 13 (holding that rational basis and not strict scrutiny was the appropriate standard of review when confronted with a challenge involving state action and the right to a free public education), *appeal dismissed sub nom.*, *Levy v. City of New York*, 429 U.S. 805 (1976).

107. *Nyquist*, 57 N.Y.2d at 43, 439 N.E.2d at 366, 453 N.Y.S.2d at 650.

disparities by votes from these taxpayers.¹⁰⁸ The taxpayers have the ability to provide for better services and facilities through their consent.¹⁰⁹ As a result, the court of appeals disposed of the claim that there was a violation of the State Equal Protection Clause¹¹⁰ and found that a rational relationship to a legitimate state purpose existed.¹¹¹

Finally, the court considered whether the funding system violated the Education Article of the New York State Constitution.¹¹² The court reversed the decision of the appellate division and held that the current method of financing did not violate the Education Article of the New York State Constitution.¹¹³

In reaching this decision, the court relied heavily upon the Framers' intent at the time of the Constitutional Convention of 1894.¹¹⁴ When the education article was adopted, there were several thousand school districts within the state, each with a varying degree of wealth and educational opportunity.¹¹⁵ Since there were such disparities existing at the inception of the education article and there was no provision enacted to remedy the problem, the court concluded that the purpose of the article was to provide only "minimal acceptable facilities' and services."¹¹⁶ Moreover, the court found no indication that the system was supposed to ensure equality throughout the state; rather, the legislature need only provide a system of free schools to all children.¹¹⁷ Since a system of free public schools existed in New York, there was no violation of the education article.

108. *Id.* at 45, 439 N.E.2d at 367, 453 N.Y.S.2d at 650.

109. *Id.*

110. *Id.* at 47, 439 N.E.2d at 368, 453 N.Y.S.2d at 652.

111. *Id.* at 44, 439 N.E.2d at 366, 453 N.Y.S.2d at 651. The court held that "the preservation and promotion of local control of education--is both a legitimate State interest and one to which the present financing system is reasonably related." *Id.*

112. *Id.*

113. *Id.* at 49, 439 N.E.2d at 369, 452 N.Y.S.2d at 654.

114. *Id.* at 47, 439 N.E.2d at 368, 453 N.Y.S.2d at 652.

115. *Id.*

116. *Id.* at 47, 439 N.E.2d at 368, 453 N.Y.S.2d at 653.

117. *Id.* at 48, 439 N.E.2d at 368, 453 N.Y.S.2d at 653.

Equally important in the court's decision was that the majority was comfortable with the fact that New York's per pupil expenditures exceeded all but two other states.¹¹⁸ The court was also reluctant to invalidate decisions concerning allocations of public funds by requiring a higher priority in education unless a "gross and glaring inadequacy" existed in the current funding system.¹¹⁹ Therefore, because no such inadequacies existed, and because the legislative mandate requiring free common schools was being met, the court found the funding system was not in violation of the education article.¹²⁰

D. Other States' Perspectives On School Funding Issues

The *Rodriguez* decision did not completely foreclose litigation in the school funding area. This decision made clear that any pressure on individual states to modify their funding systems could not be done through the federal courts.¹²¹ However, instead of claiming a Fourteenth Amendment violation, the plaintiffs would have to resort to attacking the constitutionality of funding systems via the state's equal guarantee or education provision.¹²²

118. *Id.*

119. *Id.*

120. *Id.*

121. See Stephen M. Barro, *Alternative Post-Serrano Systems and Their Expenditure Implications*, in *SCHOOL FINANCE IN TRANSITION, THE COURTS AND EDUCATIONAL REFORM* 25 (1974).

122. See *Dupree v. Alma Sch. Dist. No. 20 of Crawford County*, 651 S.W.2d 90 (Ark. 1983), *Serrano v. Priest II*, 557 P.2d 929 (Cal. 1976), *cert. denied*, *Clowes v. Serrano*, 432 U.S. 907 (1977); *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973); *Seattle Sch. Dist. No. 1 of King City v. State*, 585 P.2d 71 (Wa. 1978); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979). Other possibilities for educational funding reform, which are not specifically addressed by this Comment, include federal and state legislation which would develop finance systems which are more equalized. For example, the Michigan Legislature recently approved an amendment to replace property taxes as a method of funding public schools. See *Michigan Voters Adopt Plan on Sales and Cigarette Taxes*, N.Y. TIMES, March 16, 1994, at A18. Specifically, the voters agreed that revenue raised through the state sales and cigarette taxes

For example, subsequent to the Supreme Court's decision in *Rodriguez*, the California Supreme Court had to grapple with the school funding issue a second time in *Serrano v. Priest II*.¹²³ In *Serrano II*, the court upheld its original decision that the funding system was unconstitutional.¹²⁴ This decision, however, was based not on a Fourteenth Amendment analysis, but rather, on state equal protection grounds, since *Rodriguez* effectively eliminated the Fourteenth Amendment as a basis for seeking school finance reform.¹²⁵

The *Serrano II* court found that substantial disparities existed among the various schools with respect to the amount of per student expenditures.¹²⁶ This result was directly linked to the wide range in property tax assessments.¹²⁷ Such disparities perpetuated the inequality of educational opportunities and differences in pupil achievement.¹²⁸ Therefore, despite the *Rodriguez* decision, the California court refused to depart from its previous determination.¹²⁹ The court concluded that discrimination in educational opportunities on the basis of a district's wealth involved a suspect classification, thereby triggering strict scrutiny.¹³⁰ In addition, education was found to be a fundamental right under the California State Equal Protection Clause.¹³¹ Since the *Serrano II* decision, other states

would provide new sources of school funding. State sales tax would be raised from 4% to 6% and tax on a pack of cigarettes would be increased from 25 cents to 75 cents. *Id.* Had this proposal been defeated, a backup plan of increasing state income tax would have automatically taken effect. *Id.*

123. 557 P.2d 929 (Cal. 1976), *cert. denied*, Clowes v. Serrano, 432 U.S. 907 (1977).

124. *Id.* at 958.

125. *Id.*

126. *Id.* at 939.

127. *Id.*

128. *Id.*

129. *Id.* at 951.

130. *Id.*

131. *Id.*

have followed suit by declaring property tax funding violative of their respective equal guarantee provisions.¹³²

Subsequent to the Supreme Court's decision in *Rodriguez*, the New Jersey Supreme Court declared its educational finance system unconstitutional in *Robinson v. Cahill*.¹³³ The court circumvented the result reached in *Rodriguez* by concluding that funding disparities were violative not of the Equal Protection Clause of the Fourteenth Amendment, but rather, of the state's education provision.¹³⁴ This provision requires that the free public school system be "thorough and efficient."¹³⁵ The court noted that the legislature is entrusted with the duty to ensure that every child receives the necessary educational opportunities for effective citizenship.¹³⁶ The court recognized that a correlation existed between the sums expended and the quality of educational opportunities received.¹³⁷ Although it held New Jersey's funding system unconstitutional, the court rejected the concept of a "fundamental right" and the application of the Equal Protection Clause.¹³⁸ Rather, the court held that state constitutional provisions, as well as common and statutory law, required the invalidation of the school funding scheme.¹³⁹

132. See, e.g., *Dupree v. Alma Sch. Dist. No. 30 of Crawford County*, 651 S.W.2d 90 (Ark. 1983); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 319 (Wyo. 1980); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va 1979).

133. 303 A.2d 273, 298 (N.J. 1973).

134. *Id.* at 295-96. The trial court found that educational funds were derived from three sources: local property taxes comprised 67%; state aid, 28%; and federal aid, 5%. *Id.* at 276.

135. *Id.*; see also N.J. CONST. art. VIII, §4, cl. 1. This provision provides that "[t]he legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools" *Id.*

136. *Robinson*, 303 A.2d at 294-95.

137. *Id.* at 277.

138. *Id.* at 285-86.

139. *Id.*

II. CRITICAL CHANGE

A. Recent Decisions Suggest A New Trend In The Educational Finance Reform Movement

Following the decision set forth in *Robinson v. Cahill*,¹⁴⁰ other plaintiffs have recently succeeded in challenging the constitutionality of their state's school funding systems through the use of their respective state's education articles.¹⁴¹ For example, state supreme courts in Texas,¹⁴² Kentucky,¹⁴³ New Jersey¹⁴⁴ and Montana¹⁴⁵ each declared their funding systems violative of the education provision of their respective state constitutions. A similar challenge was recently made in Wisconsin, but was unsuccessful.¹⁴⁶

140. 303 A.2d 273 (N.J. 1973).

141. See *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989); *Helena Elementary Sch. Dist. No. 1 v. Montana*, 769 P.2d 684 (Mont. 1989); *Abbott v. Burke*, 575 A.D.2d 359 (N.J. 1990); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989).

142. *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989). The court held that the state's school financing system was "neither financially efficient nor efficient in the sense of providing for a 'general diffusion of knowledge' statewide." *Id.* at 397. It noted that 42% of the revenue came from districts where the value of the property in the richest areas was 700 times more than the value in the poorer areas. *Id.* at 391. In addition, spending per student varied in the district from \$2112 to \$19,333. *Id.*

143. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989) (holding that a school funding system must be adequately funded in order to achieve the substantial uniformity needed to ensure that every child is provided with the equal opportunity to have an adequate education).

144. *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990). See also *infra* notes 174-188.

145. *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989) (declaring funding system violative of the constitutional guarantee affording equal educational opportunity given the vast disparities in wealth among the districts).

146. See *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989). During the 1985-86 school year, revenue was derived from the following sources: federal share, 4.68%; state share, 36.07%; local share, 59.25%. *Id.* at 570 n.1. The

In 1989, the Texas funding system was again brought before the court in *Edgewood Independent School District v. Kirby*.¹⁴⁷ The Texas Supreme Court found the state's property tax based school funding system to be unconstitutional under the Texas education article and directed the legislature to establish an "efficient" system in accordance with the provision.¹⁴⁸ The court noted that "glaring disparities" existed among districts in their ability to raise revenue; a disparity of 700 to 1 existed between the richest and poorest districts.¹⁴⁹ Such a system was found to be not only financially inefficient, but it also prevented property-poor district children from receiving an efficient education.¹⁵⁰

Wisconsin Supreme Court held that the current funding system did not violate the uniformity requirement of the state constitution merely because a district has a higher concentration of disadvantaged students. *Id.* at 574-78. Furthermore, the court reasoned that disparities in expenditures resulting from the operation of a statutory system of state aid that does not interfere with a child's right to attend public schools, to obtain a basic education, or result in discriminatory disbursement of funds, does not violate the state equal protection provision. *Id.* at 579. Although the court noted that education is a fundamental right, it qualified that equal educational opportunity did not require "absolute equality" in per-pupil expenditures. *Id.* The court concluded that "equal opportunity for education [which] mandates an entirely different scheme of financing requiring the state to distribute resources unequally among students to respond to the particularized needs of each student is inconsistent with the intent evidenced in the express language of art. X."; *see also* WIS. CONST. art. X, § 3. This section states: "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years." *Id.*

147. 777 S.W.2d 391 (Tex. 1989). During the 1985-86 school year, local school districts generated approximately 55% of education revenue from local ad valorem property taxes. *Id.* at 392. The state contributed 42%, which was raised by sales taxes and various severance and excise taxes. *Id.* The remaining 3% came from federal aid and other sources. *Id.*

148. *Id.* at 398. The Texas Constitution states that "it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." TEX. CONST. art. VII, § 1.

149. *Kirby*, 777 S.W.2d at 393.

150. *Id.*

In interpreting the education provision of the state constitution, the court examined the intent of the framers and concluded that there was a duty to provide an "efficient" system of public schools.¹⁵¹ Furthermore, the court concluded that at the drafting of the constitution, the framers could not have anticipated the disparities in property wealth which resulted in unequal distribution of funding because such inequalities did not exist at that time.¹⁵² As a result, the Texas court determined that the extreme differences between the districts existed because the wealthier districts offered far more in the way of educational opportunity than property-poor districts.¹⁵³

Furthermore, the Kentucky Supreme Court was asked to decide whether its current school system was constitutional in the case of *Rose v. Council for Better Education*.¹⁵⁴ In making its decision, the court had to determine whether the system was "efficient," or substantially uniform and equal in providing educational resources and opportunities for its students.¹⁵⁵ The court answered this question in the negative, holding the Kentucky system unconstitutional and finding that the General Assembly failed to provide adequate legislation which would ensure an "efficient" system.¹⁵⁶ Furthermore, the court found education to be a fundamental right which should be available to all students within the state.¹⁵⁷

The court stated that in order for the system to be "efficient," there must be adequate funding available.¹⁵⁸ The court concluded that children in both poor and affluent districts must have equal

151. *Id.* at 395.

152. *Id.* at 393.

153. *Id.* at 391-92. Wealthier districts provide broader curricula, better facilities and faculty ratios. In addition, they have experienced educators and counselors, whereas poorer districts lack courses such as physics and chemistry, and offer no extra-curricular activities. *Id.*

154. 790 S.W.2d 186, 209 (Ky. 1989).

155. *Id.* at 191-92.

156. *Id.* at 215. The Kentucky Constitution mandates an "efficient system of common schools throughout the state." KY. CONST. § 183.

157. *Rose*, 790 S.W.2d at 215.

158. *Id.* at 211.

access to educational opportunities.¹⁵⁹ According to the court, this duty did not belong to local counties and districts, rather the obligation to provide a system which guarantees such opportunities statewide rests with the General Assembly.¹⁶⁰ The court then listed a number of factors that must be available to every child to ensure an efficient educational system.¹⁶¹ It stated that the Assembly could authorize local school entities to enact a uniform tax rate for owners of real and personal property to remedy the vast disparities in taxing that were in effect.¹⁶²

Another recent decision addressing the school funding issue was rendered by the Montana Supreme Court.¹⁶³ The plaintiffs, in an action for a declaratory judgment, challenged the constitutionality of the school funding system under the state's equal protection clause¹⁶⁴ and the education provision of the

159. *Id.*

160. *Id.*

161. *Id.* at 212. The court found that every child must have the following capabilities:

- 1) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- 2) sufficient knowledge of economic, social and political systems to enable the student to make informed choices;
- 3) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- 4) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- 5) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- 6) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- 7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Id.

162. *Id.*

163. *Helena Elementary Sch. Dist. No. 1 v. Montana*, 769 P.2d 684 (Mont. 1989).

164. MONT. CONST. art. II, § 4. This section provides that:

Montana State Constitution.¹⁶⁵ In *Helena Elementary School District v. Montana*, the court concluded that the present funding system was unconstitutional under the state's education article, and thus did not find it necessary to reach the equal protection claim.¹⁶⁶

At trial, comparison studies were introduced into evidence which examined the differences between affluent and poor school districts.¹⁶⁷ The results indicated that disparities in spending perpetuated "unequal educational opportunities."¹⁶⁸ For example, wealthier schools maintained far better instructional materials and textbooks, as well as superior facilities and curricula.¹⁶⁹

When the court examined the plain meaning of the education provision, it determined that the framers had a "goal" to develop the full potential of every person within the state through the

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Id.

165. MONT. CONST. art. X, § 1. This section provides in pertinent part:

- (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. . . .
- (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Id.

166. *Helena*, 769 P.2d at 690-91.

167. *Id.* at 686-87.

168. *Id.* at 687.

169. *Id.* at 687-88. One study indicated that wealthier districts offered greater programs in areas such as industrial arts, home economics, physical education, arts, music, and gifted programs. Most of the poorer districts did not even offer programs for gifted or talented students. *Id.*

education system.¹⁷⁰ Furthermore, the provision guaranteed an equal educational opportunity to each and every person.¹⁷¹ Therefore, since the evidence indicated vast disparities among the districts, which clearly contravened the mandated equality of the education provision, the court had little trouble declaring the funding system unconstitutional.¹⁷²

The foregoing decisions provided new possibilities to a movement that sought to relieve inequalities resulting from disparities in school funding systems.¹⁷³ Most recently, the New Jersey Supreme Court, in *Abbott v. Burke*,¹⁷⁴ was once again confronted with the issue of whether its funding system was constitutional. The court, following the current trend, determined that the Public School Education Act,¹⁷⁵ enacted in 1975, was unconstitutional since it violated the "thorough and efficient

170. *Id.* at 689.

171. *Id.*

172. *Id.* at 690.

173. See *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989) (holding school system violated state constitution because it lacked uniformity throughout the state); *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973) (holding school funding system unconstitutional because it relied heavily on local taxes which lead to a large disparity in dollar input per pupil); *Helena*, 769 P.2d 684 (holding school finance system unconstitutional because disparities between wealthy and poor school districts created inequities in educational opportunity); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (holding school funding system unconstitutional because it discriminated against poorer districts). But see *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989) (holding disparities in aid to different school districts was not a violation of state constitution if the disparities were based on a rational goal of local control over education).

174. 575 A.2d 359 (N.J. 1990).

175. See N.J. STAT. ANN. § 18A:7A-1-18A:7A-52 (West 1989). The Act allows school districts to generate revenue as if their tax base was:

134% of the average school district tax base. The school district sets the tax rate as if the real property of the district equaled this guaranteed tax base (GTB). The local revenues generated by the tax from the district's actual tax base are then supplemented by state aid, called 'equalization aid,' in an amount that, when added to these local revenues, equals what that tax rate would have produced if applied to the (GTB).

Abbott, 575 A.2d at 377-78.

clause”¹⁷⁶ of the state constitution.¹⁷⁷ In so holding, the court refused to declare the entire system as violative of the provision; rather, it was unconstitutional only in its application to poorer school districts.¹⁷⁸ The court stated that educational funding of these districts must be comparable to that of affluent districts.¹⁷⁹ However, the court stated that funding alone was not a complete solution to the problem, noting that “[w]ithout educational reform, the money may accomplish nothing.”¹⁸⁰

The *Abbott* court noted that students in poorer areas face certain disadvantages and require special educational support to enable them to fully participate in society and the workplace in the future.¹⁸¹ For example, children in these disadvantaged areas require adequate books and guidance programs.¹⁸² In addition, they need special counseling services to deal with problems related to teen pregnancy, drugs, crime and family problems which are notably prevalent in the poorer areas.¹⁸³ Furthermore, the court noted that programs must be made available to students who might otherwise drop out of school.¹⁸⁴ In order to help establish these types of programs, the court stated that adequate funding must be made available.¹⁸⁵

The New Jersey court concluded that differences in property values were responsible for the disparities in educational expenditures.¹⁸⁶ The court stated that in order to ensure a “thorough and efficient system of education [which would] enable all students to function as citizens and workers in the same

176. N.J. CONST. art. VIII, § 4. This section provides “[t]he legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” *Id.*

177. *Abbott*, 575 A.2d at 363.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 402.

183. *Id.*

184. *Id.*

185. *Id.* at 402-03.

186. *Id.* at 377.

society," the state had to guarantee equal educational expenditures to the poorer districts.¹⁸⁷ The court rendered this decision despite the fact that New Jersey maintained one of the highest per capita expenditures for education in the nation.¹⁸⁸

B. The Likelihood Of Successfully Challenging New York's Educational Finance System

The constitutionality of New York's educational funding system was recently disputed in *Reform Educational Finance Inequities Today v. Cuomo (R.E.F.I.T.)*.¹⁸⁹ In its evaluation, the trial court was unwilling to depart from the earlier decision set forth in *Nyquist*,¹⁹⁰ and held that the school funding system did not violate the Education Article of the New York State Constitution,¹⁹¹ or the Equal Protection Clauses of either the State or Federal Constitutions.¹⁹² It stated that "[a]ny deviation from the [*Nyquist*] holding must come from either the [New York] Court of Appeals itself, or by legislative action."¹⁹³ In rendering this decision, however, the court seemed almost regretful. It noted that *Nyquist* left open the possibility for future

187. *Id.* at 403.

188. *Id.* at 412.

189. 152 Misc. 2d 714, 578 N.Y.S.2d 969 (Sup. Ct. New York County 1991), *aff'd*, ___ A.D.2d ___, ___, 606 N.Y.S.2d 44, 46 (2d Dep't 1993). The plaintiffs in this case were a non-profit organization suing on behalf of itself, school districts, taxpayers, boards of education and parents and students of various districts. *Id.* at 715, 578 N.Y.S.2d at 969. In the complaint, the plaintiffs asserted causes of action based on the Education Article of the state constitution, as well as the Equal Protection Clauses of the Federal and State Constitutions. *Id.*

190. *Board of Educ. v. Nyquist*, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982). *See also supra* notes 94-120 and accompanying text.

191. N.Y. CONST. art. XI, § I. This provision states that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." *Id.*

192. *R.E.F.I.T.*, 152 Misc. 2d at 726, 578 N.Y.S.2d at 976.

193. *Id.*

litigation when there was a “gross and glaring inadequacy.”¹⁹⁴ The only problem with this statement was that it was unclear whether the inadequacies referred to educational funding, or the quality of the education itself.¹⁹⁵

At the time *Nyquist* was decided, monetary disparities between the richest and poorest districts throughout the state were 46 to 1, respectively.¹⁹⁶ In Suffolk County, these disparities were a mere 17 to 1.¹⁹⁷ Almost a decade later, however, monetary disparities in Suffolk reached as high as 330 to 1.¹⁹⁸ The court found that these differences were not merely statistical; they have real life effects: deteriorating classrooms, large class sizes, and limited methods to provide remedial services.¹⁹⁹ In addition, the court expressly recognized that there are ever increasing costly mandates imposed by the state.²⁰⁰ In 1982, when *Nyquist* was decided, these mandates were not an issue; today, such mandates have an unequal and unfair impact on the poorer districts.²⁰¹ Notwithstanding these disparities, the court was unable to depart from *Nyquist* because students were receiving a “minimum standard of education.”²⁰² Thus, the court found the funding system constitutional under New York’s education article and the Equal Protection Clauses of the State and Federal Constitutions.²⁰³

194. *Id.* at 717, 578 N.Y.S.2d at 971 (quoting *Nyquist*, 57 N.Y.2d at 48, 439 N.E.2d at 369, 453 N.Y.S.2d at 653 (1982)).

195. *Id.* at 718, 578 N.Y.S.2d at 971.

196. *Id.*

197. *Id.*

198. *Id.* at 718, 578 N.Y.S.2d at 972.

199. *Id.* at 719, 578 N.Y.S.2d at 972.

200. *Id.* The State has imposed mandates without providing additional funding. *Id.* at 720, 578 N.Y.S.2d at 973. An example of such a mandate is asbestos removal. *Id.* As a result, schools are forced to finance these mandates by eliminating certain educational programs or by cutting down on its teaching personnel. *Id.*

201. *Id.*

202. *Id.* The court noted that no “minimum standard” was submitted for consideration, and further, was not even sure if a “minimum standard” existed. *Id.*

203. *Id.* at 726, 578 N.Y.S.2d at 976.

Appeal was made to the court of appeals and transferred to the appellate division, second department.²⁰⁴ The appellate division did not agree with the plaintiffs' contention that the educational finance system had changed since *Nyquist*, resulting in a "gross and glaring inadequacy."²⁰⁵ The court determined that the plaintiffs asserted only that there were disparities between rich and poor school districts.²⁰⁶ Such disparities have already been ruled constitutional by the New York Court of Appeals.²⁰⁷ Since there was no allegation that students were not receiving a "sound and basic education," the court affirmed the lower court's decision.²⁰⁸

CONCLUSION

Prior to 1989, there seemed to be little hope for efforts designed to reform school funding systems that were based primarily on tax assessments. With the recent trend in decisions, however, there remains hope that equality can be restored to education. As it stands now, in light of the Supreme Court's decision in *Rodriguez*, decisions regarding the constitutionality of school funding systems are to be decided state by state. It is time for the New York Court of Appeals to take another look at the system currently in effect in New York, and reconsider its constitutionality.

Since the *Nyquist* decision in 1982, there have been significant changes. It is evident that the "boom" of the eighties is gone forever. Instead, the nineties must be faced with a new outlook, particularly towards education. A recession looms over the nation and severe budget cuts seriously threaten the quality of education in New York. The effects of these cuts are clearly different

204. *Reform Educ. Fin. Inequities Today v. Cuomo*, 80 N.Y.2d 801, 599 N.E.2d 689, 587 N.Y.S.2d 285 (1992).

205. *Reform Educ. Fin. Inequities Today v. Cuomo*, ___ A.D.2d ___, ___, 606 N.Y.S.2d 44, 46 (2d Dep't 1993).

206. *Id.*

207. *Id.* See also *supra* notes 94-120 and accompanying text.

208. *Id.*

throughout the state, and therefore, special concerns should be given towards reformation of the current funding system.

As a start, New York should look to its neighbor state of New Jersey for guidance. If New Jersey can declare its finance system unconstitutional despite having one of the highest per capita expenditures for education in the nation, then New York may also do so. New York needs to provide a similar guarantee that equal funding will be available to all school districts to help ease the existing disparities. In addition, a reformation of educational programs must be implemented to deal with the unique problems that arise in disadvantaged districts. Too many budget cuts are forcing the elimination of certain educational programs at a time when these programs should be expanding. The leaders of this state have to realize that education is the key to our future. Learning is what develops great minds. It is essential that children receive the finest education possible so that this country will remain an intellectual world leader. To secure this status, equal educational opportunity must be provided for by each individual state. Moreover, if New York wants to remain a forerunner in education within the United States, then the opportunity to receive an equal education must become a priority, regardless of where a person resides.

*"It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."*²⁰⁹

Janine M. Sarbak

209. *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).