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districts.[41] The court recognized that a state has a legitimate interest in controlling education within its borders.[42] However, the court of appeals also determined that the plaintiffs had a cognizable cause of action under the Education Article of the New York State Constitution for the state's failure of the state to provide a "sound basic education."[43] Thus, because the United States Constitution does not contain a provision similar to the Education Article of the New York State Constitution assuring "maintenance and support of a system of free common schools, wherein all the children of [the] state may be educated,"[44] the New York State Constitution provides more protection than the Federal Constitution in the area of education.

Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo[45]
(decided June 15, 1995)

The plaintiffs, consisting of the not-for-profit organization Reform Educational Financing Inequities Today [hereinafter R.E.F.I.T.], sued on behalf of school districts, boards of education, taxpayers, parents, and students enrolled in the public schools, challenged the New York State method of public school financing, claiming that it violated the Education Article of the New York State Constitution,[46] and the Equal Protection Clauses of the New York State[47] and Federal[48] Constitutions.[49] The

41. *See supra* notes 28-29 and accompanying text.

42. *See supra* note 30 and accompanying text.

43. *See supra* notes 25-26 and accompanying text.

44. N.Y. CONST. art. XI, § 1.

45. 86 N.Y.2d 279, 655 N.E.2d 647, 631 N.Y.S.2d 551 (1995).

46. N.Y. CONST. art. XI, § 1. Article XI, § 1 provides in pertinent part: "The 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.*

47. N.Y. CONST. art. I, § 11. Article I, § 11 provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

court of appeals held that the plaintiffs' constitutional rights were not violated because they failed to show that the students in the "property-poor school districts" were not receiving their constitutionally guaranteed "sound basic education."[50] In addition, the court determined that the "desire to provide local control of education" was a rational basis for upholding the state financing scheme.[51]

The gravamen of the complaint alleged that New York's statutory school finance scheme[52] results in an unconstitutional difference in the amount spent per student in the property-rich districts in relation to property-poor districts, and that "this disparity demonstrates a gross and glaring inadequacy in the State's school financing scheme."[53] Specifically, per-pupil expenditures in the property-poor districts ranged from $7,107 in the William Floyd district to $10,573, in the Islip school district.[54] In comparison, expenditures in the property-rich districts were as high as "$43,000 per pupil, with ten [districts] over $20,000 and 39 over $10,000."[55]

Under the Cole-Rice Law,[56] which provides the foundation for the funding system that exists today, "each district is guaranteed a minimum amount of State aid per pupil based on average daily

48. U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment states in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

49. *R.E.F.I.T.*, 86 N.Y.2d at 283, 655 N.E.2d at 648, 631 N.Y.S.2d at 552.

50. *Id.* at 284-85, 655 N.E.2d at 649, 631 N.Y.S.2d at 553.

51. *Id.*

52. The school finance scheme, "based on property tax valuation" distributes state aid in the amount of $8 billion to 700 school districts through an "agglomeration of 51 different legislatively devised formulas." Reform Educ. Fin. Inequities Today v. Cuomo, 152 Misc. 2d 714, 715, 578 N.Y.S.2d 969, 970 (Sup. Ct. Nassau County 1991), *modified*, 199 A.D.2d 488, 606 N.Y.S.2d 44 (2d Dep't 1993), *modified*, 86 N.Y.2d 279, 655 N.E.2d 647, 631 N.Y.S.2d 551 (1995).

53. *R.E.F.I.T.*, 86 N.Y.2d at 283-84, 655 N.E.2d at 648, 631 N.Y.S.2d at 552.

54. *R.E.F.I.T.*, 152 Misc. 2d at 718, 578 N.Y.S.2d at 972.

55. *Id.*

56. 1925 N.Y. Laws 675.

attendance."[57] However, state aid provides less than 50 percent of the money available to the schools to spend on education.[58] The remainder of the funds come from each district's "own vastly disparate resources"[59] consisting of property taxes based on the value of real property within each district.[60] Thus, even though budget cuts in 1991 and 1992 reduced state aid to schools by $460,000,000, wealthy districts were able to maintain their level of educational services through "their richer tax base."[61] In contrast, the budget cuts had a devastating effect on the sparse programs that already existed in the poorer districts, and these districts found it "impossible to replace the millions lost from the State aid on which they rely."[62]

However, despite the disparity in per pupil spending, the plaintiffs did not plead that the students were not receiving a "sound basic education" as the basis for their claim under the Education Article of the New York State Constitution.[63] Instead, they merely asserted that the spending scheme was unconstitutional because the extreme disparity in funds each

57. *R.E.F.I.T.*, 152 Misc. 2d at 720, 578 N.Y.S.2d at 973.

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

59. *Id.* (quoting the defendant's answer).

60. *Id.* at 720, 578 N.Y.S.2d at 973.

61. *Id.* at 721-22, 578 N.Y.S.2d at 974.

62. *Id.* at 722, 578 N.Y.S.2d at 974. The tax rates in four of the plaintiff districts, Middle Country, William Floyd, Brentwood, and Central Islip, are among New York State's six highest tax rates. *Id.* at 719, 578 N.Y.S.2d at 972. In addition, at a valuation of $101.50 per $1,000, William Floyd, which is the poorest district in Suffolk County, has "the highest wealth-adjusted [tax] rate" in New York. *Id.* The impact of the disparate resources can be seen in the William Floyd and Roosevelt districts. In William Floyd, "40% of its 9,500 students" are crowded into "rapidly deteriorating portable classrooms." *Id.* In Roosevelt, the "pupil-teacher ratios [are] double those of other districts." *Id.* Moreover, the property-poor districts have been compelled to pay for state mandated programs such as asbestos removal "by cutting funds from operating budgets reducing teaching and other staff, eliminating educational programming, [and] making other sacrifices detrimental to their educational mission." *Id.* at 720, 578 N.Y.S.2d at 973.

63. *R.E.F.I.T.*, 86 N.Y.2d at 283, 655 N.E.2d at 648, 631 N.Y.S.2d at 552.

district had made the scheme inadequate.[64] The court of appeals, in *R.E.F.I.T.*, relied on the reasoning of *Levittown Union Free School District v. Nyquist*,[65] and stated that the Education Article does not require that "all educational facilities and services be substantially equal throughout the State" but only requires that the legislature "provide a State system of free schools availing all of the State's children of a 'sound basic education.'"[66]

In *Levittown*, the plaintiffs, including the boards of education of property-poor school districts, alleged that the school finance scheme of New York, based largely on property tax, was unconstitutional because it resulted in "grossly disparate financial support" which leads to "grossly disparate educational opportunities."[67] As in *R.E.F.I.T.*, the court of appeals in *Levittown* held that such disparities, attributable to "[t]he present amalgam of statutory prescriptions for State aid to local school districts . . . does not violate the equal protection clause of either the Federal or the State Constitution nor is it unconstitutional under the education article."[68]

In evaluating the federal equal protection claim, the *Levittown* court followed the reasoning of the United States Supreme Court in *San Antonio School District v. Rodriguez*,[69] where a similar

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64. *Id.* at 283-84, 655 N.E.2d at 648, 631 N.Y.S.2d at 552.

65. 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982).

66. *R.E.F.I.T.*, 86 N.Y.2d at 283, 655 N.E.2d at 648, 631 N.Y.S.2d at 552 (quoting *Levittown*, 57 N.Y.2d at 48, 439 N.E.2d at 369, 453 N.Y.S.2d at 653).

67. *Levittown*, 57 N.Y.2d at 35-36, 439 N.E.2d at 361-62, 453 N.Y.S.2d at 646.

68. *Id.* at 35, 439 N.E.2d at 361, 453 N.Y.S.2d at 645.

69. 411 U.S. 1 (1973). In *Rodriguez*, the parents of minority school children in San Antonio, Texas, instituted a class-action suit on behalf of all poor and minority children throughout Texas, seeking to declare the Texas school finance system unconstitutional. *Id.* at 5-6. The Court held that the Texas school finance system, funded through local property taxation, did not violate the Fourteenth Amendment Equal Protection Clause. *Id.* In addition, the Court did not depart from the "usual" rational basis standard "for reviewing a State's social and economic legislation" stating that "[e]ducation, of course, is not among the rights afforded *explicit* protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." *Id.* at 35 (emphasis added). The New York Court of Appeals,

claim was examined but disregarded.[70] The court of appeals determined that under the rational basis standard, which was to be applied in New York as it had been in Texas in *Rodriguez*,[71] the current school finance scheme bore a rational relation to the legitimate purpose of the state to "encourage[] . . . participation in and control of public schools at the local district level."[72]

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however, could have distinguished *Rodriguez* in light of the fact that Article XI, Section 1 of the New York State Constitution does afford *explicit* protection for the right to education. Even without this explicit protection, the reasoning employed by the United States Supreme Court in *Rodriguez* and the New York Court of Appeals in *Levittown* is not aloof of skepticism. It has been persuasively argued that implied fundamental rights under an equal protection analysis are those rights which are necessary to the preservation of all other rights and, as such, education is certainly a fundamental right. For example, consider Justice Brennan's opinion for the Court in *Plyler v. Doe*, 457 U.S. 202 (1982):

> Public education is not a "right" granted to individuals by the Constitution. But neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction . . . . We have recognized "the public schools as a most vital civic institution for the preservation of a democratic system of government," and as the primary vehicle for transmitting "the values on which our society rests." "As . . . pointed out early in our history . . . some degree of education is necessary to prepare citizens to participate effectively and intelligently in our political system if we are to preserve freedom and independence." And these historic "perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observation of social scientists." In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society.

Id. at 221 (citations omitted).

70. *Levittown*, 57 N.Y.2d at 40-41, 439 N.E.2d at 364, 453 N.Y.S.2d at 649.

71. Although the New York scheme was not reviewed in *Rodriguez*, the Supreme Court recognized that "the Texas system is comparable to the systems employed in virtually every other State." *Rodriguez*, 411 U.S. at 47-48 (footnote omitted).

72. *Levittown*, 57 N.Y.2d at 41, 439 N.E.2d at 365, 453 N.Y.S.2d at 649 (citing *Rodriguez*, 411 U.S. at 49).

Therefore, the court held that "disparities in per pupil expenditures, resulting largely from differences in the value of assessable property . . . coupled with a failure by the State to offset such disparities" does not constitute a federal equal protection violation.[73]

Similarly, the *Levittown* court employed the rational basis standard to review and dismiss the state equal protection claim.[74] Under the rational basis test, the court found the same reasonable relation between the present school finance scheme and the state's legitimate interest of "the preservation and promotion of local control of education" as was found in the federal claim.[75] The court reasoned that a system which allows "the taxpayers of many districts to pay for and to provide *enriched* educational services and facilities beyond what the basic per pupil expenditure figures will permit" is justified under *Rodriguez*. [76]

In addition, the court in *Levittown* dismissed the claim that the finance scheme violates the Education Article of the New York State Constitution because the constitutional language "makes no reference to any requirement that the education to be made available be equal or substantially equivalent in every district."[77] In addition, the court examined the other documentary proof relating to the adoption of the Education Article in 1894 and found nothing in it to support the conclusion that the legislature intended "all educational facilities and services [to] be equal throughout the State."[78] Moreover, the enactment of the Education Article "mandated only that the Legislature provide for maintenance and support of a system of free schools in order that an education might be available to all the State's children."[79] Furthermore, the court declared that "the term education . . . connote[s] a *sound basic education*," and that requirement was met given that the "average per pupil

73. *Id.* at 40-41, 439 N.E.2d at 364, 453 N.Y.S.2d at 648-49.
74. *Id.* at 43, 439 N.E.2d at 365, 453 N.Y.S.2d at 650.
75. *Id.* at 44, 439 N.E.2d at 366, 453 N.Y.S.2d at 651.
76. *Id.* at 45, 439 N.E.2d at 367, 453 N.Y.S.2d at 651 (emphasis added).
77. *Id.* at 47, 439 N.E.2d at 368, 453 N.Y.S.2d at 652. *See supra* note 47.
78. *Id.* at 47, 439 N.E.2d at 368, 453 N.Y.S.2d at 653.
79. *Id.* at 47-48, 439 N.E.2d at 368, 453 N.Y.S.2d at 653.

expenditure exceeds that in all other States but two."[80] The court concluded its analysis of the education claim by stating that it refused to overturn legislative funding decisions, but might intervene if a "gross and glaring inadequacy" in the funding system could be shown.[81]

The New York Court of Appeals in *R.E.F.I.T.*, relying on the analysis and reasoning in *Levittown*, did not find a "'gross and glaring inadequacy'" and stated that an allegation of "extreme disparity" was not sufficient to make out a valid claim under the Education Article.[82] In addition, the court reviewed the history of the Education Article and found that its purpose was "to impose on [the Legislature] the absolute duty to provide a general system of common schools" and not "to preclude disparities in the funding for education."[83] Therefore, because the New York State Constitution only guarantees a "sound basic education" and because the plaintiffs did not plead that the students were receiving anything less than that, the court dismissed the Education Article claim.[84] Moreover, the court dismissed the plaintiffs' state and federal equal protection claims because they did not present any basis, either factual or legal, that would convince the court to overrule *Levittown* and held that the "desire to provide local control of education" provides a rational basis for the current funding system.[85]

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80. *Id.* at 48, 439 N.E.2d at 369, 453 N.Y.S.2d at 653 (emphasis added).

81. *Id.* at 48-49, 439 N.E.2d at 369, 453 N.Y.S.2d at 653.

82. *R.E.F.I.T.*, 86 N.Y.2d at 284, 655 N.E.2d at 648, 631 N.Y.S.2d at 552 (citation omitted).

83. *Id.* (quoting 3 CHARLES Z. LINCOLN, THE CONSTITUTIONAL HISTORY OF NEW YORK 554 (1994)). *See also* Judd v. Board of Educ. of Union Free Sch. Dist. No. 2, 278 N.Y. 200, 207, 15 N.E.2d 576, 580 (1938) (stating that in adopting the state common school system of education, the "cost of construction . . . and the funds necessary for their maintenance and in aid of education therein are provided by taxation by the localities in which the schools are located *and* by the State out of . . . public funds") (emphasis added), *overruled on other grounds*, Board of Educ. v. Allen, 20 N.Y.2d 109, 228 N.E.2d 791, 281 N.Y.S.2d 799 (1967), *aff'd*, 392 U.S. 236 (1968).

84. *R.E.F.I.T.*, 86 N.Y.2d at 285, 655 N.E.2d at 649, 631 N.Y.S.2d at 553.

85. *Id.*

In conclusion, in order for a plaintiff to succesfully challenge New York's school financing scheme under either the Federal or New York State Equal Protection Clauses, a level of scrutiny higher than rational basis must be adopted by the court.[86] In order to successfully challenge the financing scheme under the Education Article, a plaintiff must show "a gross and glaring inadequacy" in the funding of education which can be evidenced by a factual argument that the children are receiving less than a "sound basic education."[87] Absent such a showing, the New York State school funding system will not be deemed unconstitutional.[88]

86. *Id.*

87. *Id.* at 284, 655 N.E.2d at 648, 631 N.Y.S.2d at 552.

88. *Id.* at 285, 655 N.E.2d at 649, 631 N.Y.S.2d at 553. In holding that the finance scheme was not unconstitutional, the court modified the "broad and definitive declaration" of the appellate division which held that the system was constitutional. *Id. See* Reform Educ. Fin. Inequities Today v. Cuomo, 199 A.D.2d 488, 606 N.Y.S.2d 44 (2d Dep't 1993), *modified*, 86 N.Y.2d 279, 655 N.E.2d 647, 631 N.Y.S.2d 551 (1995). In addition, two other cases which sought to declare the New York State school financing system unconstitutional were decided on that same day as *R.E.F.I.T. See* City of New York v. State of New York, 86 N.Y.2d 286, 289, 295, 655 N.E.2d 649, 650, 654, 631 N.Y.S.2d 553, 554, 558 (1995) (dismissing the complaint because the municipal plaintiffs, including New York City, its Board of Education, the Mayor, and the Chancellor, lacked the legal capacity to sue the state); Campaign for Fiscal Equity, Inc. v. State of New York, 86 N.Y.2d 307, 319, 655 N.E.2d 661, 667, 631 N.Y.S.2d 565, 571 (1995) (holding that the plaintiffs' claim under the Education Article, based on the failure to provide a sound basic education to the children in New York City school districts, stated a cognizable cause of action at the pleading stage).