Financing Education in Minnesota: Equity and Constitutionality Questions Raised by State Referendum Levy

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Introduction

The equity and constitutionality of Minnesota's public school financing system for elementary and secondary students has once again been brought to the judicial forefront. In October of 1988, eleven percent of Minnesota's school districts,[1] which enroll approximately one quarter of Minnesota's public school students,[2] filed a lawsuit challenging the constitutionality of the current Minnesota school financing plan.[3] This comes more than eighteen

1. Star Tribune, Oct. 5, 1988, at 1B.

2. Star Tribune, Oct. 20, 1988, at 1A.

3. Skeen v. Minnesota, No. C7-88-1954 (Wright Co. Dist. Ct. Minn. filed Oct. 4, 1988). Full listing of Complaint's parties follows:

Sheridan and Dianna Skeen, for themselves and as parents of their minor children, Sarah Skeen and Christopher Skeen; John and Madeline Novak, for themselves and as parents of their minor children, Jill Novak, Andrew Novak, and Heather Novak; Ronald and Linda Rodgers, for themselves and as parents of their minor children, Ryan Rodgers and Brennan Rodgers; James and Sandra Tool, for themselves and as parents of their minor children, Jenny Tool and Ryan Tool; Vincent and Joyce Neumann, for themselves and as parents of their minor children, Matthew Neumann and Meridith Neumann; Albert Lea Independent School District No. 241; Alexandria Independent School District No. 206; Anoka Hennepin Independent School District No. 11; Big Lake Independent School District No. 727; Braham Independent School District No. 3141; Buffalo Independent School District No. 877; Cambridge-Isanti Independent School District No. 877; Chisago Lakes Independent School District No. 141; Cold Spring Independent School District No. 750; Dassel-Cokato Independent School District No. 466; Delano Independent School District No. 879; Detroit Lakes Independent School District No. 22; Eden Prairie Independent School District No. 272; Eden Valley-Watkins Independent School District No. 463; Elk River Independent School District No. 728; Faribault Independent School District No. 656; Forest Lake Independent School District No. 831; Glencoe Independent School District No. 422; Hutchinson Independent School District No. 423; Jordan Independent School District No. 727; Lakeville Independent School District No. 194; LeSueur Independent School District No. 393; Litchfield Independent School District No. 465; Maple Lake Independent School District No. 912; Monticello Independent School District No. 882; Mora Independent School District No. 332; New London-Spicer Independent School District No. 345; New Prague Independent School District No. 138; Northfield Independent School District No. 659; Norwood-Young America Independent School District No. 108; Ogilvie Independent School District No. 333; Osseo Independent School District No. 279; Pine City Independent School District No. 578; Princeton Independent School District No. 477; Prior Lake Independent School District No. 719; Rockford Independent School District No. 883; Rosseau Independent School District No. 682; Rosemount Independent School District No. 196; Rush City Independent School District No. 139; St. Francis Independent School District No. 15; St. Michael-Albertville Independent

years after the only modern constitutional challenge to Minnesota's financing scheme,[4] and presents the Minnesota courts with a challenge to interpret the substantive reach of Minnesota's constitutional protection for education and to establish judicial standards for review of the legislature's educational financing plans.

This article addresses the equity and constitutionality of Minnesota's school financing plan. It argues that the Minnesota Constitution establishes a right to equality of educational opportunity and, therefore, requires the state to maintain a system of financing substantially free of wealth-based disparity and program inequality. Part I summarizes the history of both state and federal constitutional challenges to state education financing systems. Part II discusses the history of school financing in Minnesota and explains how the current Minnesota school financing system functions. Part III illustrates the inequity of Minnesota's present financing system. Part IV concludes that the current Minnesota school financing system is unconstitutional. Finally, Part V presents a proposal to eliminate the inequity and unconstitutionality of the current financing system.

School District No. 885; St. Peter Independent School District No. 508; Sauk Rapids Independent School District No. 47; Waseca Independent School District No. 829; Watertown-Mayer Independent School District No. 111; Winona Independent School District No. 861,

Plaintiffs,

v.

State of Minnesota; Ruth E. Randall, in her official capacity as the Commissioner of Education for the State of Minnesota; and the Minnesota State Board of Education,

Defendants.

The school districts suing the State represent middle class districts and not the less wealthy districts, which are usually found in lawsuits of this type.

There are three specific allegations of the Complaint which need to be highlighted. First, while the complaint addresses a number of inequities in the state's school financing system, its primary contention is that the state's referendum levy leaves school financing subject to the disparity of district taxable property wealth. The plaintiffs allege a strong correlation between funding and property wealth, citing the increased difficulty of a less wealthy property district to pass a referendum levy and the greater burden these communities face in order to raise equivalent revenues through referenda. As a result, plaintiffs point to "less educational opportunity and lower quality education than students in wealthier school districts in Minnesota," Complaint at 16, and foresee a lifetime of "relative disadvantage." *Id.*

Second, the Complaint claims that the funding disparity based on taxable property wealth is neither "necessary to achieve any compelling state interest, nor does it bear a rational relationship to any legitimate state interest." Complaint at 16-17.

Third, the plaintiffs conclude that the funding plan is in violation of the education uniformity clause of the Minnesota Constitution and is "not thorough and efficient as required by article XIII section 1 of the constitution." Complaint at 22. Finally, as education is a "fundamental right of [Minnesota's] citizenship," Complaint at 8, plaintiffs allege that they are denied "equal protection of the law in violation of the constitution of the State of Minnesota." Complaint at 22.

4. Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971).

I. History of Constitutional Challenges to State School Financing Systems

A. Federal Basis of Judicial Intervention in Education

The courts have traditionally been very active in the education arena.[5] Prior to *San Antonio Independent School District v. Rodriguez*,[6] federal and state court decisions,[7] most notably *Serrano v. Priest I*,[8] followed what appeared to be the Supreme Court's lead in the area and protected educational rights under the aegis of the fourteenth amendment.[9] The Supreme Court's decision in *Rodriguez*, however, marked a severe blow to reform advo-

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5. Percey Burrup, Vern Brimley & Rulon Farfield, Financing Education in a Climate of Change 242-43 (1988). Most notable is the United States Supreme Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954), which effectively rid public education of the shackles of the "separate but equal" doctrine.

6. 411 U.S. 1 (1973) (Supreme Court's 5-4 decision upheld the constitutionality of the Texas school financing system against a fourteenth amendment equal protection challenge).

7. *See, e.g.*, Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Milliken v. Green, 389 Mich. 1, 203 N.W.2d 457 (1972); Robinson v. Cahill I, 118 N.J. Super. 223, 287 A.2d 187, *vacated*, 119 N.J. Super. 40, 289 A.2d 569 (1973); Sweetwater City Planning Comm'n for the Org. of School Dists. v. Hinkle, 491 P.2d 1234 (Wyo. 1971), *juris. relinquished*, 493 P.2d 1050 (Wyo. 1972).

8. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). *Serrano I* was a landmark case in school financing litigation for several reasons. First, it was the first successful constitutional challenge to school financing disparities, pursuing its claim on the federal constitution's fourteenth amendment equal protection provision. Second, it judicially established principles popularized by John Coones, William Clunes III and Stephen Sugarman. In their book Private Wealth and Public Education (1971), the authors argue that the quality of education within a state should not be a function of wealth, race or geography, and that equal tax effort should generate substantially equal revenues in all school districts. This concept has come to be known as the "Serrano Principle." John Coones, William Clunes III, & Stephen Sugarman, Private Wealth and Public Education 5 (1971). Third, *Serrano I* was concerned with differences in ability to pay, not necessarily in the size of the tax differences. *Serrano I*, 5 Cal. 3d at 601, 487 P.2d at 1252-53, 96 Cal. Rptr. at 613. Fourth and finally, *Serrano I* held education to be a fundamental right requiring any significant spending disparity to withstand "strict scrutiny." *Id.* at 604-10, 487 P.2d at 1255-59, 96 Cal. Rptr. at 615-19.

9. Initially, the federal judiciary seemed poised to extend its involvement to questions of equality of educational opportunity under the federal constitution's equal protection guarantee. *See* Annette B. Johnson, *State Court Intervention in School Finance Reform*, 28 Clev. St. L. Rev. 325, 331-32 (1979):

> Prior to *Rodriguez* [San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973)], school finance reformers had observed the willingness of the Warren Court to extend the scope of equal protection to classifications based on wealth in prisoners' rights and voting cases. There was also recognition of constitutionally protected fundamental rights that were not explicitly guaranteed in the Constitution. The nation as a whole had observed the particular protection afforded education by the federal courts. Since the decision of *Brown v. Board of Education* in 1954, there had been frequent judicial intervention in local decisions with the Court accepting jurisdiction to administer reforms directly, ordering redistribution of teachers as well as pupils, monitoring

cates. In *Rodriguez*, the Court upheld a clearly inequitable education financing system[10] and foreclosed the use of the federal constitution's equal protection provision in school finance litigation.[11]

The decision, however, did not preclude similar litigation under state constitutional protections and has merely shifted the question back to the state courts. The *Rodriguez* opinion provided numerous avenues for advocates of school finance reform in state courts. First, the Court's explanation that education was not considered fundamental because it was not "explicitly or implicitly guaranteed by the Constitution"[12] has, by negative implication, been cited by courts as suggesting that state constitutions which contain explicit protections for education should consider education to be a fundamental right.[13] Second, the Court's suggestion that additional evidence of actual injury and a clearer cause and

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> student-teacher ratios with respect to race and teacher experience, and enjoining school closings

Id. (citation omitted).

10. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 7-10 (1973) (district court's analysis of program inequality); *id.* at 17 ("State candidly admits that 'no one familiar with the Texas system would contend that it has yet achieved perfection' "); *id.* at 55-56 (Supreme Court's implicit acknowledgment of the inequalities of the financing system). The Supreme Court was reacting to a system which was structured in the following way:

> The Texas system was a modified foundation program that required each district to contribute a percentage of the minimum guarantee, based on a formula that took into account revenue raising ability of the district. Because of disparities in the value of district property, however, the Edgewood school district, taxing itself at a rate of $1.05 per $100 of assessed property, could raise only $26 per pupil above its contribution to the local fund assignment for total available state and local educational expenditure of $248 per pupil. This amount was supplemented by $108 in federal funds for a total per pupil expenditure of $248 per pupil. This amount was supplemented by $108 in federal funds for a total per pupil expenditure of $356. By contrast, the Alamo Heights district, taxing itself at the rate of .85 per $100 of valuation, yielded $333 per pupil over and above its contribution to the Foundation Program, leaving it with $558 per pupil after the state support from the Foundation Program was added. It also received $36 per pupil from federal sources for a total expenditure of $594 per pupil.

Johnson, *supra* note 9, at 333 n.26.

11. The Court's majority held that there was no federal constitutionally guaranteed right to education. *Rodriguez*, 411 U.S. at 35. The Court rejected extending "strict scrutiny" constitutional protection to pupils or taxpayers on the basis of wealth discrimination. *Id.* at 19-29. The Court also rejected the argument based on education's nexus to full and intelligent exercise of first amendment rights. *Id.* at 35.

12. *Id.* at 33-34.

13. The Court's language has been referred to by advocates of finance reform and by later state court decisions as the "*Rodriguez* test" of fundamentality. *See, e.g.*, Serrano v. Priest II, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976), *cert. denied*, 432 U.S. 907 (1977); Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977);

effect relationship between education expenditures and student achievements will lead to greater potential success for reform advocates[14] has led many to believe that further documentation is the key to successfully establishing state constitutional protections for education funding inequalities.[15] Third, the Court was careful to premise its restraint on the control state and local districts have traditionally exerted over school financing.[16] Fourth, the Court clearly enunciated the vital importance of education in a free, democratic society and the apparent need for "reform in tax systems which may well have relied too long and too heavily on the local property tax."[17] The latter two factors emphasize the narrowness of the Court's holding on the federal constitutional protections, keeping open such challenges under state constitutional protections. The Court's delivery of the issue of school financing to state courts has been further reinforced by its repeated refusal to hear subsequent education cases.[18]

B. State Basis of Judicial Intervention in Education Financing

The state court rulings immediately following *Rodriguez* were predictably negative for school financing reform advocates.[19]

Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979); Washakie Co. School Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824 (1981).

A number of states have considered and rejected the notion that education is a fundamental right under their respective state constitutions' education provisions. *See* Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 458 A.2d 758 (1983); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1983); Board of Educ., Levittown, v. Nyquist, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982); McDaniel v. Thomas, 248 Ga. 632, 285 S.E.2d 156 (1981); Board of Educ. v. Walter, 58 Ohio St. 2d 368, 390 N.E.2d 813 (1979), *cert. denied*, 444 U.S. 1015 (1980); Olsen v. State, 276 Or. 9, 554 P.2d 139 (1976); Thompson v. Engeking, 96 Idaho 793, 537 P.2d 635 (1975); Milliken v. Green, 390 Mich. 389, 212 N.W.2d 711 (1973).

14. *Rodriguez*, 411 U.S. at 20-27 (discussing the necessary conditions required for greater protection, e.g., statistical support of the disproportionate burden, *id.* at 22-23, a showing of absolute deprivation, *id.* at 20, a definable category of "poor" people adversely affected, *id.* at 25, and comparative wealth discrimination, *id.* at 27).

15. *See, e.g.*, Gershon M. Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 Tex. L. Rev. 777, 830-35 nn.225-62 (1985).

16. *Rodriguez*, 411 U.S. at 40-41.

17. *Id.* at 29-30.

18. Burrup, Brimley & Farfield, *supra* note 5, at 253.

19. Note, *Developments in State Constitutions*, 95 Harv. L. Rev. 1324, 1459-62 (1982):

> Judicial invalidation of legislation must be justified by a belief that the legislature has infringed upon an important personal right. But state judges find it difficult to label rights "fundamental" without simultaneously maintaining that such rights should be generally applicable throughout the United States. Therefore, when redressing constitutional wrongs state courts prefer to speak in the language of the fed-

Many state courts interpreted their state constitutions' equal protection provisions as co-extensive with the federal constitution, and thus summarily rejected the state equal protection challenges.[20] This was not surprising given state courts' overwhelming tendencies in privacy and education cases to find state-specific factors—state constitutional text or history—to be insufficient authority for development of a state fundamental right.[21] The Warren and early Burger Courts' expansion of federal constitutional protections reinforced the tendency of state courts to rely on federal law and federal courts for their interpretation of state constitutional protections.[22] It is noteworthy, however, that even in the wake of *Rodriguez*, state courts remained adamant about their right and authority under their state constitutions to review the school financing plans of their respective legislatures.[23]

In the 1970s, the state courts accepted the Burger Court's challenge to develop their own body of state freedoms, asserting that state constitutional protections for education could extend beyond the federal constitutional protections.[24] Since *Rodriguez*, twenty-four state courts have considered the constitutionality of their school finance systems and have found them unconstitutional.[25] Most noteworthy is the recent Texas Supreme Court's

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eral Constitution. Influencing the development of national norms thus becomes the central concern of state constitutional interpretation; reliance on state grounds is accordingly seen as a last resort.

Id. (citations omitted).

20. *See, e.g.*, Shofstall v. Hollings, 110 Ariz. 88, 515 P.2d 590 (1973) (Arizona Supreme Court found education to be a fundamental right but applied a rational basis test to evaluate the legislative financing plan and thus upheld the constitutionality of the state's plan); Milliken v. Green, 390 Mich. 389, 212 N.W.2d 711 (1973) (vacated earlier decision which had declared the state's school financing system unconstitutional); Northshore School Dist. No. 417 v. Kinnear, 84 Wash. 2d 685, 530 P.2d 178 (1974) (system upheld as a valid exercise of legislative power); Thompson v. Engelking, 96 Idaho 793, 537 P.2d 635 (1975) (upheld constitutionality of school financing which relied heavily upon local property taxes and created unequal expenditures per pupil; education was not found to be a fundamental right); Olsen v. State, 276 Or. 9, 554 P.2d 139 (1976) (inequality of financing system due to reliance on property taxes justified by local control and the availability of alternative financing).

21. *See* Note, *supra* note 19, at 1459-61.

22. *Id.* at 1460; *see also* Johnson, *supra* note 9.

23. *See* Serrano v. Priest II, 18 Cal. 2d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976), *cert. denied*, 432 U.S. 907 (1977); Northshore School Dist. No. 417 v. Kinnear, 84 Wash. 2d 685, 530 P.2d 178 (1974).

24. *See, e.g.*, Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977); Serrano v. Priest II, 18 Cal. 2d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976); Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978).

25. Dupre v. Alma School Dist. No. 30, 279 Ark. 340, 651 S.W.2d 90 (1983); Serrano v. Priest I, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971); Rose v. Council for Better Educ., No. 88-SC-804-T6 (Ky. June 8, 1989) (Westlaw, state case law database); Helena Elementary School Dist. No. 1 v. State, 769 P.2d 684 (Mont. 1989);

ruling that the state's method of school financing is unconstitutional.[26] Though addressing many of the same ills and inequities the *Rodriguez* Court found unprotected under the federal constitution, the Texas court in a 9-0 decision struck down the financing system of the nation's second largest school system as violative of the state's constitutional requirement for an "efficient" educational system.[27] Besides the Minnesota challenge, there are five other states with similar cases pending. Four of the states are hearing challenges for the first time.[28] Reform through state court litigation has been established as a viable avenue for change.

This development has not been uniform.[29] Two questions have been fundamental to state court resolution of each decision. First, whether the state's funding formula satisfies the state constitution's education provision. Second, whether the state's funding formula violates the state's constitutional guarantee of equal protection, particularly given the greater emphasis accorded education by the state's explicit education provisions. An affirmative answer to either inquiry typically subjects the state financing plan to strict scrutiny.[30]

C. State Constitution Education Provision Argument

The states created the public school systems and have plenary power over them.[31] Indeed, the duty to educate is "paramount" to the state's function.[32] Unlike the federal constitution, the constitutions of forty-eight of the fifty states provide explicit

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Robinson v. Cahill II, 62 N.J. 473, 303 A.2d 273 (1973), *cert. denied*, 414 U.S. 976 (1973); Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 585 P.2d 71 (1978); Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979); Washakie County School Dist. No. 1 v. Huschler, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824 (1980); Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977).

26. Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989).

27. *Id.*

28. Alaska, North Dakota, Oregon, Tennesee (initial hearings) and New Jersey (rehearing). Susan Tifft, *The Big Shift in School Finance*, Time, Oct. 16, 1989, at 48.

29. One commentary describes it as: "a series of unrelated ad hoc decisions which reflect the bias of the state's population toward reform rather than a uniform trend based on objective legal reasoning or criteria." Johnson, *supra* note 9, at 337.

30. *Id.*

31. Ratner, *supra* note 15, at 814-15.

32. Plyer v. Doe, 457 U.S. 202, 222 (1982) ("Today, education is perhaps the most important function of state and local governments." (quoting Brown v. Board of Educ., 347 U.S. 483, 493 (1954)); *see also*, Seattle School Dist. No. 1, 90 Wash. 2d 476, 511, 585 P.2d 71, 90 (1979) (" 'Paramount' is not a mere synonym for 'important.' Rather, it means superior in rank, above all others, chief, preeminent, supreme, and in fact dominant.").

protection for education.[33] The education provisions vary greatly,[34] but each education clause imposes upon the state a constitutional duty to provide the level of education which its constitution dictates, and to do so by meeting the obligation itself or by delegating the duty to local districts, subject to legislative direction and supervision.[35] While states clearly have an explicit duty to provide for education, what level of education is required is unclear. Implicit in this inquiry is what "qualitative standard"[36] is appropriate to evaluate the legislature's performance of its duty to educate.

In *Robinson v. Cahill II*,[37] *Seattle School District No. 1 v. State of Washington*[38] and *Edgewood Independent School District v. Kirby*,[39] three state supreme courts found their states' school financing plans to be incongruous with their own constitutions' education provisions. In *Robinson II*, the New Jersey Supreme Court concluded its state school financing system violated the education clause of the New Jersey Constitution which required a "thorough

33. *See* Alaska Const. art. VII, § 1; Ariz. Const. art. XI, § 1; Ark. Const. art. XIV, § 1; Cal. Const. art. IX, § 1; Colo. Const. art. IX, § 2; Conn. Const. art. VIII, § 1; Del. Const. art. X, § 1; Fla. Const. art. IX, § 1; Ga. Const. art. VIII, § 1; Haw. Const. art. X, § 1; Idaho Const. art. IX, § 1; Ill. Const. art. X, § 1; Ind. Const. art. VIII, § 1; Iowa Const. art. IX, § 2; Kan. Const. art. VI, § 1; Ky. Const. art. VI, § 183; La. Const. art. VIII, § 1; Me. Const. art. VIII, § 1; Md. Const. art. VIII, § 1; Mass. Const. pt. 2, ch. 5, § 2; Mich. Const. art. VIII, § 2; Minn. Const. art. XIII, § 1; Mo. Const. art. IX, § 1(a); Mont. Const. art. X, § 1; Neb. Const. art. VII, § 1; Nev. Const. art. XI, § 2; N.H. Const. pt. 2, art. 83; N.J. Const. art. VIII, § 4; N.M. Const. art. XII, § 1; N.Y. Const. art. XI, § 1; N.C. Const. art. IX, § 2; N.D. Const. art. VIII, § 1; Ohio Const. art. VI, § 3; Okla. Const. art. XIII, § 1; Or. Const. art. VIII, § 3; Pa. Const. art. III, § 14; R.I. Const. art. XII, § 1; S.C. Const. art. XI, § 3; S.D. Const. art. VIII, § 1; Tenn. Const. art. XI, § 12; Tex. Const. art. VII, § 1; Utah Const. art. X, § 1; Vt. Const. ch. 2, § 68; Va. Const. art. VIII, § 1; Wash. Const. art. IX, §§ 1, 2; W. Va. Const. art. XII, § 1; Wis. Const. art. X, § 3; Wyo. Const. art. VII, § 1.

34. For example, the Connecticut Constitution is general: "There shall always be free public elementary and secondary schools in the state." Conn. Const. art. III, § 1. The Washington Constitution, however, is very specific: "[I]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders," Wash. Const. art. IX, § 1, and it is the duty of the legislature to "provide for a general and uniform system of public schools." *Id.* at art. IX, § 2.

35. *See, e.g.*, Robinson v. Cahill II, 62 N.J. 473, 513, 303 A.2d 273, 293-97 (1973), *cert. denied*, 414 U.S. 976 (1975):

> If the State chooses to assign its obligation [to educate] under the 1975 amendment to local government, the State must do so by a plan which will fulfill the State's continuing obligation. To that end the State must define in some discernible way the educational obligation and must *compel* the local school districts to raise the money necessary to provide that opportunity.

Id. (emphasis in original); *see also* Ratner, *supra* note 15, at 814-15 n.139.

36. *See infra* notes 123-137 and accompanying text.

37. 62 N.J. 473, 303 A.2d 273 (1973).

38. 90 Wash. 2d 476, 585 P.2d 71 (1978).

39. 777 S.W.2d 391 (Tex. 1989).

and efficient system of free public schools."[40] The court has subsequently construed the "thorough and efficient" clause to require equal educational opportunity.[41] In striking the financing system, the court cited the state's reliance upon inherently unequal local taxation.[42] In *Seattle School District No. 1*, the Washington Supreme Court rejected the state's school financing system because it relied upon discretionary local districts' levies to raise revenues.[43] The court found the current system violated the Washington Constitution's requirement of "regular and dependable sources" of funds for public education.[44]

In *Edgewood*, the Texas Supreme Court unequivocally struck the entire framework of the state's school financing plan due to the system's reliance upon unequal taxable property wealth.[45] Relying upon the original intent of the state constitutional parameters in mandatory and "efficient" school systems, the court interpreted the education clause to require equality of educational opportunity.[46]

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40. Robinson v. Cahill II, 62 N.J. 473, 508, 303 A.2d 273, 291 (1978)(quoting N.J. Const. art IV, § 7, ¶ 6). The court defined "thorough and efficient" as requiring the state to provide "[the] educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market." *Id.*

41. Robinson v. Cahill V, 67 N.J. 333, 339 A.2d 193 (1975), *reprinted in corrected form in* 69 N.J. 133, 351 A.2d 713 (1975).

42. *Id.* ("[O]ne difficulty with the design for local fiscal responsibility is that the tax base to which the school districts are remitted is already overloaded, particularly in the major cities, by the other demands for local service."); *see also infra* notes 161-179 and accompanying text.

43. *Seattle School Dist. No. 1*, 90 Wash. 2d 476, 524, 585 P.2d 71, 98 (A failure by voters to approve excess levies in their districts left 40% of students within the state in need of more revenue.).

44. The Washington Supreme Court interpreted article IX, section 1 of the Washington Constitution, which provides that "[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders," as requiring "regular and dependable sources" of sufficient funds. The court stated:

> [T]he levy system's instability is demonstrated by the special excess levy's dependence upon the assessed valuation of taxable real property, within a district. Some districts have substantially higher real property valuations than others thus making it easier for them to raise funds. Such variations provide neither a dependable nor regular source of revenue for meeting the state's obligation.

Seattle School Dist. No. 1, 90 Wash. 2d at 528, 585 P.2d at 98-99.

45. 777 S.W.2d 391 397 (Tex. 1989).

46. *Id.* at 396-97.

> In addition to specific comments in the constitutional debates, the structure of school finance at the time indicates that such gross disparities were not contemplated. Apart from cities, there was no district structure for schools nor any authority to tax locally for school purposes under the constitution of 1876. The 1876 Constitution provided a structure whereby the burdens of school taxation fell equally and uniformly across the state, and each student in the state was entitled to

Other state courts have not interpreted their constitutions' education provisions so expansively.[47] The vague constitutional language of most education clauses have been interpreted as requiring merely an "adequate" or "minimal" or "minimally adequate" education.[48] Other state courts have emphasized that school financing is a legislative function and have granted deference to their state legislatures' financing plans.[49] Finally, some state courts have interpreted their state education clauses as only mandating that school financing not be left to the complete discretion of local districts.[50]

These courts have been criticized for failing to define a minimum standard for education financing or to provide constitutional parameters within which their state legislatures must create their

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> exactly the same distribution of funds. The state's school fund was initially apportioned strictly on a per capita basis. We conclude that, in mandating "efficiency," the constitutional framers and ratifiers did not intend a system with such vast disparities as now exist. . . . The present system . . . provides not for a diffusion that is general, but for one that is limited and unbalanced. The resultant inequalities are thus directly contrary to the constitutional vision of efficiency.

Id. at 396 (citations omitted).

47. In fact, most legislative financing plans have been upheld. *See* Danson v. Casey, 484 Pa. 415, 424-25, 399 A.2d 360, 365 (1979) ("thorough and efficient" education clause required an adequate or minimum education); Board of Educ. v. Walter, 58 Ohio St. 2d 368, 382, 390 N.E.2d 813, 825-26 (1979), *cert. denied*, 444 U.S. 1015 (1980) ("thorough and efficient" clause established a minimum standard); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005, 1018-19 (Colo. 1982) ("thorough and uniform" clause is "not a mandate for absolute equality in educational services or expenditures" but rather a legislative requirement to "provide to each school age child the opportunity to receive a free education, and to establish guidelines for a thorough and uniform system of public schools"); Board of Educ., Levittown v. Nyquist, 57 N.Y.2d 27, 47, 439 N.E.2d 359, 368, 453 N.Y.S.2d 643, 652 (1982) (constitutional provision for "a system of free common schools" contains no reference to any requirement that the education to be made available be equal or substantially equivalent in every district); Olsen v. State, 276 Or. 9, 27, 554 P.2d 139, 148 (1976) ("system of common schools" requirement fulfilled "if the state requires and provides for a minimum of educational opportunities"); Thompson v. Engelking, 96 Idaho 793, 810, 537 P.2d 635, 652 (1975) ("general, uniform and thorough system of public, free common school" did not require equal educational expenditures for equality discussion in constitutional debates); Shofstall v. Hollins, 110 Ariz. 88, 90, 515 P.2d 590, 592 (1973) ("general and uniform" clause met by a system which was free and available to all persons aged six to twenty-one, and open for a minimum of six months per year); McDaniel v. Thomas, 248 Ga. 632, 639, 648, 285 S.E.2d 156, 162, 168 (1981) (constitutional provisions stating that a "primary obligation of the state of Georgia" (art. VIII, § 1, para. 1 (1976)) to provide "an adequate education for the citizens" (art. VIII, § 7, para. 1 (1976)) satisfied despite the court's finding that "serious disparities in educational opportunities exist . . . .").

48. *See supra* note 47 (regarding state court decisions of Arizona, Idaho, Maryland, New York, Ohio, and Oregon).

49. *See supra* note 47 (regarding state court decision of Georgia).

50. *See supra* note 47 (regarding state court decisions of Colorado and Pennsylvania).

financing plans.[51] Low educational requirements create a nebulous standard and ensure continued deference to legislative decisions. In addition, these courts have been challenged for their inconsistent use of the minimum standard: both denying the cost-quality relationship (between expenditures and quality of educational opportunity) and holding local fiscal control to be a rational basis for the differences.[52]

State court decisions interpreting education clauses illustrate the broad discretion state courts have in construing the constitutional parameters for education. The decisions reflect the state courts' attitudes towards legislative discretion, the "proclivity for judicial activism,"[53] and the strength of each individual state's view of education.[54] State courts interpreting education provisions have refused to simply adopt the direction of other state courts.

D. State Equal Protection Argument

Each state constitution contains an explicit or implicit equal protection provision similar to the federal constitution guarantee,[55] and, unlike the federal constitution, most state constitutions also

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51. The initial objection to this practice was voiced by Justice Marshall in his dissent in San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973):

> Neither the majority nor appellants inform us how judicially manageable standards are to be derived for determining how much education is "enough" to excuse constitutional discrimination. One would think that the majority would heed its own fervent affirmation of judicial self-restraint before undertaking the complex task of determining at large what level of education is constitutionally sufficient. . . . If, as the majority stresses, such authorities are uncertain as to the impact of various levels of funding on educational quality, I fail to see where it finds the expertise to divine that the particular levels of funding provided by the program assure an adequate educational opportunity—much less an education substantially equivalent in quality to that which a higher level of functioning might provide.

Id. at 89 (Marshall, J., dissenting).

52. John E. McDermott & Stephen P. Klein, *The Cost-Quality Debate in School Finance Litigation: Do Dollars Make a Difference?*, 38 Law & Contemp. Probs. 415, 426 (1973). McDermott and Klein noted the double standard of Justice Powell's reasoning in *Rodriguez*, which on one hand refuses to decide the cost-quality issue, but on the other hand employs it to justify the basis for the inequity, stating:

> If local control means all that Justice Powell says it does, then a relationship between cost and quality must exist. Local control implies control over something that has meaningful content. If there is not relationship between cost and quality, then local control has no meaning and expenditure inequalities which use local control for their justification can have no rational basis. For the system to be "rational" (at least if local control is the rational basis offered), courts must go beyond an adequate definition of equality.

Id. at 422.

53. Johnson, *supra* note 9, at 337.

54. *See supra* note 29 and accompanying text.

55. Ratner, *supra* note 15, at 845 n.323.

have an explicit education clause.[56] State courts are empowered to construe their state equal protection provisions independently of the United States Supreme Court's interpretation of the federal equal protection provision. State equal protection clauses are increasingly the basis for state court rulings.[57] The Connecticut Supreme Court observed, "[i]n the area of fundamental civil liberties—which includes all protections of the declaration of rights in article first of the Connecticut Constitution—[the state supreme court] sit[s] as the court of last resort, subject only to the qualifications that [its] interpretations may not restrict guarantees accorded the national citizenry under the federal charter."[58] Though many courts have declined the challenge expressed by the Connecticut Supreme Court, critics contend that it becomes all the more important under the Burger and now Rehnquist Courts for state courts to protect their state constitutional rights, for the Supreme Court's retraction of federal remedies in reliance on state remedies "constitutes a clear call to state courts to step into the breach."[59]

In assessing state constitutional equal protection provisions affecting school financing, state courts have applied the traditional two-tiered equal protection analysis used by the United States Supreme Court.[60] Thus, in order for the reviewing court to apply strict judicial scrutiny, there must be either discrimination involving a suspect class or infringement of a fundamental right. Though the United States Supreme Court has not held that education disparately impacts a suspect class or reaches the level of a fundamental right under the federal constitution's equal protection clause, state courts have found education to be a fundamental right under their respective state equal protection clauses.[61] State courts have focused on the equal protection guarantees of the state constitutions interpreted in conjunction with explicit education

56. *See supra* note 33.

57. *See, e.g.*, Williams v. Zobel, 619 P.2d 448, 457-64 (Alaska 1980) (sustained state statute awarding state funds to residents in proportion to length of state residency against both state and federal equal protection challenges), *rev'd as to federal equal protection issue*, 457 U.S. 55 (1982); Carson v. Maurer, 120 N.H. 925, 932-33, 424 A.2d 825, 831 (1980) (per curiam) (invalidating various aspects of state's medical malpractice recovery statute as violating state equal protection); Planned Parenthood Ass'n v. Department of Human Resources, 63 Or. App. 41, 58-62, 663 P.2d 1247, 1258-61 (1983) (invalidating state medical assistance for abortions under state equal protection).

58. Horton v. Meskill, 172 Conn. 615, 641, 376 A.2d 359, 371 (1977).

59. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 503 (1977).

60. *See, e.g.*, Serrano v. Priest I, 5 Cal. 2d 584, 597-601, 487 P.2d 1241, 1250-53, 96 Cal. Rptr. 601, 610-13 (1971).

61. *See* Appendix A-2.

provisions.[62] In determining whether education is a fundmental right, however, courts have had difficulty developing objective and consistent criteria for assessing "fundmentality." Three primary analyses of fundmentality have been applied by state courts: the *Rodriguez* "test,"[63] education's "overall importance to the state,"[64] and education's "nexus to other constitutional rights."[65]

Under a strict application of the *Rodriguez* test, most state courts would find education to be a fundamental right, for nearly every state's constitution explicitly protects education.[66] Although some courts have declined to adopt this test of fundamentality,[67] four state courts have embraced it.[68]

Analysis of education's "overall importance to the state" has been adopted by a few state courts. For example, the courts in *Horton v. Meskill*[69] and *Serrano v. Priest I*[70] both employed this analysis to find education to be a fundamental right. The *Horton* court focused on four factors to determine the importance of edu-

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62. *See, e.g.*, Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977).

63. San Antonio Indep. School Dist v. Rodriguez, 411 U.S. 1, 33-34 (1973):

> [T]he key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather the answer lies in assessing whether there is a right to education *explicitly or implicitly guaranteed by the Constitution*

Id. (citations omitted) (emphasis added). *See also* Plyer v. Doe, 457 U.S. 202, 217 n.15 (1982) (Court grants fundamentality to a right which is protected in the Constitution).

64. *See infra* notes 69-73 and accompanying text.

65. *See infra* note 74 and accompanying text.

66. *See supra* note 33.

67. *Id. See* Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 672, 458 A.2d 758, 799 (1983) (Cole, J., dissenting) ("[T]he majority relies on several cases, a careful analysis of which demonstrates that it has overreacted to theoretical possibilities suggested by other courts."). Courts rejecting this test of fundamentality point out that state constitutions, unlike the federal constitution, are not restricted to protections for activities of fundamental import and worthy of strict scrutiny review. Many state constitutions explicitly enumerate rights which are clearly not fundamental. This objection has been viewed by many as more technical than substantive. Other objections to the *Rodriguez* test of fundamentality are that it is "overly simplistic," that there are other vital public interests such as fire protection, personal security, health care, and welfare subsidies which are equally important, and that it would leave all local fiscal schemes subject to review under equal protection analysis. *See, e.g.*, Olsen v. State, 276 Or. 9, 19, 554 P.2d 139, 144 (1976) (liquor by the drink); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005, 1017 (Colo. 1983) (mining and irrigation); Board of Educ. v. Walter, 58 Ohio St. 2d 368, 375, 390 N.E.2d 813, 818 (1979) (worker's compensation); Board of Educ., Levittown v. Nyquist, 57 N.Y.2d 27, 43 n.5, 439 N.E.2d 359, 366 n.5, 453 N.Y.S.2d 643, 650 n.5 (1982) (superintendence and repair of canals).

68. *See supra* note 13.

69. 172 Conn. 615, 376 A.2d 359 (1977).

70. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

cation to the state: (1) the explicit protection of education in the state constitution; (2) the lengthy history of the state's interest in education; (3) the fact that education is regulated by state statute; and (4) the compulsory nature of education.[71] The *Serrano I* court found education to be a fundamental right by examining several other factors: (1) the large number of persons affected by education; (2) the extended period of time it directly affects residents; (3) the significance of its effect on its residents; (4) its critical importance to economic prosperity and social stability; and (5) the fact that education is mandatory.[72] In addition, the United States Supreme Court's classic recitation of the importance of education in *Brown v. Board of Education* strongly supports the conclusion that education is a fundamental right:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures for education both demonstrate our recognition of the importance of education to our own democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is a principle instrument in awakening the child[ren] to cultural values, in preparing [them] for later professional training, and in helping [them] adjust normally to [their] environment. In these days, it is doubtful that any child[ren] may reasonably be expected to succeed in life if [they are] denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.[73]

Analysis of education's "nexus to other constitutional rights" has been used to supplement state court findings of fundamentality. It has been argued that education should be regarded as a fundamental right implicitly protected by state constitutions because it is a prerequisite to the meaningful discharge of first amendment rights and the right to vote. The *Serrano I* court employed this reasoning as a major factor in holding that education is a fundamental right, stating:

> The analogy between education and voting is . . . direct: both are crucial to participation in, and functioning of, a democracy. Voting has been regarded as a fundamental right because it is "preservative of other basic civil and political rights." . . . At a

71. *Horton*, 172 Conn. at 647-48, 376 A.2d at 374.

72. *Serrano I*, 5 Cal. 3d at 604-10, 487 P.2d at 1255-59, 96 Cal. Rptr. at 615-19.

73. Brown v. Board of Educ., 347 U.S. 483, 493 (1954). While acknowledging the vital importance of education, other courts have declined to conclude that education is a fundamental right. Hornbeck v. Somerset County Board of Education, for example, typifies the reasoning of most courts rejecting this basis of finding education to be a fundamental right. *See* Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 648, 458 A.2d 758, 786 (1983).

> minimum, education makes more meaningful the casting of a ballot. More significantly, it is likely to provide the understanding of, and the interest in, public issues which are the spur to involvement in other civic and political activities.[74]

While there is ample precedent for state courts to follow in formulating equitable school financing plans, the decision ultimately rests upon the language of the state's constitution.

The crucial step in state equal protection analysis of education once inequities have been found is the determination of the appropriate level of scrutiny to apply to the challenged financing system. State courts which have found education to be a fundamental right have typically applied strict scrutiny.[75] To overcome its burden of proof under strict scrutiny, the state must show that the inequities of the challenged financing plan are necessary to achieve a compelling state interest. If, however, education is not determined to be a fundamental right, then the courts apply the traditional rational basis test.[76] To withstand this test, the state is merely required to show that the inequities of the financing plan are rationally related to a valid state interest. Courts have typically been very deferential to the legislature under this lower standard.[77]

E. State's Defenses to Judicial Review: Local Control

Under either an education clause[78] or an equal protection argument,[79] the state is compelled to justify any inequity in school financing when challenged. The inequities typically addressed in school financing litigation stem from the state system's reliance on local property taxation. Districts which have higher property value naturally benefit from the property tax system. The standard defense to property-reliant school financing plans is local control.[80] Without this monetary input, the argument goes, there

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74. *Serrano I*, 5 Cal. 3d at 607-08, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

75. *See* Appendix A-2. *But see* Buse v. Smith, 74 Wis. 2d 550, 247 N.W.2d 1414 (1976) (education held to be a fundamental right requiring strict scrutiny, but state was able to meet its burden).

76. *See generally* Note, *supra* note 19.

77. An additional argument has been made for reviewing the financing plan under the Supreme Court's intermediate standard. *Id.* Intermediate review would require the state to demonstrate that the financing plan is substantially related to an important governmental interest. *Id.*

78. *See supra* notes 31-54 and accompanying text.

79. *See supra* notes 55-77 and accompanying text.

80. The United States Supreme Court pronounced the importance of local control in public education in Milliken v. Bradley, 418 U.S. 617, 641-42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public school and to quality of

exists no means for localities to shape their schools.

The reality is that only those districts wealthy enough to exceed the state's minimum standards have the choice to increase educational offerings.[81] The hardship thus falls upon the less wealthy districts which have no additional revenues. This "sad paradox" for these districts has led reform advocates to label local control the "single most important obstacle to education finance reform today."[82] These critics argue that there is an underlying misconception that local levies are the only way to exert control of a district's schools.[83]

Additionally, the recent push for "radical restructuring of schools and [the] creation of national performance goals" is inapposite with the principle of local control.[84] One observer noted that "the once sacred principle of local control is rapidly going the way of *McGuffey's Reader*."[85]

II. Minnesota's School Financing System

A. *Minnesota's Recent History of School Financing (1972 - 1987)*

Since 1863, the state of Minnesota has involved itself in public school financing.[86] In providing public school financing, Minnesota has struggled over financing equality and, less directly, program equity.

For many years the state assistance was low and local districts provided most of the revenue.[87] Although state support in-

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the educational process."). Board of Education, Levittown v. Nyquist, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982), argues that the extent to which a local community levies above the minimum established by the state is a direct reflection of the implementation of the desires of the local taxpayers. *Id.* at 45, 439 N.E.2d at 367, 453 N.Y.S.2d at 651. Others argue with the *Rodriguez* majority that local control is advantageous, for it allows each local district "to tailor [its] program to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence." San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 50 (1973).

81. *See infra* notes 157-179 and accompanying text.

82. Note, *A "Uniform" Education Reform of Local Property Tax School Finance Systems Through State Constitutions*, 62 Marq. L. Rev. 565, 591 (1979) (quoting Betsy Levin, *Alternatives to the Present Systems of School Finance: Their Problems and Prospects*, 61 Geo. L.J. 879, 902 (1973)).

83. *Id.*; *see Rodriguez*, 411 U.S. at 49-50, ("Equally important [to local control over financing], however, is the opportunity it offers for participation in the decision-making process that determines how those local tax dollars will be spent.").

84. Tifft, *supra* note 28, at 48.

85. *Id.*

86. *See* Minnesota Dep't Educ., The ABC's of Minnesota School Finance: Paying for the Public Schools in 1987-88 and 1988-89, at 4 (1987).

87. *See* Office of the Legislative Auditor, State of Minnesota, High School Edu-

creased to forty percent by 1960, local property taxes continued to fund most of the local districts.[88] The reliance on local property taxes led to considerable funding inequity because property-poor districts had fewer resources to tax than property-wealthy districts.[89] In 1957, the legislature created a foundation aid program which, through both local and state tax dollars, established a guaranteed level of funding per "pupil unit."[90] The guaranteed formula allowance was, however, "well below" the median spending of most districts, requiring that additional revenues be drawn from local property taxes.[91] This reliance on local property taxes revived the initial inequities.

This system was successfully challenged in *Van Dusartz v. Hatfield*.[92] Decided after *Serrano v. Priest I*[93] and before *Rodriguez*, *Van Dusartz* identified the wealth-based disparities inherent in Minnesota's school financing system. In holding Minnesota's school financing system unconstitutional under the federal equal protection guarantee, the *Van Dusartz* court adopted the reasoning of the *Serrano I* Court.[94] Although its essential underpinnings were later overruled by *Rodriguez*, the *Van Dusartz* decision firmly established the need for school finance reform in Minnesota and persuasively discussed the need for a judicially manageable and legislatively understood[95] standard of educational opportunity based on fiscal neutrality.[96] Fiscal neutrality attempts to "neutralize" wealth-based disparities in funding by prohibiting any financing plan which results in a correlation between district wealth and

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cation 34 (1988) [hereinafter High School Education] ("From 1900 through 1930, state aids provided only about 20 percent of revenues.").

88. *Id.*; *see also* Legislative Commission on Public Education, Equalization Trends in Minnesota Education Finance, 1972 Through 1987, at 11 (1986) [hereinafter Legislative Trends].

89. High School Education, *supra* note 87, at 34-35; *see infra* notes 157-79 and accompanying text.

90. High School Education, *supra* note 87, at 35 n.5 (defining "pupil units"):

> Pupil units are determined by applying weights to districts' average daily membership (ADM). Currently, each kindergarten ADM counts as 0.5 pupil units; each pre-kindergarten, handicapped kindergarten, and elementary ADM counts as 1.0 pupil unit; and each secondary ADM counts as 1.35. Thus, districts receive more funding for secondary students than elementary students.

Id.

91. Legislative Trends, *supra* note 88, at 11.

92. 334 F. Supp. 870 (D. Minn. 1971).

93. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

94. 334 F. Supp. at 877.

95. These self-explanatory terms are important in that they reinforce the notion that the adopted standard of educational opportunity must fulfill the practical purpose of being implemented and reviewable by both the legislature and the judicary, respectively.

96. 334 F. Supp. at 872-73.

district revenue.[97]

In 1971, the Minnesota state legislature attempted to correct the unsatisfactory financing situation.[98] There were two major changes in the 1971 plan. First, the foundation aid formula allowance was raised closer to the actual operating expenditures, while local property levies were limited. Second, the primary source of education funding was shifted from local property taxes to state taxes.[99]

The "Minnesota Miracle," as this plan became known,[100] was short lived as financial inequities increased throughout the 1970s. While attempting to equalize foundation allowances through a "catch up" provision to low-spending districts, the state recognized the need for "disequalization funds" to compensate for factors which increased costs in selected districts.[101] Increased funding was thus awarded for concentrations of Aid to Families with Dependent Children (AFDC) pupil units,[102] and "sparsity aid" was granted to correct for hardships caused by size and location of a district.[103]

In 1983-84, the state overhauled its overly complex, and in many respects, outdated formula by replacing it with a five-tiered foundation-aid program.[104] This program attempted to offset cost factors by adding a "training and experience" allowance based on the level of education and years of experience of each district's teachers.[105] That became equally unwieldy and was replaced by Minnesota's current school financing plan, the General Education Aid Program.[106]

After 1971, districts were granted an escape clause: the referendum levy. A district could levy any additional amount approved by its voters in a referendum election, with the proceeds available to the levying district for any general operating expenses. The use of this levy has become increasingly important to school districts, as illustrated below.[107]

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97. *See infra* notes 136-144 and accompanying text. For application of fiscal neutrality, see *infra* notes 142-169 and accompanying text.

98. Legislative Trends, *supra* note 88, at 12; High School Education, *supra* note 87, at 35.

99. Legislative Trends, *supra* note 88, at 12-13.

100. *Id.*

101. *Id.* at 14-15.

102. *Id.* at 14; *see infra* note 113.

103. Legislative Trends, *supra* note 88, at 15; *see infra* note 111.

104. Legislative Trends, *supra* note 88 at 17.

105. *Id.*; *see infra* note 112.

106. Minn. Stat. § 124A (1988).

107. Minnesota House Ways and Means Staff on Government Finance Issues, *Understanding the General Education Funding Program, 1988-89*, Money Matters,

TABLE 1

TRENDS IN USE OF REFERENDA LEVIES

School Year	Number of Districts	Total Referenda Levies	State Total Referenda Levy Per WADM	Percent of Foundation plus Referendum Revenue
1972-73	1	$ 25,395	$ .02	0 %
1978-79	74	7,067,813	7.50	0.6
1981-82	131	43,943,937	52.24	3.2
1983-84	185	68,854,632	84.48	4.3
1984-85	188	69,225,297	85.97	4.2
1985-86	198	79,719,756	99.61	4.5
1986-87	217	95,019,482	118.95	5.0

B. Minnesota's Current School Financing System

Minnesota's current school financing plan[108] has two expressed goals. One is to adequately fund the operation of each district's basic education program and the other is to "equalize differences in property wealth between school districts."[109]

The General Education Aid Program is divided into the Basic General Education Formula, controlled by the state, and the Referendum Levy, determined by the local district.[110] As in previous state formula allowances, these additional components of the general education formula recognize factors that increase the costs of operating an educational program, costs which would unjustly penalize particular districts if they were not appropriately compensated. The factors compensated for are small size and isolation of

July 20, 1988 [hereinafter Money Matters] (unpaginated publication). Table One can best be understood with the following glossary:

> Glossary *EARC:* Adjusted assessed valuation, as determined by Equalization Aid Review Committee. *Foundation Revenue:* The sum of revenue from the foundation levy . . . plus state foundation aid associated with each component for the foundation levy. *Referendum Revenue:* General operating revenue derived from a levy approved by voter referendum. This includes referendum aid paid to equalize such levies in taconite districts. *WADM:* Weighted average daily membership (sometimes called "actual pupil units"). The weights are 0.5 pupil units per kindergarten pupil, 1.0 pupil units in grades 1-6, and 1.4 pupil units in grades 7-12. Handicapped kindergarten and pre-kindergarten pupils are individually weighted according to the number of hours of educational service the pupil receives.

Legislative Trends, *supra* note 88, at 10.

108. Minn. Stat. § 124A (1988).

109. Money Matters, *supra* note 107.

110. *Id.* The basic general education formula establishes the minimum level of funding for school districts, with the specific formula allowance and the general education levy set for each year by legislation. *Id.*

rural school districts,[111] high levels of staff training and operating costs,[112] and high concentrations of students from families receiving AFDC.[113]

These three additional cost factors may increase state aid but not local levies. Although similar to previous formulas, these categories have been limited to fewer districts and have been restricted in dollars allotted.[114] (Appendix A-3 illustrates the funding program.)

There is no precise formula for determining the minimum level of funding; rather, it is completely left up to legislative discretion.[115] Once the base level of necessary funding is determined, the legislature establishes a minimum levy, an amount which each district must tax its inhabitants in order to receive the state's guaranteed allowance.[116] For example, the 1988-89 mill levy is 35.9 mills while the basic revenue guarantee is $2,755.[117] Thus, regardless of the revenue actually raised by an individual district through a general property tax levy, the actual dollar amount is guaranteed by the state, provided the district levies the required tax. For an example of how this levy system works, see Table 2 below. The figures in Table 2[118] are based on enrollment of 1,000 pupil units, and it charts the relative local revenue contribution to the state aid contribution for three general property valuation rates under the current financing system.

111. *Id.* The sparsity revenue provides additional revenue for small isolated schools. The formula takes into account a school district's enrollment and the distance from a district's school to a school in another district. *Id.*

112. *Id.* The training and experience revenue provides additional money to districts that have a high level of staff training and experience relative to the state average. *Id.*

113. *Id.* The compensatory revenue provides additional funding for districts with high concentrations of students from families receiving AFDC. *Id.*

114. High School Education, *supra* note 87, at 35.

115. Money Matters, *supra* note 107.

116. *Id.* A mill levy is 10 times the percentage of tax per dollar in property value. For example, a 35.9 mill levy represents .0359 percent of each property tax dollar required to be allocated to education in order to ensure reception of the referendum state funding. *Id.*

117. *See id.*

118. Minnesota House Ways and Means Committee, Financing Education in Minnesota, 1983-89, at 21 (1988).

TABLE 2

COMPARISON
OF
STATE AID AND LOCAL REVENUE CONTRIBUTIONS

	Valuation		
	Low	Average	High
Adjusted Assessed Property Value	$17,500,000	$35,000,000	$70,000,000
Local Property Tax Effort	35.9 mills	35.9 mills	35.9 mills
Local Revenue Contributions	$628,250	$1,256,500	$2,513,000
State Aid Contributions	$2,126,750	$1,498,500	$242,000
Percent State Aid	77.2%	54.4%	8.8%
Percent Local Revenue	22.8%	45.6%	91.2%
TOTAL BASIC GENERAL EDUCATION REVENUE	$2,755,000	$2,755,000	$2,755,000

The only non-state controlled revenue is the "referendum levy," which allows districts to increase the revenue available in their general funds with the approval of the voters in the district. This referendum levy is raised exclusively by local property taxes and is retained in its entirety by the local levying district. Thus, the levy is the only portion of educational aid not levied or equalized by the state. Since the primary disequalizing factors are compensated for by state aid,[119] the referendum levy is necessarily the primary source of any funding disparities among school districts.[120]

III. Equity of Minnesota's School Financing System

Discussion of Minnesota's school financing system begins with an analysis of the financing system's inequity, for if there are no inequities, then constitutional analysis is moot.[121] An evaluation of the equity of Minnesota's school financing system requires a two-step process. First, the state must establish an appropriate standard (or means) for evaluating educational opportunities. Sec-

119. Although there inevitably exists disequalizing factors other than those compensated for under Minnesota's school financing plan, a thorough discussion of those factors is beyond the scope of this article. Also, the actual degree to which the state's formula works truly to compensate for the identical disequalizing factors is uncertain, but similarly beyond the limits of this article.

120. Similarly, any general funding inadequacies are primarily the result of the state providing an insufficient basic revenue per pupil.

121. While some may think that addressing the constitutional question first is more logical, "the course of litigation [has] not follow[ed] this route." Johnson, *supra* note 9, at 337. Courts inclined to judicial restraint have not elected procedural and technical methods to circumvent the constitutional issues, rather, they have faced the issues directly. *Id.*

ond, the state must evaluate the equity of the system in light of the equalization standard chosen. This article's evaluation of the equity of Minnesota's school financing plan will focus on its most controversial component: the referendum levy.

A. *Standard of Equalization: Goal of Fiscal Neutrality*

Given the usually undefined role of schools and the illusive goals of education, judicial standards of educational equality are predictably muddled. In their oft-cited article, *The Cost-Quality Debate in School Finance: Do Dollars Make a Difference?*,[122] John E. McDermott and Stephen P. Klein cite eight different standards considered by courts as measures of equality of educational opportunity. These standards are: "equal expenditures per pupil";[123] "dollars to needs";[124] "lack of judicially manageable standards";[125] "maximum variable ratio";[126] "negative standards";[127] "inputs";[128]

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122. McDermott & Klein, *supra* note 52.

123. *Id.* at 417. Unlike the "one-person one-vote" principle, the "one dollar one-scholar" measure of equality has been universally rejected. *Id.* The need for special aid or "justified inequality" is best summarized by John Coones, a noted author on school financing equity for over twenty years:

> It is no virtue simply to achieve equality in facilities or in anything else; indeed, it may be a very great vice to do so where individual need or preferences differ. It is those needs and preferences that are important, and equality does not always serve them; indeed, it tends to be an arbitrary matter.

James Guthrie, Walter Garms, & Lawrence Pierce, School Finance and Education Policy: Enhancing Educational Efficiency, Equality and Choice 2 (1988). The Minnesota legislature has not only conceded this point, it has created for over fifteen years school financing systems which, to varying degrees, have recognized the need for increased funding for various students and districts. *See supra* notes 98-118 and accompanying text.

124. McDermott & Klein, *supra* note 52, at 417. The United States District Court for the Northern District of Illinois in McInnis v. Shapiro, 293 F. Supp. 327 (D.N.D. 1968), recognized the obvious unmanageability and unacceptability of a system creating an infinite array of excuses for disparity—most of which were indefensible. McDermott & Klein, *supra* note 52, at 417. A Minnesota legislative report termed this standard an "ideal concept" and similarly identified its problem of requiring "so many subjective judgments." *See* Legislative Trends, *supra* note 88, at 2.

125. McDermott & Klein, *supra* note 52, at 417. The *McInnis* court and the United States District Court for the Western District of Virginia in Burrus v. Wilkerson, 301 F. Supp. 1237 (W.D. Va. 1968), *aff'd*, 397 U.S. 44 (1970), found ruling on the issue of equality in school financing to be beyond judicial competence to rule on without manageable standards of review. McDermott & Klein, *supra* note 52, at 417. Consequently, it is incumbent upon litigants to establish acceptable measures of equality of educational opportunity, which satisfy the basic equality requirement and are flexible enough to meet the increased need of special students and districts. *See infra* notes 128-138 and accompanying text.

126. McDermott & Klein, *supra* note 52, at 417. The criticism of this measure is that it raises serious separation of powers questions. *Id.* Furthermore, the subjective nature of setting ratios begs the question of objectivity. *Id.*

127. *Id.* This standard (also known as fiscal neutrality) identifies what equality

"outputs";[129] and "minimum adequacy."[130]

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of educational opportunity is *not*. *Id.* at 418. The foremost example is the "fiscal neutrality" principle. Fiscal neutrality posits expenditure disparity based on wealth to be unlawful. Fiscal neutrality satisfies the judicial criteria for it is a manageable standard for the courts, it maintains equality, and it is flexible enough to make allowances for the special needs of individual pupils and districts. As the United States District Court for the District of Minnesota stated in support of fiscal neutrality:

> [A]bsolute uniformity of school expenditures by the districts of the state is not required. On the contrary, the fiscal neutrality principle not only removes discrimination by wealth but also allows free play to local effort choice and openly permits the State to adopt one of many optional school funding systems.

Van Dusartz v. Hatfield, 334 F. Supp. 870, 876 (D. Minn. 1971).

The major criticism of this standard is that it does not extend to inequities other than wealth. Nevertheless, so long as a consensus exists on what does not justify expenditure disparities, this standard provides a viable judicial measure. Further, as this standard challenges what historically has been the major source of inequality—wealth-based disparity, the plan should be given much judicial attention.

128. McDermott & Klein, *supra* note 52, at 419. The inputs standard seeks to measure equality by the level of educational resources available to each district. To explain this standard, McDermott and Klein cite Justice Marshall's dissent in San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), where he suggested such a standard: "The question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive." *Id.* at 419-20. Such a standard would necessarily measure such factors as teachers' training, cost expenditures, teacher-student ratios, facilities available. *Id.* at 420. The criticism of this standard is that, similar to the equal expenditure measure, its rigidity fails adequately to meet the needs of its special students. However, some more elaborate input systems attempt to provide equal inputs by adjusting for unique needs of pupils of districts and for cost and price differences. *See* Legislative Trends, *supra* note 88, at 3. For a discussion of Minnesota's use of flexible inputs system, *see supra* notes 101-103 and 115-120 and accompanying text.

129. McDermott & Klein, *supra* note 52, at 420. This standard measures equality in terms of the students' actual academic achievement as measured by standard tests. *Id.* The difficulty in this measure is the impossibility of factoring in influences other than school that affect student achievement scores. As yet unable to monitor and weigh all of these factors, courts have preferred to leave output-based challenges to the social sciences. Under equal protection analysis, this standard can be deemed irrelevant, for equal protection provisions require equal treatment of persons, not the "creation" of equal results in people. *Id.* at 432.

130. *Id.* at 423. This standard measures whether a state has successfully provided an education satisfying a level of "minimum adequacy." This is the standard adopted by the *Rodriguez* court. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 92 (1973) (Marshall, J., dissenting). It is the standard which ensures the least judicial entanglement while being the most manageable, requiring nothing more than a showing of having provided a minimally adequate education. All other disparities and inequities are irrelevant. A chief criticism of this standard was originally voiced by Justice Marshall in his *Rodriguez* dissent, noting that this standard still required the Court to set a qualitative measure to determine what is an "adequate" education. 411 U.S. at 89. This, Marshall argues, the Court clearly refused to do.

The second major criticism of this standard is its frequent application by those who refuse to accept the relationship between cost expenditures and the quality of education. McDermott and Klein, *supra* note 52 at 423.

Of these equalization standards, McDermott and Klein advocate a hybrid of the negative and input standards—a negative-input (fiscal neutrality) standard.[131] This system focuses on expenditure or input inequalities that lack rational justifications, particularly wealth-based disparities. Such a system effectively addresses the primary ill of school financing, while giving courts the flexibility to look also at inequities in programs, services, and facilities. The relative ease of applying this standard and its numerical objectivity allow it to be judicially manageable and legislatively understood.

The multiplicity of approaches to and the complexity of determining standards for equalization of educational opportunity have led many courts to avoid interpreting the constitutional contours of education. However, critics have argued that for the same reason no one would accept *de jure* segregation as non-justiciable because of allegations of attendant harmful side effects, courts should not refuse this challenge due to uncertainty and timidity.[132]

The equalization standard of choice in Minnesota appears to be a variant of the negative-input standard (fiscal neutrality). Though undermined by *Rodriguez*, *Van Dusartz* held that "the level of spending for a child's education may not be a function of wealth other than the wealth of the state as a whole."[133] Despite its lack of precedential value, the *Van Dusartz* court's objection to fiscal neutrality, is still persuasive:

> This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the State itself has defined and commissioned. The heaviest burdens of this system surely fall *de facto* upon those poor families residing in poor districts who cannot escape to private schools, but this effect only magnifies the odiousness of the explicit discrimination by the law itself against all children living in relatively poor districts.[134]

Minnesota's adoption of the fiscal neutrality standard is supported by Legislative Trends, a 1987 education report compiled by Minnesota's Legislative Commission on Public Education,[135] which described the fiscal neutrality standard as "perhaps the most critical component of both research and litigation on education financing equity."[136] Legislative Trends explained that fiscal neutrality

131. McDermott & Klein, *supra* note 52, at 434.

132. Guthrie, Garms, & Pierce, *supra* note 123, at 434.

133. Van Dusartz v. Hatfield, 334 F. Supp. 870, 872 (D. Minn. 1972) (explaining the fiscal neutrality standard adopted from *Serrano*).

134. *Id.* at 876.

135. Legislative Trends, *supra* note 88.

136. *Id.* at 50.

is an important concept in school finance due to the immense difficulty (if not impossibility) in defining and measuring "quality" of education, per pupil revenues, or expenditures.[137] Fiscal neutrality uses substitute measures in calculating the degree of neutrality of a state's financing system. For this reason, the fiscal neutrality standard has been partially adopted and cited as the goal of Minnesota's current basic aid-to-education program.[138]

There are three distinct advantages for Minnesota courts in adopting the fiscal neutrality standard. First, fiscal neutrality does not define or even address the question of "adequacy" of educational opportunity, but, rather, it attempts to ensure that the educational opportunity provided in a state is equally available to all of its citizens. Thus, courts avoid entanglement in the political quagmire of determining "adequacy."[139] Second, fiscal neutrality establishes a numerical and objective evaluation of equality of educational opportunity.[140] The courts thus provide parameters for the state's obligation to educate, while maintaining sufficient deference to the legislature in matters of education. Third, the adoption of a standard which would eliminate all substantial funding differences among school districts supports the acceptability of the state's "choice" plan—a policy permitting parents to move their children to the school of their choice. Many have criticized the "choice" plan as likely to lead to the abandonment of poor inner-city schools which are traditionally underfinanced.[141] Equalized financing would cause a two-fold benefit: all parents would be able to make their choices based on non-monetary concerns, and underfinanced schools would be given the resources to improve.

An education finance system is fiscally neutral if revenue and tax rate differences among districts are independent of their property wealth and reflect only differences in effort among districts to raise education revenues.[142] A positive correlation between a district's property wealth and tax rates and its educational revenue is a critical component of litigation on education financing equity.[143] A strong correlation indicates inequity, for it reveals that property-wealthy districts have significantly more revenue per pupil than

137. *Id.*

138. *See supra* notes 109-111 and accompanying text.

139. *See supra* note 130.

140. *See infra* notes 142-156 and accompanying text.

141. Tifftl, *supra* note 28, at 48.

142. Legislative Trends, *supra* note 88, at 44 (citing Stephen J. Carroll, *The Search for Equity in School Financing*, in Financing Education: Overcoming Inefficiency and Inequity (1982)); *see also id.* (adopting the fiscal neutrality standard implicitly through its entire study of property tax rate relationship to school funding).

143. *Id.* at 50, 69-70.

less property-wealthy districts in terms of total general revenue.[144]

B. *Statistical Analysis of the Equity of Minnesota's School Financing System*

1. Correlating Revenue to Property Wealth

In Legislative Trends,[145] the relationship between district revenue and property wealth was statistically correlated. While the legislative study demonstrated recent improvements in reducing the correlation between a district's general education revenue and its property wealth, the general revenue plus referendum revenue remains "closely correlated with property wealth."[146] Thus, while the general revenue plan is working to achieve equity, the referendum levy is not.

Appendix A-4 represents these findings by mapping the relationship between the general revenue plus referendum revenue per pupil and average property assessment value per pupil.[147] Appendix A-4 illustrates the "clear positive relationship" between revenue and property wealth.[148]

Though there has been vocal support for equity in school financing for many years, Legislative Trends statistically documents that little change has been effected. The relationship between revenue and property wealth appears to be as strong as it was in 1972-73.[149] Using a commonly accepted statistical measure of finance equity called the Gini Coefficient,[150] the strength of the relation-

144. *Id.* at 69-70 (The property-wealth to expenditure relationship merely implies inequities; no single factor or set of factors can irrefutably disclose inequity.).

145. *Id.*

146. *Id.* at 73. General revenue plus referendum revenue is merely the sum of the guaranteed state maximum allowance per district and the referendum revenues, if any, raised by the district.

147. *Id.* at 10. In studying this relationship, Minnesota's 435 districts were equally divided into deciles according to each district's property wealth. Group One combines the districts with the lowest property wealth per pupil unit (average property valuation per pupil of $16,993). *Id.* at 51. Group Ten represents the districts of the highest property wealth (average property valuation per pupil of $74,210). *Id.* Groups Two through Nine represent districts with average property wealth falling between the two extremes, with the average property wealth increasing with the group number. *Id.*

148. *Id.* Group Ten, the highest wealth district, had the highest revenue per pupil for each of the seven years. Further, revenue per pupil consistently increases with the group's wealth ranking. To illustrate, Group Eight had a greater revenue than Group Seven in all seven years, Group Five had a greater revenue than Group Seven in all seven years, and Group Five had a greater revenue than Group Four in six of the seven years. *Id.*

149. *Id.* at 74.

150. *Id.* at 55-57 ("a complex mathematical measure of the extent to which per-pupil revenue is related to per-pupil wealth"). For a further discussion of the actual equation, see *id.* at 89-90.

ship between revenue and property wealth is less than in 1983-84, but higher than in 1978-79 and nearly equal to 1972-73.[151] Additional comparisons reveal the same correlation between revenue and property wealth.[152]

The correlation between revenue and property wealth continues to expand under the state's revised school financing plan. This conclusion is shown graphically in two state-prepared tables, Appendices A-5 and A-6, illustrating the relationship between revenue and property wealth under the revised school financing plan.

2. Correlating Foundation Tax Rates with Revenue per Pupil

The next factor in determining financing equity is the relationship between tax rates and school district property wealth.[153] Minnesota's overall tax rates reflect the influence of district property wealth on the educational expenditures. Tax rates do not vary much among the districts, but tax plus referendum tax rates reveal a somewhat higher rate in wealthier districts than in less property-wealthy districts.[154] Total school tax rates also reflect a disparate impact on less property-wealthy districts.[155] This advantage for wealthier districts is primarily attributable to the referen-

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151. *Id.* at 74.

152. Disparity in referendum revenue per pupil ranges from a high of $273 in Group Ten to a low of $37 in Group three. *Id.* at 73. Further, the average total revenue per pupil in Group Ten is more than $400 above the state average and more than $500 above the average for each of Groups One through Five. *Id.* at 74.

153. It is generally thought to be undesirable to have wide disparities in tax rates among districts, even when such disparities reflect true differences among taxpayers and consumers in the amounts of educational services they desire. It is even less desirable to have disparities in tax rates that are closely correlated with school district wealth. If low-wealth districts have unusually high tax rates, it may be due to an education finance structure that provides too little equalization aid, so that low-wealth districts must tax themselves excessively in order to provide educational programs. On the other hand, if low-wealth districts have inordinately low tax rates, it may be that such districts simply do not have access to levies to which wealthier districts have access. The lack of access may be due to legal restrictions, because the districts do not meet the criterion specified in law, e.g., certain grandfathering requirements. Or the lack of access may be due to economic, political, sociological, or other factors that effectively preclude access to revenues, e.g., the difficulty that extremely low-wealth districts have in passing referendum levies.

Id. at 59.

154. *Id.* at 67, 74.

155. Tax rates are above the state average in the four least-wealthy deciles and below the state average in the six wealthiest deciles. *Id.* at 74. In fact, the rate in Group Ten is 5.20 mills below the state average, and 10.79 mills below the rate for Group One. *Id.* at 74, 76, 77, 79.

dum levy.[156]

3. Particular Problems with the Referendum Levy

The referendum levy has become an integral element of school financing in Minnesota.[157] From taxes paid in 1988-89, 239 of Minnesota's 435 school districts raised over $133 million through referendum levies. These figures are up from 1987-88, when 226 districts raised $112 million, and 1986-87, when 217 districts raised $95 million.[158] In response to the increase in referendum taxing, the Chairman of the House Education Committee's finance division observed, "The message [school district voters are] sending [legislators] is that funding is not adequate. . . . We [legislators] certainly don't want inequity. If there are that many referendums out there and they're passing, maybe we [legislators] need to reconsider [funding]."[159] While the number and importance of the referendum levy has become invaluable to many Minnesota school districts, low-wealth districts have not significantly benefitted from them.[160]

Two factors contribute to this result. First, taxpayers of most low-wealth districts face higher tax rates than those of high property-wealth districts.[161] Second, property-poor districts are reluctant to further levy the overburdened taxpayers of poorer districts. Even if a property-poor district were willing to extend its school levy beyond those of other districts, the district would be forced to levy at a much greater rate to garner a comparable yield.[162]

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156. *See supra* note 107 and accompanying text (Table 1).

157. *Id.*; *see also* Star Tribune, Oct. 20, 1988, at 1A, col. 2.

158. Star Tribune, Oct. 20, 1988, at 1A, col. 2.

159. *Id.*

160. "The proportion of districts with referendum levies is over half in Groups Five through Ten (property-wealthy districts) and over eighty percent in Groups Nine and Ten." Legislative Trends, *supra* note 88, at 77-78. In Groups One through Three (low property-wealth districts), however, only about one-quarter of the districts have referendum levies. *Id.*

161. The total school tax rate, not including referenda levies, is above the state average in Groups One through Four and below the state average in Groups Five through Ten. *Id.* at 76-77. In fact, the gross total school tax rate, not including referenda levies, is 52.67 mills in Group One (the least wealthy district), a figure more than seven mills above the state average and thirteen mills above the comparable rate for Group Ten (the wealthiest district). *Id.* at 76.

162. *Id.* at 77. For example, the average revenue for one mill levy in Group One is $17—less than half of the statewide average of $38 and less than one-fourth of the average for Group Ten. *Id.* Conversely, the average tax rate needed to raise $300 per pupil in referendum levy revenue is 17.7 mills for districts in Group One, compared with 4.0 mills for districts in Group Ten, and 7.8 mills average for all districts statewide. *Id.*

C. Adequacy of Minnesota's School Financing System

Having established the imbalance in educational expenditures (finance inequity), the issue is whether these inequities translate into qualitative differences in educational opportunity (program inequity). This determination is known as the "cost-quality" relationship.[163] While there is some academic disagreement about the cost-quality relationship in regard to educational expenditures,[164] courts nationwide have had little difficulty finding that dollars do produce differences in educational opportunity.[165] Minnesota's apparent acceptance of this conclusion is substantiated by the legislative auditor's report High School Education.[166] The 1988 report observed that the referendum levy was, in fact, a factor contributing to curriculum variations between Minnesota school districts.[167]

Recognition that there is a level of diminishing returns from increased educational inputs anticipates the next question: whether Minnesota's financial inequalities translate into "inadequacy" of educational opportunity for those adversely affected by the financing scheme. The best documentation of the insufficiency of current school financing is found in the conclusions of High School Education.[168]

> We question whether all students have equal access to high school education in Minnesota. Although only a small fraction of Minnesota students in grades 9 through 12 may be affected by outright curriculum failure, we believe the rarity of deficient programming begs important questions of fairness and quality. In addition, equity questions are posed by (1) districts' uneven reliance on television technology, mid-day busing, alternate-year scheduling, and high school correspondence programs and (2) limited access to courses which go beyond the minimum.[169]

Additionally, common sense dictates that referendum levies will not be passed unless the majority of citizens believe current fund-

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163. *See generally* McDermott & Klein, *supra* note 52.

164. The primary concern focuses on a 1966 empirical study which found no correlation between increased educational expenditures, inputs (books, equipment) and student performance on standardized tests. *See generally* Office of Educ., U.S. Dept. of Health, Educ. and Welfare, Equality of Educational Opportunity (1966).

165. Note, *supra* note 82, at 569. Additionally, Gary Farland, director of Minnesota's Dept. of Education, Education Finance and Analysis, cites national studies finding a strong correlation between additional educational expenditures and significant economic increases. Gary Farland, Elementary/Secondary Education and the Minnesota Economy 3 (1989) (unpublished manuscript).

166. ADDED TO BALANCE WITH NEW FOOTNOTE 166 IN TEXT.

167. High School Education, *supra* note 87.

168. Farland, *supra* note 165, at xix. Since the sole effect of the referendum levy is additional revenue, there is an implicit adoption of the cost-quality relationship in the report's conclusion.

169. High School Education, *supra* note 87.

ing is inadequate.[170] The sheer number of passing referendum levies and the increasing size of the levies substantiate the perceived inadequacy of current funding and the need for additional revenues.

Expenditure disparities exist between the state's school districts. These disparities create inequities which have a significant impact on the quality of educational opportunity in Minnesota. Therefore, the state's allowance of the referendum levy, the primary contibutor to the disparities, makes the state a constructive sponsor of the inequities that follow.

IV. Constitutionality of Minnesota's School Financing System

The two Minnesota constitutional provisions that protect educational interests are the education uniformity clause[171] and the equal protection guarantee.[172] The education uniformity clause provides as follows:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a *general and uniform* system of public schools. The legislature shall make such a provision by taxation or otherwise as will secure a *thorough and efficient* system of public schools throughout the state (emphasis added).[173]

The equal protection guarantee under the Minnesota Constitution prohibits the state from denying its residents the equal protection of the laws.[174] Minnesota's school financing system can be successfully challenged on either ground.

A. State Education Uniformity Clause Argument

Education clauses create a state duty to educate, a duty which clearly rests at the apex of the state's function.[175] The constitutional guarantee of a "general and uniform" and "thorough and efficient" education further defines this duty. Minnesota courts have found these guarantees to create a mandatory duty on the state to maintain public schools.[176] Minnesota courts acknowledge that the legislature has broad authority and discretion in the field

170. *Id.* at 38.

171. Minn. Const. art. XIII, § 1.

172. *See generally* Minn. Const. art. I, § 2 (rights and privileges clause); art. X (uniformity clause); art. XII (special legislative section).

173. *See supra* note 170 (emphasis added).

174. *See supra* note 171.

175. *See supra* notes 31-32 and accompanying text.

176. Associated Schools of Indep. Dist. No. 63 v. School Dist. No. 83, 122 Minn. 254, 142 N.W. 325, 326-29 (1913).

of education financing.[177] This discretion, however, is limited by the parameters of the Minnesota education clause.[178] As the Texas Supreme Court stated while considering a constitutional challenge on similar language:

> Fortunately, however, for the people, the function of the judiciary in deciding constitutional questions is not one which it is at liberty to decline . . . [we] cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution; [we] cannot pass it by because it is doubtful; with whatever doubt, with whatever difficulties a case may be attended.[179]

Despite the imprecise terms employed, Minnesota courts must create constitutional guidelines. Judicial refusal to define such an important constitutional question is inherently suspect, for the state education clause arguably requires, at a minimum, clearly defined constitutional parameters for evaluating school finance inequities. Leaving the legislature with unbridled discretion in the area of school financing exacerbates the disparate treatment of students based on the wealth of their school distirct—an action which is clearly not within the perview of the legislature.[180] It is imperative for Minnesota courts to define with specificity the qualitative standard it adopts. The cost of failing to do so has been well documented.[181]

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177. Board of Educ. of Minneapolis v. Houghton, 181 Minn. 576, 233 N.W. 834, 835 (1930).

178. *See* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803). ("[J]ust as the legislature cannot abridge constitutional rights by its enactments, it cannot curtail them through its silence. . . . The judicial obligation to protect the rights of individuals is as old as this country.").

179. Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391, 394 (Tex. 1989)(quoting Morton v. Gordon, Dallam 396, 397-98 (Tex. 1941)).

180. *Id.* (When called upon to define imprecise terms of the constitution, "this court must . . . measure the constitutionality of the legislative actions.").

See also Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 504, 585 P.2d 71, 86 (1978). The Court concluded: "Once it is determined that judicial interpretation and construction are required, there remains no separation of powers issue. Thereafter, the matter is strictly one of judicial discretion." *Id.* (quoting Baker v. Carr, 369 U.S. 180, 211 (1962)). *See also* Marbury v. Madison, 5 U.S. (1 Cranch) 137 (Chief Justice Marshall declaring the judiciary supreme in the area of constitutional interpretation, declaring the legal duties thereunder, and the application thereof).

181. *See* Robinson v. Cahill II, 62 N.J. 473, 303 A.2d 273 (1973), (*cert. denied*, 414 U.S. 976 (1974). The court focused on the specific discrepancies (in dollar inputs per pupil) of the then existing financing plan and stated only generally in regard to revising the plan:

> Indeed the state has never spelled out the content of the educational opportunity the constitution requires. Without some such prescription, it is even more difficult to understand how the tax burden can be left to local initiative with any hope that state wide equality of educational opportunity will emerge.

Id. at 516, 303 A.2d at 295.

As a consequence, see Robinson v. Cahill I-VII. Robinson v. Cahill VII, 70 N.J. 464,

In creating the constitutional guidelines (qualitative standards) for evaluating legislation in this area, Minnesota courts are neither directed by a clear expression of the framers' intent,[182] nor relieved of their interpretive duty by traditionally applied justifications for avoiding the issue. Minnesota courts could advance two justifications for not creating a qualitative standard of equalization of educational opportunity. They could either deny the "cost-quality" issue or embrace "local control" as a legitimate excuse for Minnesota's school finance inequities. The former justification is eliminated by the state's apparent preliminary acceptance of the validity of the cost-quality relationship between expenditures and educational opportunity.[183] Local control as a justification is also prohibited by the inherent inconsistency in denying the cost-quality relationship, but then using that very relationship to excuse the economic disparities created by local control. Further, the use of local control as a justification for the financing inequities violates the language of Minnesota's education clause, which gives the duty to educate to the state not to local districts.

Finally, local control is contrary to the established law on broader state-wide and national goals,[184] and an anathema to the successful implementation of the "choice" system.[185]

Unable to avoid reaching a qualitative standard, Minnesota courts are presented with a purely interpretive question: what is meant by "general and uniform" and "thorough and efficient?"

"Uniform," by definition and case law, implies broad egalitarian objectives. The definition of "uniform" is "having always the

360 A.2d 400 (1976); Robinson v. Cahill VI, 69 N.J. 449, 355 A.2d 129 (1976); Robinson v. Cahill V, 67 N.J. 333, 339 A.2d 193, *reprinted in corrected form in* 69 N.J. 133, 351 A.2d 713 (1975); Robinson v. Cahill IV, 67 N.J. 35, 335 A.2d 6 (1975); Robinson v. Cahill III 63 N.J. 196, 306 A.2d 65 (1973); Robinson v. Cahill II, 62 N.J. 473, 303 A.2d 273 (1973), *cert. denied*, 414 U.S. 976 (1974); Robinson v. Cahill I, 118 N.J. Super 223, 287 A.2d 187, *vacated*, 119 N.J. super 40, 289 A.2d 569 (1973)), which chronicle the New Jersey courts' difficulties in getting a reluctant legislature to adhere to the standards it has constitutionally imposed. *See* Johnson, *supra* note 9, at 344 n.80 and accompanying text of article for an abbreviated discussion of this situation.

In contrast, see the expeditious resolution of unconstitutional school financing in Montana following explicit judicial pronouncements of qualitative standard of full educational equality and prohibition against reliance on disequalizing local taxes. Helena Elementary School Dist. No. 1 & High School Dist. No. 1 of Lewis & Clark County v. State, 769 P.2d 684 (Mont. 1989).

182. Records from the proceedings of Minnesota's constitutional convention of 1857 reveal the delegates attempted to emulate the Massachusetts and Ohio phraseology, but these records are not useful in giving content to the education clause. The Debates and Proceedings of the Minnesota Constitutional Convention 437-38 (1857).

183. *See supra* notes 163-166 and accompanying text.

184. *See supra* notes 84-85 and accompanying text.

185. *See* Tifft, *supra* note 28, at 48.

same form, manner, or degree not varying or variable."[186] A concurring justice in *Seattle School District No. 1* found that the "general and uniform" provision of the Washington Constitution's education clause,[187] taken with the broad requirement for a "regular and dependable" source of funding, mandated equality of educational opportunity.[188]

Likewise, "thorough and efficient" has been broadly interpreted to mandate equality of educational opportunity. To paraphrase the New Jersey Supreme Court, the term "thorough" connotes in common meaning the concept of completeness and attention to detail. It means more than simply adequate or minimal.[189]

"Efficient" alone has been held to mandate equality of educational opportunity.[190] The most desirable qualitative standard is, as discussed above in determining the standard of equalization to employ, one based on input equality or negative inputs (fiscal neutrality).[191]

To review, fiscal neutrality has the two-fold advantage of

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186. Webster's New Collegiate Dictionary 1269 (1981).

187. Wash. Const. art. IX, § 2.

188. [T]aken together, the clauses contemplate an educational system in which, to the extent practical through statewide planning and financial support, each child is afforded an equal opportunity to learn, regardless of differences in his or her family and community resources. The system of local levy financing challenged here is an anathema to the egalitarian promise of these provisions, violating them in both letter and spirit.

Note, *supra* note 82, at 573 (quoting Seattle School Dist. No. 1 v. State, 90 Wash. 2d 476, 547, 585 P.2d 71, 109 (1978), (Utley, J., concurring)).

189. Robinson v. Cahill IV, 67 N.J. 333, 339 A.2d 193, *reprinted in corrected form in* 69 N.J. 133, 351 A.2d 713 (1975).

190. Edgewood Indep. School Dist. v. Kirby, 777 S.W. 2d 391 (Tex. 1989).

191. The "minimum adequacy" standard has been popular because it does not require extensive judicial activism. *See supra* note 130. While attempting to avoid judicial entanglements, such an interpretation merely avoids the requisite qualitative question of what, in fact, is an "adequate" or "minimum" or "minimally adequate" education. Regardless, it seems unlikely that Minnesota courts will adopt such a low qualitative standard given Minnesotans high regard for education. *See supra* notes 117, 123-124 and accompanying text. It is also unlikely that Minnesota courts will accept a financing system which cites "local control" as the justification for its inherent inequities. An alternative standard, "maximum variable ratios," will force Minnesota courts to create constitutionally permissable standards of variance between districts. *See supra* note 126. Aware of the degree of judicial involvement required of such flexible and ill-defined qualitative standards, Minnesota courts are likely to feel unqualified and disinclined to do so. The arbitrary nature of each of these standards is reason enough for Minnesota courts to look elsewhere. *See, e.g.*, Horton v. Meskill, 172 Conn. 615, 645-47, 376 A.2d 359, 373 (1977); *see also supra* notes 124-130 and accompanying text. Finally and conclusively, combining the state's equal protection guarantee, whether or not when joined with the education uniformity clause, raises education to the level of a fundamental right, and mandates equality of educational opportunity.

avoiding a qualitative definition of "adequacy" and presenting a readily understood and applied standard. The Minnesota legislature endorsed such a standard by pronouncing funding equality as one of the two goals for its funding plan[192] and partially adopting the standard of equalization.[193] Adoption of the fiscal neutrality standard does not negate local control; rather, fiscal neutrality merely restricts local control to all non-monetary decisions, e.g., program offerings, curriculum decision, scheduling.

By adopting a fiscal neutrality standard, the Minnesota courts can create a judicially manageable standard to review inequities in Minnesota's school financing system. Any demonstrable inequities would represent prima facie evidence of the system's failure to be "general and uniform" and "thorough and efficient", prima facie evidence of Minnesota's failure to satisfy its constitutional mandate of educational equality.[194]

The current Minnesota school financing system has reached the threshold showing of a failure to achieve fiscal neutrality.[195] The significant wealth-based disparity in financing the state's continued allowance of the referendum levy statistically documents the inequity.[196] Thus, under the fiscal neutrality standard, the current Minnesota school financing plan is unconstitutional.

B. State Equal Protection Argument: Standard of Review

The appropriate level of judicial review for education in Minnesota depends whether education is a fundamental right. With federal courts foreclosed from considering federal constitutional equal protection challenges by the Supreme Court's decision in *Rodriguez*,[197] Minnesota courts are the sole interpretors of the extent of Minnesota's equal protection guarantee.

Minnesota courts recognize that federal guarantees of freedom from discriminatory legislation may not be as extensive as those in Minnesota.[198] All three cited fundamental rights analyses

192. *See supra* notes 108-109 and accompanying text.

193. *See supra* notes 122-138 and accompanying text.

194. *See* Robinson v. Cahill V, 67 N.J. 333, 339 A.2d 193, *reprinted in corrected form in* 69 N.J. 133, 351 A.2d 713, 718-719 (1975).

195. *See id.*; Seattle School Dist. No. 1, 90 Wash. 2d 476, 585 P.2d 71 (1978). The level of review which the Minnesota courts will adopt to evaluate legislative adherence to this standard is unclear. The two state court decisions which found their states' education clauses to be violated both applied a strict scrutiny review of the funding inequities.

196. *See supra* notes 142-169 and accompanying text.

197. San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1 (1973).

198. Haskell's, Inc. v. Sopsic, 313 N.W.2d 921, 921 (Minn. 1981) ("While the federal guarantees may not be as wide reaching as Minnesota's guarantees of freedom from discriminatory legislation, the federal test is similarly stated."). The court

support recognition of education as a fundamental right under the Minnesota Constitution. First, the Minnesota Constitution's explicit guarantee of educational opportunity satisfies the *Rodriguez* test.[199] Further, Minnesota's constitution does not provide explicitly for what are clearly non-fundamental rights.[200] This avoids the technical difficulties encountered by other courts.

Second, the "overall importance" fundamental rights test is also satisfied in Minnesota. From education's percentage of the State's total expenditures[201] to education's total portion of local property taxes,[202] education is clearly recognized by Minnesotans as integral to the state's functioning. Gary Farland, director of Minnesota's Department of Education, Education Finance and Analysis, writes: "Minnesotans are concerned with their investment in elementary and secondary education, and whether it is sufficiently funded and productively arranged. The concern is not only economic; education is a necessary ingredient to all facets of life in a healthy and achieving society."[203] The importance of education in Minnesota is further emphasized by the number of studies on reform of Minnesota's elementary and secondary education. Since 1982, six in-depth studies were commissioned by a variety of groups,[204] each calling for qualitative reform in Minnesota public education.

Third, the nexus argument for finding fundamentality was recognized and articulated by the *Van Dusartz* court. The court conceded:

> [I]t is not the "importance" of an asserted interest alone which renders [education] specifically protected[; rather, e]ducation has a unique impact on the mind, personality, and future role of the individual child. It is basic to the functioning of a free society and thereby evokes special judicial solicitude.[205]

Under state court decisions finding education to be a funda-

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noted the existence of "the broader and more far reaching state constitutional guarantees[,]" but it was not forced to determine the reach of the state constitutional guarantees of equal protection and due process beyond the 14th amendment of the United States Constitution. *Id.*

199. *Rodriguez*, 411 U.S. 1 at 33-34.

200. *See generally* Minn. Const. art. I, § 2 (rights and privileges clause).

201. Office of Minnesota Legislative Auditor, Trends in Educational Expenditures at ix (1988) (one-third of state's budget goes to fund public education).

202. *Id.* (44% of local property taxes go to fund public education).

203. *See* Farland, *supra* note 165, at 2.

204. *Id.* at 5 (Citizens' League of Minnesota, Governor's Commission of Education for Economic Growth, Minnesota Education Association, Center for Urban and Regional Affairs and College of Education at University of Minnesota, the Minnesota Business Partnership, and the Legislative Auditor's Office).

205. Van Dusartz v. Hatfield, 334 F. Supp. 870, 875 (D. Minn. 1971).

mental right, every court except one applied strict scrutiny.[206] Strict scrutiny in Minnesota requires the defending party to meet the onerous burden that the right infringed upon be necessary to advance a compelling state interest.[207] Given the limited defenses to strict scrutiny analysis and the irrelevance of local control as a defense to such wealth-based disparity,[208] it is unlikely Minnesota's school financing system can be held constitutional. It is also questionable whether the inherent inequities of Minnesota's school financing system can withstand intermediate or even rational basis scrutiny.

Finally, all supposed objections to such a constitutional pronouncement as ignoring "practical realities" are baseless and irrelevant. No studies are available substantiating any negative realities resulting from a constitutional finding against Minnesota's school financing system. Such objections would presumably parallel the unsupported "doomsday realities" that opponents to segregation raised in *Brown v. Board of Education*. A retrospective look at the impact of *Brown v. Board of Education*, however, shows that these fears are merely illusory. As illustrated in *Brown v. Board of Education*, constitutional mandates cannot be subject to social pressures, for societal concerns and projected societal disruptions should be irrelevant to such decisions involving fundamental rights.

V. Proposal

Despite its numerous revisions, Minnesota's school financing plan still violates the state's constitutional mandate for equality of educational opportunity. As such, it is the duty of the courts to declare the current school financing plan unconstitutional. Specifically, given the Minnesota legislature's refusal to enact true reform for equality of educational opportunity, the Minnesota courts must intervene by striking the clearly disequalizing referendum levy from the school financing plan while upholding legislative discretion with respect to the remainder of the financing formula.[209] Further, the courts should adopt fiscal neutrality as

206. *See supra* note 13.

207. Essling v. Markman, 335 N.W.2d 237, 239 (Minn. 1983).

208. *Id.* at 239.

209. Johnson, *supra* note 9, at 371-72. Johnson advocated a middle-ground approach to judicial intervention in school financing when the ills of the financing plan can be isolated. Thus, in a system such as Minnesota's, Johnson would propose invalidating the education statute only to the "extent that it includes provisions that are clearly disequalizing while upholding the legislative discretion with respect to the remainder of the funding formula." *Id.* at 372.

the standard to be used to evaluate the equity and constitutionality of subsequent school funding plans.

Conclusion

The challenge presented is to openly and objectively assess the equity and constitutionality of Minnesota's school financing plan. Such an analysis points to a system of financing—a referendum levy—which systematically produces significant disparities in educational opportunity based on school district property-wealth. Minnesota courts should strike the referendum levy and its inequitable effects from the Minnesota school financing plan and force the legislature to restructure the plan. Only then will Minnesota begin to truly challenge the root of its pervasive inequality of educational opportunity: wealth-based disparity.

APPENDIX

STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Arizona	*Shofstall v. Hollins* (1973)	"The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year . . . ."	Minimal standard
Michigan	*Milliken v. Green* (1973)	"The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law . . . ."	Minimal standard
Idaho	*Thompson v. Engelking* (1975)	"It shall be the duty of the legislature of Idaho to establish and maintain a general, uniform, and *thorough* system of public free common schools."*	Minimal standard
Oregon	*Olsen v. Oregon* (1979)	"The Legislative Assembly shall provide by law for the establishment of a uniform and general system of common schools."	Minimal standard

APPENDIX

STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Pennsylvania	*Danson v. Casey* (1979)	"The General Assembly shall provide for the maintenance of a *thorough* and *efficient* system of public education to serve the needs of the Commonwealth."*	Minimal standard
Ohio	*Board of Education v. Walter* (1979)	"The General Assembly shall make such provisions, by taxation or otherwise, as, with the income arising from the school trust fund, will secure a *thorough* and *efficient* system of common schools throughout the state . . . ."*	Minimal standard
Georgia	*Thomas v. McDaniels* (1981)	"The provision of an *adequate* education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided by taxation."*	Minimal standard
Colorado	*Lujan v. State Board of Education* (1982)	"The General Assembly shall as soon as practicable, provide for the establishment and maintenance of a *thorough* and uniform system of free public schools throughout the state . . . ."*	Minimal standard
New York	*Board of Education v. Nyquist* (1982)	"The legislature shall provide the maintenance and support of a system of free common schools wherein all the children of the state may be educated."	Minimal standard

APPENDIX

STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Maryland	*Hornbeck v. Somerset County Board of Education* (1983)	"The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a *thorough* and *efficient* system of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."*	Minimal standard
Oklahoma	*Fair School Finance County of Oklahoma v. State* (1987)	"Provisions should be made for the establishment and maintenance of a system of public schools, which shall be open to all children of the State. . . . The legislature shall establish and maintain a system of *free* public schools wherein all the children of the State may be educated."*	Minimal standard
South Carolina	*Richland County v. Campbell* (1988)	"shall provide for the maintenance and support of a system of *free* public schools . . . ."*	Minimal standard

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STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
New Jersey	*Robinson v. Cahill* (1973)	"The legislature shall provide for the maintenance and support of a *thorough* and *efficient* system of free public schools . . . ."*	Strict scrutiny
Kansas	*Knowles v. State Board of Education* (1976)	"The legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools . . . ."	Strict scrutiny
Wisconsin	*Buse v. Smith* (1976)	"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 four and twenty years . . . ."	Strict scrutiny
California	*Serrano v. Priest* (1976)	"The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year . . . ."	Strict scrutiny

APPENDIX

STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Connecticut	*Horton v. Meskill* (1977)	"There shall always be free public elementary and secondary schools in the state."	Strict scrutiny
Washington	*Seattle School District No. 1 of King County v. State* (1978)	"The legislature shall provide for a general and uniform system of public schools."	Strict scrutiny
West Virginia	*Pauley v. Kelly* (1979)	"The legislature shall provide by general law, for a *thorough* and *efficient* system of free schools."*	Strict scrutiny
Wyoming	*Washakie County School No. 1 v. Huschler* (1980)	"The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kindergarten and grade. . . ."	Strict scrutiny

APPENDIX

STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Arkansas	*Dupre v. Alma School District No. 30* (1983)	"Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and *efficient* system of free schools and shall adopt a "suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law and no other interpretation shall be given to it."*	Rational relationship

APPENDIX

STATE SCHOOL FINANCING SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Montana	*Helena Elementary v. State*	*Section 1. Educational goals and duties.* *(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 costs of the basic elementary and secondary school system.*	Strict scrutiny
Kentucky	*Council for Better Education v. Wilkinson* (1980)	"The general assembly shall, by appropriate legislation, provide for an *efficient* system of *common* schools throughout the State."*	Strict scrutiny

APPENDIX

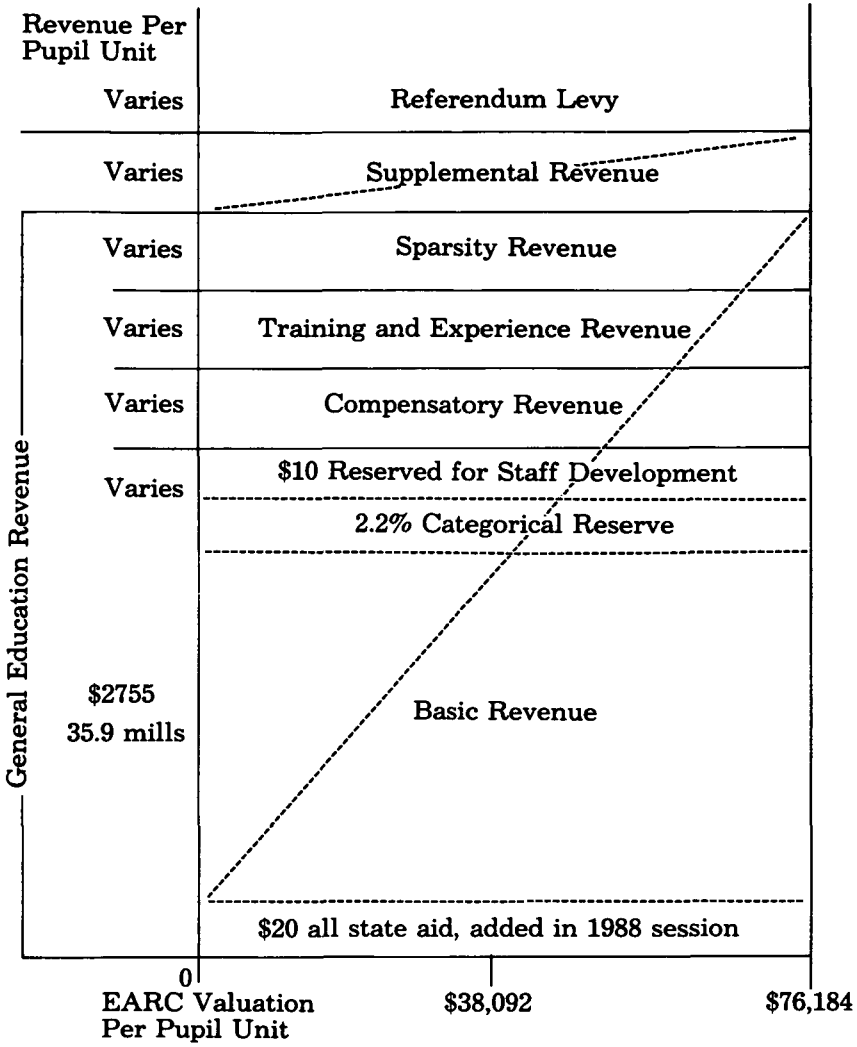
STATE SCHOOL FINANCE SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Texas	*Kirby v. Edgewood* (1989)	"A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, 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." "All free men, when they form a social compact, have equal rights . . . ." "It is the policy of the State of Texas that the provision of public education is a state responsibility and that a *thorough* and *efficient* system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have *access to programs and services that are appropriate to his or her educational needs and that are substantially equal* to those available to any similar student, notwithstanding varying local economic factors."	Strict scrutiny

* Emphasis added

APPENDIX

1988-89 General Education Funding Program



* General Education Revenue is reduced by the amount the fund balance exceeds $600 up to $150

Source: MN. House Ways & Means Comm., *Financing Education in Minnesota, 1988-89*, July, 1988, at 13.

APPENDIX

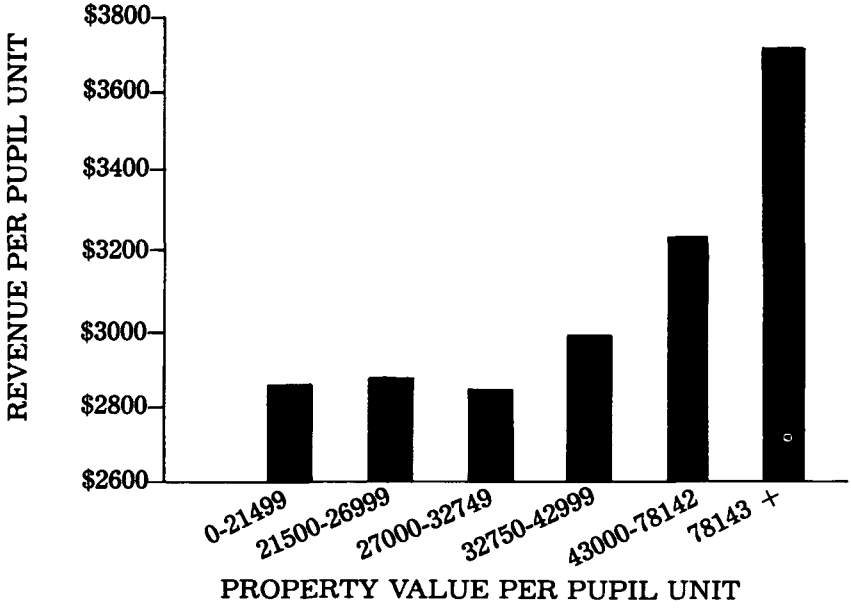
RELATIONSHIP OF FOUNDATION REVENUE, NOT INCLUDING REFERENDUM, TO PROPERTY WEALTH (ERAC/WADM)

Decile (Based on Property Wealth per WADM)	Foundation Revenue per WADM									
	1981-82		1983-84		1984-85		1985-86		19860-87	
	Revenue	Rank	Revenue	Rank	Revenue	Rank	Revenue	Rank	Revenue	Rank
1 (lowest wealth)	$1456	10	$1771	8	$1842	9	$2026	8	$2216	6
2	1489	8	1746	10	1809	10	1980	10	2239	4
3	1471	9	1750	9	1871	6	2070	6	2189	9
4	1578	6	1852	5	1844	8	2016	9	2173	10
5	1560	7	1827	6	1871	6	2027	7	2201	8
6	1583	4	1797	7	1884	5	2073	5	2205	7
7	1583	4	1898	4	1924	4	2083	3	2237	5
8	1634	3	1902	3	1932	3	2077	4	2263	3
9	1762	2	2105	2	2132	2	2306	2	2430	2
10 (highest wealth)	1822	1	2132	1	2203	1	2368	1	2528	1
Mean	1593		1882		1933		2104		2274	
Ration of Group 10 to Group 1	1.251		1.204		1.196		1.169		1.141	

Source: Legislative Trends, *supra* note 88, at 52.

APPENDIX

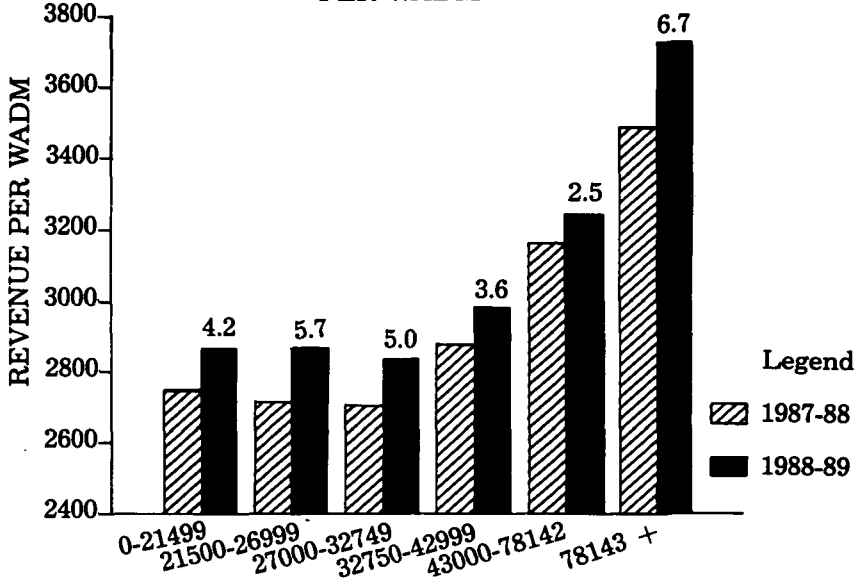
1988-89
FOUNDATION/GENERAL EDUCATION REVENUE
PER PUPIL UNIT
including referendum levy
DISTRICTS GROUPED BY PROPERTY VALUATION
PER PUPIL UNIT



Source: Minnesota Department of Education, *Data on General Education Revenue for F.Y. 1989*, November, 1987.

APPENDIX

1987-88 AND 1988-89
FOUNDATION/GENERAL EDUCATION REVENUE
PER WADM
including referendum levy
DISTRICTS GROUPED BY PROPERTY VALUATION
PER WADM



Source: MN. Dept. of Educ., Educ Aids & Levies Section, Dec. 1987 at 3.