Constitutional Issues in Property Tax Based Public School Financing Systems

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CONSTITUTIONAL ISSUES IN PROPERTY TAX BASED PUBLIC SCHOOL FINANCING SYSTEMS

I. INTRODUCTION ........................................................... 121

II. LOCAL PROPERTY TAX AS THE BASIS FOR PUBLIC SCHOOL FINANCING ..... 122

III. FEDERAL CONSTITUTION EQUAL PROTECTION STANDARD IN PUBLIC SCHOOL FINANCING CASES ......................................................... 123

IV. STATE CONSTITUTIONAL STANDARDS IN PUBLIC SCHOOL FINANCING CASES 124

A. Successful Cases ....................................................... 124
   1. New Jersey: Robinson v. Cahill .................................... 124
   2. Subsequent Successful Cases...................................... 126
      a. Connecticut .................................................. 127
      b. West Virginia ................................................ 127
      c. Wyoming .................................................... 128
      d. Arkansas .................................................... 128

B. Unsuccessful Cases..................................................... 129

V. ANALYSIS................................................................. 130

VI. CONCLUSION.............................................................. 134

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Board of Education

I. INTRODUCTION

Education has long been recognized by our society to be of vital importance. It provides the basis for opportunity and advancement, and is a necessity in guaranteeing the right to self-determination. Nonetheless, the right of every citizen to receive an education is neither explicitly nor implicitly guaranteed in the United States Constitution. Instead the job of educating has been the function of state governments, and every state constitution contains an explicit provision guaranteeing education for its citizens. State constitutional provisions for education, however, vary in terms of the substance of the right; some merely establish that a public school system will exist in the state, while others contain language such as a guarantee of a "thorough and efficient" or "general and uniform" system of public schools. Thus, the kind and quality of education that a state must make available to children is often poorly defined, and state constitutional provisions leave legislators free to interpret and implement such provisions with a great deal of flexibility.

2 See e.g., Mich. Const. art. VIII, § 2; Or. Const. art. VIII, § 3; Ariz. Const. art. XI, § 1.
3 See e.g., Conn. Const. art. VIII, § 1, “to provide free public elementary and secondary schools in the state”; N.J. Const. 1947 art. VIII, § IV, par. 1, “maintenance and support of a thorough and efficient system of free public schools”; Or. Const. art. VIII, § 3, “establishment of a uniform and general system of Common schools".

121
Public school systems are failing to do the job of educating. Adult illiteracy is recognized as a serious problem facing the United States today as more and more children leave public school systems without possessing even a basic education.\(^4\) It is impossible to conclude that all public school systems in this country are fulfilling their obligation to educate.

Significantly contributing to the failure to educate is the method by which public schools are financed.\(^5\) In the vast majority of states a large portion of public school funding is provided by local property tax revenues. This creates gross inequities between school districts in the amount of money available to spend on education in each district and, therefore, the kind and quality of that education. This Note will examine the constitutionality of public school financing systems which are based in part on local property tax. First, it will discuss the Supreme Court's analysis of such systems under the United States Constitution. Next, it will examine the various ways in which state courts have interpreted state constitutional standards and applied their analyses to challenges of these financing schemes. Finally, this Note will argue that courts should examine constitutional challenges to public school financing systems using intermediate judicial scrutiny.

II. LOCAL PROPERTY TAX AS THE BASIS FOR PUBLIC SCHOOL FINANCING

Public schools are largely financed by local taxes based on property value, supplemented by state and federal contributions. Thus, school districts in neighborhoods of relatively low property values have less money available to fund the education of children who live in such neighborhoods than those in areas of higher property values. For example, the wealthiest school district in New York spent $4214.00 per pupil in the academic year 1974-75; the poorest spent $396.00 on each child, a difference of 4.5 to 1.\(^6\) Many other states have similar disparities.\(^7\) State systems that allow for such disparities in educational quality are in essence creating a permanent underclass of poor and uneducated citizens. These children are being denied, because of their wealth or the wealth of their neighbors, the same quality of education being made available to wealthier citizens. Thus, children living in neighborhoods of low property value are being denied the same opportunity to participate, compete and excel in society that is available to children who reside in districts with higher property values. Public school financing systems based on property tax serve to perpetuate a class of poorly educated, low income and underachieving citizens, and maintain the opportunity for advancement and achievement for those who can afford to pay more for it.

\(^4\) For a general discussion, see Ratner, A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills, 63 TEXAS L. REV. 777, 779-794 (1985).

\(^5\) For a thorough discussion of the correlation between public school financing and academic achievement, see id.


\(^7\) For example, during the academic year 1978-79, the wealthiest district in Maryland spent $2328.00 per pupil, while the poorest district spent $1498.00. See Hornbeck v. Somerset Co. Board of Educ. 295 Md. 597, 613, 458 A.2d 758, 767 (1983). In West Virginia, the disparity during the academic year 1977-78 was $1428.00 to $832.00. See Pauley v. Kelly, 162 W.Va. 672, 734, 255 S.E.2d 859, 892 (1979).
III. FEDERAL CONSTITUTION EQUAL PROTECTION STANDARD IN PUBLIC SCHOOL FINANCING CASES

The Supreme Court, in a 5-4 decision, established the federal equal protection standard to be utilized in constitutional challenges to public school financing systems which are based on property tax. In San Antonio Independent School District v. Rodriguez, the parent plaintiffs brought a class action suit on behalf of schoolchildren throughout the state who were poor and resided in school districts having a low property tax base. The plaintiffs claimed that the Texas system, under which approximately 41% of educational expenditures came from local property taxes, created a discriminatory class against those persons residing in school districts that had low property tax bases because it resulted in substantially less money available for the education of students in poorer districts than in wealthy districts. The most affluent school district in San Antonio spent $594.00 per pupil for the 1967-68 school year; in the poorest district only $356.00 was spent on each pupil. The Texas' system's reliance on local property tax, it was therefore alleged, favored the more affluent and violated equal protection requirements because of substantial interdistrict disparities in per pupil expenditures. The plaintiffs alleged that education is a fundamental right guaranteed by the United States Constitution, and that because the state's system provided for education based on a citizen's wealth, they were also a suspect class. Accordingly, under the Supreme Court's two tiered equal protection analysis, the plaintiffs claimed that the Court must strictly scrutinize the Texas system and uphold it only if the state could demonstrate a compelling state interest to justify the unequal treatment.

In determining the level of review to be utilized in the analysis of the constitutionality of the Texas legislature's system, the Court found that strict scrutiny was improper. According to the Court, the plaintiffs were neither a suspect class nor was education a fundamental right guaranteed by the U.S. Constitution. The Court failed to find that the plaintiffs were a suspect class for several reasons. First, the plaintiffs did not claim to be suffering from the absolute denial of a right; rather their claim was of unequal opportunity to exercise that right. In addition, the Court described the plaintiffs as a "large, diverse, and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts." In determining whether the plaintiffs' claim involved a fundamental right, the Court stated that "the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution, and the state must demonstrate a compelling state interest to justify the unequal treatment. Where neither a fundamental right nor a suspect classification is involved, the Court applies minimum judicial scrutiny and the state must only show that there is a rational relationship between the state's interest and the means employed to achieve that interest.

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9 Id. at 5.
10 Id. at 12, 13.
11 Id. at 17.
12 The Court examines whether the plaintiff's claim involves a fundamental right or a suspect classification. In the case of either the Court will strictly scrutinize the challenged scheme and require the state to demonstrate a compelling interest to justify the unequal treatment. Where neither a fundamental right nor a suspect classification is involved, the Court applies minimum judicial scrutiny and the state must only show that there is a rational relationship between the state's interest and the means employed to achieve that interest.
13 Rodriguez, 411 U.S. at 28.
14 Id.
15 Id. at 36.
16 Id. at 25.
17 Id. at 28.
provided for in the Constitution." The Court found, however, that education is neither explicitly provided for in the Constitution, nor is it implicitly guaranteed.

The Court instead applied minimum judicial scrutiny to the plaintiffs' claim and found that the state's interest in promoting local control over school systems constituted a legitimate state purpose, and that Texas' financing scheme bore a rational relation to that purpose. Benefits of local control include freedom to devote more money to education than the minimum provided by the state system, participation by local residents in the decision-making process concerning the way in which local tax dollars should be spent, and an opportunity for experimentation, innovation and competition for educational excellence. Therefore, because the system did not impose invidious discrimination in violation of the fourteenth amendment, it was upheld.

IV. State Constitutional Standards in Public School Financing Cases

Since Rodriguez, a number of actions have been brought in state courts challenging the constitutionality of public school financing systems which rely in part on local property taxes. These suits have alleged that present systems violate state and federal equal protection guarantees, as well as clauses in state constitutions that provide for public education. Courts in all states have refused to apply federal equal protection to plaintiffs based on the Supreme Court decision in Rodriguez. Courts have found, however, that state constitutions can provide a heightened level of equal protection to its citizens, and that the federal Constitution merely establishes the minimum. In addition, education clauses in state constitutions make public education an explicitly guaranteed right, unlike the federal Constitution which makes no such guarantee. State courts have analyzed education financing systems with varying degrees of judicial scrutiny, and such challenges have been unsuccessful in a minority of states, while successful in the majority.

A. Successful Cases

1. New Jersey: Robinson v. Cahill

In 1973, the New Jersey decision of Robinson v. Cahill presented the first successful challenge to a state's public school financing scheme following the Supreme Court's decision in Rodriguez. The plaintiffs, who were residents, taxpayers, and school officials

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18 Id. at 33.
19 Id. at 44.
20 Id. at 50.
23 Id.
of five cities, brought an action maintaining that the state's public school financing system violated both federal and state equal protection, as well as the state constitutional provision for education, which provided for the "maintenance and support of a thorough and efficient system of free public schools." The plaintiffs claimed that the system's substantial reliance on local property tax revenues to finance public education produced gross disparities in the revenues available among different districts within the state. They argued that the court must find a compelling state interest to uphold the present system against their equal protection claim for two reasons. First, the plaintiffs claimed that education is a fundamental right guaranteed by both the federal and states constitutions, and, second, they claimed that they were a suspect class because the present system classified students according to their wealth. The Supreme Court of New Jersey disposed of the federal equal protection claim under the Supreme Court's ruling in Rodriguez, but acknowledged that a state constitution could require a more stringent standard of equal protection. The court, however, was hesitant to decide the case based upon the state equal protection clause, stating that "the equal protection clause may be unmanageable if it is called upon to supply categorical answers in the vast areas of human needs."

In its analysis of the plaintiffs' claim that education is a fundamental right, the court acknowledged that the New Jersey Constitution explicitly mandates education as a governmental function; nevertheless, the court pointed out that a vast range of other services, such as police and fire protection are also explicitly provided for in the state constitution. Thus, under the plaintiff's reasoning, all governmental services mandated in the state constitution would have to be considered fundamental rights, rendering the classification unworkable. In disposing of the plaintiffs' claim that education is a fundamental right, the court rejected the test used by the Supreme Court in Rodriguez, by which a right is deemed fundamental only if it is explicitly or implicitly provided for in the U.S. Constitution.

The court also ruled against the plaintiffs' claim that that the state's system was suspect because it classified citizens on the basis of their wealth. On this claim, the court found that wealth is not "suspect" as a basis for raising revenues. The court stated that "residents of a political subdivision are permitted within substantial limits to decide how much to raise for services which are necessary or sufficiently desirable to justify the exertion of the taxing power." Therefore, the court reasoned, taxes in different taxing districts need not be uniform. Thus the court found that, absent the involvement of a fundamental right or a suspect classification, there need only be a

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26 N.J. CONST. 1947 art. VIII, § IV, par. 1.
28 See supra note 25 at 486, 303 A.2d at 279.
29 Id. at 486, 303 A.2d at 281.
30 Id. at 490, 303 A.2d at 282.
31 Id. at 492, 303 A.2d at 283.
32 Id. at 497, 303 A.2d at 285.
33 Id. at 495-96, 303 A.2d at 284.
34 Id. at 497, 303 A.2d at 285.
35 Id. at 492, 303 A.2d at 283.
36 Id.
37 Id. at 493, 303 A.2d at 283.
38 Id. at 494, 303 A.2d at 283.
rational relation between the state's goal and its method of implementing that goal.\textsuperscript{39} The state argued that the public interest is furthered when the residents of a locality are given a voice in the amount of services and expenditures because it stimulates citizen concern for the performance of those services.\textsuperscript{40} The court concluded that it may not be "irrational" to deal with education in those terms and upheld the state’s system against the plaintiffs' equal protection claim.\textsuperscript{41}

Instead, the court examined the meaning of the "thorough and efficient" clause in the New Jersey Constitution's education amendment, and found that while it did not call for statewide equality among taxpayers, it did intend to provide equal educational opportunity to the children of the state.\textsuperscript{42} The court interpreted the constitutional guarantee to an education as "embrac(ing) that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and a competitor in the labor market."\textsuperscript{43} Next the court determined whether the state had fulfilled its obligation to provide all students with that level of educational opportunity that is contemplated by a thorough and efficient system of education. The court found that the constitutional demand had not been met. In reaching its decision, the court relied on the relevance of the discrepancies in dollar input per pupil to educational opportunity. The court justified its reliance on that criterion because it found that dollar input was plainly relevant and because defendants had shown no other viable criterion for measuring compliance with the constitutional mandate.\textsuperscript{44} At the time of the trial, local taxes yielded 67% of the total operating expenses of the public schools.\textsuperscript{45} As a result, gross discrepancies in public school expenditures existed between districts throughout the state. Thus the Court found that a statutory scheme for financing public education which relied heavily on local taxation had no apparent relation to the constitutional mandate for equal educational opportunity.\textsuperscript{46}

2. Subsequent Successful Cases

Courts in Arkansas, Wyoming, West Virginia, and Connecticut have also found that those states' systems of financing public schools are unconstitutional.\textsuperscript{47} In each state the court found that education is a fundamental right under the state constitution and, therefore, any discriminatory classification found in the state's educational financing system could not be upheld unless the state could demonstrate a compelling state interest to justify the unequal classification.\textsuperscript{48}

\textsuperscript{39} Id. at 499, 303 A.2d at 286.
\textsuperscript{40} Id.
\textsuperscript{41} Id.
\textsuperscript{42} Id. at 513, 303 A.2d at 294.
\textsuperscript{43} Id. at 515, 303 A.2d at 295.
\textsuperscript{44} Id.
\textsuperscript{45} Id. at 480, 303 A.2d at 280.
\textsuperscript{46} Id. at 516, 303 A.2d at 296.
\textsuperscript{48} Id.
a. Connecticut

In finding for the plaintiffs, the court in Horton v. Meskill concluded that "in Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized."49 Unlike New Jersey, the Connecticut Constitution's education clause sets no qualitative standards for education whatsoever. Instead, it merely establishes that the state will provide free public elementary and secondary schools.50 The court, however, noted that the Connecticut General Assembly has stated that it is the concern of the state that "each child shall have...equal opportunity to receive a suitable program of educational experiences."51 In relying on the legislature's interpretation of the education clause of the state constitution, the court determined that it must strictly scrutinize the state's present system.52 Because the system resulted in gross discrepancies in funding between school districts, the court ruled that the present system violated the plaintiffs' constitutional right to education.53

b. West Virginia

The West Virginia Constitution provides for a "thorough and efficient" system of public schools, like the New Jersey Constitution.54 In Pauley v. Kelly, the plaintiffs claimed that the state's present system violated the constitutional mandate for a "thorough and efficient" system because of interdistrict funding discrepancies.55 The plaintiffs also claimed that the system violated the state equal protection standard because education is a fundamental right of the people of West Virginia.56 In its analysis, the court looked to the intentions of the framers of the state constitution to determine what was meant by that document's "thorough and efficient" clause, defining it as an education system that:

develops as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically.57

In applying that definition to plaintiffs' schools, the court found them "woefully inadequate."58

The court also found that under West Virginia's Constitution education is a constitutionally derived right, and therefore fundamental, and invoked a strict scrutiny analysis of state's financing system.59 Because the state was unable to demonstrate a compelling state interest to justify the resulting unequal classification, the plaintiffs prevailed on the state equal protection claim as well.

50 CONN. CONST. art. VIII, § 1.
51 CONN. GEN. STAT. § 10-4a.
52 Horton, 172 Conn. at 649, 376 A.2d at 374.
53 Id. at 650, 376 A.2d at 374.
54 W.VA. CONST. art 12, § 1.
55 162 W.Va. 672, 674, 255 S.E.2d 859, 861 (1979)
56 Id. at 707, 255 S.E.2d at 878.
57 Id. at 705, 255 S.E.2d at 877.
58 Id. at 707, 255 S.E.2d at 878.
59 Id. at 877.
c. Wyoming

The Wyoming Constitution calls for "the establishment and maintenance of a complete and uniform system of public instruction."\(^{60}\) In Washakie County School District No. One v. Herschler, the plaintiffs claimed that the state's public school financing system violated federal and state equal protection clauses as well as the state constitution's mandate for education.\(^{61}\) The court determined that in the state of Wyoming education is a fundamental interest.\(^{62}\) Therefore, the state's financing system must withstand strict scrutiny to be upheld against an equal protection claim under the state constitution.\(^{63}\) In addition, the court stated that a classification based on wealth is considered suspect, and found that because Wyoming's financing system distributed funds on the basis of wealth it was a suspect classification.\(^{64}\) While stating that "exact or absolute equality is not required," the court proscribed "any system which makes the quality of a child's education a function of district wealth."\(^{65}\) The court determined that the plaintiffs' state equal protection rights had been violated by the state's system for funding public education because of the dependence of education on the property tax resources of the local school district.

d. Arkansas

Plaintiffs in DuPree v. Alma School District No. 30 claimed that the Arkansas system of financing public schools violated both the state constitution's equal protection clause and the constitutional provision for education, which calls for a "general, suitable and efficient system of free public schools."\(^{66}\) The court found that the present system, which resulted in dollar per pupil discrepancies of nearly 3:1\(^{67}\) between districts, violated both the plaintiffs' right to equal protection under the state's laws\(^{68}\) and the state's constitutional mandate for education.\(^{69}\) Unlike the New Jersey, Connecticut, West Virginia and Wyoming courts, where the defendants were required to show a compelling state interest to justify the fiscal inequality, the Arkansas Supreme Court merely applied minimum scrutiny to the state's plan and found that the system bore "no rational relationship to the educational needs of the individual districts."\(^{70}\) A system that is determined primarily by the tax base of each district, the court reasoned, "only promotes greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged."\(^{71}\) The court also upheld the trial court's finding that the state's system violated Arkansas' constitutional mandate for education.\(^{72}\)

\(^{60}\) Wyo. Const. art. VII, § 1.
\(^{61}\) 606 P.2d 310, 315 (Wyo. 1980).
\(^{62}\) Id. at 333.
\(^{63}\) Id. at 335.
\(^{64}\) Id. at 334.
\(^{65}\) Id. at 336.
\(^{66}\) Ark. Const. art. XIV, § 1.
\(^{67}\) 279 Ark. 340, 344, 651 S.W.2d 90, 92 (1983).
\(^{68}\) Id. at 345, 651 S.W.2d at 93.
\(^{69}\) Id. at 347, 651 S.W.2d at 95.
\(^{70}\) Id. at 345, 651 S.W.2d at 93.
\(^{71}\) Id.
\(^{72}\) Id. at 347, 651 S.W.2d at 95.
B. Unsuccessful Cases

In other states where property based financing systems create disparities in educational funding between districts, challenges to state financing systems of public schools since the *Rodriguez* decision have been unsuccessful. Most states have found that the federal equal protection standards are controlling, and following the United States Supreme Court in *Rodriguez*, have applied a rational basis test to determine whether state equal protection is violated by the states' system. Like *Rodriguez*, in each of these cases the court found that the state's interest in local control is a legitimate interest satisfied by the existing system. However, most states that have considered the issue of whether education is a fundamental right have rejected the *Rodriguez* "explicitly or implicitly" guaranteed test. Instead courts have justified their present systems by finding that no child is being totally deprived of a right to educational opportunity. In New York, the court justified applying only rational basis scrutiny because, despite the existence of disparities between districts, no authority was presented that discrimination between units of government (school districts) calls for any closer judicial scrutiny. In Maryland, the court framed the issue as whether anything in the Constitution, either federal or state, requires that the same amount of money should be spent on each child, or prohibits any county, regardless of wealth, from spending any more. In Oregon, the court upheld the system by applying a balancing test, weighing the interest impinged upon — educational opportunity — against the state objective in maintaining the present system of school financing — local control.

These states have also upheld property based financing systems against allegations that the systems violate state constitution clauses providing for education. The Maryland Constitution provides for a "thorough and efficient" system of schools, like New Jersey; however the court interpreted this standard to mean "adequate" and stated that simply to show that the educational resources available in poorer districts are inferior to those in rich districts does not mean that there is insufficient funding provided by the state's financing scheme for all students to obtain an adequate education.

The court in New York, whose Constitution provides for the "maintenance and support of a system of free common schools," and the courts in Washington and Oregon, whose Constitutions guarantee a "general and uniform" system of schools found that constitutional requirements were being met as long as plaintiffs could not show that students

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74 Id.
75 Id.
76 See e.g., *Olsen v. State*, 276 Or. 9, 554 P.2d 139 (1976).
77 Id. at 21, 554 P.2d at 147.
79 *Hornbeck*, 295 Md. at 658, 458 A.2d at 790.
80 Olsen, 276 Or. at 20, 554 P.2d at 144.
81 *MD. CONST.* art 8, § 1.
82 Olsen, 276 Or. at 20, 554 P.2d at 144.
83 *N.Y. CONST.* art. VIII, § 3
84 *WASH. CONST.* art 9, § 2, *OR. CONST.* art VIII, § 3.
were being denied a minimum education. In Arizona, "general and uniform" was interpreted to simply mean schools that are available to citizens between the ages of 6 and 21, and open a minimum of 6 months each year. In Idaho, where schools are constitutionally guaranteed to be "general, uniform, and thorough," the court looked to the intent of the framers of the state constitution and, finding no indication of any requirement that the school system be equal, upheld that state's system.

In addition, courts have been reluctant to interfere with legislative schemes for public school financing for fear of engaging in judicial legislation. The Idaho court refused to interfere with the state's system, stating that

to do otherwise would be an unwise and unwarranted entry into the controversial area of public school financing, whereby this court would convene as a 'super legislature', legislating in a turbulent field of social, economic, and political policy.

The Georgia court concurred with this analysis, adding that the court "lacks the expertise and familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues." In Washington, the court stated that the legislature and the Superintendent of Public Instruction, not the courts are the determinants of whether and in what manner the state's duty to make ample provision for the education of the state's children is to be discharged. In Ohio, the court recognized a duty to review the constitutionality of legislation, but finding that no student was actually being deprived of any educational opportunity at all, found that the General Assembly had not abused its "broad discretion" in creating the present system.

V. Analysis

An examination of state court decisions in public school financing litigation produces some striking contrasts and remarkable inconsistencies. Most notable has been the way in which courts in different states have interpreted the meaning of identical and like constitutional mandates for education. As a result, courts have come to opposite conclusions in otherwise similar cases. A "thorough and efficient" system of schools in New Jersey has been understood by the judiciary to mean equal educational opportunity to all children. The same phrase, however, to courts in Maryland and Ohio merely contemplates the provision of a basic or minimum standard of education. In Wyoming, the constitutional mandate of a "complete and uniform" system of public schools could

86 ARIZ. CONST. art XI, § 1.
88 IDAHO CONST. art IX, § 1.
90 Id. at 798, 537 P.2d at 640.
92 Kinnear, 84 Wash.2d at 715, 530 P.2d at 195.
93 Bd. of Ed. of City Sch. Dist. Etc. v. Walter, 58 Ohio St.2d 368, 387, 390 N.E.2d 813, 825.
94 Robinson, 62 N.J. at 513, 303 N.E.2d at 294.
95 Hornbeck, 295 Md. at 639, 458 A.2d at 780; Walter, 58 Ohio St.2d at 388, 390 N.E.2d at 825.
not tolerate a system which relied on local wealth for financing, whereas similar language in Oregon and Colorado was found to require only that a minimum of educational opportunity was made available. In Connecticut, the state Constitution mandates only that "there shall always be free public elementary and secondary schools in the state," yet the court found that this language established education as a fundamental right, and struck down that state's present financing scheme. Conversely, in Arizona, where education was found to be a fundamental right under the state constitutional provision providing for the "establishment and maintenance of a general and uniform public school system," a school system which is merely open 6 months a year and available to all citizens ages 6-21 satisfies this requirement.

In many states where financing systems have been upheld, the courts have given great deference to the legislation, fearing that examining the statutes too closely would entail judicial intervention into an area reserved for the legislature. Courts have been hesitant to give substantive definitions to states' education clauses, and are therefore unwilling to establish standards by which statutory schemes will meet constitutional requirements. Courts have found that this duty belongs to the legislature, not to the judiciary. Thus, courts have been very willing to accept state arguments for the promotion of local control over schools as a legitimate justification for the inequalities of the existing financing schemes.

Yet, many dissenting judges and commentators have pointed out that this argument, upon closer scrutiny, is lacking in substance. Proponents of many existing schemes argue for the benefits that local control gives over meeting specific local needs, such as providing money for experimentation and innovation, and the planning of extracurricular activities. However, such benefits are only possible where a district has the money to afford them. Many school districts are fighting to provide the bare minimum of education with the funds that they have available. In Ohio, a number of school districts actually closed due to fiscal impossibilities. The dissenting opinion in Hornbeck v. Somerset County Board of Education states:

Local control is an elusive term to those jurisdictions that do not have enough funds to make decisions about what resources will benefit their children. Whatever benefits local control may entail, they certainly do not justify a system giving a vastly inferior educational opportunity to students in poor jurisdictions throughout the state.

Many courts have also been reluctant to find a relevant relationship between educational opportunity and educational funding. Yet, while other factors admittedly can affect educational underachievement, the availability of funding is significant. The court in McDaniel v. Thomas, while upholding Georgia's system, acknowledged that:

disparities in funding also affect the availability of textbooks, library books, audio-visual equipment, supplies, counseling and testing services, and extra-

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96 Herschler, 606 P.2d at 336.
97 Olsen, 276 Or. at 27; 554 P.2d at 148; Lujan 649 P.2d at 1025.
98 See supra note 50.
99 Horton, 172 Conn. at 650, 376 A.2d at 374.
100 Shofstall, 110 Ariz. at 90, 515 P.2d at 592.
101 Walter, 58 Ohio St.2d at 394, 390 N.E.2d at 829.
102 Hornbeck, 295 Md. at 686, 458 A.2d at 805.
curricular activities as well as the conditions of school buildings and grounds.\textsuperscript{103}

In addition, as the dissenting opinion in \textit{Thompson v. Engelking} pointed out:

...clearly a school district would have a great deal of difficulty offering a competent chemistry program if it were unable to purchase the proper equipment and materials. Yet a wealthy district would have little trouble offering such a program.\textsuperscript{104}

Claims of equal protection violations have also produced different outcomes in state courts. Many states have followed the standard established by the Supreme Court in \textit{Rodriguez}, and applied the two tiered test utilized by the Court in that case.\textsuperscript{105} Like the Court in \textit{Rodriguez}, these courts have failed to find the plaintiffs a suspect class or education a fundamental right, and thus have upheld state financing systems based on the finding of a rational relation between the financing scheme and the states’ interest in local control over the schools.\textsuperscript{106} Those states that have applied strict scrutiny to their financing schemes, based on the finding that education is a fundamental right or that the plaintiffs are a suspect class, have all found state equal protection violations.\textsuperscript{107}

States which have followed the \textit{Rodriguez} equal protection analysis, however, have also rejected that case’s test for determining when a right should be considered fundamental.\textsuperscript{108} State constitutions, unlike the federal Constitution, are not of limited powers and specifically provide for a vast range of services, thus making unworkable a test that bases fundamentality on whether a right is explicitly or implicitly granted in the Constitution. The fundamentality of education is therefore based on a subjective judicial standard that varies from state to state. Many state courts, while not finding educational opportunity a fundamental right guaranteed by the state constitution, nonetheless have stressed the importance of education and the vital role that it plays in society. The court in New York stated that:

...public education is unquestionably high on the list of priorities of governmental concern and responsibility, involving the expenditure of enormous sums of State and local revenue, enlisting the most active attention of our citizenry and of our Legislature, and manifested by express articulation in our state Constitution.\textsuperscript{109}

However, under the two-tiered equal protection analysis used by the Supreme Court in \textit{Rodriguez}, a right that is not deemed fundamental is given no greater judicial scrutiny when a violation is alleged than the rational relationship test. Thus, under this analysis, courts must take an all or nothing approach to reviewing the constitutionality of statutory schemes affecting educational opportunity. Consequently, courts have been forced to endorse school financing schemes even though many of those same courts have expressed dissatisfaction with the present systems. For example, in Oregon, where the system was upheld, the court stated that:

\begin{footnotes}
\item[104] Thompson, 96 Idaho at 824, 537 P.2d at 666.
\item[105] See supra note 73.
\item[106] Id.
\item[107] Herschler, 606 P.2d 310; Pauley, 162 W.Va. 672, 255 S.E.2d 859, Horton, 172 Conn. 615.
\item[108] Olsen, 276 Or. 9, 554 P.2d 139.
\item[109] Levittown, 453 N.Y.S.2d at 650, 439 N.E.2d at 366.
\end{footnotes}
our decision should not be interpreted to mean that we are of the opinion that the Oregon system of school financing is politically or educationally desirable. Our only role is to pass upon its constitutionality.\textsuperscript{110}

In Georgia, the court qualified its decision upholding the state's system by stating that:

our holding that the current system of financing public education in Georgia is not unconstitutional should not be construed as an endorsement of the status quo.... It is clear that a great deal more can be done and needs to be done to equalize educational opportunities in this state.\textsuperscript{111}

Courts have recognized that an education is more important than many other social welfare benefits. Therefore the two-tiered approach to judicial analysis of state public school financing schemes is not adequate to evaluate effectively the method by which a state provides educational opportunity to its citizens.

It is necessary that courts apply a degree of judicial scrutiny to these cases which enables courts to recognize education as a vital and important interest. Courts must ensure that states are providing all their citizens with an equal opportunity to an adequate education. This must be done, however, recognizing the benefits of decision-making by a local electorate and preventing judicial intrusion into the legislative function. Courts must not be allowed to substitute their own educational policies and preferences for those of elected school officials, administrators, teachers and parents.

Since \textit{Rodriguez}, the Supreme Court has developed intermediate (middle) level scrutiny, by which the means chosen by a state must be substantially related to the achievement of an important objective.\textsuperscript{111} This is the appropriate level of judicial scrutiny to be applied in evaluating claims of equal protection violations under state public school financing systems.

Intermediate level scrutiny has been applied in cases involving gender-based classifications,\textsuperscript{113} illegitimacy,\textsuperscript{114} and alienage.\textsuperscript{115} In \textit{Plyler v. Doe}, the Court applied intermediate scrutiny to find that a Texas statute which withheld from local school districts any state funds for the education of children who were not "legally admitted" into the United States violated the Equal Protection clause of the Fourteenth Amendment.\textsuperscript{116} In so doing, while acknowledging that education is not a fundamental right, the Court discussed the importance of education and distinguished it from other governmental benefits and social welfare legislation.\textsuperscript{117} In quoting \textit{Abington School District v. Schempp}, the Court stated that "we have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government."\textsuperscript{118} In addition, the Court stated that "education has a fundamental role in maintaining the fabric of our society"\textsuperscript{119} and that "illiteracy is an enduring disability. The inability to read and write will handicap the

\textsuperscript{110} Olsen, 276 Or at 27, 554 P.2d at 149.
\textsuperscript{111} McDaniel, 248 Ga. at 648, 285 S.E.2d at 169.
\textsuperscript{112} Craig v. Boren, 429 U.S. 190 (1976).
\textsuperscript{113} Id.
\textsuperscript{114} Lalli v. Lalli, 439 U.S. 259 (1982).
\textsuperscript{116} Id. at 224.
\textsuperscript{117} Id. at 221
\textsuperscript{118} Id.
\textsuperscript{119} Id.
individual deprived of a basic education each and every day of his life." The Court has recognized that the right to an education, although not explicitly granted in the federal Constitution, nonetheless has a fundamental role in society. The deprivation of an education harms an individual in a deep and enduring way. It necessarily must follow that an alleged violation of the right to an education deserves closer judicial scrutiny than merely requiring a showing by a state of a rational basis for a discriminatory scheme.

Under the Plyler analysis, once the plaintiffs establish a prima facie case of unequal treatment, the defendants bear the burden of proving that the disparate treatment of school children furthers a substantial government interest. This analysis should be employed in school financing case as well. Courts would then be called upon to consider whether taxing local property to fund schools is a scheme that furthers the government's interest in local control of public schools, and whether that interest is a substantial one. While the benefits of local control over public schools are many and may be considered legally "important," it is not likely that courts will find that a funding scheme that creates gross inequities in educational opportunity is substantially related to furthering those interests. Under intermediate scrutiny, public school financing systems that are based on local property tax would have to be found constitutionally invalid.

In addition, courts are free to protect individual rights more fully under state constitutional provisions than the level of protection granted under the federal Constitution. State courts have done so in many areas of the law, such as criminal procedure, land use, as well as education funding. Thus, although the Supreme Court has refused to recognize education as a fundamental right under the federal Constitution, or wealth as a suspect class, state courts are free to make such findings. Strict scrutiny of a public school financing scheme can be the appropriate level of review by a state court regardless of the federal standard. At the very least, however, claims of equal protection violations by public school financing systems, at both the state and federal level, should be evaluated using intermediate judicial scrutiny.

VI. CONCLUSION

Equal educational opportunity is a necessity in granting all citizens the right to self-determination and in maximizing the productivity of society. It is a means of granting all children, wealthy or poor, the opportunity to develop their skills and abilities to their fullest potential. Such an opportunity should not be provided only to those who happen to live in school districts that can afford education and be denied to those who live in districts which cannot. Public school financing systems based on local property taxes are creating basic educational opportunities that are available only to the wealthy and thus serve to perpetuate a class of poor and uneducated citizens.

120 Id. at 222.
121 See id. at 217-18, 230.
Courts should examine public school financing cases under a standard of review that demands that the defendants prove that an important government interest is substantially furthered by local property tax based funding scheme. Under this degree of scrutiny local property tax based financing systems cannot be upheld. Legislators are not omnipotent, and courts should not close their eyes to controversial areas by pleading deference. The courts have a duty to interpret the Constitution, and to review the constitutionality of legislative schemes, regardless of the potential consequences or attending controversy.

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