Connecticut Coalition for Justice in Education Funding v. Rell: What Is an Equitable Solution to Public School Funding?

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A recent Education Trust study found that thirty-six states have a funding gap between low-poverty and high-poverty public school districts, with a national disparity of over $1,300 per student.¹ Thirty-five states have a funding gap between districts with low-minority and high-minority populations, with a national disparity of over $1,000 per student.² The study found that the national funding gap between low- and high-poverty districts translates into an annual shortfall of over $23,000 for a typical classroom of twenty-five students, and over $370,000 for a typical elementary school of four hundred children.³ These gaps seriously impact the ability of high-poverty schools to educate children.⁴

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³ Id. at 6, 7 tbl. 3.

⁴ Id. at 4. Though simply allocating more money to a school district does not necessarily result in a higher quality education, it does mean that more money can be spent on obtaining qualified teachers, procuring better school supplies, and lowering teacher-to-student ratios. See id. Beyond the scope of this Comment, but nonetheless important, is the link between the quality of schooling and future economic success. See, e.g., David Card & Alan B. Krueger, Does School Quality Matter? Returns to Education and the Characteristics of Public Schools in the United States, 100 J. POL. ECON. 1-2 (1992) (citing five studies finding a positive correlation between "school quality and earnings"); id. at 36-37; see also W.S. Barnett, Introduction to EARLY CARE AND EDUCATION FOR CHILDREN IN POVERTY 1, 3 (W. Steven Barnett & Sarane Spence Boocock eds., 1998) (observing that childcare may substantially affect future earnings); WILLIAM SCHWEKE, SMART MONEY: EDUCATION AND ECONOMIC DEVELOPMENT 19 (2004) (arguing that increased education spending benefits both students and businesses).
The landmark decision of *Brown v. Board of Education* overturned the "separate but equal" doctrine of *Plessy v. Ferguson*, firmly establishing education as one of the most important responsibilities of both state and local governments. Creating an adequate funding system to carry out this responsibility for public education is both a national and statewide concern. Many schools, however, lack the money necessary to effectively educate their students. Challenges to the funding systems have mainly been adjudicated in state courts.

For example, in November 2005, the Connecticut Coalition for Justice in Education Funding (CCJEF) filed a complaint against Connecticut Governor Jody Rell alleging that the public education funding system in Connecticut violates the state constitution because it fails to adequately and equitably fund the state's public schools. The Connecticut Constitution guarantees that "[t]here shall always be free public elementary and secondary schools in the state." Moreover, Connecticut law guarantees that "each child shall have . . . equal opportunity to receive a suitable program of educational experiences." Many of the

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5. *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483, 493 (1954) ("Education is perhaps the most important function of state and local governments.").


7. See, e.g., *Abbott v. Burke (Abbott II)*, 575 A.2d 359, 375 (N.J. 1990) ("[A] significant number of poorer urban districts do not provide a thorough and efficient education for their students . . . [and] the education provided depends to a significant extent on the money spent for it, and on what that money can buy—in quality and quantity . . . ").


10. *CONN. CONST. art. VIII, § 1.*

state's school districts, however, are not funded at levels sufficient to meet the 2007-2008 No Child Left Behind's adequate yearly progress requirements.\textsuperscript{12} The CCJEF alleges that the current system irreparably harms schoolchildren in the districts that do not receive adequate funding.\textsuperscript{13}

Insufficient education funding is a problem beyond the borders of Connecticut.\textsuperscript{14} Many advocacy groups have filed suit in other states arguing that the equalization of funding will narrow the academic achievement gap that currently exists between socio-economic classes.\textsuperscript{15}

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\textit{See John Augenblick et al., Augenblick, Palaiich & Assocs., Inc., Estimating the Cost of an Adequate Education in Connecticut} 6 (2005). The No Child Left Behind Act (NCLB) requires schools to meet adequate yearly progress (AYP) requirements with respect to student proficiency in math and reading in order to qualify for increased federal funding. \textit{See No Child Left Behind Act of 2001, Pub. L. No. 107-110, sec. 101, § 1111, 115 Stat. 1425, 1444-62 (2002) (codified as amended at 20 U.S.C. § 6311 (West 2003 & Supp. 2007)). The Act does not require states to give a minimum amount of funding to schools, but rather simply sets academic standards. See 20 U.S.C.A. § 6311(a)(1), (b)(1) (West 2003 & Supp. 2007). For example, in the 2007-2008 school year the lower standard of NCLB requires seventy-nine to eighty-two percent of children at schools in Connecticut to be at a "proficient" level in math and reading in order to qualify for funding. Augenblick et al., supra, at 6. By the 2013-2014 school year, however, one hundred percent of Connecticut students must meet or exceed the state achievement standards. See 20 U.S.C. § 6311(b)(2)(F) (Supp. IV 2004) (requiring each state to set a twelve-year or shorter timeline for satisfying the AYP mandate). A study commissioned by CCJEF found that a serious lack of funding existed in Connecticut's public schools. See Augenblick et al., supra, at 72-73. The funding required to meet the 2007-2008 NCLB AYP standards was not provided for 91 of 166 school districts. Id. at 77 tbl. V-1A. The state is approximately $462 million short of providing enough funds to meet these academic standards. Id. at v. One hundred forty-five of Connecticut's 166 school districts would require an additional $2 billion to meet the target of full adequacy in 2013-2014. Id.
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13. Amended Complaint, supra note 9, at 42, 50.
14. See Lundberg, supra note 8, at 1101 & n.3.
15. See, e.g., Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 198 (Ky. 1989) (reviewing evidence that Kentucky's system of funding created unequal conditions affecting the quality of education and, thus, the performance of the school system statewide); Fair Sch. Fin. Council of Okla., Inc. v. State, 746 P.2d 1135, 1137 (Okla. 1987) (rejecting an advocacy group's claim on the basis that neither the state nor the federal constitution required equal funds per student). A recent \textit{New York Times} article reported that an achievement gap still exists between students of different races. Sam Dillon, \textit{Schools Slow in Closing Gaps Between Races}, \textit{N.Y Times}, Nov. 20, 2006, at A1. For example, in 2005 only nineteen percent of white students in eighth grade tested below "basic" proficiency in reading, compared with forty-nine percent of black students. Id. at A18. Similarly, only twenty-one percent of white students in eighth grade tested below basic proficiency in math, compared with fifty-nine percent of black students. Id. As a research brief by the Northwest Evaluation Association stated, in academic performance at "each score level at each grade in each subject[,] minority students grew less than European-Americans[,] and students from poor schools grew less than those from wealthier ones." Martha S. McCall et al., N.W. Evaluation Ass'n, \textit{Achievement Gaps: An Examination of Differences in Student Achievement and Growth} 1 (2006), quoted in Dillon, supra.
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However, the CCJEF believes that greater steps beyond increasing funding must be taken to solve Connecticut’s education problems.\footnote{Amended Complaint, \textit{supra} note 9, at 18-21.}

Using the State of Connecticut as a foundation, this Comment examines the current funding inadequacies of public school education for lower-income districts. In Part I, this Comment discusses how the Supreme Court sought to provide equal educational access to non-white students, but determined that the use of property taxes to fund education does not violate the Fourteenth Amendment of the United States Constitution. In Part II, this Comment examines how the Connecticut Supreme Court has responded to challenges that the state’s public school funding system is inequitable under the state constitution. In Part III, this Comment analyzes the current funding system in place in Connecticut and explains the inadequacies that exist within this system. Taking a broader view, Part IV looks to equity and adequacy challenges other state legislatures have faced, with either overwhelming successes or overwhelming failures. Finally, this Comment addresses remedies the Connecticut court should consider in attempting to solve the public education problems identified in \textit{CCJEF v. Rell}.  

\section{Education Jurisprudence at the Federal and State Level}

\subsection{Education Policy is Primarily a State Responsibility}

Prior to the twentieth century, education policy was left mainly to the states.\footnote{See Kristen Safier, Comment, \textit{The Question of a Fundamental Right to a Minimally Adequate Education}, 69 U. CIN. L. REV. 993, 998 (2001).} Connecticut adopted child labor and schooling laws in 1842; thirty years later, Connecticut adopted laws providing for general compulsory education.\footnote{1842 Conn. Pub. Acts 40-41; Stephen Lassonde, \textit{Learning and Earning: Schooling, Juvenile Employment, and the Early Life Course in Late Nineteenth Century New Haven}, 29 J. SOC. HIST. 839, 845 (1996). The 1842 law barred children younger than fifteen from employment by any business in the state without proof of attendance in school for at least three months per year. 1842 Conn. Pub. Acts 40-41. To incentivize social responsibility toward children, the law provided that businesses would be fined twenty-five dollars per offense. See \textit{id.} at 41. In addition, the law barred children younger than fourteen from working in textile manufacturing more than ten hours a day, with a fine of seven dollars per day. \textit{Id.} By 1918, all states had passed a compulsory attendance law. Adriana Lleras-Muney, \textit{Were Compulsory Attendance and Child Labor Laws Effective? An Analysis from 1915 to 1939}, 45 J. L. & ECON. 401, 403 (2002).} While having one of the highest median
incomes of any state in the nation, Connecticut consistently contributes one of the lowest amounts to its public education system.

The right to public education is established in the Connecticut Constitution as well as Connecticut's General Statutes. The Connecticut Constitution mandates that "[t]here shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation." Section 10-4(a) of the Connecticut General Statutes states that Connecticut's educational interests "shall include, but not be limited to, the concern of the state that . . . each child shall have . . . equal opportunity to receive a suitable program of educational experiences." Section 10-4(a) also establishes that the state must provide a minimum level of funding, but does not mention a specific system of distribution of the funds.

**B. A Step Toward Equal Opportunity Education**

Equality in the public education system has been an integral part of our democratic society since the Supreme Court decided that "inherently unequal" educational opportunities were unconstitutional. In *Brown v. Board of Education (Brown I)*, the Supreme Court overturned the "'separate but equal'" doctrine originally laid down in *Plessy v. Ferguson.* Though *Brown I* required desegregation, it did not provide the remedy for how schools were to be funded. However, the Court did comment on the importance of an adequate education to the development of a person. Justice Warren observed that today, education

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21. See CONN. CONST. art. VIII, § 1; CONN. GEN. STAT. ANN. § 10-4a (West 2002).

22. CONN. CONST. art. VIII, § 1.

23. CONN. GEN. STAT. ANN. § 10-4a (West 2002).

24. See id.


26. *Id.* at 493-495.

27. See *id.* Though the Court later commented on the appropriate remedy to desegregate under *Brown I*, it remanded the cases to lower courts because they were more familiar with local problems. *Brown v. Bd. of Educ. (*Brown II*),* 349 U.S. 294, 299-300 (1955). The Court did not propose an equitable public education funding plan. *See id.* at 299.

is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. 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.

Overturning the "separate but equal" doctrine was an important step for closing the achievement gap between students of different races. However, simply declaring that separation based on race was inherently unequal did not solve the problem of how a sound educational system should operate.

C. The Federal Government Enacts Education Legislation

In 1965, the federal government took steps to provide substantial funds to students in kindergarten through twelfth grade. The result was the Elementary and Secondary Education Act of 1965 (ESEA), which contained the Title I Compensatory Program. Though Congress’s goal

29. Id.
30. See Jeannie Oakes & Martin Lipton, “Schools That Shock the Conscience”: Williams v. California and the Struggle for Education on Equal Terms Fifty Years After Brown, 11 ASIAN L.J. 234, 234 (2004). The majority in Brown I emphasized that the important factor in their decision concerning public education was that “the state ha[d] undertaken to provide it.” 347 U.S. at 493. When a state takes an affirmative step to provide a service, that service must be made available to all citizens equally. Id.
31. See Elementary and Secondary Education Act (ESEA) of 1965, Pub. L. No. 89-10, 79 Stat. 27. The ESEA was a component of President Lyndon Johnson’s larger efforts to fight poverty. Benjamin Michael Superfine, Using the Courts to Influence the Implementation of No Child Left Behind, 28 CARDOZO L. REV. 779, 785 (2006). It was not a coincidence that the legislation came amidst the civil rights movement. See Rachel F. Moran, The Politics of Discretion: Federal Intervention in Bilingual Education, 76 CAL. L. REV. 1249, 1258 (1988). As President Johnson stated, “‘Congress has taken the most significant step of this century to provide widespread help to all of America’s schoolchildren. . . . Since 1870, almost a hundred years ago, we have been trying to do what we have just done—pass an elementary school bill for all the children of America.” President Lyndon B. Johnson, Remarks Following Enactment of the Elementary and Secondary Education Bill (Apr. 9, 1965), available at http://www.presidency.ucsb.edu/ws/index.php?pid=26883. The Act authorized the use of funds “for educator’s [sic] professional development, instructional materials, resources to support educational programs, and parental involvement promotion.” The Elementary and Secondary Education Act of 1965, http://si.unm.edu/si2002/SUSAN_A/TIMELINE/TIM_0015.HTM. Though originally authorized only through 1970, the ESEA has been re-enacted every five years since its inception. Id. The National Education Association states that the intention of the Act has remained to “provide[] targeted resources to help ensure that disadvantaged students have access to a quality public education.” Id.
was to provide supplemental funds rather than equalize education funding, it was the federal government's first step to put education at the center of social policy.\(^{33}\)

The next step by the federal government was the implementation of the Equal Education Opportunities Act in 1974.\(^{34}\) Congress aimed the Act to prevent the denial of educational opportunities on the basis of "race, color, sex, or national origin" by abolishing segregated school systems.\(^{35}\) Like the Court had done in the \textit{Brown} decisions, Congress established goals for the educational system but left the specific mechanism of implementation to the states.\(^{36}\) However, with the Act, Congress demonstrated a renewed commitment of the federal government to outlaw unfair practices that occurred at the state level.\(^{37}\)

\textit{D. Education is Not a Fundamental Right}

In 1973, the Supreme Court dealt what seemed like a large blow to the campaign for equal opportunity education.\(^{38}\) In \textit{San Antonio Independent School District v. Rodriguez}, the Edgewood Independent School District argued that Texas' educational funding system violated the Equal

\textit{33. See Comm'n on Chapter 1, Making Schools Work for Children in Poverty 7, 9, 12 (1992); Thomas Timar, Program Design and Assessment Strategies in Chapter 1, in Rethinking Policy for At-Risk Students 65, 67 (Kenneth K. Wong & Margaret C. Wang eds., 1994). The Title I program did not focus on providing base funding for target students. Tom Loveless & Diane Ravitch, Broken Promises: What the Federal Government Can Do to Improve American Education, \textit{Brookings Rev.}, Spring 2000, at 18, 21. Instead, the program was centered on supplementing the regular funding that these students already received to compensate for any shortcomings they may have had as a result of their socioeconomic situation. See id. It is estimated that from 1965 to 2000, the program spent over $100 billion in federal funds, with an annual cost of about $8.4 billion at the end of that period. Id. The statute, although amended frequently over the years, retained the same basic principle of providing remedial services to students in need. See David J. Hoff, Chapter I Study Documents Impact of Poverty, \textit{EduC. Wk.}, Apr. 16, 1997, at 22, 22-23 (noting that the program's name was changed from Chapter 1 to Title I). In 1990, the federal government commenced a $29 million study of the Title I program. Id. at 22. The Prospects study was a four-year national longitudinal study of over forty thousand students in high-poverty and low-poverty schools. Id. The study concluded that those students targeted by the Title I program still achieved a lower level of academic performance compared to their classmates from low-poverty schools, with the original achievement gap actually increasing slightly. See id.}


\textit{35. Id. § 1701(a)(1), (b).}


\textit{37. 20 U.S.C. § 1703 (specifying six types of prohibited state actions relating to segregation).}

Protection Clause of the Fourteenth Amendment.\textsuperscript{39} Despite the Edgewood school district's tax rate being twenty-five percent higher than that of the neighboring Alamo Heights Independent School District, Edgewood spent only sixty percent of the amount Alamo Heights spent on education.\textsuperscript{40} Thus, Edgewood argued that its students were adversely impacted by the educational funding system in Texas because of its reliance on local property taxes.\textsuperscript{41}

The Supreme Court disagreed, however, and ruled that education was not a fundamental right protected under the Fourteenth Amendment nor any other constitutional provision.\textsuperscript{42} The decision shut the door on challenges to public school funding systems at the federal level.\textsuperscript{43} The majority in \textit{Rodriguez} hesitated to delve into school finance cases due to federalism concerns.\textsuperscript{44} However, the Court carefully reserved the

\textsuperscript{39} Id. at 4-6 & n.2 (majority opinion). The first Texas state constitution established a system of free public education. Id. at 6 & n.6 (citing TEX. CONST. of 1845 art. X, §§ 1-2). Beginning in 1883, Texas began using local property taxes as a method of funding local school districts. Id. at 6-7 & n.7 (citing TEX. CONST. of 1876, art. VII, § 3 (amended 1883)). Because Texas was a mainly a rural state, the wealth of its citizens was “spread relatively evenly across the State” prior to 1940. Id. at 7-8 & n.14. Thus, a local district’s property taxes supplemented by state funding provided equity in the public education system. See id. at 7-8. However, the growth of industry drastically changed the amount one school district could spend on its children’s education relative to another district. Id. at 8.

\textsuperscript{40} Id. at 12-13. The Edgewood Independent School District had twenty-two thousand students, of whom about ninety percent were Mexican-Americans and almost six percent were African-Americans. Id. at 11-12. Edgewood was a high-poverty district, having both the lowest average property value per student ($5,960) and median family income ($4,686) in the metropolitan area. Id. at 12. Residents of the Edgewood district were taxed at a rate of $1.05 for every $100 of assessed property value; Edgewood then contributed $26 per student to its schools. Id. State and federal funding supplemented this amount to bring the total spent per student in Edgewood to $356. Id. The Alamo Heights Independent School District, on the other hand, had five thousand students, of whom only eighteen percent were Mexican-American and less than one percent were African-American. Id. at 12-13. Alamo Heights was “the most affluent school district in San Antonio,” having a much higher property value per student (over $49,000) and median family income ($8,001) than Edgewood. Id. Residents of the Alamo Heights district were taxed at a rate of $0.85 per $100 of assessed property value; Alamo Heights then contributed $558 per student to its schools. Id. at 13. State and federal funding supplemented this amount to bring the total spent per student in Alamo Heights to $594. Id.

\textsuperscript{41} Id. at 4-5.

\textsuperscript{42} Id. at 33-35.

\textsuperscript{43} See id. at 60-62 (Stewart, J., concurring) (finding no grounds for invalidating the Texas system under the Equal Protection Clause).

\textsuperscript{44} Id. at 43 (majority opinion) (expressing wariness of imposing “inflexible constitutional restraints” that would handicap states’ “continued research and experimentation,” which the Court believed “so vital to finding even partial solutions to educational problems”).
possibility of raising valid challenges at the state level. The Court felt that these problems would be better left to the respective states, as it had traditionally been their duty.

E. Challenges to State Funding Systems

The wording of the Rodriguez opinion left plaintiffs no other option but to bring their education funding suits based on violations of their state constitutions. Many state decisions focused on the equalization of funding. Two important decisions of the post-Rodriguez era were Serrano v. Priest (Serrano II) and Robinson v. Cahill. In both cases, the state supreme courts ruled in favor of plaintiffs who alleged that the challenged funding systems violated the state constitutions by failing to provide for equitable funding for all districts; but the courts anchored their holdings to very different provisions of those constitutions.

In Serrano II, the California Supreme Court held that the system of public education funding in place violated the equal protection provision of the state constitution. The reliance on property taxes to fund the public school system created unequal conditions. Thus, the court found

45. See id. at 58-59 ("The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. . . . The ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.").

46. Id. at 40-44; id. at 44 ("[I]t would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every state.").

47. See supra note 46 and accompanying text.

48. Michael W. La Mort, Courts Continue to Address the Wealth Disparity Issue, 11 EDUC. EVALUATION & POL'Y ANALYSIS 3, 3-4 (1989). Such arguments on the state level were successful in nearly fifty percent of the suits filed by 1989. Id. at 4.

49. 557 P.2d 929 (Cal. 1976).


51. See Serrano II, 557 P.2d at 957-58 (holding that the funding system violated the state but not the federal constitution); Robinson, 303 A.2d at 297 ("[I]t may be doubted that the thorough and efficient system of schools . . . can realistically be met by reliance upon local taxation.").

52. Serrano II, 557 P.2d at 958. At an earlier state of the case, the California Supreme Court reversed the trial court's order granting defendants' general demurrers, on the ground that the facts alleged in the complaint, if true, would establish violations of both the state and federal constitutions. Serrano v. Priest (Serrano I), 487 P.2d 1241, 1244-45, 1265-66 (Cal. 1971) (in bank).

53. Serrano I, 487 P.2d at 1252. The public school system in California, at the time Serrano I was brought, was based on a finance system drawing heavily from local property
the funding system failed to provide equal treatment with respect to both
the provision of services for students and the distribution of the tax
burden among districts.\textsuperscript{54}

The New Jersey Supreme Court, however, did not use the equal
protection clause of the New Jersey Constitution as the foundation of its
holding in \textit{Robinson}.\textsuperscript{55} Instead, the court used the state’s education
provision to find that the funding system in place was unconstitutional.\textsuperscript{56}
That article guaranteed each child in the state the right to a “"thorough
and efficient"” education.\textsuperscript{57} Because it was so closely linked to property
taxes, the funding system could not provide equal educational
opportunities to students, and thus violated the constitutional mandate.\textsuperscript{58}

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\textsuperscript{54} Id. at 1244. As a consequence, “districts with smaller tax bases [we]re not able to
spend as much money per child for education as districts with larger assessed property
valuations.” \textit{Id}.

\textsuperscript{55} Id. at 1252 n.15; see also \textit{Serrano II}, 557 P.2d at 958 (affirming the holding in
\textit{Serrano I}). It is unlikely that many state courts would use an equal protection claim as the
basis for their decision to declare educational funding systems unconstitutional. \textit{See} Kevin
Randall McMillan, \textit{The Turning Tide: The Emerging Fourth Wave of School Finance
Reform Litigation and the Courts’ Lingering Institutional Concerns}, 58 OHIO ST. L.J. 1867,
1992 (1998). The broad nature of equality has the potential to set a very dangerous
precedent for the courts. \textit{See id}. By grounding such a decision on the Equal Protection
Clause, courts would potentially open the door for more social reform claims based on the
same argument. \textit{See id}. For example, the equal protection rationale could support
arguments based on desegregation, because often, the difference in funding between
school districts breaks down along racial lines. \textit{See id}. at 1898-99. Interestingly, only three
states have desegregation clauses explicitly written in their state constitutions:
Connecticut, Hawaii, and New Jersey. \textit{Id}. at 1902 & n.163.

\textsuperscript{56} \textit{Robinson}, 303 A.2d at 282-87. The New Jersey court also rejected the plaintiff’s
federal equal protection argument, on the authority of the Supreme Court’s \textit{Rodriguez}
decision. \textit{Id}. at 279-82.

\textsuperscript{57} \textit{Id}. at 290-98. The foundation program, which was the funding system in place,
drew on three sources: local real property taxes, state aid, and federal aid. \textit{Id}. at 276.
Under this program, each district received $400 per student, minus the amount the district
could raise through local property taxes at a rate of $1.05 per $100 of property value.
202 A.2d 273 (N.J. 1973). Established in 1954, the program set a minimum contribution
level at $100 per student for all districts. \textit{Id}. However, by the 1969-1970 school year,
every district in New Jersey had an annual budget in excess of that “"guaranteed”” under
the 1954 program, and by 1972, the average statewide expense per student was $1009. \textit{Id}.
At the time of the suit, sixty-seven percent of education operating expenses statewide
were funded by local taxes, twenty-eight percent by state aid, and five percent by federal

\textsuperscript{58} \textit{Id}. at 295-97. As the court summarized the funding problem:

It is agreed there is a disparity in the number of dollars spent per pupil,
depending upon the district of residence. As to the local property tax, the base is
the taxable real property within the several districts, and of course the amount of
taxable real property within a district is not related to the number of students
within it. Although there is no statutory maximum upon the local tax for current
The Robinson decision was important because it sparked a new line of potential challenges to state education funding systems.\textsuperscript{59} Instead of using an equal protection argument focused on equalized spending with respect to all districts, many litigants chose to center their attention on the quality of education students received.\textsuperscript{60} Thus, the focus shifted away from strictly fiscal concerns.\textsuperscript{61}

II. CONNECTICUT ATTEMPTS TO TACKLE THE PROBLEM

A. Connecticut Parents Challenge the Funding System

In 1974, in Horton v. Meskill, a group of parents in Connecticut filed suit against state officials, alleging that the funding system in Connecticut violated the Fourteenth Amendment as well as the educational provisions that existed in both the state constitution and code.\textsuperscript{62} Two
separate sources financed the education funding system in Connecticut. The first source of funding came directly from local property taxes of all property owners within town lines; the second came from the state, as directed by legislation. Specifically, the legislation allocated "a flat grant [to each town] depending on the average number of pupils attending school daily." Even though various other grants supplemented the flat grant, it constituted a majority of the funding from the state.

In the 1972-73 school year, the percentage contribution for education funding fell heavily on the local governments. Although this was a national trend, local governments in Connecticut shouldered a burden much higher than the national average. By placing such a heavy burden on the local governments, the Connecticut public education system essentially used property taxes as its primary source of funding. Moreover, the flat grant did not take into account the relative needs of individual towns. Towns that were adequately funded through property taxes received just as much state aid as those towns in dire need of assistance. Thus, the most accurate measure of a town's ability to finance public education was the amount of taxable property found within its borders.

63. Horton, 376 A.2d at 365-66.
64. Id.
65. Id. ("This grant is usually referred to as the ADM (average daily membership) grant.").
66. Id. at 366 (giving examples of supplemental grants, including those for "exceptional and handicapped students").
67. COMM'N TO STUDY SCH. FIN. & EQUAL EDUC. OPPORTUNITY, FINANCING CONNECTICUT'S SCHOOLS 1 (1975) (reporting that local sources provided sixty-eight percent of Connecticut's education funds, while state and federal sources provided twenty-nine and three percent, respectively).
68. Id. (reporting that the national averages were fifty-one percent local contributions, forty-one percent state contributions, and eight percent federal contributions).
69. Horton, 376 A.2d at 366.
70. See id. at 367-68.
71. Id. at 366 (noting that about eighty percent of the state aid for local public school operation expenses was distributed as a flat grant, without regard for the ability of the recipient to finance education).
72. Id. at 367-68. The situation existing in Connecticut at the time of Horton meant that both taxpayers and students in property-poor towns were placed at a disadvantage. Id. The taxpayers in property-poor towns were taxed at higher rates than property-rich towns. Id. at 367. Moreover, the higher tax rates still yielded comparatively less money for the town to spend on education. Id. Therefore, less money was spent on the education of individual students who attended schools in property-poor towns than that of students who attended school in property-rich towns. Id. at 367-68. The flat grant from the state did not consider any of these factors. Id. As the Horton court summed up the situation:
The court's holding in *Horton* mirrored the holding of the *Robinson* court by enumerating what factors should be considered when evaluating the "quality of education" at a school.⁷³ *Horton* recognized that many of the requirements of a quality education are directly related to the per-pupil expenditures implemented at the school.⁷⁴ The court noted that Connecticut was the worst in the nation at distributing funds in a way that would create a balance in the abilities of towns to finance their respective public education systems.⁷⁵ Moreover, Connecticut "ranked forty-seventh in the percent of educational funding coming from the state and second in the percent of education funding coming from local governments."⁷⁶

These facts led the court to uphold the trial court's finding that the finance system in Connecticut was unconstitutional.⁷⁷ The court recognized that variations in funding among school districts had a substantial impact on the quality of instruction in Connecticut schools.⁷⁸ Thus, the state failed to fulfill its constitutional duty to provide an equal opportunity to receive a suitable education, because the quality of education depended on where a student resided in the state.⁷⁹

"In short, many towns can tax far less and spend much more; and those less fortunate towns can never catch up in school expenditure because taxes are already as high as homeowners can tolerate. . . . This dual inequity—a family can pay more and get less for its children—is the fundamental issue of school finance."

. . . [T]he present system of financing education in Connecticut ensures that, regardless of the educational needs or wants of children, more educational dollars will be allotted to children who live in property-rich towns than to children who live in property-poor towns.

*Id.* (quoting 2 GOVERNOR'S COMM'N ON TAX REFORM, LOCAL GOVERNMENT—SCHOOLS AND PROPERTY 53-54 (1972) (alteration in original)).

73. See *id.* at 368 (listing eight factors: "(a) size of classes; (b) training, experience and background of teaching staff; (c) materials, books and supplies; (d) school philosophy and objectives; (e) type of local control; (f) test scores as measured against ability; (g) degree of motivation and application of the students; (h) course offerings and extracurricular activities").

74. See *id.*

75. *Id.*

76. *Id.* at 369.

77. *Id.* at 369-70, 374.

78. *Id.* at 368.

79. *Id.* at 374-75. This was not a direct constitutional duty, but one imposed by statute derived from the state constitution. *See* CONN. CONST. art. VIII, § 1; CONN. GEN. STAT. ANN. § 10-4a (West 2002).
B. Connecticut Attempts to Provide an Equitable Funding System

The decision in *Horton* effectively ended the system of public education funding that existed in Connecticut prior to 1977. After *Horton*, the country began to realize that the public education systems at the state level were in need of serious overhauls. A national study found that a "rising tide of mediocrity" was eroding the quality of education in schools across the country. Essentially, by allowing such problems as insufficient funding to prevail, American schools had put themselves at a competitive disadvantage with the rest of the world.

The Connecticut legislature's response came in 1989 with the implementation of the Education Cost Sharing Grant program (ECS). The ECS is a complex system of formulae that determine the amount of education funding a given town will receive from the state. The ECS takes into account both the number of resident students within each town and the socio-economic backgrounds of those students. Essentially, aid to towns is tied to the number of resident students plus a specified increase for any "at need" groups that ECS recognizes.

Moreover, every town has a minimum expenditure requirement (MER) that must be met in order to qualify for additional funding through the ECS program. The MER is a specified amount that towns must spend on direct educational needs. The MER consists of local tax dollars coupled with state and federal education grants for regular and

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82. *Id.* at 7.
83. *Id.* Though the study's primary concern was student achievement and results, *id.* at 5, 7, the lack of adequate funding was also addressed, *id.* at 15-16, 19.
85. *See id.* at 24-25.
86. *Id.* at 3-4. For example, because of the relationship between concentrations of poverty and educational need, students living in poverty are given extra weight in the system. *Id.* at 2-3.
87. *Id.* at 3. Limited English proficiency students and remedial students are both considered at need and receive the same special weighting. *Id.* However, some groups that many would consider at need are not factored into this calculation. For example, special education students are not factored into the system any differently from a resident student with no mental or physical disabilities. *Id.*
88. *Id.* The state requires that if there are more than twenty limited English proficiency students of the same language in a school, the district is obligated to "establish comprehensive bi-lingual programs for these students." *Id.* at 2-3.
89. *Id.* at 24-26.
90. *Id.* at 24. Debt service and transportation are not counted toward a school's MER. *Id.*
special education programs. If a town fails to meet the MER, the State Board of Education withholds twice the amount of the town’s shortfall. The goal of the ECS is to provide more equitable funding to all towns in the state. In 1989, ECS grants represented 44.5 percent of the total education expenditures for every town in Connecticut. By 2005, that share had dropped to 40.6% of total education expenditures.

C. CCJEF Challenges the ECS

In Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, the CCJEF asserts that the State of Connecticut is not fulfilling its duties as outlined in the Horton decision. Not only has the funding percentage of the ECS decreased over the past sixteen years, but the achievement gap in students’ performances remains large. Not surprisingly, the poorest towns have the least percentage of compliance with the MER requirement. Thus, towns with the most resources and lowest need receive their full ECS allotment, while towns with the least resources and highest need may not.

91. Id.
92. Id.
93. Id. at 2.
94. Id. at 12.
95. Id. at 32-33.
96. Amended Complaint, supra note 9, at 17-19.
97. Id. at 31-35, 43-45, 49. Moreover, the CCJEF argues that the ECS is underfunded and lacks a rational relation to the actual costs of educating students. Id. at 42-44; see also discussion supra note 12.
98. Div. OF FIN. & INTERNAL OPERATIONS, supra note 84, at 28-30. When calculating socio-economic status, factors such as median family income, percentage of parents with a bachelor’s degree, percentage in managerial or professional occupations, percentage of single parent families, percentage of families receiving Temporary Family Assistance, percentage of non-English-speaking homes, and the 1994 average enrollment are considered. Id. When Connecticut’s 166 school districts were divided according to these guidelines, the lowest group (the group having the greatest need) had a compliance rate of 8.63%, while the highest group (the group having the least need) had a compliance rate of 146.89%. Id. According to ECS policy, whatever shortage a town has in relation to the MER, double that amount can be withheld in the form of ECS funding. Id. at 26-31.
99. Id. at 24. In its complaint, the CCJEF asserted that Connecticut “municipalities ... do not have the ability to raise the funds needed to compensate for the monetary shortfalls that result from the state’s arbitrary and inadequate funding system.” Amended Complaint, supra note 9, at 43. The CCJEF alleged that the state’s failure to adequately and equitably fund its public schools irreparably harmed the plaintiff schoolchildren by limiting their future ability “to take full advantage of this country’s democratic processes and institutions,” secure “meaningful employment” in the competitive marketplace, successfully continue their education beyond high school, and reap the monetary benefits and intellectual rewards of such an education. Id. at 50-51.
III. CAN CONNECTICUT LEARN FROM THE EXPERIENCES OF OTHER STATES?

Forty-five states have had education funding challenges brought under their respective state constitutions. In a limited number of cases, the

100. National Access Network, Access: Education Finance Litigation, School Funding Policy, and Advocacy, http://www.schoolfunding.info/states/state_by_state.php; see, e.g., Opinion of the Justices, 624 So.2d 107, 107 ( Ala. 1993) (advising Alabama Senate whether "the Legislature is required to provide schoolchildren with substantially equitable and adequate educational opportunities" under the state constitution); Shofstall v. Hollins, 515 P.2d 590, 591 (Ariz. 1973) (en banc) (stating plaintiffs' claim that the disparity in funding among school districts "results in inequality in education for the students, and an unequal burden on taxpayers in the poorer districts"); Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90, 91 (Ark. 1983) (stating plaintiffs' claim that "the current state financing system is inadequate to rectify the inequalities inherent in a financing system based on widely varying local tax bases"); Serrano v. Priest (Serrano I), 487 P.2d 1241, 1244 (Cal. 1971) (in bank); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005, 1010-11 (Colo. 1982) (en banc) (reversing trial court's findings that the Colorado funding system "violates the equal protection provisions of the United States and the Colorado Constitutions, and also violates the Colorado constitutional mandate that a 'thorough and uniform' system of public schools be provided" (quoting COLO. CONST. art IX, § 2)); Horton v. Meskill, 376 A.2d 359, 361 (Conn. 1977); McDaniel v. Thomas, 285 S.E.2d 156, 157 (Ga. 1981) (reviewing claims that Georgia's "system of financing public education 1) violates the equal protection provisions of [the] state constitution and 2) deprives . . . children . . . of an 'adequate education'" (citation omitted)); Thompson v. Engelking, 537 P.2d 635, 636 (Idaho 1975) (upholding validity of public school financing system under state constitution despite "its heavy reliance on the ad velorem property tax"); Blase v. State, 302 N.E.2d 46, 47 (Ill. 1973) (rejecting allegation that the state should "provide not less than 50% of the funds needed to operate and maintain public elementary and secondary institutions and services"); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 190 (Ky. 1989) (reviewing allegations that "the system of school financing provided for by the General Assembly is inadequate; places too much emphasis on local school board resources; and results in inadequacies, inequities and inequalities throughout the state so as to result in an inefficient system of common school education in violation of [the] Kentucky Constitution"); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, 761-62 (Md. 1983); Sween v. State, 505 N.W.2d 299, 301 (Minn. 1993) (en banc) (reviewing claim that "certain components of the Minnesota education finance system were unconstitutional under the Education Clause of the Minnesota Constitution"); Helena Elementary Sch. Dist. No. 1 v. State, 769 P.2d 684, 685 (Mont. 1989), amended by 784 P.2d 412 (Mont. 1990) (upholding lower court's ruling that Montana's public school funding system was unconstitutional); Gould v. Orr, 506 N.W.2d 349, 350 (Neb. 1993) (rejecting claim that "Nebraska's statutory scheme for financing public schools denie[d] appellants equal protection of the law, equal and adequate educational opportunity, and uniform and proportionate taxation"); Abbott v. Burke (Abbott II), 575 A.2d 359, 363 (N.J. 1990) (upholding challenge to state education statute as violative of the state constitution's "thorough and efficient clause"); Bd. of Educ. v. Nyquist, 439 N.E.2d 359, 361-62 (N.Y. 1982) (rejecting allegation that the state schooling system "violate[d] the equal protection clauses of both the State and the Federal Constitutions and the education article of our State Constitution because that system results in grossly disparate financial support (and thus grossly disparate educational opportunities) in the school districts of the State"); Britt v. N.C. State Bd. of Educ., 357 S.E.2d 432, 434 (N.C. Ct. App. 1987) (rejecting claim that "each student in the State has a fundamental right to an education substantially equal to
court's decision has led to marked increases in achievement in the state, while in other cases the court's decision has had no positive effect

that enjoyed by every other student in the State, and that the present statutory scheme for financing public education violates that right’); Bismarck Pub. Sch. Dist. No. 1 v. State, 511 N.W.2d 247, 250-51 (N.D. 1994) (3-2 decision) (upholding challenge to funding system "based predominantly upon each school district's property tax base, which resulted in ... nine 'property poor' school districts and their pupils receiving fewer educational resources per pupil than 'property wealthy' school districts"); Bd. of Educ. v. Walter, 390 N.E.2d 813, 817 (Ohio 1979) (rejecting the claim that “Section 2 of Article I of the Ohio Constitution provides Ohio's school-age children with a 'fundamental right' to equal educational opportunity’); Fair Sch. Fin. Council of Okla., Inc. v. State, 746 P.2d 1135, 1137 (Okla. 1987) (“We hold that neither the United States nor the Oklahoma Constitution requires a funding regime that provides equal expenditures per child.”); Coal. for Equitable Sch. Funding, Inc. v. State, 811 P.2d 116, 117 (Or. 1991) (in bank) (upholding constitutionality of funding system despite allegations that “[t]he state pays to school districts less money than they need to comply with all the state standards” and that “the quality of educational opportunity depends substantially on availability of funds, which differs from district to district”); Olsen v. State, 554 P.2d 139, 140 (Or. 1976) (rejecting claims that “under the Oregon system the amount of money available for education depends upon the value of the property in the individual school districts and this varies greatly,” and that “this variation in wealth results in unequal educational opportunities for the children of the state’); Danson v. Casey, 399 A.2d 360, 362-63 (Pa. 1979) (dismissing action for failure to state a justiciable claim, despite allegation that the state shortage of educational funds meant the state “would be able to offer its students only a ‘truncated and uniquely limited program of educational services’”); Richland County v. Campbell, 364 S.E.2d 470, 471 (S.C. 1988) (rejecting claim that “the present system for financing public primary and secondary education is unconstitutional” and denying an order “directing the legislature to reallocate school funds to remedy the alleged[ly] invalid system”); Tenn. Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 141 (Tenn. 1993) (remanding for determination of whether “the funding system violates the equal protection provisions of Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution because the system results in inequalities in the provision of those educational opportunities guaranteed by Article XI, Section 12’’); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 392 (Tex. 1989) (finding that the state school financing system violated the state constitution); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 78 (Wash. 1978) (en banc) (upholding claims that “the State had failed to discharge its 'paramount duty' to make 'ample provision for the education' of its resident children pursuant to [the state constitution] and to 'provide for a general and uniform system of public schools'”); Pauley v. Kelly, 255 S.E.2d 859, 861 (W. Va. 1979) (remanding for determination of whether “[the] system for financing public schools violates West Virginia's Constitution by denying plaintiffs the 'thorough and efficient' education required by Article XII, Section 1, and by denying them equal protection of the law’’); Kukor v. Grover, 436 N.W.2d 568, 570 (Wis. 1989) (rejecting claim that “the system of school finance is unconstitutional for the reason that it fails to meet the requirement of art. X, sec. 3 of the Wisconsin Constitution that '[t]he legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable’’); Washakie County Sch. Dist. No. 1 v. Herschler, 606 P.2d 310, 315 (Wyo. 1980) (granting declaratory judgment on claim that plaintiffs “have a right to a school financing system that provides a relatively uniform amount of money on an annual per-pupil basis to each of the Wyoming school districts,” among other claims).
whatsoever. The following examples details the potential pitfalls and successes for a state facing a challenge to its public education system.

A. Alabama Fails to Implement a Successful System

In Alabama Coalition for Equity, Inc. v. Hunt, a challenge was brought under the Alabama state constitution. The state's public education system was in shambles: Alabama ranked forty-ninth among the states in graduation rate, almost half the adult population lacked a high school diploma, and more than forty percent of all high school students required remedial courses before starting post-secondary education. The court used a variety of measures to test the adequacy of Alabama's public schools. Under each test, the court concluded that Alabama's public schools "clearly fall short." The court proposed and approved a comprehensive system and set a six year deadline to reach a fully funded status. The plan was a combination of many proposals, including accountability at all levels, professional development, and programs for at-risk youth. The system was to be funded by a progressive tax restructuring plan that would affect taxpayers relative to their income.

101. See discussion infra Part III.A-D.
103. Id. at 136-37. All parties to the suit acknowledged the poor condition of Alabama schools. Id. at 139. In fact, Governor Guy Hunt admitted that the dropout rate in Alabama was one of the highest in the country. Id. at 137. Moreover, he conceded that many students who did graduate could not handle the demands of a college curriculum without remedial coursework. Id.; see also Martha I. Morgan, Adam S. Cohen & Helen Hershkoff, Establishing Education Program Inadequacy: The Alabama Example, 28 U. MICH. J.L. REFORM 559, 592-94 (1995) (discussing the inadequate learning conditions noted in Alabama Coalition for Equity).
104. Ala. Coal. for Equity, reprinted in 624 So. 2d 107 app. at 128-137.
105. Id. at 138.
Ultimately, the plan failed. Politicians and special interest groups, including education associations, attacked the plan on many fronts; some groups grossly exaggerated the cost of the education plan. Fob James, a gubernatorial candidate, ran on an anti-tax and anti-educational reform platform, promising to overturn the court order in Alabama Coalition for Equity. Eventually, the tax restructuring plan was defeated by a referendum and Alabama never realized the plan’s potential as a solution to the public education crisis. Alabama’s public school system remains one of the worst in the nation.

B. Kentucky Revamps Its Entire Education System

Kentucky’s educational system was challenged in Rose v. Council for Better Education, Inc. In Council for Better Education, the state supreme court found that not only was Kentucky’s education funding...
system unconstitutional, but "that Kentucky's entire system of common schools [wa]s unconstitutional" as well.115 Without criticizing responsible individuals or institutional actors, the court emphasized that its decision was "an opportunity for the General Assembly to launch the Commonwealth into a new era of educational opportunity which will ensure a strong economic, cultural and political future."116 The court provided extensive guidance as to what it expected of the General Assembly in order to produce an education system that would satisfy the requirements of the state constitution.117 In issuing its strong directive, the court focused not on who had erred, but on how to work toward the common goal of a better educational system.118

115. Id. at 215.
116. Id. at 216.
117. Id. at 212-13. First, the court enumerated seven "capacities" that a proper school system must aim to provide each student:
   (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

   Id. at 212. Second, the court spelled out what it found to be the nine "essential, and minimal, characteristics of an 'efficient'" public school system:
   (1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.
   (2) Common schools shall be free to all.
   (3) Common school shall be available to all Kentucky children.
   (4) Common schools shall be substantially uniform throughout the state.
   (5) Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances.
   (6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence.
   (7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education.
   (8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education.
   (9) An adequate education is one which has as its goal the development of the seven capacities recited previously.

   Id. at 212-13.

118. See id. at 216 ("This decision has not been reached without much thought and consideration. We do not take our responsibilities lightly, and we have decided this case
The decision in Council for Better Education spawned the Kentucky Education Reform Act of 1990 (KERA). KERA established the Support Education Excellence in Kentucky (SEEK) fund, which earmarked a state-wide minimum level of funding per pupil to be spent on each pupil's education. Through SEEK, the legislature took two distinct actions to increase and equalize funding in the state. First, it equalized local property tax rates. Second, it increased the state sales tax by one percent and made changes to income taxation and deduction rules.

After KERA's implementation, Kentucky students improved substantially in mathematics at all levels and in reading at both elementary and high school levels. Moreover, funding for Kentucky's schools increased more than sixty percent in eight years and local contributions increased by over 108%. The success of Kentucky's reform effort has inspired other states to adopt reforms as well.
C. New Jersey Attempts to Change its Funding System

A few years prior to the Kentucky suit, the New Jersey system of education funding was challenged in *Abbott v. Burke* (*Abbott II*). In *Abbott II*, the state supreme court found that students in poorer districts in New Jersey were not being afforded a "thorough and efficient education," as the state constitution mandated. The court ordered the executive and legislative branches to introduce new legislation that would ensure equality in the public school system. The court recommended basing per-pupil expenditures on the average amounts spent per pupil in the 120 wealthiest towns and highest-achieving districts, which would result in increased funding for twenty-eight specific school districts. This recommendation led to the passage of the Quality Education Act.

The Quality Education Act restricted funding to the wealthier districts in New Jersey and increased the funding to more impoverished districts. The Act was met with fierce resistance and it was reigned in almost immediately. Similar to Alabama, politicians began to fight the
What is an Equitable Solution to Public School Funding?

D. Michigan Focuses on Finance Reform

Michigan began a substantial overhaul of its public education funding system in 1993. When the state's Republican governor and members of the state senate's majority proposed a bill to reduce property taxes just a few weeks after voters rejected a similar constitutional amendment, the Democratic senate minority leader proposed cutting local property taxes entirely; her proposal was immediately adopted, but with a deadline of December 31, 1993 for the development of reform plans to replace lost school revenue. The legislature's reform proposals forced the public to choose between two options for funding public education: the "ballot plan," which would raise the state sales tax, or the "statutory plan," which would raise the state income tax if voters rejected the ballot plan. By a margin of sixty-nine percent to thirty-one percent, the voters chose the ballot plan.

The ballot plan, which increased the state sales tax by fifty percent, raised more than $1.5 billion of school funding in only one year. Combined with other measures, state aid to schools increased from $2.5 billion in 1993 to $7 billion in 1994. Each district received a set amount of money per student residing in that district. The system also contained a grandfather clause that ensured no school district would receive less funding than it had before the ballot plan took effect. Most school districts benefited in terms of funding as a result of the reform, and no district was significantly worse off.

134. Id. at 106-07. Governor Whitman, who opposed the Act, claimed that "a thorough and efficient education was defined best by educational standards rather than financial inputs." Id. at 107.
135. See id. at 108-09.
138. Id. at 163.
139. Id. at 165.
140. See id. at 166-67.
141. See id.
142. Id. at 166.
143. See Courant & Loeb, supra note 136, at 131.
144. See id. at 131-33. However, Courant and Loeb posited that the guarantee that no district would be worse off was only temporary, as calls for increased local control over school spending mounted. See id. at 133.
The Michigan overhaul seems to have had a positive impact by redistributing the burden of paying for education reforms. In the year prior to the legislation, local districts funded more than sixty-six percent of the educational burden, while the state contributed only about twenty-nine percent. By 2001, the state contribution had increased to almost seventy-eight percent of public education funding. Nine years after the ballot plan was passed, the discrepancy in funding between richer and poorer districts had decreased fifty percent.

E. Hawaii Implements a New System of Distribution

Hawaii is one of only five states yet to have had a constitutional challenge to its public education system. In Hawaii, local property tax constitutes a very small portion of public education funding. Moreover, Hawaii does not base the distribution of educational funds on property wealth. The basis for public education funding in Hawaii comes directly from the state sales tax. Besides being unique in the way it funds its public education system, Hawaii is a trailblazer in its method for distributing funds to individual schools.

Edmonton, Alberta, has used weighted school funding (WSF) for many years with very favorable results, but no state legislature in the United States had

145. See id. at 131-33.
147. Id.
148. See id. at 36.
150. LOHMAN, supra note 20, at 6 tbl.3 (noting that 1.2% of Hawaii's education funding came from property taxes in 1997-1998).
152. Id. at 300.
153. See id. at 301.
ever fully implemented WSF. On July 27, 2006, Hawaii became the first state to implement the WSF system statewide.

The WSF system is based on three core principles. First, funding follows each individual student, rather than simply being disbursed based on the district's determined amount of fiscal need. Second, the calculation of funding per student is based on factors that aim to accurately represent, or "weight," the student's specific needs. This funding is not assigned to the school district but rather to the specific student. Third, principals are given direct control of their schools' budgets, and they decide how the funding is allocated.

IV. COMPARING THE SOLUTIONS OF OTHER STATES

A. Focusing the Challenge Under the State Constitution

Since the Supreme Court's decision in Rodriguez, students and organizations have challenged the system of public education from both


156. Vu, supra note 155. Hawaii is unique not only because of its use of the WSF system, but because the entire state comprises essentially one school district. Id. It is unclear whether this setup will provide an advantage or disadvantage for the successful implementation of WSF. Id.

157. See PETKO, supra note 155, at 6.

158. Id.; see also THOMAS B. FORDHAM INST., FUND THE CHILD: TACKLING INEQUITY & ANTIQUITY IN SCHOOL FINANCE 21-27 (2006) [hereinafter FUND THE CHILD]. Traditionally, funds are distributed by the full-time equivalent count, or the number of students enrolled in a given school district. PETKO, supra note 155, at 6. However, under the WSF system, the specific demographic of each school determines the amount of funding the school receives. Id.

159. FUND THE CHILD, supra note 158, at 21-23. For example, a student who does not speak English as his or her first language, or who has a learning disability, is given a heavier "weight" and receives more funding. Id. at 22.

160. Id. at 21. Thus, when a student moves to a different school, even within the same district, the specific funding for that student goes with him or her. Id.

161. See id. at 25-28. WSF is frequently confused with the school-based management (SBM) movement of funding of public school systems. PETKO, supra note 155, at 1 (observing that WSF and SBM each belong to the decentralization movement, a broad reform effort). The WSF system is a way of allocating resources, while SBM is a way of managing resources that have already been distributed to schools. Id. at 8-9. WSF funding is designed to "arrive at the school as real dollars... [instead of as] teaching positions, ratios, or staffing norms." FUND THE CHILD, supra note 158, at 26-27. The control given to principals under WSF allows flexibility within each school as to the destination of the funds, instead of having such decisions made at the district level, where there is little direct contact with the individual schools. Id. at 25-26.
an equality and adequacy perspective. A successful challenge under the equality clause of a state constitution normally results in a restructuring of the current funding system for public education. A successful adequacy challenge, on the other hand, normally results in a solution having much broader implications than school finances. CCJEF brought a challenge under both Connecticut’s equality and adequacy clauses. Thus, the court should not allow Connecticut to simply restructure the current finance system as it did in the wake of the decision in Horton. Instead, Connecticut should determine what aspects of other states’ reforms caused their respective successes or failures.

B. Kentucky Achieves Success Compared to Alabama

The challenge brought in Council for Better Education was limited to the funding system in place. However, the Kentucky Supreme Court broadened the scope of the action by declaring the entire public education system unconstitutional under the state’s adequacy clause. Kentucky decided to implement the most sweeping education reform the country has ever seen with KERA. Kentucky and Alabama were facing the same situation concerning the dismal conditions of their public education systems. Kentucky achieved a major success whereas Alabama still has poor student achievement due to the failure of legislation crafted in response to the Alabama Coalition for Equity decision.

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162. See supra note 100 and accompanying text; see also supra Part I.D.
163. See supra note 100.
164. See, e.g., Opinion of the Justices, 624 So. 2d 107, 107 (Ala. 1993).
165. See, e.g., Rose v. Council for Better Edu., 790 S.W.2d 186, 215 (Ky. 1989) (noting that the entire system of education was unconstitutional, not just the funding system).
166. Amended Complaint, supra note 9, at 17-19. The constitutional language gives the legislature explicit direction to implement a public school system. CONN. CONST. art VIII, § 1. The legislature, in turn, mandated that the state provide each child with “equal opportunity to receive a suitable program of educational experiences.” CONN. GEN. STAT. ANN. § 10-4a (West 2002).
167. See generally DIV. OF FIN. & INTERNAL OPERATIONS, supra note 84.
169. Id. at 215. The constitution provides that “[t]he General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.” KY. CONST. § 183.
170. SCHRAG, supra note 127, at 72.
172. See supra Part III.A.-B.
While the Alabama legislature never passed a funding scheme, the Kentucky legislature decided to fund KERA through a flat increase on the sales tax within the state and the implementation of a minimum level of local contribution. The main difference between Alabama and Kentucky, however, was not in each state's vision of what constituted an adequate education, but in the manner in which Kentucky implemented its restructuring plan. Instead of simply using the advocacy and reform groups involved in the litigation, Kentucky involved the legislative and executive branches collectively. The group behind KERA consisted of administrative employees, former politicians, attorneys, judges, and persons with experience in the public school system. Drawing on that diversity, the group was able to raise public support for their program before it actually went into effect. By contrast, because Alabama did not proactively "sell" its idea for education reform to the public, politicians used it as a platform to attack the resulting increase in taxes. With community support, Kentucky fully implemented its plan with minimal political backlash, and its ranking has steadily increased since the plan's inception. Alabama's ranking has stagnated, showing almost no improvement in student performance over the past ten years.

C. Michigan Focuses on Funding

Hawaii's decision to implement the WSF decentralized its public education system by placing more responsibility in the hands of each school's principal by delivering real dollars to the individual schools

173. See LUCIER, supra note 137, at 186-87. This aspect of the system is quite similar to MER standard in the ECS system for Connecticut. See supra text accompanying notes 84-95.

174. See SCHRAG, supra note 126, at 70-72; see also Council for Better Educ., 790 S.W. 2d at 210-12.


177. See Dawahare, supra note 176, at 35-36.

178. See A+ RESEARCH FOUND., supra note 107, at 3-5.

179. GAINING GROUND, supra note 121, at 6, 9, 13-17. Kentucky's students' scores on the National Assessment for Educational Progress (NAEP) test in 1998 showed Kentucky students "pass[ing] the national average for reading, and ... closing in for math and science." Id. at 16; see also THOMAS D. SNYDER ET AL., U.S. DEPT OF EDUC., DIGEST OF EDUCATION STATISTICS 2005, at 196-97 tbls. 112-13 (2006).

based on the specific students enrolled.\textsuperscript{181} Michigan took the opposite approach by attempting to centralize its school funding system while significantly decreasing its reliance on local property taxes as a source of funding.\textsuperscript{182}

Michigan's education reform, like that of Hawaii, was not the result of a pending challenge to the education system.\textsuperscript{183} Instead, Michigan's education reform was developed by a state senator and resulted in a ballot plan that placed heavier emphasis on the state sales tax and less emphasis on local property taxes.\textsuperscript{184} Michigan's plan seemed to produce immediate success.\textsuperscript{185} Michigan managed to provide increased funding to lower-income district schools while allowing wealthier schools to maintain their original funding through a grandfather clause.\textsuperscript{186} Thus, no school received less funding than it had previously received, which made it harder to raise a political challenge to the new measures.\textsuperscript{187}

Michigan's system, however, does appear to have certain drawbacks.\textsuperscript{188} Unlike Hawaii, Michigan failed to increase local control over the spending of disbursed funds.\textsuperscript{189} Thus, there is no guarantee that the funds meant to equalize education in the state will actually go to the services necessary at an individual school.\textsuperscript{190} Additionally relying upon state revenues to fund educational spending potentially puts education at odds with other government items in Michigan's budget.\textsuperscript{191}

\begin{itemize}
  \item \textsuperscript{181} See PETKO, \textit{supra} note 155, at 6.
  \item \textsuperscript{183} See LUCIER, \textit{supra} note 137, at 160.
  \item \textsuperscript{184} \textit{Id.} at 160, 163.
  \item \textsuperscript{185} \textit{Id.} at 165.
  \item \textsuperscript{186} Courant & Loeb, \textit{supra} note 136, at 131.
  \item \textsuperscript{187} \textit{Id.} at 131-32. Moreover, although there were still differences in the per-pupil expenditures, the new funding system made it extremely difficult to take advantage of these differences. \textit{Id.} at 133. Individual districts are limited as to how much they can supplement their educational budget with local funds. \textit{Id.} The ballot system actually provides more incentive to petition the state government for increases to the foundation grant. \textit{Id.} at 128. However, the foundation grant is what funds all schools in the state and, thus, any increase achieved by one district’s petition will benefit all Michigan school districts. \textit{Id.}
  \item \textsuperscript{188} \textit{Id.} at 133.
  \item \textsuperscript{189} \textit{Id.}; see also Vu, \textit{supra} note 155.
  \item \textsuperscript{190} See Courant & Loeb, \textit{supra} note 136, at 133.
  \item \textsuperscript{191} \textit{Id.} at 133-34. An economically slow year would reduce the amount of available total state funds, thereby reducing the amount of funds allocated to education. \textit{Id.} at 134.
\end{itemize}
D. Hawaii’s Mistakes in Implementing the WSF System

Hawaii is unique for many reasons when it comes to public education. Not only has it never had a constitutional challenge to its public education system, but it was also the first state to approve the full integration of the WSF system. On its face, the Hawaii WSF system appears very similar to the ECS system being challenged in Connecticut. However, there are two key differences. First, though each system weighs students similarly, the WSF system ensures that the money actually goes to the students who need it. On the other hand, the ECS system distributes funds to local school districts based on the specific demographic for that district. Second, the basis for funding of the WSF in Hawaii is derived almost entirely from state tax revenues rather than the local property tax base.

Hawaii’s new system has been criticized since it was first introduced. The first mistake Hawaii made was to neglect to include “a base amount [of money] to make sure schools of any size could operate.” The second was that Hawaii did not raise public support or attempt a grassroots campaign to inform and encourage citizens to back WSF in the

194. See DIV. OF FIN. & INTERNAL OPERATIONS, supra note 84, at 2-8; PETKO, supra note 155, at 6-8; discussion supra notes 84-95.
195. DIV. OF FIN. & INTERNAL OPERATIONS, supra note 84, at 2-3; PETKO, supra note 155, at 6-7.
196. FUND THE CHILD, supra note 158, at 21-23.
197. DIV. OF FIN. & INTERNAL OPERATIONS, supra note 84, at 4-8. The ECS system does not ensure that the money actually arrives at the school that needs it because the money goes to the district, rather than the individual school. See id.
198. LOHMAN, supra note 20, at 2. While the ECS system in Connecticut derives 94.6% of its funding from local property tax contributions, the WSF system in Hawaii derived only 1.2% of its funding from local property taxes in 2003. Id. at 6. At first glance this system may seem like a perfect solution to Connecticut’s equal funding problem, but two things are apparent. First, Hawaii only has one school district while Connecticut has 166, thus making the WSF system easier to implement in Hawaii from an administrative perspective. National Center for Education Statistics, State Profiles: Connecticut, http://nces.ed.gov/nationsreportcard/profile.asp (last visited Sept. 28, 2007); Vu, supra note 155. Second, by linking funding of public schools to state tax dollars, Hawaii’s economic health plays a considerable role in school funding. Thompson, supra note 151, at 300. When the economy is strong, there will likely be few complaints from schools. Id. However, during economic downturns, schools in Hawaii have dealt with “occasionally severe reductions in the amount of funds actually spent for educational purpose.” Id.
199. Vu, supra note 155.
200. Id.
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public school system.\footnote{201} Instead, the Board of Education simply unveiled its revolutionary plan without much warning.\footnote{202} Because of the initial controversy this caused, the Department of Education backed off from its original goal of full, immediate implementation of the WSF system.\footnote{203} The result of Hawaii's implementation of the WSF system remains to be seen, but it is on tenuous grounds at its inception.\footnote{204}

V. INTEGRATION OF EDUCATIONAL SYSTEMS IS THE KEY

A. Connecticut Must Learn from Other States

Connecticut has one of the most unique demographics in the nation.\footnote{205} Moreover, because of its small size, Connecticut has no system of regional government.\footnote{206} Instead, each of the 166 school districts operates independently of any regional system.\footnote{207} In 2005, Connecticut had the highest median income of any state in the country, yet it has consistently ranked at the bottom of states in contributions to public education.\footnote{208}

With such wealth available in the state, Connecticut should not lack in its contribution to the quality of its education system. With disparities in wealth and no regional management, it is inevitable that a funding system with substantial emphasis on local property taxes to supplement

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\footnote{201} Cf. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 229 (Ky. 1989) (ensuring that public support was intact before proceeding with education reform in Kentucky).

\footnote{202} Vu, \textit{supra} note 155. The plan pleasantly surprised the seventy-seven schools scheduled to receive funding increases over $100,000, but it shocked the ninety-three schools scheduled to receive funding decreases in excess of $100,000. \textit{Id.} Even though many schools likely knew that their funding would be decreased, they protested that the changes were too drastic. \textit{See id.} In an effort to appease these concerns, the Hawaii legislature produced a $20 million one-time grant to cover the decreases in funding any school received as a result of the WSF system. \textit{Id.}

\footnote{203} \textit{Id.} Instead, Hawaii proposed a phase-in over the next three years. \textit{Id.} The current proposal caps the rise or fall of education funding at ten percent for the first year, thirty percent for the second year, and fifty percent for the third year following implementation. \textit{Id.} Though this may have eased the fears of some schools in the short run, it opened the door to criticism that the new system was not being implemented fast enough. \textit{Id.}

\footnote{204} \textit{See id.}


\footnote{207} \textit{See id.; see also} National Center for Education Statistics, \textit{supra} note 198.

\footnote{208} \textit{See supra} notes 19-20 and accompanying text.
state grants will create unequal opportunities in education. Though research may never fully establish a causal link between money and performance, a school that receives twice the funding per pupil as another will have a distinct advantage in providing quality education to its students. Connecticut should build on efforts in other states to provide a solution that will work for its unique situation.

In its suit, the CCJEF chose to focus on both adequacy and equality. By doing this, the CCJEF will force the state of Connecticut to examine its entire public education system rather than merely tweaking or replacing the current ECS funding system. Michigan and Hawaii focused only on funding because constitutional challenges to the quality of their systems had not been brought in their state courts. Connecticut, like Kentucky and Alabama, will have the opportunity to perform a complete overhaul.

No matter what system Connecticut chooses to implement, it will require raising the contribution that the state makes to public education. This will mean that taxes will increase for residents of the state to cover the shift from local property to state aid. The ability to involve concerned state citizens to make education reform was the critical difference between Kentucky and Alabama. Ensuring that the

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209. See LOHMAN, supra note 20, at 6.
211. See, e.g., Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 215 (Ky. 1989) (forcing Kentucky to devise a plan, which resulted in the Kentucky Education Reform Act).
212. See Amended Complaint, supra note 9, at 50.
214. See LUCIER, supra note 137, at 159-60; Vu, supra note 155. However, note that Hawaii chose to decentralize its system as well. HAW. EDUC. POLICY CTR., ADOPTION OF A STUDENT WEIGHTED FORMULA FOR FUNDING HAWAII’S PUBLIC SCHOOLS: POLICY ISSUES 1 (2003).
215. Instead, pressure came directly from the individual legislators to provide a better system of funding. See LUCIER, supra note 137, at 160.
217. See AUGENBLICK, supra note 12, at v.
218. Cf. LOHMAN, supra note 20, at 6.
219. See SCHRAG, supra note 126, at 145-47. Because Kentucky established a base of support before the actual program was proposed as legislation, politicians were not able to use it as a rallying point during the election season. See id. at 63-64, 145-46. Alabama, on the other hand, did not inform taxpayers of why increased funding was necessary or how the increase would benefit the entire state. See id. at 146. Thus, many politicians used opposition to increased taxes as a platform during the next election cycle. Id.
public is aware of the impacts of Connecticut's new program and raising support for the changes must be the primary goals of the state legislature.

**B. Achieving Equity**

Connecticut must implement a new funding system for the state. Relying on local property taxes has not closed the achievement gap that exists in Connecticut between pupils in wealthier districts and those in poorer districts. Reliance on the state sales tax is a much better way to achieve equality in funding because revenues will go back to the state for disbursement to local school districts. The use of local property taxes, however, means that wealthier districts have more available funds to use for education. Moreover, the use of the sales tax as a basis for funding will prevent money from staying in the same district from which it originates. Whereas local property tax revenue never leaves the district from which it was collected, sales tax revenue will be used across the entire state.

A potential problem associated with increasing the state sales tax to fund public education is the connection between funding and the economy. Were Connecticut to enter an economic recession, available state funds would dwindle and the public education system would vie with other governmental expenditures for adequate funds. However, this system is designed to equalize education funding. Though an economic recession could potentially reduce funding to schools in Connecticut, it would reduce funding to all schools proportional to the distribution system in place.

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220. See Amended Complaint, *supra* note 9, at 53-55. Significant achievement gaps exist among Connecticut schools based on the amount they are able to spend on education. See id. at 42-55.

221. Id. at 43.


224. Cf. Recent Legislation, *supra* note 222, at 1412 ("The new state-run distribution plan . . . immediately increases funding for the poorest school districts and creates a statutory framework for reducing spending disparities.").

225. See id. at 1411-12.


227. See id.

228. See LUCIER, *supra* note 137, at 186-87.

229. But see Courant & Loeb, *supra* note 136, at 134 (noting that Michigan's economy is particularly vulnerable to economic recessions).
C. Achieving Adequacy

Once the state implements a funding system that is not reliant on local property taxes, it will have addressed the equality portion of the CCJEF's claim. However, equal funding is not synonymous with an equal education. Even though funding may be considered equalized under the current ECS system, there is no guarantee that the money actually arrives at schools with the most need. The best solution for Connecticut would be to implement the WSF system currently in use in Hawaii.

Connecticut has yet to fully fund the ECS, and disburses funds to districts rather than to specific students. Even though students carry a certain weight under the ECS system, there is no assurance that funds assigned for these students ever reach their respective schools. The entire purpose of the WSF system, however, is to have funding follow individual students.

There is no guarantee that this solution will close the achievement gap in Connecticut, but it has proved successful in other school systems. The WSF system places the responsibility in the hands of the individual schools rather than at the district or state level. The set-up is more associated with a business model than the traditional school management

230. See Amended Complaint, supra note 9, at 17-18, 43.
231. Cf. FUND THE CHILD, supra note 158, at 23 ("Using WSF, unequal funding actually paves the way to equity.").
232. See id. at 14-17. The increase in the state sales tax as the main source of supplemental funding to replace local property tax contributions will raise funds to be dispersed statewide. See Recent Legislation, supra note 222, at 1411, 1416.
233. See Vu, supra note 155. The proposed method for distribution will not be a drastic change, considering that the ECS system is technically already in place. See Div. of Fin. & Internal Operations, supra note 84, at 1.
234. See Amended Complaint, supra note 9, at 43-44.
235. See Div. of Fin. & Internal Operations, supra note 84, at 3. Moreover, even if the funds do reach the school, there is no guarantee that they arrive in real dollars or are specially addressed to the educational needs of the students. Cf. FUND THE CHILD, supra note 158, at 21 ("Funding that truly 'follows' the child means a real dollar amount moves with a specific child between school budgets as that child moves between schools and even districts—not just calculating a total based on the number and characteristics of a group of students.").
236. FUND THE CHILD, supra note 158, at 21-23. The individual schools receive the funds in real dollars and are responsible for implementation of programs that will adequately educate the students. Id.
237. See, e.g., Clever Red-Necks, supra note 154, at 41-42. Alberta implemented the WSF system in the 1980s and since has risen to second in mathematics, second in reading, and fourth in science for fifteen-year-olds in Canadian provinces compared to students of other countries, such as Finland, Japan, South Korea, and Australia. Id. at 41.
238. See FUND THE CHILD, supra note 158, at 25-27.
While a school is unlike a business because it does not operate for profit, there is still an element of competition inherent in the public school system. Public schools that exceed test score expectations and requirements receive positive reinforcement through media attention and increased funding. Public schools that do not perform at designated levels are threatened with state take-over. Though the goals between businesses and schools may be different, the incentives for success are quite the same.

VI. CONCLUSION

Connecticut will have to make a decision concerning its current system of public education. In the post-Horton era, the ECS has not closed the achievement gap between students in wealthy and poor districts. Connecticut is not the first state to tackle this problem, and should look to other jurisdictions in attempting to solve it.

The best solution for Connecticut is to borrow from other states' programs. Kentucky achieved unparalleled success by completely restructuring its education system. The key to its success was garnering support well before the actual implementation of the plan. By uniting forces on all sides of the reform effort and informing the public of the benefits of increased taxes, it eliminated the political agendas that killed a similar effort in Alabama. Michigan shifted the source of its education funding from local property taxes to the state sales tax. This led to an equalization of funding and a lessening of the inherent inequality that existed when relying on local property taxes to make up the difference between fiscal needs and state grants. Hawaii implemented the WSF system that has been successfully used in Great Britain and Alberta, Canada for years. Instead of having money distributed to local districts as with the ECS, money follows the students designated as needing the extra funding.

Connecticut should equalize its funding system by shifting away from local property taxes to fund public education. Moreover, to ensure adequacy in its education system, it should implement a WSF system that places funds directly with the students who need them. However, unless


240. Cf. id. ("If it doesn't occur to most school administrators that they should first allocate the funds to the schools—and then make the schools pay for the central services that they use.").

241. See id. at 112.

242. See, e.g., id. at 111 (giving, as an example, the Chicago school system).

243. Id. at 11, 113.
Connecticut ensures support for these programs, the education system in Connecticut will certainly fail to achieve equality.