
EQUALITY IN PUBLIC SCHOOL FINANCING: MISSOURI'S NEED FOR REFORM

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Although protests against property taxes persist, Missouri continues to base its public school financing system on local property taxation.¹ The recently amended "foundation program" in Missouri assures every district a minimum per pupil expenditure level.² The scheme further provides low-wealth districts an additional grant to overcome disparities created by the presence or absence of taxable property within their boundaries.³ This state aid flows to local districts in the form of a "guaranteed tax base."⁴

The financing method attempts to equalize the inequities in per

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1. During the 1977-78 school year, the relative contributions of school revenues in Missouri were 48.8% local, 43.0% state, and 8.2% federal. Total school expenditures in Missouri totaled approximately 1.2 billion dollars. See MISSOURI STATE BOARD OF EDUCATION, 129TH REPORT OF THE PUBLIC SCHOOLS OF MISSOURI FOR THE SCHOOL YEAR ENDING JUNE 30, 1978, Table 1(a), p. 46 [hereinafter cited as 1978 SCHOOL REPORT].

2. See generally MO. REV. STAT. ch. 163 (1978).

3. *Id.* § 163.031.

4. *Id.* § 163.011. For the 1977-78 school year, the "guaranteed tax base" was the amount in which the 85th percentile of the state aggregate number of pupils fell the preceding year. Each year thereafter (through 1982-83), the percentile level shall be increased by one until reaching the 90th, where it will remain.

In order to receive the guaranteed tax base, however, each district must comply with four basic requirements:

pupil expenditures between districts,⁵ but substantial interdistrict disparities remain.⁶ These facts result in the denial of an equal educational opportunity⁷ to certain state pupils, and render the Missouri

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- a) operate schools for at least 180 days per year;
 - b) maintain adequate and accurate records of attendance, personnel, and finance;
 - c) levy a property tax of at least \$1.25 per \$100 assessed valuation; and
 - d) compute average daily attendance.

See Id. § 163.021 (1978).

5. *See State ex rel. School Dist. of Kansas City v. Young*, 519 S.W.2d 328, 333-34 (Mo. App. 1975) (the purpose of § 163.031 is to at least partially equalize relative disparity in wealth between affluent and less affluent districts by distribution of state aid).

6. Comparisons in per-pupil expenditures between individual school districts for 1977-78 are astounding. Clayton School District in St. Louis County spends \$3,441.69 per eligible pupil, while the R-IV School District in Ripley County spends \$963.66 per pupil. The Lindbergh School District in St. Louis County, which includes towns of moderate wealth (Crestwood, Sappington and Sunset Hills), spends \$1,360.37 per pupil. Clayton, Ladue (\$2,473.57/pupil), and Brentwood (\$2,020.87/pupil) are the only districts spending more than \$2,000 per pupil in the St. Louis County area. St. Louis City spends \$1,863.69 per pupil.

The problem with such spending disparities is that the districts spending the most per pupil use the least burdensome tax rate. Ladue's tax levy is \$3.90/\$100 assessed valuation (a.v.), and Clayton's is \$3.97/\$100 a.v. On the other hand, the Normandy School District in St. Louis County, which spends \$1,475.63/pupil, taxes itself at \$5.19/\$100 a.v. Similarly, University City School District with a per pupil expenditure (p.p.e.) of \$1,666.02, pays \$6.47/\$100 a.v. Differences in formula used by the districts produce the disparate assessed valuation to pupil ratios. Because units of land in certain areas of the state are valued higher than the same size unit in another area, the assessment per \$100 may be less than other areas, but still provides more money per unit of land. Clayton, for example, has an a.v./pupil figure of \$90,119, while Normandy's is \$19,422, and that of Ripley County (R-IV) is \$6,728. For state-wide data, see 1978 SCHOOL REPORT, *supra* note 1, at 94-112.

7. Even though commentators have written extensively about "equal educational opportunity," the definition is by no means clear. Opportunity measured on equal "inputs" is basically an objective standard, with money as the measuring stick. This philosophy contends that where there are wide disparities in expenditure levels among districts, there will be wide disparities in the quality of education and opportunities among those districts. Measuring educational opportunity by inputs makes it easy to measure amounts of money given, and even if there is no exact "cost-quality" correlation in education, everyone begins monetarily equal. For a very thorough analysis of the "inputs" technique, see J. COONS, W. CLUNE & S. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970); R. REISCHAUER & R. HARTMAN, REFORMING SCHOOL FINANCE (1973); A. WISE, RICH SCHOOLS, POOR SCHOOLS (1968). *See also* Levin, *Current Trends in School Finance Reform Litigation: A Commentary*, 1977 DUKE L. J. 1099, 1107-1109; Note, *School Finance Reform: Robinson v. Cahill*, 13 URBAN L. ANN. 139, 148 n.61 (1977).

On the other hand, the "outputs" measurement of equal educational opportunity is a subjective performance test based on student achievement. Proponents of this tech-

financing system susceptible to a constitutional challenge. This Note presents some problems inherent in the Missouri method of distributing state aid, demonstrates state constitutional attacks on educational financing systems, and proposes centralized state funding as a legislative alternative.

I. MISSOURI'S FOUNDATION PLAN AND ITS PROBLEMS

The Missouri financing scheme guarantees each school district a specified amount of equalized assessed property valuation per eligible pupil as a "guaranteed tax base." Missouri statutes provide a complex formula to determine this "guaranteed tax base" and the proportionate amount of state financial assistance for each district.⁸ Basically, the state assures districts in which residential and/or commercial property valuation is low a minimum level of money per pupil. Each district still levies its own property tax expressed as a fixed

nique advocate standardized testing and other similar methods of measuring the quality of education. Student expenditures are irrelevant. *See generally* Billings & Legler, *Factors Affecting Educational Opportunity and Their Implications for School Reform: An Empirical Study*, 4 J. L. & EDUC. 633 (1975).

Many educators have published studies on the "cost-quality" relationship in education. Early influential reports reveal that money has little effect on education. *See* J. COLEMAN, EQUALITY OF EDUCATIONAL OPPORTUNITY 325 (1966) (inequalities in a child's home and background are more influential than inequalities in education); C. JENCKS, INEQUALITY 8 (1972) (concluding that educational resources do not have an effect on standardized test scores). *But see* J. GUTHRIE, SCHOOLS AND INEQUALITY 60-62 (1971) (criticizing the methodology of the Coleman Report); Richards, *Equal Opportunity and School Finance: Toward a Moral Theory of Constitutional Adjudication*, 41 U. CHI. L. REV. 32, 54 (1973) (suggesting that the Coleman study and other similar studies are based on a narrow concept of education, namely verbal skills). *See generally* U.S. ADVISORY COMM'N. ON INTERGOVERNMENTAL RELATIONS, FINANCING SCHOOLS AND PROPERTY TAX RELIEF—A STATE RESPONSIBILITY (1973) [hereinafter cited as COMMISSION REPORT 1973]. For a complete list of educational studies, see COMMISSION REPORT 1973, App. J at 247-261.

These contradictory studies indicate the current inadequacy of social science to clearly delineate the relationship between cost and quality. Too many rich districts, however, oppose educational financing reform which assumes money has no impact. Although money is in and of itself inadequate to equalize districts, poorer ones should at least have the opportunity to try. Why force a terrible baseball team to play with seven men? It cannot hurt to start equally. *See* COONS, *supra*, at 30-35.

8. For a detailed explanation of the plan, see MO. REV. STAT. §§ 163.011(5), 163.031. To compute the guaranteed tax base, school districts are ranked annually from lowest to highest according to the amount of equalized assessed property valuation per pupil. This tax base is to be gradually increased until each district receives the amount of valuation/pupil of the district in which the 90th percentile of the state aggregate number of pupils falls during the preceding year. *See also* note 4 *supra*.

rate per one hundred dollars equalized assessed valuation.⁹ The state simply pays each school district the local tax rate on every one hundred dollars property valuation over and above the district's *actual* tax base, up to its *guaranteed* base. In essence, Missouri provides the difference between a district's actual revenue and the state guarantee.¹⁰

One significant flaw in the Missouri funding program is its failure to recognize and provide for the elevated expenditures necessary in large urban environments. Disproportionately high educational costs in the central city reduce the effective impact of total educational outlays covered by state grants.¹¹ Schools in urban core areas spend more money for qualified teachers, school safety, and construction costs than those located in county or rural areas.¹² Additionally, inner-city areas experience heavy noneducational "overburden" obligations which cause further diminution of the equalization aid's impact.¹³ Such expenses include the high commercial costs of maintaining the central business district, of providing extensive police and fire protection, and of sustaining numerous health and welfare services.¹⁴ The overburden problem must be considered by a school financing plan since the costs tend to absorb large portions of state aid.¹⁵ Thus, although the St. Louis and Kansas City areas show high

9. The rate must be at least \$1.25/\$100 a.v. to qualify the district for state aid. See note 4 *supra*.

10. There are some technical complications in the formula, however. For example, there are variations in the amount of aid received for pupil absences, orphans, and escheats or forfeitures in the district. See MO. REV. STAT. §§163.031-.035(2).

11. In addition, inner-city children often have more mental, emotional, and physical handicaps. See Board of Educ. v. Nyquist, 94 Misc. 2d 466, 408 N.Y.S.2d 606 (Sup. Ct. 1978) (urban areas experience increased problems over rural areas, including a larger number of students with impaired learning readiness, a disproportionate number of pupils with mental, emotional, and physical health problems and a greater number of handicapped pupils).

12. See note 11 *supra*.

13. Inner city "overburden" or noneducational costs greatly outnumber those of the suburbs. Arguably, the high percentage of the property tax used for such noneducational expenses acts as a constraint on the tax rate which could be levied for education. For an excellent discussion of municipal overburden and its effects on education, see Zelinsky, *Educational Equalization and Suburban Sprawl: Subsidizing the Suburbs Through School Finance Reform*, 71 Nw. U. L. REV. 161 (1976); Levin, *supra* note 7, at 1118.

14. See note 13 *supra* for an explanation of the constraining effect these overburden expenses have on tax money for education.

15. See note 13 *supra*.

per-pupil expenditures,¹⁶ the money does not reflect high quality education, but rather indicates costs not present in most suburban communities.¹⁷

A second problem with the school funding method stems from the Missouri property assessment procedure. State law demands property be assessed at "true value,"¹⁸ but uniformity in taxation does not occur.¹⁹ The Missouri Supreme Court recently declared that the state's property assessment practices violated state constitutional and statutory requirements. The Missouri Supreme Court subsequently ordered statewide reassessment,²⁰ assigning the task to the legislature. Nevertheless, many taxpayers continue to pay taxes on grossly undervalued property assessed years ago. Until legislative action occurs, the state school financing system will continue to create inequities among local taxpayers.²¹

Furthermore, the Missouri financing scheme disregards the differ-

16. Indeed, urban areas may and often do show high per-pupil expenditures. Extremely wealthy suburbs have similarly high levels. The core city has the following combination of characteristics: Large size, low individual income, and a relatively small proportion of public school pupils. At the other end of the spectrum, the wealthiest suburbs are characterized by small size, high incomes, and a small percentage of students. Between the extremes lies the "classic" suburban area: medium size, moderate incomes, and a large amount of high school students. Consequently, inner city areas derive their high p.p.e.'s through large commercial and industrial property taxes, whereas wealthy suburbs derive theirs through high individual property taxes. See Zelinsky, *supra* note 13, at 184-85. See generally R. JOHNSTON, *URBAN RESIDENTIAL PATTERNS* (1972); B. LEVIN, T. MULLER, & C. SANDOVAL, *THE HIGH COST OF EDUCATION IN CITIES* (1973); R. WOOD, *SUBURBIA: ITS PEOPLE AND THEIR POLITICS* (1959); Gans, *The White Exodus to Suburbia Steps Up*, in *CITIES IN TROUBLE* 40 (N. Glazer ed. 1970).

17. Actually, the money also indicates the inefficiency associated with large-scale enterprise. See Zelinsky, *The Cities and the Middle Class: Another Look at the Urban Crisis*, 1975 Wis. L. Rev. 1081.

18. MO. REV. STAT. § 137.115 (1978) (provides for property to be annually assessed at 33 $\frac{1}{3}$ % of its true value).

19. The assessment practice in Missouri has been inconsistent and of poor quality. Assessors must be trained in areas such as construction and the economics of buying and selling. They must conduct occasional on-site assessments to check on values reported by property holders. Furthermore, assessment, to be successful, must be frequent; this has not been the case in Missouri. For a general review of assessment problems, see C. HARRISS, *PROPERTY TAXATION IN GOVERNMENT FINANCE* 22-32 (1974).

20. *Cassilly v. Riney*, 576 S.W.2d 325 (Mo. 1979) (all property owners are compelled to bear their proper share of the tax burden).

21. Whether these inequities remain depends on the new assessment plan developed by the legislature. The plan is now under consideration.

ences in "marginal utilities"²² between school districts. It is more difficult for a poor family to spend tax dollars for education than for a wealthier one to do so.²³ Low-income districts often tax themselves as heavily as wealthier ones, but the tax dollars expended by a family in the former are greater than those spent in the latter *relative* to their respective incomes.²⁴ The absolute dollars spent by the rich are much greater when taxing themselves at the same rate as less affluent districts, but so is their ability to afford the necessities (and the luxuries) of life. Thus, although poorer districts may want to spend more money for education, they often cannot.

Consequently, the "guaranteed tax base" formula adopted by the Missouri legislature to finance education appears inadequate to equalize educational opportunities for elementary and secondary pupils statewide. Aid channeled to school districts barely serves to keep poorer districts from closing.²⁵ This denies equal opportunity for education regardless of what standard applies.²⁶ By attaching local property wealth to school district spending, Missouri allows wealthier districts to achieve high per-pupil expenditure levels relatively easily, while effectively denying lower-income districts the same opportunity. Herein lies the constitutional challenge to the funding program.

22. The process is commonly known as the principle of diminishing marginal (not total) utility. It implies that additional units of any good add proportionately less to one's utility. See A. ALCHIAN & W. ALLEN, *UNIVERSITY ECONOMICS* 15 n.1 (1964).

23. See C.S. BENSON, *ECONOMICS OF PUBLIC EDUCATION* 78-111 (1968). This economic principle merely states that it is easier for someone making \$100,000 to lose 5% of his income to taxes than it is for someone earning considerably less to do so. The latter strives to provide food, clothing and shelter for his family; the former has no such worries. *Id.*

24. See notes 6 & 23 *supra*.

25. For figures on aid to statewide school districts, see note 6 *supra*. Indeed, a temporary shutdown occurred as a result of the 1979 St. Louis public school teachers' strike. Schools closed for several months while teachers remained adamant in salary demands. Since the St. Louis Board of Education had insufficient funds to meet the additional costs, state aid over and above that generated through the financing plan (approximately \$1.3 million) was required to solve the dilemma. See *St. Louis Bd. of Educ. v. St. Louis Teachers' Union, Local 420, No. 792-0048* (St. Louis Dist. Ct., Mo., March 5, 1979).

26. See note 7 *supra*. Even if "inputs" are not measured in determining equal educational opportunity in future Missouri financing, resources are still required in some manner. Money is the only common thread in every element in the educational process—salaries, plant, equipment, guards, libraries, etc. See COONS, *supra* note 7, at 25-30.

II. EQUAL EDUCATIONAL OPPORTUNITY LITIGATION

Before examining the constitutional implications of the Missouri state aid formula, one should focus on comparable litigation elsewhere. Courts quashed early challenges to state school finance laws under the equal protection clause of the U.S. Constitution, declaring that no manageable standards existed to determine educational "needs."²⁷ Shortly thereafter, in *Serrano v. Priest*,²⁸ the California Supreme Court held that the state system of public school financing was unconstitutional. The California financing plan received a large portion of its revenue from local property taxation, with accompanying state aid generated through a "foundation program" similar to that employed in Missouri.²⁹ The court cited plaintiff's claim that the scheme perpetuated "substantial disparities in the quality and extent of availability of educational opportunity."³⁰ Following *Serrano*, suits emerged in two-thirds of the states, producing nine decisions

27. Early cases claimed that expenditures must be made on the basis of pupils' educational needs without regard to the fiscal capacity of local school districts. Suit was first brought in Illinois, where plaintiffs claimed they were denied a good education despite their great "educational needs." *McInnis v. Shapiro*, 293 F. Supp. 327, 329 (N.D. Ill. 1968), *aff'd sub nom. mem.*, *McInnis v. Ogilvie*, 394 U.S. 322 (1969) (accepted a presumption that students receiving a more "expensive" education were better educated, but declared there were no "manageable standards" by which the court could determine if there was a constitutional violation).

Subsequently, Virginia's system of financing was attacked, and likewise was rejected by the court. *Burruss v. Wilkerson*, 310 F. Supp. 572 (W.D. Va. 1969) *aff'd mem.*, 397 U.S. 44 (1970) (court noted that it had "neither the knowledge, nor the means, nor the power" to tailor money to fit students' needs throughout the state). On "educational needs," see generally Lindquist & Wise, *Developments in Education Litigation: Equal Protection*, 5 J. L. & EDUC. 11 (1976).

28. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971), *on review of demurrer*. The *Serrano* decision was the first to require equalization of education expenditures.

29. When *Serrano* was brought, California revenues were derived from local property taxes (55.7%), state aid (35.5%), federal funds (6.1%), and miscellaneous sources (2.7%). The state distributed aid through a foundation program which supplemented local revenue to provide "a minimum amount of guaranteed support to all districts." For a complete explanation of the California foundation plan at the time of the *Serrano* litigation, see *id.* at 589-91, 487 P.2d at 1246-48, 96 Cal. Rptr. at 606-08.

30. *Id.* at 590-610, 487 P.2d at 1244-1259, 96 Cal. Rptr. at 610-15. The California Supreme Court stated that the system conditioned the quality of education on the private wealth of the district. *Id.* This formulation has come to be known as the fiscal neutrality doctrine—that the quality of education should be independent of the wealth of the area. See Levin, *supra* note 7, at 1101; Lindquist & Wise, *supra* note 27, at 4 n.13.

within two years.³¹

This frenetic period of school financing litigation endured until the United States Supreme Court decided *San Antonio Independent School District v. Rodriguez*.³² The sharply divided Court held the Texas school finance system, which produced financial inequalities among school districts, did not violate the equal protection clause of the Fourteenth Amendment.³³ The Court found no fundamental right to education under the Constitution. It applied the traditional "two-tier" approach to equal protection, and stated that Texas had shown a rational relationship between its financing system and its state interest in "retaining local funding incentives."³⁴ This landmark decision effectively blocked all federal equal protection

31. *Parker v. Mandel*, 344 F. Supp. 1068 (D. Md. 1972); *Rodriguez v. San Antonio Indep. School Dist.*, 337 F. Supp. 280 (W.D. Tex. 1971), *rev'd*, 411 U.S. 1 (1973); *Van Dusart v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971); *Hollins v. Shofstall*, Civ. No. C-253652 (Ariz. Super. Ct. June 1, 1972), *rev'd*, 110 Ariz. 88, 515 P.2d 590 (1973); *Caldwell v. Kansas*, Civ. No. 50616 (Johnson County Dist. Ct., Kan., Aug. 30, 1972); *Milliken v. Green*, 389 Mich. 1, 203 N.W.2d 457 (1972), *vacated*, 390 Mich. 389, 212 N.W.2d 711 (1973); *Robinson v. Cahill*, 118 N.J. Super. 223, 287 A.2d 187 (1972), *supplemented at* 119 N.J. Super. 40, 289 A.2d 569 (1972), *aff'd as modified*, 62 N.J. 473, 303 A.2d 273 (1973); *Spano v. Board of Educ. of Lakeland Cent. School Dist.*, 68 Misc. 2d 804, 328 N.Y.S. 229 (Sup. Ct. 1972); *Sweetwater County Planning Comm. v. Hinkle*, 491 P.2d 1234 (Wyo. 1971).

After *Serrano*, during the peak period (August 1972), more than 50 actions challenging the constitutionality of state school financing systems were filed in 31 states. See U.S. OFFICE OF EDUCATION, TASK FORCE ON SCHOOL FINANCE, ANALYSIS OF INTRASTATE SCHOOL FINANCE COURT CASES (August 1972) (compiled by Lawyers' Committee for Civil Rights Under Law); S. Browning & M. Lehtman, *Law Suits Challenging State School Finance Systems*, in App. F. to INEQUALITY IN SCHOOL FINANCING: THE ROLE OF THE LAW (U.S. Comm'n on Civil Rights, Clearinghouse Publication No. 39, 1972).

32. 411 U.S. 1 (1973).

33. *Id.* at 33-35. The Court determined that education was not a fundamental right because it was not "explicitly or implicitly" guaranteed by the federal Constitution. Subsequently, the Court applied the two-tier equal protection approach to the Texas scheme. Under this method, state laws are evaluated in one of two ways. Using the less critical "rational basis" standard, a state need only show some reasonable connection between the law and a legitimate state interest. Under the more demanding "strict scrutiny" standard, a state must justify the law by demonstrating a "compelling state interest." This generally requires the state to show that less restrictive measures cannot be found to satisfy state objectives. See Gammon, *Equal Protection of the Law and San Antonio Independent School District v. Rodriguez*, 11 VAL. U. L. REV. 435 (1977). See generally W. HAZARD, *EDUCATION AND THE LAW; CASES AND MATERIALS ON PUBLIC SCHOOLS* 505-516 (2nd ed. 1978); P. HOLLANDER, *LEGAL HANDBOOK FOR EDUCATORS* (1978).

34. 411 U.S. at 25-35. See note 33 *supra*.

challenges to school financing.³⁵ Proponents of school finance equalization, however, continued attacking state foundation plans under state equal protection as well as state education clause provisions.³⁶

A. *Post-Rodriguez State Equal Protection Clause Litigation*

After *Rodriguez* eliminated the Fourteenth Amendment basis for holding California's financing system unconstitutional, the *Serrano* court, on remand, held education to be a fundamental right under the state constitution.³⁷ The court held the state failed to show a "compelling interest" for tying the financing system to district wealth. In affirming the trial court in *Serrano v. Priest (Serrano II)*,³⁸ the California Supreme Court stated that although state equal protection provisions are "substantially the equivalent of" the federal equal protection clause, they "are possessed of an independent vitality

35. Although *Rodriguez* is controlling on federal equal protection challenges to school financing systems, the Court was sharply divided. In the 5-4 decision, five separate opinions emerged with the dissenters proposing radically different tests. See text in Part III, *infra*.

The Court's concern focused on the possible consequences of finding the Texas educational financing formula unconstitutional. It did not wish to "open the flood-gates" for similar suits by other Texas municipal services. 411 U.S. at 40. In contrast, when faced with the same question in *Serrano*, the California Supreme Court distinguished education from other municipal services such as fire protection and public health because of education's "universal relevance" and its necessary role in a free enterprise democracy. 5 Cal. 3d at 609-10, 487 P.2d at 1258-59, 96 Cal. Rptr. at 618-19. See Comment, *Constitutional Law-Invalidating Public School Financing on State Grounds-Horton v. Meskill*, 12 SUFFOLK L. REV. 178, 187 n.66 (1978). For a thorough criticism of the *Rodriguez* decision, see Gammon, *supra* note 33, at 435-50; Lindquist & Wise, *supra* note 27, at 5-23.

36. For discussions of such state court actions and legislative proposals in the immediate post-*Rodriguez* era, see EDUCATION COMM'N OF THE STATES, MAJOR CHANGES IN SCHOOL FINANCE: STATEHOUSE SCORECARD (1974); W. GRUBB, NEW PROGRAMS OF STATE SCHOOL AID (1974); Browning & Long, *School Finance Reform and the Courts After Rodriguez* in SCHOOL FINANCE IN TRANSITION 81, 96, 101 (J. Pincus ed. 1974). For an updated list of cases, see Lindquist & Wise, *supra* note 27, at 3 n.11.

37. See *Serrano v. Priest*, No. 938, 254 (L.A. County, Cal. Super. Ct., Apr. 10, 1974), *aff'd*, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1977).

38. 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1977) (the California Supreme Court declared that "those individual rights and liberties which lie at the core of our free and representative form are properly considered fundamental" and education clearly fits within this category). The court rejected the *Rodriguez* approach in assessing "fundamentalness" (the explicit-implicit test), claiming *Rodriguez* did not apply by analogy "to the state sphere." *Id.* at 766-67, 557 P.2d at 952, 135 Cal. Rptr. at 368.

which . . . may demand an analysis different from that which would obtain if only the federal standard were applicable."³⁹

Subsequently, in *Horton v. Meskill*,⁴⁰ the Connecticut Supreme Court voided the state's school financing scheme⁴¹ which consisted of providing an identical, state-determined "flat grant" to each pupil.⁴² The court declared education a fundamental right guaranteed by the Connecticut Constitution within the meanings of both the *Rodriguez* test (a right implicitly or explicitly mentioned in the constitution) and the *Serrano II* standard (a right which lies at the "core" of our form of government).⁴³ Applying its newly defined fundamental rights test, the court subjected the state-aid formula to strict scrutiny and struck it down.⁴⁴

A New York court recently held the state's method of financing public education unconstitutional in *Board of Education, Levittown v. Nyquist*.⁴⁵ The court found the express linkage of property wealth to

39. *Id.* at 764, 557 P.2d at 950, 135 Cal. Rptr. at 366. To emphasize that California could act independently of federal Constitutional law in some cases, the court quoted from *People v. Longwill*, 14 Cal. 3d 943, 951 n.4, 538 P.2d 753, 758 n.4, 123 Cal. Rptr. 297, 302 n.4 (1975) ("[D]ecisions of the United States Supreme Court defining fundamental civil rights are persuasive authority . . . , but are to be followed . . . only when they provide no less individual protection than is guaranteed by California law"). For a full discussion of the issues raised by *Serrano* and *Rodriguez*, see *Future Directions for School Finance Reform*, 38 LAW & CONTEMP. PROB. 293 (1974), reprinted in *FUTURE DIRECTIONS FOR SCHOOL FINANCE REFORM* (B. Levin ed. 1974); Carrington, *Financing the American Dream: Equality and School Taxes*, 73 COLUM. L. REV. 1227 (1973); Karst, *Serrano v. Priest: A State Court's Responsibilities and Opportunities in the Development of Federal Constitutional Law*, 60 CAL. L. REV. 720 (1972).

40. 172 Conn. 615, 376 A.2d 359 (1977). The relative percentages of contributions to education in Connecticut were approximately 70% local, 25% state, and 5% federal. Connecticut's financing scheme consisted of a "flat grant" to each pupil in the state. Every student received exactly the same amount of aid at a level set by the state. *Id.* at 630, 635, 376 A.2d at 366, 369.

41. *Id.* at 644-46, 376 A.2d at 372-73.

42. See note 40 *supra*.

43. 172 Conn. at 640-46, 376 A.2d at 371-73.

44. *Id.* at 645-46, 376 A.2d at 374. The court further stated that since the state's objective of local control over school funding could be achieved by "less onerous means," the plan's interference with the fundamental right to education was unjustifiable. Furthermore, the Connecticut court noted a significant correlation between per-pupil expenditures and quality education. It ordered the state to substantially provide equal educational opportunity to its youth. *Id.* at 648-49, 376 A.2d at 374-75.

45. 94 Misc. 2d 466, 408 N.Y.S.2d 606 (Sup. Ct. 1978). The New York foundation plan which supplied a minimum per-pupil expenditure level of \$1,200 in each district was unconstitutional because it linked private wealth to school spending. The court

school spending intolerable. It refused to label education a fundamental right, but instead applied the "sliding scale" standard of equal protection review to evaluate the state aid plan.⁴⁶ Although the system served a state interest, the court ordered the legislature to consider a *less objectionable* funding alternative.⁴⁷

Viewing these state equal protection challenges together, the cases finding a fundamental right to education are better reasoned. Each state provides some system of public education for school-aged children⁴⁸ such that all pupils enjoy a guaranteed right to attend.⁴⁹ As society becomes more complex, the need for a quality education for all is increasingly apparent.

Additionally, the judicial "strict scrutiny" standard applicable when confronted with fundamental interests is easier to apply than a "sliding scale" test. The former requires the state to show a compelling state interest for retaining a particular law.⁵⁰ The sliding scale approach, on the other hand, mandates the court to measure the "nexus" between a specific constitutional guarantee and a nonconstitutional interest to determine the appropriate degree of judicial scrutiny.⁵¹ This flexible test arguably promotes fairness, but certainly

noted with concern that while the wealthier districts achieved high levels of spending easily, the poorer districts had to settle for the minimum guarantee. *Id.* at 519-31, 408 N.Y.S.2d at 634-41.

46. *Id.* at 522, 408 N.Y.S.2d at 636. The "sliding scale" standard of equal protection review is a compromise test that lies between "strict scrutiny" and the "rational basis" standard. Justice Marshall introduced the test in his *Rodriguez* dissent. *See* 411 U.S. at 102-03. Marshall stated that as the nexus between the specific constitutional guarantee and the nonconstitutional interest draws closer, the latter becomes more fundamental, and the degree of judicial scrutiny must be adjusted accordingly. *Id.* *See also* notes 50 & 51 and accompanying text *infra*.

In applying this flexible text, the New York court declared that if a substantial state interest was served by the discriminatory plan, it must still consider whether such state interest could be achieved by a "less objectionable alternative." The court determined the "maintenance and support" of New York schools could be less onerously attained. 94 Misc. 2d at 526-27, 532, 408 N.Y.S.2d at 639, 642.

47. 94 Misc. 2d at 469-73, 408 N.Y.S.2d at 610-15. The court also stated that the financing plan was unconstitutional when reviewed under the less stringent rational basis test. The system, despite its intended objective of equalizing expenditures, failed to be rationally connected to legitimate state objectives. *Id.*

48. *See* note 53 *infra*.

49. Such right is constitutionally guaranteed in each state. *Id.* *See, e.g.,* Mo. CONST. art. IX, § 1(a).

50. *See* note 33 *supra*.

51. *See* note 46 *supra*.

results in line drawing and judicial guesswork.

B. *Post-Rodriguez State Education Clause Litigation*

Other attacks upon school financing plans arose under state constitutional clauses providing various educational guarantees. In *Robinson v. Cahill*,⁵² the New Jersey Supreme Court overturned the state's school financing system on the grounds it violated the state constitutional command to provide a "thorough and efficient system of free public schools."⁵³ The court held that this condition was not fulfilled unless the *lowest* level of school district revenue coincided with the

52. 62 N.J. 473, 303 A.2d 273 (1973) (declaring the New Jersey educational financing plan unconstitutional). Since the *Robinson* decision, a multitude of litigation developed over the creation of the new plan. See *Robinson v. Cahill*, 70 N.J. 464, 360 A.2d 400 (1976) (dissolving injunction as a result of full funding of the new legislation).

53. N.J. CONST. art. VIII, § 4, para. 1. Eight states mandate a thorough and efficient system of free public schools. See MD. CONST. art. VIII, § 1; MINN. CONST. art. XIII, § 2; N.J. CONST. art. VIII, § 4, para. 1; OHIO CONST. art. VI, § 2; PA. CONST. art. III, § 14; S.D. CONST. art. VIII, § 15; W. VA. CONST. art. XII, § 1; WYO. CONST. art. VII, § 9.

An Ohio court held in *Board of Educ. of Cincinnati v. Walter*, No. A7662725 (Hamilton County C.P. Ct., Ohio, Nov. 28, 1977), that the discrimination against school children created by the state funding program impaired a fundamental interest. The state constitution guarantees the right of school-aged children to attend school in a "thorough and efficient system of common schools." The court proclaimed that the system failed under either the strict scrutiny test (requiring a compelling state interest to support the existing financing system) or the more deferential equal protection test (requiring merely a rational basis between the system and its purpose of equalizing school district spending).

In denying the Colorado State Board of Education's motion to dismiss an action challenging the constitutionality of that state's school financing system, the district court applied the *Rodriguez* test. The court held that education was a fundamental right explicitly guaranteed by the state constitution which provided that the legislature establish and maintain a "thorough and uniform system of free public schools." *Lujan v. Colorado State Bd. of Educ.*, Civ. No. C-73688, slip op. at 20-22 (Denver County Dist. Ct., Colo., Dec. 12, 1977). The court went on to note, however, that there is such a close relationship in Colorado between "public education and other rights traditionally recognized as basic and essential to citizenship" (i.e., the right to vote, effectively participate in the political process, etc.) that education is also a fundamental right *implicitly* guaranteed by the Colorado Constitution. *Id.* at 22-27.

Many other states have similar provisions. Although the language varies, almost all state constitutions contain an express provision guaranteeing a free public education. For a summary of state constitutional provisions, see OFFICE OF EDUCATION, U.S. DEPT. OF HEALTH, EDUCATION, AND WELFARE, STATE CONSTITUTIONAL PROVISIONS AND SELECTED LEGAL MATERIALS RELATING TO PUBLIC SCHOOL FINANCE (DHEW Pub. No. (OE) 73-00002, 1973) [hereinafter cited as OFFICE OF EDUCATION REPORT].

desired quality of education statewide. The *Robinson* court abandoned the mechanical two-tier approach to equal protection in favor of a balance that "weighs the nature of the restraint or denial against the apparent public justification."⁵⁴ Finding no equal protection violation, the court stated that "the Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen."⁵⁵

Several years later, the Washington Supreme Court in *Seattle School District No. 1 v. Washington*⁵⁶ held that the state constitution created a mandatory, judicially enforceable duty upon the state legislature to generate funds sufficient for a basic program of education.⁵⁷ The constitutional language placed the "paramount duty" on the state to "make ample provision" for education.⁵⁸ The court found that the existing system, which authorized the use of special excess levies to provide educational funds,⁵⁹ failed to fulfill this duty; school

54. *Robinson v. Cahill*, 62 N.J. at 492, 303 A.2d at 282. *Accord*, *Olsen v. State*, 276 Or. 9, 554 P.2d 139 (1976). The *Robinson* court stated that in applying such a "balancing" approach, the question is whether the state action is arbitrary. If so, the court may call upon the state to demonstrate the existence of a sufficient public need for the restraint or denial. 62 N.J. at 492, 303 A.2d at 282.

Other state courts also have considered the issue addressed in *Robinson*, but few have followed the *Robinson* approach. See Comment, *Constitutional Law—School Financing System Based on Local Property Taxes Violative of Equal Protection Clause of State Constitution*, 43 MO. L. REV. 322, 330 n.52 (1978).

55. *Robinson v. Cahill*, 62 N.J. at 515, 303 A.2d at 295. The court further held there was no relationship between the educational needs of school districts and their tax bases. Due to the system's heavy reliance on local property taxes, and the wide disparities in assessed valuation of taxable property per pupil, the court ordered that the constitutional mandate to provide "thorough and efficient" schools could not be satisfied unless the lowest level of dollar performance coincided with the commanded quality of education. All efforts beyond the minimum had to be attributable to local decisions to do more than the state was obliged to do. *Id.* at 516, 303 A.2d at 295.

56. 90 Wash. 2d 476, 585 P.2d 71 (1978). The *Seattle* case overrules *Northshore v. Kinnear*, 84 Wash. 2d 685, 530 P.2d 178, insofar as it is inconsistent.

57. 90 Wash. 2d at 522, 585 P.2d at 97. The Washington Supreme Court held the state's "paramount duty" created a correlative right on behalf of all resident children to have the state make ample provision for their education. In interpreting this "ample provision" language, the court stated it means more "than mere reading, writing, and arithmetic; the duty embraces broad educational opportunities needed in the contemporary setting to equip children for their role as citizens. . . ." *Id.* at 480-85, 585 P.2d at 94.

58. See WASH. CONST. art. IX, § 1 (It is the "paramount duty of the state to make ample provision" for education.).

59. The Washington legislature authorized school districts to supplement insufficient state funding by resorting to special excess levy elections. The scheme enables a

financing must instead be generated "through dependable and regular tax sources."⁶⁰

Challenges to state funding plans under various state education clauses cannot be analyzed together, since each clause has unique constitutional language mandating the necessary statewide educational standard.⁶¹ State courts must interpret these distinct provisions before any clear definitions of "education" are revealed. Only when one state's clause is nearly identical to another's will a *case* study of such similar state's section be persuasive.⁶²

III. CONSTITUTIONAL ANALYSIS OF MISSOURI EDUCATION

The Missouri education clause, unlike other state constitutions, explicitly outlines the importance of education and the preservation of fundamental liberties.⁶³ Despite attempts in 1875 and 1945 to excise it, this provision remains intact.⁶⁴ The 1875 Constitutional Convention's Education Committee reported that the education clause pro-

district to seek more adequate funding from the local electorate. Districts receive the bulk of state funds through an apportionment formula which operates on the premise of an equal guarantee in dollars for each "weighted" (a variable taking into account the costs to particular districts, training of faculty and other subjective elements) student enrolled. In the 1974-75 school year, Seattle School District No. 1 raised 37.7% of its total revenues through special excess levies. *See* 90 Wash. 2d at 460, 481, 483, 585 P.2d at 78, 98, 100.

60. *Id.* at 485, 585 P.2d at 99. The court merely held the "special excess levies" used by Washington to finance education could not be the main source of revenue. Such levies may be used to fund enrichment programs at the local level which exceed the constitutional requirements. *Id.*

61. *See* notes 63 & 85-87 and accompanying text *infra*.

62. *See* Office of Education Report, *supra* note 53, for a total list of state education clauses. A state court interpretation of a provision identical with that of another state can be helpful in the constitutional construction of the latter.

63. *Compare* MO. CONST. art. IX, § 1(a), *infra* note 68, with CONN. CONST. art. VIII, § 1 ("There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by legislation."); Cal. CONST. art. IX, § 1 ("[K]nowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage . . . the promotion of intellectual, scientific, moral, and agricultural improvement.") and *id.* § 5 ("The Legislature shall provide for a system of common schools . . . at least six months in every year.").

64. *See* 9 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, at 87-92 (I. Loeb and F. Shoemaker eds. 1920) [hereinafter cited as 1875 DEBATES]; Transcripts of the Debates of the 1945 Missouri Constitutional Convention, April 28, 1944, at 1800-03 [hereinafter cited as 1945 Transcripts].

motes education as "organic and fundamental."⁶⁵ This constitutional interpretation supports the view that education is a fundamental right in Missouri.

In 1927, the Missouri Supreme Court in *State ex rel. Roberts v. Wilson*⁶⁶ held that the right of children to attend public school "is not a privilege dependent upon the discretion of any one, but is a *fundamental* right, which cannot be denied except for the general welfare."⁶⁷ Furthermore, the preamble of the Missouri education article strenuously emphasizes the nexus between a system of free public schools and the "preservation of the rights and liberties of the people."⁶⁸ The language closely resembles that of the California education clause,⁶⁹ on which the *Serrano II* court relied to attach a fundamental right to education.⁷⁰ Justice Brennan proposed this "nexus" test to determine the fundamentality of education in his dissenting opinion in *Rodriguez*.⁷¹ Looking to the importance of education in comparison with those rights "which are in fact constitutionally guaranteed," Brennan averred a fundamental right

65 1875 DEBATES, *supra* note 64 ("The education of the people is to be interwoven with the very framework of the commonwealth. It is not to be left to the ever-changing whim and indefinable caprice of the Legislature, but is to be made organic and fundamental.").

66 221 Mo. App. 9, 297 S.W. 419 (1927).

67 *Id.* at 13, 297 S.W. at 420. *Accord*, *Lehew v. Brummell*, 103 Mo. 546, 15 S.W. 765, 766 (1891). The *Wilson* decision was based on the 1875 Missouri Constitution's education clause. The 1945 provision, however, which is the current law, differs only in increasing the maximum age of pupils from 20 to 21 years. *Compare* MO. CONST. OF 1875, art. XI, § 1 *with* MO. CONST. art. IX, § 1(a).

68. *Mo. Const.* art. IX, § 1(a) states:

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.

Among the "rights and liberties" mentioned in the education preamble are those specifically guaranteed by the Missouri Bill of Rights. *See* MO. CONST. art. I, §§ 1-31.

69. *See* note 63 *supra*.

70. *See* notes 37-39 and accompanying text *supra*.

71. 411 U.S. at 62-63 (Brennan, J., dissenting) (discussion of the "nexus" between specific constitutional guarantees and nonconstitutional interests). Studies have been done on "legal socialization." Based on developmental theories, research conclusions have begun to support the contention of Justices Brennan and Marshall that there is a strong nexus between education and an understanding and exercise of legal and political rights. *See* Lindquist & Wise, *supra* note 27, at 20-21 n.82. *See also* Tapp & Levine, *Legal Socialization: Strategies for an Ethical Legality*, 27 STAN. L. REV. 1 (1974).

to education.⁷² Given the express relationship between education and other clearly fundamental rights in the Missouri Constitution, under the nexus test, education should be a fundamental interest.

Despite the education clause's pronouncement of a fundamental right to education, it makes no reference to the quality or kind of education required.⁷³ The state constitution, however, contains an obscure provision (the deficiency funds clause) in the education article that arguably mandates a specific level of state support for public schools.⁷⁴ If revenues to the public schools become insufficient to *sustain* them for at least eight months, under the clause, the general assembly may provide for the deficiency.⁷⁵ Although the deficiency funds clause has never been used to challenge the adequacy of state support to public schools, such use is consistent with the legislative history and judicial interpretation of the section.

The Missouri Constitution of 1865 originally contained the deficiency clause.⁷⁶ It authorized the general assembly to levy a local property tax if contributions from the state and county school funds⁷⁷ proved inadequate to support schools.⁷⁸ The 1865 version of the

72. 411 U.S. at 62-63. The nexus test would be particularly effective in a school financing case brought under the Missouri equal protection clause, largely because the Missouri education article recognizes an express connection between education and other clearly fundamental rights, such as the right to vote and to exercise free speech. *See* note 68 *supra*.

73. *See* note 68 *supra*. The Education Committee of the 1875 Missouri Constitutional Convention declined to adopt a resolution calling for the addition of the words "thorough and efficient" to the language of this section. 1 JOURNAL OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, at 187 (I. Loeb and F. Shoemaker eds. 1920). The rejection of such language, however, should not preclude the necessity for a quality education. The drafters of the 1875 Convention may have felt that the "thorough and efficient" language was redundant. *See* notes 64 & 65 *supra*.

74. MO. CONST. art. IX, § 3(b) ("In event the public school fund provided and set apart by law for the support of free public schools, shall be insufficient to sustain free schools at least eight months in every year . . . , the general assembly may provide for such deficiency").

75. *Id.*

76. MO. CONST. OF 1865, art. IX, § 8.

77. The county school fund consisted of the income and proceeds from all land designated by the federal government to be used for school purposes. The state school fund was established out of the proceeds from escheats, penalties, forfeitures, fines, the sale of public lands and estrays, and "so much of the ordinary revenue of the state as may be necessary." *Id.* § 5.

78. The major difference in the 1865 deficiency funds clause and the present one is that the former required only sufficient funds to sustain schools four months per year. *Compare* MO. CONST. art. IX, § 3(b) *with* MO. CONST. OF 1865, art. IX, § 8.

clause, however, did not require the general assembly to provide direct financial support to local school districts.⁷⁹

The 1875 Constitutional Convention modified the provision, guaranteeing sufficient appropriation to the public school fund each year to insure the operation of all state public schools.⁸⁰ Subsequently, the Missouri Supreme Court held in *State ex rel. Sharp v. Miller*⁸¹ that the phrase "the general assembly may provide" constituted an absolute *command* to the legislature and not merely legislative discretion.⁸² This interpretation of the clause remains authoritative; the duty lies with the legislature to sustain financially troubled school districts for at least eight months each year.⁸³

Based on the education and deficiency funds clauses of the state constitution, the present Missouri system of financing public education exposes itself to constitutional attack. Missouri courts, however, must analyze the meaning of the word "sustain" in this constitutional context before determining whether the deficiency funds clause becomes a tool in such an attack.⁸⁴ Courts have held the phrases "thor-

79. See note 76 *supra*.

80. See 1875 DEBATES, *supra* note 64, at 243-48, 259-89. The Constitutional Convention of 1875 failed in its initial attempt for minimum legislative appropriations to the public school fund. The Education Committee chairman finally introduced a modified deficiency funds clause which guaranteed enough money to insure the operation of a school district in all regions of the state. This modified provision was adopted after heavy debate. Subsequently, the education article was amended to require at least 25% of the state's revenue be applied annually for the support of free public schools. See *id.* at 39, 282-89.

81. 65 Mo. 50 (1877).

82. *Id.* at 54.

83. The Constitutional Convention of 1945 retained the deficiency funds clause without debate. Two minor changes were made; the minimum school term was increased from four to eight months, and the 1875 reference to § 11 of the Article on Revenue and Taxation (MO. CONST. OF 1875, art. X, § 11) was abolished. The latter had been included to prevent the legislature from remedying deficiencies by imposing a direct tax on districts unable to maintain four-month schools. See 1875 DEBATES, *supra* note 64, at 259-80; 1945 Transcripts, *supra* note 64, at 1852.

Statements made at the 1945 Constitutional Convention emphasize the state's duty to maintain the statewide school system. See 1945 Transcripts, *supra* note 64, at 1796 (comments from the chairman of the Education Committee) ("This is a state school system and it's the state's obligation to see that we have a school system, and if the money doesn't come from other sources, why, I never could see anything wrong with the state supplying the money.")

84. Arguably, even if "sustain" is interpreted as some minimal quantity of funding to individual school districts, which is extremely unlikely based on past interpretations of the deficiency funds clause, the Missouri financing scheme still fails to so provide. See notes 80 & 83 *supra*. Note 25 *supra* discusses whether the legislature

ough and efficient,"⁸⁵ "maintenance and support,"⁸⁶ and "free public elementary and secondary schools"⁸⁷ to be constitutional mandates to various state legislatures to provide *equal* per-pupil expenditures in every state district. Analogously, the provisions in the Missouri Constitution demand fiscal equality in local school districts.

The Missouri education clause states that both a "diffusion of knowledge" and "intelligence" are *essential* to the preservation of the rights and the liberties of the people.⁸⁸ Indeed, a quality education is necessary in our democratic, free enterprise system and must stand apart from other municipal services of lesser import.⁸⁹ An *equal* understanding and an exercise of one's legal and political rights stem only from *equal* educational backgrounds.⁹⁰ The state legislature cannot condition the receipt of such a fundamental right as education upon district wealth.⁹¹ Equality in funding cannot *guarantee* that each pupil will obtain an equal amount of "knowledge" or "intelligence." Although subjective concepts such as knowledge and intelligence are not easily measured, equal financing initially gives each pupil similar equipment, teachers, and other facilities. These equal objective inputs promote educational environments where the mandated "diffusion of knowledge" is more likely to be realized by every pupil.⁹²

can sit and watch public schools remain closed for months due to a teachers' strike. Seemingly, the general assembly must provide funds in circumstances such as this to "sustain" school districts for eight months. See notes 81 & 82 and accompanying text *supra*.

85. *Robinson v. Cahill*, 62 N.J. 473, 513-20, 303 A.2d 273, 294-98 (1973). See notes 53-55 *supra*.

86. *Board of Educ. v. Nyquist*, 94 Misc. 2d 466, 523-25, 408 N.Y.S.2d 606, 636-38 (1978). See notes 45-47 *supra*.

87. *Horton v. Meskill*, 172 Conn. 615, 640-46, 376 A.2d 359, 374-76 (1977). See notes 40-44 *supra*.

88. See note 68 *supra*.

89. See notes 35 & 53 *supra*.

90. See notes 68 & 71 *supra*.

91. See generally Silard and Goldstein, *Toward Abolition of Local Funding in Public Education*, 3 J. L. & EDUC. 307 (1974).

92. Of course, this re-opens the argument concerning whether equal monetary "inputs" promote equal learning. It suffices to say that one may never be sure. But money is the only objective element in the learning process which can be accurately measured; it is also a common factor in all school districts. Consequently, equalizing revenues to school districts should equalize educational opportunities as much as possible. See note 7 *supra*.

In addition to the education provision, the Missouri Constitution contains an express equal protection clause,⁹³ as well as a section prohibiting the creation of special and local laws.⁹⁴ The Missouri Supreme Court affords equal protection of the law to a given class of persons only when they are "subjected to like and equal conditions."⁹⁵ Furthermore, Missouri equal protection language appears more explicit than the federal provision in entitling all persons to "equal rights and opportunities under the law."⁹⁶ Clearly, pupils re-

93. MO. CONST. art. I, § 2 states:

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

94. MO. CONST. art. III, § 40(30). This provision is interpreted similarly to the Fourteenth Amendment of the federal Constitution. The section provides that "the general assembly shall not pass any local or special law . . . where a general law can be made applicable," and the applicability of such general law is a judicial question. *See State ex rel. Toedebusch Transfer, Inc. v. Public Serv. Comm'n.*, 520 S.W.2d 38 (Mo. 1975); *St. Louis Union Trust Co. v. State*, 348 Mo. 725, 155 S.W.2d 107 (1941), *cert. denied*, 314 U.S. 700 (1942).

95. *See King v. Swenson*, 423 S.W.2d 699 (Mo. 1968) (the general purpose of federal and state equal protection provisions is to prevent invidious discrimination. Statutory classification does not violate constitutional limitation if all persons in the same class are treated equally.); *Brawner v. Brawner*, 327 S.W.2d 808 (Mo. 1959), *cert. denied*, 361 U.S. 964 (1959) (the state equal protection clause does not prohibit classification of the subjects of legislation if all persons within the same class are included and treated alike); *Walters v. City of St. Louis*, 364 Mo. 56, 259 S.W.2d 377 (1953), *aff'd* 347 U.S. 231 (1954) (statutory classification does not violate the constitution if all persons within the same class are treated with equality); *State v. Day-Brite Lighting, Inc.*, 362 Mo. 299, 240 S.W.2d 886 (1951), *aff'd* 342 U.S. 421 (1952) ("When all persons within the purview of the statute are subjected to like conditions, they are afforded equal protection of the law"); *State, on Inf. of Taylor v. Currency Services, Inc.*, 358 Mo. 983, 218 S.W.2d 600 (1949) (the legislature may pass laws applicable to a particular class of individuals, but such laws must bear equally on all individuals coming naturally within that class); *Ballantine v. Nester*, 350 Mo. 58, 164 S.W.2d 378 (1942).

96. *Compare* MO. CONST. art. I, § 2, *supra* note 80, with U.S. CONST. amend. XIV, § 1 ("No state shall . . . deny to any person within its jurisdiction the equal protection of the laws"). The Missouri equal protection clause contains basically the same provisions as the 1875 Missouri Constitution's clause (*see* MO. CONST. OF 1875, art. II, § 4). The phrase "that all persons are created equal and are entitled to equal rights and opportunity under the law" was added to the constitution in 1945, however, showing the significance the 1945 Convention attached to equal opportunities. *See* note 92 *supra*.

siding in districts having low-pupil expenditures receive none of these "equal opportunities."

Missouri courts, however, have seldom interpreted the state equal protection clause contrary to requirements of the Fourteenth Amendment of the federal Constitution.⁹⁷ In *Bopp v. Spainhower*,⁹⁸ for example, the Missouri Supreme Court held the appropriate standard of review for state equal protection claims is the "rational basis" test when "no specific federal right, apart from equal protection, is imperiled."⁹⁹ But a quality education remains a federal "right which must be made available to all on equal terms" since *Brown v. Board of Education*.¹⁰⁰ This guaranteed right to education certainly commands a stricter level of judicial scrutiny than the "rational basis" test when reviewing the Missouri school financing plan.

The *Rodriguez* decision represents persuasive authority regarding challenges to the Missouri scheme brought solely under state equal protection provisions. Courts that traditionally interpret their state equal protection clauses in conjunction with the Fourteenth Amendment refuse to do so in attacks on state educational financing programs.¹⁰¹ The United States Supreme Court proclaimed the highest court in any state is the final judge of what is unconstitutional *under state law*.¹⁰² Should Missouri interpret state laws independently of federal influence, the state school financing scheme will fail to pass constitutional muster.¹⁰³

Even if state courts continue to construe state and federal provisions similarly, the Missouri financing system remains vulnerable.

97. See *In re Interest of J.D.G.*, 498 S.W.2d 786 (Mo. 1973); *State v. Stock*, 463 S.W.2d 889 (Mo. 1971); *Gem Stores, Inc. v. O'Brien*, 374 S.W.2d 109 (Mo. en banc 1964) ("decisions of this state are in harmony with the federal cases . . .").

98. 519 S.W.2d 281 (Mo. 1975).

99. *Id.* at 289.

100. 347 U.S. 483, 493 (1954). See note 104 *infra*.

101. See *Serrano v. Priest*, 18 Cal. 3d 728, 764, 557 P.2d 929, 950, 135 Cal. Rptr. 345, 366 (1977) (California laws possess an "independent vitality"); *Horton v. Meskill*, 172 Conn. 615, 625-40, 376 A.2d 359, 365-75 (1977). (Although the majority opinion acknowledged that the interpretation of the Connecticut equal protection clause traditionally paralleled that of the federal Constitution, the court stated it need not apply the United States Supreme Court's equal protection analysis to state law questions).

102. *Scripto, Inc. v. Carson*, 362 U.S. 207, 210 (1960). For a general analysis, see C. WRIGHT, *FEDERAL COURTS* 543 (3d ed. 1976) (United States Supreme Court considers state supreme courts the final authority on questions pertaining to state law).

103. See notes 33 & 34 *supra*.

The United States Supreme Court holds education in high esteem.¹⁰⁴ Consequently, Missouri courts may adjust the standard of judicial review of the existing foundation plan to a "sliding scale," considering the relative importance of the system compared to the rights of the pupils it affects.¹⁰⁵ Several courts have overturned state financing programs similar to Missouri's by reviewing the schemes under a "rational basis" standard.¹⁰⁶ In Missouri, review of the "guaranteed tax base" formula under strict scrutiny virtually guarantees the plan's doom; review under some lesser standard,¹⁰⁷ however, certainly does not preclude such a result.

Should proponents of an attempt to overturn the state funding system be thwarted by the judiciary, the possibility of change through legislative amendment remains. Indeed, Texas altered its formula for financing public education no less than twice after *Rodriguez* held the system constitutional.¹⁰⁸ The Supreme Court stated that although financing schemes relying on local property taxes for revenue needed

104. See *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring) ("Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government."); *Brown v. Board of Education*, 347 U.S. 483, 493 (1954) ("[I]t 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 . . . is a right which must be made available to all on equal terms."); (emphasis added) *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) ("American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.").

105. See note 46 *supra*. Justice Marshall claimed the Court had always applied a "spectrum" of standards varying according to the fundamentality of the classifications involved, the relative constitutional and societal significance of the interest adversely affected, and the available legislative alternatives. See *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 98-110 (1972) (Marshall, J., dissenting); *James v. Strange*, 407 U.S. 128 (1972); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972); *Reed v. Reed*, 404 U.S. 71 (1971); *Skinner v. Oklahoma*, 316 U.S. 535 (1942). See generally *Gammon*, *supra* note 33.

A court in New York recently invalidated that state's educational financing scheme (which is quite similar to the Missouri plan) when subjecting it to "sliding scale" review. See note 46 *supra*.

106. See notes 47 & 53 and accompanying text *supra*.

107. The history, development, and proposed changes in equal protection standards of review have been thoroughly critiqued. For a compilation of such analyses, see *Gammon*, *supra* note 33, at 438-39 n.13.

108. Texas reformed its foundation plan for educational finance twice since *Rodriguez*. See 1975 Tex. Gen. Laws, ch. 334, §§ 1-16, at 877; 1977 Tex. Sess. Law Serv., 1st Spec. Sess., ch. 1, § 1, at 11 (Vernon). The present Texas financing system, however, is under constant attack. See generally Note, *Texas School Finance: The Incompatibility of Property Taxation and Quality Education*, 56 TEX. L. REV. 253 (1978)

reform, ultimate solutions "must come from the law makers, and from the democratic pressures of those who elect them."¹⁰⁹ It becomes imperative to propose an alternative financing plan for Missouri.

IV. CENTRALIZED STATE FUNDING: A LEGISLATIVE ALTERNATIVE

No property tax system remedies the basic incompatibility of quality education and property taxation.¹¹⁰ By using local taxes as the primary means of funding education, Missouri's financing system focuses not on actual educational needs, but rather on citizens' willingness to allow their property to be taxed.¹¹¹ The total financial resources of the state must be equally available to all public school

[hereinafter cited as *Texas School Finance*] (proposing "regionalism" in school district organization or hopefully full state funding for Texas).

109. 411 U.S. at 59.

110. Property tax administration may serve to minimize inequitable tax assessment practices, but the underlying incompatibility of private wealth and quality education remains. See Silard & Goldstein, *supra* note 91, at 329 (The inequality has its roots in the fact that, except for a few highly homogeneous states, the aggregate assessable property per child varies greatly among the districts of the state Naturally, rich localities can produce greater revenues). See also COMMISSION REPORT 1973, *supra* note 7, at 93 ("The principle that the quality of a student's public elementary and secondary education should not be dependent on the wealth of his parents and neighbors stands out as a sound objective of public school finance policy. . .").

Critics have dealt extensively with educational inequities produced by school finance systems dependent upon property wealth. See generally J. BERKE, ANSWERS TO INEQUITY: AN ANALYSIS OF NEW SCHOOL FINANCE (1974); J. BERKE, A. CAMPBELL, & R. GOETTEL, FINANCING EQUAL EDUCATIONAL OPPORTUNITY (1972); J. COONS, *supra* note 7; J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, SCHOOLS AND INEQUALITY (1971); R. HARRISON, EQUALITY IN PUBLIC SCHOOL FINANCE (1976); R. REISCHAUER & R. HARTMAN, REFORMING SCHOOL FINANCE (1973).

111. The local property tax is extremely unpopular. One commentator summarizes the reasons for its unpopularity as follows:

- 1) the local property tax bears harshly on low-income families ("capriciously related to the flow of cash into the household");
- 2) it affects homeowners most heavily;
- 3) its administration is non-uniform and arbitrary;
- 4) periodic reappraisal of property produces a tax "shock"—dramatic increases reflect inflation of property values that hit the property owner in one lump sum; and
- 5) payment of this local tax is more painful than the "pay as you go" income and sales taxes.

Shannon, *The Property Tax: Reform or Relief*, in PROPERTY TAX REFORM 25 (G. Peterson ed. 1973).

children.¹¹² The ultimate responsibility for providing equal educational opportunities lies with the state.¹¹³ It is obliged to give the less economically favored pupils educational programs similar in quality and breadth to those received by the more affluent.¹¹⁴ Missouri must assume its burden and allot revenue to districts on an equal and uniform basis. Consequently, full state funding,¹¹⁵ independent of local property taxation, rather than a revised foundation program,¹¹⁶ rep-

112. See J. COONS, *supra* note 7, at 45.

113. See generally MO. CONST. art. X.

114. J. HOGAN, *THE SCHOOLS, THE COURTS, AND THE PUBLIC INTEREST* (1974); E. REUTTER, JR., *SCHOOLS AND THE LAW* (1970).

115. Full state funding is a radical proposal totally abolishing local property taxation as a revenue source for public education. It provides an easy means of equalizing expenditures between districts, and affords the opportunity to take differences in educational needs and local costs into account. State funding gives the state legislatures the flexibility to balance educational costs among various tax bases and to channel funds to the educational needs and socioeconomic character of school districts. For a general explanation of full state funding and its consequences, see Thomas, *Equalizing Educational Opportunity Through School Finance Reform: A Review Assessment*, 48 U. CIN. L. REV. 255, 302-03 (1979).

Full state funding has been completely endorsed by the Advisory Council on Intergovernmental Relations, President's Commission on School Finance, the State of Hawaii, Former Governor Anderson of Minnesota, Governor Milliken of Michigan, the New York Commission on Quality, Cost, and Financing of Elementary and Secondary Education, and the Citizen's Commission on Maryland Government. See COMMISSION REPORT 1973, *supra* note 7, at 106.

116. Aside from full state funding, there are actually only three choices for school finance reform in Missouri:

A. *District power equalizing*—Basically, this system is a commitment by the state to the principle that the relationship between effort (the tax rate a district decides to levy) and offering (money the district spends on education) of each district will be the same. Each district determines its own effort. At any given tax level, every local district raises the same amount of money per pupil through local revenue plus state aid. The problem with district power equalizing is that the state fixes the number of dollars that can be spent by the district (although it does guarantee that amount). For a thorough explanation, see J. COONS, *supra* note 7, at 200-50.

B. *School district reorganization*—This plan involves re-drawing districts to provide equal assessed valuation per pupil in each district. The problem with this approach is the subsequent fluctuations in property value. Constant re-drawing is necessary to keep the districts "equal." See *Texas School Finance*, *supra* note 108, at 266.

C. *"Beefed-up" foundation plan*—Missouri could subsidize the present system to assure a per-pupil expenditure level by such local district near that of the wealthiest districts. This plan, however, requires an immense amount of state aid, and it still links private wealth to school spending. In addition, adopting a full state funding program leaves this high expenditure option open at the state's desire. See COMMISSION REPORT 1973, *supra* note 7, at 105-06.

resents the best method of equalizing public school finance.

Centralized state funding for Missouri schools has several advantages. Initially, better revenue sources exist for the state than for local school districts.¹¹⁷ There is no need to rely on a local property tax. The diversity of tax sources from a statewide tax base enables Missouri to make only moderate tax rate increases to increase school funding.¹¹⁸ State sales and income taxes also tend to be more responsive to changes in the economy than local property taxes.¹¹⁹ Furthermore, the State of Missouri has distinct tax administration advantages over local governments.¹²⁰ Finally, and perhaps most importantly, centralized state funding promotes equality in financing at a given monetary level.¹²¹

The primary obstacle to the implementation of complete state

117. During the 1977-78 fiscal year, Missouri collected approximately \$540 million in personal income taxes, \$90 million in corporate taxes, \$656 million in state sales taxes, \$60 million in cigarette taxes, and \$19 million in inheritance taxes. Telephone conversation with Mr. Thompson, State Dep't of Revenue, Jefferson City, Mo. (March 5, 1979).

Local districts, on the other hand, derive practically all of their revenue from local property taxes. See generally ADVISORY COMM'N. ON INTERGOVERNMENTAL RELATIONS, submitted to THE PRESIDENT'S COMMISSION ON SCHOOL FINANCE, STATE-LOCAL REVENUE SYSTEMS AND EDUCATIONAL FINANCE (1971) [hereinafter cited as COMMISSION REPORT 1971].

118. Diversity of taxes tends to promote less distortion in private sector decisions, and also creates less incentive to evade taxes. Small rate increases in several taxes may create less disturbance than one large rate hike. Broadening the tax base increases horizontal equity, economic efficiency, and ease of administration. Interstate tax competition has encouraged tax diversification. States have moderated tax rates and sought new sources of tax revenue. See COMMISSION REPORT 1971, *supra* note 117, at 3-8.

119. Income taxes, and to a lesser degree state sales taxes, are more progressive than local property taxes. Most scholars and economists concerned with public finance believe that lower-income households pay larger percentages of their incomes for property taxes than do higher-income households. See D. NETZER, ECONOMICS OF THE PROPERTY TAX 40 (1966); EDUCATION FINANCE CENTER, EDUC. COMM'N OF THE STATES, THE REGRESSIVITY OF THE PROPERTY TAX I (1976). See generally Shannon, *supra* note 111.

120. "Economies of scale" favor Missouri handling school financing. The state's large size and the large amount of statewide economic activity explain the relatively low administrative costs. Locally imposed taxes are subject to higher administrative costs due to independent units of government, overlapping taxes, etc. See COMMISSION REPORT 1971, *supra* note 117, at 3-6.

121. See COMMISSION REPORT 1973, *supra* note 7, at 123 (With full state funding, "uniformity would be the rule—modified, however, by special needs or costs in some jurisdictions and by limited local add-on spending. . .").

funding in Missouri is the state's attainment of resources to replace local tax revenues.¹²² Missouri, however, possesses an abundance of alternative tax sources. A recent government report revealed that Missouri has "the greatest untapped taxing potential" of all the states in the "plains" region of the United States.¹²³ A mere one percent increase in the Missouri sales tax would yield approximately 220 million dollars in additional state revenue.¹²⁴ A similar amount of funds would result from moderately increasing corporate and personal income tax rates.¹²⁵ Should the state decide to provide the least change in the status quo, a uniform statewide property tax would produce the funds necessary for education.¹²⁶

A threatening aspect of this proposal is that full state funding will lower rather than raise the quality of education. Educators caution that centralized financing creates a "compromise" education.¹²⁷ This

122. Local and county sources supplied approximately \$583 million toward Missouri school financing in the 1977-78 school year. When effectuating full state funding, Missouri must replace this lost local revenue. See 1978 SCHOOL REPORT, *supra* note 1, at 46.

123. See COMMISSION REPORT 1973, *supra* note 7, at 94. The plains states mentioned in the report included Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota. The study revealed that Missouri, by taxing itself as much as Minnesota (the "highest effort" state in the "plains"), could increase its total revenue by approximately \$700 million. Furthermore, a conventional taxing system as complete and thorough as New York's (the highest taxing state in the nation) would yield about \$1.1 billion in additional revenue. The report concluded that every state except New York, Wisconsin and Vermont could raise its per-pupil spending level to the 90th percentile by using substantially less than its entire untapped relative tax capacity. *Id.*

124. Missouri's sales tax revenue for 1977-78 was based on a 3% sales tax rate. Raising the rate to 4% provides the \$220 million. See note 117 *supra*. Additional revenues could be easily obtained by similar increases in cigarette, inheritance, and automobile taxes.

125. Missouri should intensify its state income tax rate for school finance purposes. States making heavy use of the income tax for financing have found it superior to others in "productivity, elasticity, equity, and ease of administration." The fact that the income tax is moderately progressive is also desirable. COMMISSION REPORT 1971, *supra* note 117, at 3-10. See generally B. LEVIN, T. MULLER, W. SCANLON, & M. COHEN, PUBLIC SCHOOL FINANCE: PRESENT DISPARITIES AND FISCAL ALTERNATIVES (1972).

126. A statewide property tax shifts the burden among individual property owners in different localities due to the uniform tax. The system at least makes everyone pay property taxes at the same rate. The total tax burden, however, remains with the property owners as a group. See COMMISSION REPORT 1973, *supra* note 7, at 74.

127. In addition to this "compromise" education argument, some argue that a centralized funding system terminates the opportunity and the responsibility of work-

concept, however, would allow Missouri to fund schools at any level it desires; it may set the per-pupil expenditure level wherever it desires. Centralized state funding clearly does not mandate mediocrity. If Missouri wants to fund all districts at the highest practical level, it must collect additional revenues. In the alternative, financing schools with an average or "compromise" amount of funds at least provides *uniformity*, which is more desirable than conditioning education upon local wealth.¹²⁸

Constant objections to full state funding prevail. Foremost among the objections is the loss of local autonomy in education. Local control over *spending* options, however, need not be equated with control over *revenue* options.¹²⁹ Numerous studies indicate that centralized financing and decentralized policymaking are not mutually exclusive.¹³⁰ School district spending and operational decisions can and should remain at the local level. Indeed, the state must work closely with all school districts to be aware of needs and expenses unique to each area.¹³¹

ing at the local level, thereby taking away "local incentive." See J. COONS, *supra* note 7, at 30-45. But see notes 132-34 and accompanying text *infra*.

128. Indeed, educators never claim that full state funding of public schools is unfair; they merely give opinions as to the practicality of such a system. See J. COONS, *supra* note 7, at 35; Thomas, *Equalizing Educational Opportunity Through School Finance Reform: A Review Assessment*, 48 U. CIN. L. REV. 255, 302-03 (1979).

129. One study of 10 states representing more than 29% of the national student population concluded:

- 1) The extent of state controls over local district decision-making has no direct relationship to the percentage of state funding.
- 2) With the exception of North Carolina, higher percentages of state funding appear to be somewhat more conducive to innovations.
- 3) The rate of adoption of innovative educational practices is generally higher in states which spend more per-pupil in absolute dollars. This relationship is much stronger than that between rate of innovation and level of state funding.
- 4) The extent of state controls appears to be related to increased per-pupil expenditures.

B. LEVIN, *supra* note 125, at 268.

130. See, e.g., N.Y. STATE COMM'N. ON THE QUALITY, COST, AND FINANCING OF ELEMENTARY AND SECONDARY EDUCATION IN NEW YORK STATE, THE FLEISCHMAN REPORT ON THE QUALITY, COST, AND FINANCING OF ELEM. AND SEC. EDUCATION IN NEW YORK STATE (1973) [hereinafter cited as FLEISCHMAN REPORT]; COMM. FOR ECONOMIC DEVELOPMENT, EDUCATING THE DISADVANTAGED (1970); ADVISORY COMM'N. ON INTERGOVERNMENTAL RELATIONS, STATE AID TO LOCAL GOVERNMENT (1969). See also B. LEVIN, *supra* note 125, at 212-43 (a complete discussion and evaluation of Hawaii's move to full state funding).

131. See notes 11 & 13 and accompanying text *supra*.

Finally, the financing scheme must include an opportunity for supplemental monetary enrichment at the local level.¹³² Some studies recommend against such local aid¹³³ because it reinstates the element of inequality. Stimulation of local incentive, however, weighs in the favor of such aid. Local enrichment allows school districts optional school improvements,¹³⁴ as well as surplus revenue for possible errors in the state distributional formula or other unpredicted expenses.

V. CONCLUSION

Missouri must shift from traditional reliance on local property taxes to state funding of education. Problems inherent in the present system cannot otherwise be solved. Other states are moving in a similar direction. Missouri will undoubtedly retain its present foundation plan until a financially compelled school shutdown occurs. Political changes and skyrocketing costs of education will stretch the local property tax to its limits. In response, full state funding will eventually prevail as educational needs demand.

132. See note 121 *supra*. The first policy recommendation on school finance by the Advisory Commission on Intergovernmental Relations to the federal government called for state assumption of all responsibility for financing public schools "with opportunity for financial enrichment at the local level and assurance of retention of appropriate local policymaking authority." ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 130, at 14.

133. See, e.g., FLEISCHMAN REPORT, *supra* note 130, at 213 (local supplementation will "lead back to disparities" that centralized state funding attempts to remedy).

134. Even though local financial enrichment may allow some shift from absolute uniformity, it does so only after the state has provided every district with a relatively high expenditure level. School districts desiring more revenue than this amount per-pupil must pay additionally for it. See generally COMMISSION REPORT 1973, *supra* note 7.

