

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

_____	:	
WILLIAM PENN SCHOOL	:	
DISTRICT, <i>et al.</i> ,	:	
	:	NO. 587 MD 2014
Petitioners,	:	
	:	
vs.	:	
	:	
PENNSYLVANIA DEPARTMENT	:	
OF EDUCATION, <i>et al.</i> ,	:	
	:	
Respondents.	:	
_____	:	

EXECUTIVE RESPONDENTS’ POST-TRIAL BRIEF

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I. SUMMARY OF ARGUMENT

The Court has “the final word regarding the Constitution’s meaning” and to determine whether a Constitutional mandate has been satisfied. *See William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 170 A.3d 414, 436 (2017). Before the Court are two critical questions related to the interpretation of the Education Clause¹ of the Pennsylvania Constitution: (1) what it means to have a “thorough and efficient system of public education that serves the needs of the Commonwealth” and (2) whether the General Assembly has satisfied its exclusive obligation thereunder. As for Petitioners’ equal protection claim, the question is whether the system of funding discriminates against students who reside in low-wealth school districts in violation of the Constitution’s Equal Protection Clause.

The Education Clause is an organic, express provision of the Pennsylvania Constitution which restricts the General Assembly’s otherwise plenary power to legislate education funding and policy. In interpreting its meaning, the Court should focus its analysis on the plain language of the Education Clause. It is also appropriate for the Court to consider any relevant decisional law or policy considerations, and

¹ The Education Clause is found in Article III, Section 14 of the Constitution of Pennsylvania, and states: “The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa. Const. Art. 3, § 14.

any extra-jurisdictional case law from states that have identical or similar express constitutional provisions.

Furthermore, in determining whether the General Assembly has met its mandate prescribed by the Education Clause, this Court should examine **both the *inputs*** – the amount of funding and the quality of the educational resources available to the public education system – **and the *outputs*** – the outcomes that the system produces. A majority of courts have considered both inputs and outputs in evaluating their constitutional education provisions containing similar language to this Commonwealth’s Education Clause. The General Assembly has an obligation under the Education Clause to provide the necessary inputs sufficient to maintain a “thorough and efficient” system of public education. The outcomes of that system are crucial to gauging whether the General Assembly has met this obligation as they are the evidence of the adequacy and equity of the inputs.

Finally, to the extent the Court grants any relief to Petitioners, the doctrine of sovereign immunity applies to the Executive Respondents and, therefore, monetary damages are barred, and any remedy must be prospective in nature.

II. ARGUMENT

a. **It is the Province and Duty of the Court to Interpret the Pennsylvania Constitution's Education Clause and Determine Whether the General Assembly has Complied with Its Mandate.**

It is the province of the Court to say what the law is and to have the final word regarding the Constitution's meaning. *William Penn Sch. Dist.*, 170 A.3d at 435-36.

The Pennsylvania Supreme Court has recognized this centuries-old rule of law as foundational to our democracy:

The cornerstone of our republican democracy is the principle of government divided into three separate, co-equal branches that both empower and constrain one another. *See Robinson Twp.*, 83 A.3d at 927 n.16. Judicial review stands as a bulwark against unconstitutional or otherwise illegal actions by the two political branches. **"It is emphatically the province and duty of the judicial department,"** instructed Chief Justice John Marshall, **"to say what the law is."** *Marbury v. Madison*, 5 U.S. 137, 177, 1 Cranch 137, 2 L.Ed. 60 (1803). **The foundation for the rule of law as we have come to know it is the axiom that, when disagreements arise, the Court has the final word regarding the Constitution's meaning.**

Id. (emphasis added).

It cannot be disputed that the General Assembly has authority to legislate in the education arena, but it is not the General Assembly's prerogative to assess the constitutional adequacy of its own effort. *See id.* at n. 38. Antithetical to the principles undergirding American democracy is the idea that a legislature can conclusively determine for itself that it has acted in accordance with its constitutional

bounds. *See id.* at 438-39. Both the Pennsylvania and United States Supreme Courts have long recognized that this duty rests squarely with the courts:

The idea that any legislature . . . can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. **The duty rests upon all courts . . . when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation.**

Id. at 438-39 (citing *Robinson Twp., Washington Cnty. v. Com.*, 623 Pa. 564, 610, 83 A.3d 901, 929 (2013) (emphasis added; citations modified; footnote omitted), citing *Smyth v. Ames*, 169 U.S. 466, 527–28 (1898), *overruled on other grounds by Federal Power Comm'n v. Natural Gas Pipeline Co. of Am.*, 315 U.S. 575, 602 (1942)).

Absent the Education Clause, the General Assembly would have plenary power over the funding of education in the Commonwealth. The Education Clause acts as a constraint on the power of the General Assembly, requiring such funding to be sufficient and equitable to produce a “thorough and efficient” system of public education. *Cf. League of Women Voters v. Commonwealth*, 178 A.3d 737, 803 (2018) (“[a]lthough plenary, the General Assembly's police power is not absolute, as legislative power is subject to restrictions enumerated in the Constitution and to limitations inherent in the form of government chosen by the people of this Commonwealth.”)

Traditional tests of judicial scrutiny have no applicability in the interpretation of the Education Clause.² Indeed, “[t]he touchstone of interpretation of a constitutional provision is the **actual language** of the Constitution itself.” *League of Women Voters*, 178 A.3d at 802 (citing *Ieropoli v. AC & S Corp.*, 842 A.2d 919, 925 (2004)) (emphasis added). “[T]he Constitution’s language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption.” *Id.* If any ambiguity becomes apparent in the plain language interpretation of a constitutional provision, the Court must follow the rules of interpretation similar to those generally applicable when construing statutes. *Id.* at 802-803 (citing *Robinson Township v. Commonwealth*, 83 A.3d 901, 945 (Pa. 2013); *Commonwealth v. Omar*, 981 A.2d 179, 185 (Pa. 2009)). The Court may resort to considerations other than the plain language to discern intent, including: the occasion and necessity for the provision; the circumstances under which the amendment was ratified; the mischief to be remedied; the object to be attained; and the contemporaneous legislative history. *Id.* at 803.

Moreover, the Education Clause is an organic clause to the Pennsylvania Constitution – it has no federal counterpart. Therefore, in addition, the court “may consider, as necessary, any relevant decisional law and policy considerations

² Levels of judicial scrutiny (*e.g.*, rational basis, intermediate scrutiny, and strict scrutiny) are applicable in the context of an Equal Protection claim, but not in the interpretation of the Education Clause. *See League of Women Voters v. Commonwealth*, 178 A.3d 737, 802-803 (2018). The Executive Respondents take no position on the level of judicial scrutiny that the Court should apply to Petitioners’ Equal Protection claim.

argued by the parties, and any extra-jurisdictional case law from states that have identical or similar provisions, which may be helpful and persuasive.” *Id.* (citing *Jubelirer v. Rendell*, 953 A.2d 514, 525 at n.12 (2008)).

Accordingly, it is the Court’s responsibility and duty to interpret the Education Clause according to its plain language and to adjudicate whether the General Assembly has complied with its obligations thereunder. *See League of Women Voters*, 842 A.2d at 825 (finding the Congressional Redistricting Act of 2011 unconstitutional under the Free and Equal Elections Clause); *see also Allegheny Cnty. v. Com.*, 534 A.2d 760, 765 (1987), enforcement denied *sub nom. Cnty. of Allegheny v. Com.*, 626 A.2d 492 (1993) (finding the statutory scheme for county funding of the judicial system unconstitutional under the constitution’s express provision of a “unified judicial system”).

b. The Court Should Examine Both the Inputs and the Outputs of the Commonwealth’s Public Education System in Determining Whether the General Assembly Has Satisfied Its Constitutional Obligations Under the Education Clause.

This Court’s determination of whether the General Assembly has satisfied the mandate of the Education Clause should be a holistic endeavor that examines both the inputs and the outputs of the public education system. The plain language of the Education Clause imposes on the General Assembly an obligation to provide the necessary inputs (*i.e.*, the funding and provision of resources) for a system of public education. Whether those inputs are sufficient to maintain a “thorough and efficient” system can be gauged, in part, by its outputs (*i.e.*, the student educational

outcomes produced by that system). Put another way, the outcomes are the evidence of whether the inputs are adequate and equitable.

Indeed, a majority of courts across the country, at the state and federal levels, have concluded that an examination of both inputs and outputs is necessary to effectively evaluate the constitutionality of that system. *See, e.g., Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 332 (2003) (“To determine whether New York City schools in fact deliver the opportunity for a sound basic education, the trial court took evidence on the ‘inputs’ children receive—teaching, facilities and instrumentalities of learning—and their resulting ‘outputs,’ such as test results and graduation and dropout rates.”); *Davis v. State*, 2011 S.D. 51, 804 N.W.2d 618, 633–34 (“[E]ducational results are also a factor in determining constitutionality of the system. In other words, are the students receiving the education required by the constitution?”). *See also generally, Abbeville Cnty. Sch. Dist. v. State*, 737 S.E.2d 157 (S.C. 2014); *Gannon v. State*, 390 P.3d 461 (Kan. 2017); *Martinez v. State of New Mexico*, 2018 WL 9489378 (N.M. Dist. July 20, 2018).³

³A minority of courts have taken an inputs-only based approach. *See e.g., Bismarck Pub. Sch. Dist. #1 v. State*, 511 N.W.2d 247 (N.D. 1994); *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2004). Other courts have held it proper to find their state’s education system to be unconstitutional based on an analysis of the outputs alone. *See Morath v. The Texas Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 863 (Tex. 2016) (stating “[b]ecause the adequacy standard ‘is plainly result-oriented,’ the proper focus of a constitutional adequacy analysis should be on outputs that measure student performance”); *Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109, 167 (Del. Ch. 2018) (holding that

Likewise, this Court should analyze both the inputs and the outputs of our education system and consider the relationship of those student educational outcomes with the adequacy and equitable distribution of funding inputs. The equitable funding factors contained in Act 35 should be heavily weighted in the Court’s inputs analysis. The Fair Funding Formula was enacted to “establish a fair, equitable formula for allocating new state funds to Pennsylvania schools to move closer to ensuring that all students receive a quality public education and that schools with the greatest needs receive funding necessary for the resources they require.” *See* Executive Respondents’ Proposed Findings of Fact (“FOF”) ¶ 164. Specifically, Act 35 contains a legislative blueprint for assessing the increased funding needs of school districts by virtue of the characteristics of their student populations (*e.g.*, poverty), geography (*e.g.*, sparsity) and local ability and effort to pay. *See* FOF ¶ 165. The Level Up funding initiative⁴ should also be considered and is additionally

“allegations regarding educational outputs would be sufficient standing alone to state a claim” and that based only on those outputs “Delaware is not fulfilling its constitutional obligation to Disadvantaged Students”). This Court has previously examined outputs, such as PSSA scores, in a prior case examining a constitutional challenge to the Education Clause. *See e.g. Pa. Ass'n of Rural & Small Sch. v. Ridge*, 1998 Pa. Commw. Unpub. LEXIS 1, at *91 (Commw. Ct. July 9, 1998). For the Court’s convenience, a copy of the *PARSS* case is included in Appendix A.

⁴ In 2021, Governor Wolf and the General Assembly recognized the underfunding of low wealth school districts and allocated \$100 million in Level Up funds to the 100 lowest wealth school districts to address funding inequities. *See* FOF ¶ 170.

instructive as the Court examines the adequacy and equitable distribution of public education funding inputs. *See* FOF ¶ 170.

This Court should also accord significant weight to the outcome metrics of the system of public education because they are reflective of whether school funds are equitably distributed. The PSSA and Keystone exams, as well as PVAAS scores, are legislated measures to determine the effectiveness of the system of public education. *See* FOF ¶¶ 38-47, 69-81. Furthermore, the additional outcome measures tracked in the Future Ready PA Index⁵ contain reliable metrics that reflect the results of disparate funding inputs in districts across the Commonwealth. *See* FOF ¶¶ 123-127.

By examining the information provided by the system's outputs, the Court can determine whether the funding inputs provided by the General Assembly are sufficient and equitably distributed to meet their constitutional obligation under the Education Clause.

c. Sovereign Immunity Bars Petitioners From Recovering Any Damages or Monetary Relief from the Executive Respondents.

⁵ The Future Ready PA Index captures additional outputs beyond the State Assessment Measures (which includes proficiency levels on PSSA and Keystone Exams and Academic Growth Measures, such as PVAAS), such as On-Track Measures (including English Language Growth and Attainment; Regular Attendance; and Early Indicators of Success) and College and Career Measures (including the Career Standards Benchmark; High School Graduation Rate; Industry-Based Learning; Rigorous Courses of Study; and Postsecondary Transition to School, Military, or Work). FOF ¶¶ 123, 126.

Sovereign immunity remains a salient issue for this Court on remand. *See William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d at n. 29. To the extent that this Court grants relief to the Petitioners in this matter, any assessment of monetary damages should be barred as against Executive Respondents based on the doctrine of sovereign immunity. *See* 1. Pa.C.S. § 2310. Accordingly, Petitioners are barred from recovering any monetary relief from the Executive Respondents and any relief granted should be prospective in nature. *Ex Parte Young*, 209 U.S. 123, 159-60 (1908).

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Dated: July 1, 2022

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

I further certify that the word count of this brief does not exceed 14,000 words exclusive of supplementary matters including cover page, table of contents, table of authorities, proof of service, and certifications of compliance.

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APPENDIX A



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Pa. Ass'n of Rural & Small Sch. v. Ridge

Commonwealth Court of Pennsylvania

July 9, 1998, Decided; July 9, 1998, Filed

NO. 11 M.D. 1991

Reporter

1998 Pa. Commw. Unpub. LEXIS 1 *

PENNSYLVANIA ASSOCIATION OF RURAL AND SMALL SCHOOLS; CLAIRTON CITY SCHOOL DISTRICT; NORTHERN TIOGA SCHOOL DISTRICT; HARRISBURG SCHOOL DISTRICT; APPOLLO-RIDGE SCHOOL DISTRICT; CORRY AREA SCHOOL DISTRICT; DUQUESNE CITY SCHOOL DISTRICT; EVERETT SCHOOL DISTRICT; GLENDALE SCHOOL DISTRICT; RONALD ALLENDER, by his parent and next friend, ARLEN R. ALLENDER; STEVEN M. AZAMI, by his parent and next friend, FAYE M. AZAMI; BRADLEY CLARK, by his parent and next friends, HENRY CLARK and TONIA CLARK; TIFFANY EVANS, by her parent and next friend, MARILYN EVANS; JENNIFER HUZEY, by her parent and next friend, THOMAS HUZEY; PAM SLEDGE, by her parent and next friend, ROBERTA SLEDGE; and KAREN SNELL, by her parent and next friend, DENISE JOHNSON, Petitioners v. THOMAS J. RIDGE, Governor of the Commonwealth of Pennsylvania; EUGENE W. HICKOK, Secretary of Education, Respondents, THE ASSOCIATION OF SCHOOL DISTRICTS IN SUPPORT OF EXCELLENCE AND EQUITY; ABINGTON SCHOOL DISTRICT; CAROL GODFREY, a taxpayer from Abington School District and parent of an Abington School District student; WISSAHICKON SCHOOL DISTRICT; JOAN S. PATTON, a taxpayer from Wissahickon School District and parent of two Wissahickon School District students; RADNOR SCHOOL DISTRICT, and MARY ANITA NAAB, a taxpayer from Radnor School District and parent of three Radnor School District students, Intervenors

Notice: An unreported opinion of the Commonwealth Court may be cited and relied upon when it is relevant under the doctrine of law of the case, res judicata or collateral estoppel. Parties may also cite an unreported panel decision of the Commonwealth Court issued after January 15, 2008 for its persuasive value, but not as binding precedent. A single-judge opinion of the Commonwealth Court, even if reported, shall be cited only for its persuasive value, not as a binding precedent.

Subsequent History: Affirmed by Pennsylvania Ass'n of Rural & Small Schs v. Ridge, 558 Pa. 374, 737 A.2d 246, 1999 Pa. LEXIS 2991 (Oct. 1, 1999)

Prior History: Pennsylvania Ass'n of Rural & Small Sch. v. Casey, 531 Pa. 439, 613 A.2d 1198, 1992 Pa. LEXIS 445 (Sept. 16, 1992)

Judges: [*1] BEFORE: HONORABLE DAN PELLEGRINI, Judge. MEMORANDUM OPINION BY JUDGE PELLEGRINI.

Opinion by: DAN PELLEGRINI

Opinion

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DECREE NISI

[*2] APPENDIX I

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Statistics Regarding School Districts by County

MEMORANDUM OPINION BY JUDGE PELLEGRINI

I.

INTRODUCTION

A.

The Pennsylvania Association of Rural and Small Schools¹ (PARSS) et al² filed a petition for review seeking to have Pennsylvania's current system for funding public education declared unconstitutional as violative of Article 3, Section 14 of the Pennsylvania Constitution, commonly referred to as the Education Clause. That provision provides:

¹ PARSS is a non-profit corporation representing approximately 108 school districts in Pennsylvania whose purpose is to conduct research, formulate plans, advise governmental bodies and agencies and the general public, and prosecute litigation regarding the rights and interests of rural and small public school districts in Pennsylvania and of the students served by those school districts.

² The other petitioners include numerous school districts and various students from those districts.

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.³

At the core of PARSS' contention is that the Education Clause, which mandates that there be a "thorough and efficient system of public education", is being violated because there exists a disparity between the amount spent on education among Pennsylvania's 501 school districts,⁴ resulting in a corresponding disparity in the education students are receiving. They argue that property-rich districts are able to spend more on educating their students even though they expend less "effort" (i.e., have a lower tax rate) than poorer districts, even taking into account [*3] the greater subsidy poorer districts receive from the General Assembly. This disparity in funding, they argue, is a result of an unconstitutional educational funding scheme adopted by the General Assembly allowing wealthy, i.e., property-rich school districts, to have more funds available to educate their students.

Not contending that students in less affluent districts are *not* receiving an "adequate" education,⁵ PARSS argues that more funds made available to the school districts equates with a better education⁶ — conversely, less funds made available equates with a reduced education. Accordingly, it argues that because the present funding scheme allows some school districts to have more money to spend with less tax effort, students in districts with less wealth do not have access to a "quality" education as guaranteed by the Education Clause of the Pennsylvania Constitution.

PARSS also contends that the present funding scheme violates rights of students who reside in poorer districts, rights guaranteed under the Equal Protection provisions of the Pennsylvania Constitution.⁷ Because education should be considered a

³Maryland, Minnesota, New Jersey and Ohio have a "thorough and efficient" phrase in their Education Clauses; Colorado, Idaho and Montana's Education Clauses require a "thorough" system; and Arkansas, Delaware, Illinois, Kentucky and Texas, constitutional provisions require "efficient" systems.

⁴There are also 29 Intermediate School Units, successors to the Office of County Superintendents of Schools that provide support services to the school districts. To a large degree, their operations are controlled by a Board composed of the Superintendents of School Districts within the unit. Intermediate Units have no taxing power and while a state subsidy provides for Intermediate Unit administrative operations, a combination of state subsidies and levies on the School District within the Intermediate Unit provides for funding of educational programs.

⁵Not one of the educators called by PARSS testified that his or her district was not providing their students with an "adequate" education. Nowhere in PARSS' brief does it advance that the Education Clause's mandate is not met because students are not receiving an adequate education.

⁶Education can be defined either in terms of "inputs", the amount of money behind each pupil which hopefully will correspond to the amount of teaching that those students will receive, or "outcomes", which corresponds to what the student has learned. PARSS measures education in terms of "inputs": one dollar in spending equals one unit of education. By that, however, it does not contend that funding for students has to be uniform. It acknowledges that there can be differences in funding if they are related to legitimate educational goals such as funding for children whose families are poor or for special education.

⁷The Pennsylvania Constitution does not have an equal protection clause but rights equivalent to ones guaranteed by the federal Equal Protection Clause to the Fourteenth Amendment are discerned from the following three provisions:

Article I, Section 1

fundamental right, PARSS argues that the strict-scrutiny standard should be applied to determine whether the present educational [*4] funding scheme violates equal protection rights of students to receive the same education. It goes on to contend that, even if education is not a fundamental right, equal protection rights of students are being violated because no rational basis exists why access to education should be based on the wealth of a local district where a child resides.

Intervenor, the Association of School Districts in Support of Excellence and Equity, comprised generally of more affluent districts, [*5] essentially supports PARSS' position that the method of system funding is unconstitutional. It contends that the Education Clause requires that a school funding mechanism be implemented so that all school districts have the ability to equally fund "the common branches of education" but does not require that expenditures for instruction must be uniform. It contends that while all schools should have the ability to fund the "common branches of education",⁸ school districts should not be restricted from spending more funds from their own resources to add the "higher branches" if they so desire.⁹

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness;

Article I, Section 26

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right; and

Article III, Section 32

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law [under eight identified categories].

⁸This term "common branches of education" as well as Intervenor's position that funding does not have to be uniform, comes from the Debates of 1874 Constitutional Convention. During the debates, Mr. Hazzard, one of the constitutional delegates, insisted that the term "uniform" should not be added because it would prevent local districts such as his from "organiz[ing], in the common schools, a class in the higher studies[.]" *Id.* at 45. He stated that as to classes in higher studies, "[w]e ask no aid from the State in that regard. We pay our taxes and are content." *Id.* He then added, however:

Of course, everybody knows we must keep the *common branches of education uniform*; that must be so, of necessity; but do not let it be said that we can't, even if we want to, introduce the higher branches into our common schools. (Emphasis added).

⁹Not only do they recognize that there can be differences based on legitimate social or educational goals, but neither PARSS nor Intervenor contends that wealthy districts cannot spend more on a per pupil basis as long as children in their schools are receiving a "quality" education. Even though all they requested in their prayer for relief was a declaration that the present system of funding education be declared unconstitutional, they advance a three-tier approach suggested in a report prepared by the National Conference of State Legislatures for the Education Committee of the Pennsylvania House of Representatives as one way of alleviating the disparity in funding between rich and poor districts.

The first tier of funding would cover the basic costs of providing an adequate set of services to all pupils with the state paying all costs. The second tier would be designed to allow school districts to raise additional revenue to fund a "quality" education and the state would share in such costs based on the relative wealth and tax effort of the school districts measured by their capacity to raise revenue. The third tier would allow a local school district to spend whatever it desires as long as it can raise the revenue. Both the amount of funds necessary to provide a basic education (first tier) and then a quality education (second tier) would be set annually by the General Assembly.

This three tiered approach is a modification of a concept known as the "district power equalization," proposed by John Coons, William Chine and Stephen Sugarman in 'Educational Opportunity: A Workable Constitutional Test for State Financial Structures', 57 Calif. L Rev. 305, (1969). This approach has been extremely influential because it retains local control by allowing local school districts to retain control over how local funds would be allocated but cuts the tie between the amount of money that finances education in a local school district and district

The Commonwealth contends that PARSS' action is without merit. [*7] It argues that the determination of what constitutes a "thorough and efficient" system of funding education is non-justiciable because such a determination is not within the jurisdiction of the courts to decide, but is a matter left solely to the General Assembly to determine. Even if the question is justiciable, the Commonwealth contends that the system for funding education is constitutional because every student in Pennsylvania receives an "adequate" education and neither the Education Clause nor the Equal Protection provisions to the Pennsylvania Constitution requires more. It also contends that the Pennsylvania Constitution does not require that spending be uniform and to impose such a requirement would impair local control over tax rates, spending choices and other educational

wealth. Under this approach, school financing only depends on the tax rate in each district (effort) and not the size of the tax base. As stated by Coons, et. al. (pp. 319-321):

The essence of district power equalizing is the simple elimination of wealth from the formula determining a school district's offering. Instead of offering being a function of both wealth and effort, it becomes a function of effort alone. The easiest way to perceive this is to suppose that the legislature has developed a table which specifies how much per pupil each district [*6] will be permitted to spend for each level of (locally chosen) tax effort against local wealth (preferably income, but, more realistically, property). Such a table might look like this:

Local Tax Rate	Permissible
Per pupil	
Expenditure	
10 mills	\$500
(minimum tax rate	
permitted)	
11 mills	550
12 mills	600
13 mills	750
14 mills	700
29 mills	1450
30 mills	1500
(maximum rate	
permitted)	

Irrespective of the amount of the local corrections, the district would be permitted to spend that amount and only that amount per pupil fixed by law for the tax rate chosen. Rich districts and poor districts taxing at 12 mills would provide a \$600 education. Poor districts and rich districts taxing at 30 mills would provide a \$1,500 education. Obviously, this might require the redistribution of excess local collections from rich districts and the subvention of insufficient collections in poor districts. The magnitude of such effects would depend on the degree that the state wishes to pay for the total cost of education; this, in turn, is related to the extent to which the state wishes to stimulate the district's effort.

To overcome the natural reluctance of the wealthy school districts to shift any of their locally raised revenues to poorer districts, PARSS' and Intervenor's proposal requires the state to directly fund the first tier, and the second tier of funding is where this district power equalization would be applied. The third tier seems to avoid what the New Jersey Supreme Court in *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359, 397-98 (N.J. 1990), stated was a "little short of a revolution in the suburban districts [if] parents learned that basic skills was what their children were entitled to, limited to, and no more."

choices. Finally, the Commonwealth argues that the amount spend on a student's education, at least above the base minimums, have nothing to do with student achievement or the education they receive.

B.

The action brought by PARSS is not unique, but rather one of a large number of cases brought over the past three decades in over half of the states challenging the system by which public education is funded.¹⁰ Those challenges [*8] have come in waves characterized by the particular legal theory being advanced. The first wave of school cases began in the late 1960's and ended with the Supreme Court's decision in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L.Ed. 2d 16, 93 S.Ct. 1278 (1973). In that case, the method of funding education in Texas under the federal Equal Protection Clause was challenged.¹¹ Plaintiffs asserted that either all children were entitled to have the same amount of money spent on education or on the same education opportunities. As here, those first wave challenges were premised on the belief that more money equaled a better education. Finding education not to be a fundamental right and refusing to apply a "strict scrutiny" analysis, the United States Supreme Court upheld the disparities in funding because they were rationally related to the state's interest in preserving local control of education. This decision effectively ended challenges to school funding brought in federal courts based on the equal protection provisions of the Fourteenth Amendment to the Federal Constitution.

In the second wave, which began with the New Jersey's Supreme Court's decision in *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (N.J. 1973), and lasted until the late 1980's, the emphasis continued to be on the idea that the amount of money spent on education or educational opportunities had to [*9] be equal.¹² Because *Rodriguez* had foreclosed the use of the federal constitution, those bringing actions relied on the state educational provisions, particularly, state equal protection clauses and, to

¹⁰For a survey of cases in other jurisdictions, see Appendix I

¹¹ See also: *Parker v. Mandel*, 344 F. Supp. 1068 (D. Md. 1972); *McInnis v. Shapiro*, 293 F.Supp. 327 (N.D. ILL. 1968), *affirmed*, 394 U.S. 322, 22 L.Ed.2d 308, 89 S.Ct. 1197 (1969).

¹² See, e.g., *Dupree v. Alma Sch. Dist.*, No. 30, 279 Ark. 340, 651 S.W.2d 90 (Ark. 1983); *Serrano v. Priest*, 18 Cal. 3d 728, 135 Cal. Rptr. 345, 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907, 53 L.Ed.2d 1079, 97 S.Ct. 2951 (1977); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982); *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (Conn. 1977); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156 (Ga. 1981); *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (Ida. 1975); *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 458 A.2d 758 (Md. 1983); *Britt v. North Carolina State Bd. of Educ.*, 86 N.C. App. 282, 357 S.E.2d 432 (N.C.), *appeal dismissed, review denied*, 320 N.C. 790, 361 S.E.2d 71 (N.C. 1987); *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (N.J. 1973); *Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138, 74 L.Ed.2d 986, 103 S.Ct. 775 (1983); *Board of Educ. of the City of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015, 62 L. Ed. 2d 644, 100 S. Ct. 665 (1980); *Fair Sch. Fin. Council of Oklahoma, Inc. v. State*, 1987 OK 114, 746 P.2d 1135 (Okla. 1987); *Olsen v. State*, 276 Ore. 9, 554 P.2d 139 (Ore. 1976); *Richland County v. Campbell*, 294 S.C. 346, 364 S.E.2d 470 (S.C. 1988); *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (W. Va. 1979); *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (Wash. 1978); *Kukor v. Grover*, 148 Wis. 2d 469, 436 N.W.2d 568 (Wis. 1989); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824, 66 L.Ed. 2d 26, 101 S.Ct. 84 (1980).

a lesser extent, state educational clauses. Although plaintiffs were able to prevail in some states, in the overwhelming majority of the cases the state courts found that the challenged educational funding schemes were constitutional. One case that also challenged an educational funding scheme based on state equal protection provisions, although it also involved the education clause, was *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360 (1979). Faced with "melded" equal protection provisions and refusing to strictly scrutinize the challenged educational finance legislation, our Supreme Court found that the Commonwealth's educational funding scheme bore a "reasonable relation" to providing a "thorough and efficient" system of education under the Education Clause and was constitutional.

The third wave,¹³ which began roughly in 1989 with *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex. 1989) and *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989), and continues to the present, is different from the preceding two waves in several respects. First, rather than relying on state equal protection provisions, [*10] the third wave challenges to the funding system were based on the education clauses contained in their respective state constitutions. Second, those challenges, as here, did not focus on uniformity in funding, but instead focused on the quality of education received and sought to raise the poorer districts' offerings to a certain level in order to provide those district's student's with a quality education. In this wave, the decisions have still been mixed, but those actions challenging a particular state's funding system have been more successful and courts have imposed more sweeping remedies. Present in all of the challenges brought based on a state's Education Clause are the issues of what type of education is required by that clause and, in a significant number of cases, whether that question is justiciable.

C.

Just like third wave actions brought in other jurisdictions, PARSS' main challenge to the Pennsylvania educational funding system challenges the quality of education that students in poorer districts are receiving. Like *Danson*, however, it has aspects of a second wave case because it also alleges that the disparity in funding violates [*11] the Equal Protection provisions of the Pennsylvania Constitution. After lengthy discovery and efforts to resolve the matter, including the appointment of a

¹³ See, e.g., *Alabama Coalition for Equity, Inc. v. Hunt*, CV-90-833-R (Ala. Cir. 1993), 1993 Westlaw 204083; *Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (Ariz. 1994); *Jim Guy Tucker, Governor v. Lake View School District*, 323 Ark. 693, 917 S.W.2d 530 (Ark. 1996); *Coalition For Adequacy and Fairness in School Funding v. Chiles*, 680 So.2d 400 (Fla.1996); *Idaho Schools For Equal Education Opportunity v. Evans*, 128 Idaho 276, 912 P.2d 644 (Ida. 1996); *Committee for Educational Rights v. Edgar*, 267 Ill. App. 3d 18, 641 N.E.2d 602, 204 Ill. Dec. 378 (Ill. 1994), affirmed, 267 Ill. App. 3d 18, 641 N.E.2d 602, 204 Ill. Dec. 378 (Ill. 1994); *McDuffy v. Secretary of Education*, 415 Mass. 545, 615 N.E.2d 516 (Mass. 1993); *Skeen v. Minnesota*, 505 N.W.2d 299 (Minn. 1993); *Helena Elementary School District No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (Mont. 1989), amended, 236 Mont. 44, 784 P.2d 412 (Mont. 1990); *Claremont School District v. Governor*, 142 N.H. 462, 703 A.2d 1353 (N.H. 1997); *Bismarck Public School District No. 1 v. North Dakota*, 511 N.W.2d 247 (N.D. 1994); *DeRolph v. Ohio*, 78 Ohio St. 3d 193, 1997-Ohio-84, 677 N.E.2d 733 (Oh. 1997); *City of Pawtucket v. Sundlun*, 662 A.2d 40 (R.I. 1995); *Tennessee Small Schools System v. McWherter*, 894 S.W.2d 734 (Tenn. 1995); *Brigham v. State of Vermont*, 166 Vt. 246, 692 A.2d 384 (Vt. 1997); *Scott v. Virginia*, 247 Va. 379, 443 S.E.2d 138, 10 Va. Law Rep. 1192 (Va. 1994).

Gubernatorial Commission, all to no avail, the matter proceeded to trial. During the four-week trial, much of the evidence offered consisted of exhibits and testimony regarding the following:

- how education is funded in Pennsylvania;
- the disparity in funds available to each of the approximately 500 school districts in Pennsylvania;
- how that disparity affects or doesn't affect education in poor and more affluent schools; and
- the historical context and the debates that led to the enactment of the Education Clause of the Pennsylvania Constitution.

After the trial was over, lengthy briefs and thousands of proposed findings of fact and conclusions of law were submitted. Based on PARSS' argument that the amount spent per pupil corresponded to the quality of education that each pupil received, there was no dispute that there was, at least facially, a disparity in funding between districts. Rather, it became apparent that the resolution of whether the current system of funding education was constitutional did not depend on fact finding, but instead involved the resolution of a legal [*12] issue of what the Education Clause and the Equal Protection provisions of the Pennsylvania Constitution meant.¹⁴ As a result, the parties were directed to identify any specific findings of fact submitted by the other side that would require judgment to be entered against them. In response, the parties filed statements that, with some obfuscation, confirmed that any specific disputed finding(s) of fact would not control the outcome of the case and that the core issue — whether the disparity in the amount spent per pupil in Pennsylvania under the present system of funding presented was unconstitutional under the Pennsylvania Education Clause and Equal Protection provisions would be determined solely on how those provisions were interpreted. Whether the Court can reach this issue, however, requires resolution of the question of whether the constitutionality of the state educational funding scheme is justiciable.

D.

Overtaking the decision in this case, this court, in *Yesenia Marrero v. Commonwealth of Pennsylvania*, 709 A.2d 956 (Pa. Cmwlth. 1998) (Pellegrini, J. dissenting), held that what constitutes an adequate education and whether the funds currently available for funding education were adequate were matters within the exclusive purview of the General Assembly and were not subject to intervention by the judicial branch of the government. Because *Marrero* [*13] holds that once the General Assembly establishes a "system" of public education, what is "thorough and efficient" education and whether it violates the Equal Protection provisions is non-justiciable, PARSS-complaint is likewise non-justiciable. Even though we are constrained to follow *Marrero*'s holding, *Marrero* and this case will be reviewed by our Supreme Court. Rather than causing any more delay and dismissing PARSS' action based solely on *Marrero*, it is more expeditious to go on to examine whether the present system

¹⁴ Nonetheless, findings of fact were made. See Appendix II.

of education also violates either the Education Clause or Equal Protection provisions of the Pennsylvania Constitution so that our Supreme Court can review all the issues, if it desires, together.

II.

STATE FUNDING OF EDUCATION IN PENNSYLVANIA

There is no dispute that Pennsylvania devotes a great amount of its resources to funding public education. In fiscal year 1994-95, the General Fund Budget provided for \$6.9 billion in state funding for education, approximately 44% of the entire General Fund budget, with 5.3 billion or 34% of the General Budget going to fund local public schools. Pennsylvania also spends more than most other states on education. The Final Report on Education Equity [*14] in Pennsylvania prepared for the House Committees on Education and Appropriations in 1992 and prepared by the National Conferences of State Legislatures showed that after adjusting for inter-state cost of living differences, Pennsylvania spent more than 20.7% more per pupil than the national average. While Pennsylvania spends a great deal of its resources and more than most states on financing public education, at issue in this case is not the amount, but how those funds are distributed, i.e., the disparity in the amounts spent by school districts educating their students on a per-pupil basis.

PARSS contends that Pennsylvania's 501 school districts are part of a unitary system of education, and the Education Clause of the Pennsylvania Constitution places a duty on the Commonwealth to provide for a "thorough and efficient system" of education. Because the General Assembly opted to place great reliance for the funding of education in Pennsylvania on real property taxes, PARSS argues that the district's ability to finance schools is determined by whether the district is property rich or property poor. It contends that just because a child lives in a property-rich district, that child has access to a quality education, while a child in [*15] a property-poor district does not receive a quality education. For its part, the Commonwealth argues that the present funding scheme adequately greatly reduces any disparity in the ability to raise revenues because the state subsidizes a greater percentage of poorer school districts' budgets so that all students in the Commonwealth may receive an adequate education.

To understand these arguments, it is necessary to examine how education is funded in Pennsylvania. The present funding system is complex, resulting from the accretion of different funding subsidies made to address social, political and educational concerns over the years, as well as the amount of money the General Assembly wants to spend each year on education relative to tax revenues and other competing needs for funding.

A. Basic Instructional Subsidy

To carry out its constitutional mandate under Article 3, Section 14 of the Pennsylvania Constitution to provide for a thorough and efficient system of education, the General Assembly established a system that delegated the operational responsibility for providing a public education to Boards of Directors of each of the Commonwealth's 501 school districts. Public education in Pennsylvania is funded by a combination of taxes imposed [*16] by those school boards, as well as state subsidies. While there may have been some *ad hoc* state aid for education given to local districts previously, the General Assembly first established a system for funding basic education in The Public School Code of 1949, Act of March 10, 1949, P.L. 30, as *amended*, 24 P.S. §§1-101 - 27-2702. Since that time, there have been a variety of formulas used to calculate the amount of state aid each district would receive for basic instructional costs. The present system of funding, however, has at its core what is known as the Equalized Subsidy for Basic Education (ESBE) formula.

1. ESBE Formula (1983-1984 to 1992-1993)

The amount of aid received under ESBE by school districts for the years 1983-84 to 1992-93 was determined by (1) an aid ratio, which was based on each district's total market value and personal income of residents and was used to indicate the relative wealth of districts; (2) the average weighted daily membership that is used to measure each district's enrollment;¹⁵ and (3) a fixed dollar amount known as the Factor for Educational Expense indicating the maximum amount of funding for each student. The formula also contained a number of supplements to provide funding [*17] to sparsely-populated school districts, to districts with large numbers of children from low-income families, and to districts that were considered low wealth and whose tax effort was above the state average. In addition, each district was guaranteed a minimum two percent increase in funding each year regardless of the district's wealth.

The ESBE formula was designed to provide a higher proportion of state funding to districts that had the least amount of local wealth relative to the number of students. Approximately 85 percent of each district's level of state funding was determined by the district's aid ratio. In some of the state's poorer districts, state funding under ESBE accounted for over 70 percent of the district's total funding for instruction compared to under ten percent in some of the Commonwealth's wealthiest districts. In fiscal year (FY) 1992-93, the General Assembly suspended the use of the ESBE formula to allocate the state dollars for

¹⁵ Average daily membership, the basic allocation unit, is the sum of the district's enrollment count for each day in the school year divided by the number of days in the school year. Weighted ADM is determined by weighing half—time kindergarten at 0.5, full—time kindergarten and elementary at 1.0, and secondary at 1.36.

instructional costs and all schools received in subsidies what they received the previous year but without any increase in the subsidy.

2. Foundation Approach (1993-1994)

The General Assembly replaced ESBE in fiscal year 1993-94 with the [*18] "foundation" approach to subsidize basic instruction to lessen the disparity of spending between districts. The foundation approach required that each school district have a certain amount of financial resources behind each child, with the Commonwealth providing additional funds to districts where the foundation level would not be met without the additional state support. The foundation level of support for FY 1993-94 was \$3,875 per student and was increased to \$4,700 per student, or by 21.9 percent for FY 1994-95. Nonetheless, under this approach, each school district was still guaranteed to continue to receive the same amount of state funding the district received for basic education in the previous FY under the ESBE formula, even if the district had resources that would take it above the foundation level.

In addition to the base payment equal to each district's fiscal year 1993-94 total basic education subsidy, including all supplements, "foundation funding for equity" was comprised of five components: a foundation component, a poverty component, a growth component, a minimum increase guarantee component and a limited revenue supplement.

a. Foundation Component

The determination of [*19] whether a district qualified for a share of the foundation component was based on a number of factors: each district's 1993-94 total basic education subsidy; the district's 1993-94 retirement and social security payments from the state equalized¹⁶ and how much revenue the district could raise by levying a tax of 19.5 mills on the district's market value and 0.5 percent of it on the personal income of its residents. Districts where the total revenue divided by the district's Average Daily Membership (ADM)¹⁷ was less than \$4,700 qualified for the additional state dollars in the amount equal to the difference multiplied by the district's ADM. It is important to note that school boards were not required to levy taxes equivalent

¹⁶ "Equalized Mills" is defined as a measure of the local tax effort calculated by dividing the local taxes by the market value multiplied by 1,000.

¹⁷ Average daily membership, the basic allocation unit, is the sum of the district's enrollment count for each day in the school year divided by the number of days in the school year. Weighted ADM is determined by weighing half—time kindergarten at 0.5, full—time kindergarten and elementary at 1.0, and secondary at 1.36.

to 19.5 mills, but an assumption was made that this amount of local revenues would be available in each district as a reasonable expectation of local support.

b. Poverty Component

Additional funding under the poverty supplement was provided to all school districts in recognition of the fact that students from low-income families often require more educational resources and intensive support than their peers. The poverty supplement was provided for each student whose family [*20] was receiving Aid to Families with Dependent Children (AFDC) and was equal to \$120 per AFDC student for districts where AFDC students represent 35 percent or more of the district's ADM and \$110 per AFDC student for all other districts.

c. Growth Component

The growth component included under the "foundation funding for equity" line item was designed to help districts meet the added costs associated with a rapidly growing student population. Under this component, districts which experienced an increase in student population, as measured by an ADM greater than 4.5 percent between the 1992-93 and 1993-94 school years, qualified for additional funding equal to \$400 times the increase in the district's ADM. Districts in which the increase in ADM was 4.5 percent or less qualified for additional funding equal to \$225 times the increase in ADM.

d. Minimum Increase Component

A minimum increase in funding over each district's FY 1993-94 basic education funding level was guaranteed. The increase for each district was dependent on the district's Market Value/Personal Income Aid (MV/PI) ratio so that poorer districts were guaranteed a larger relative increase in state funding than wealthier districts. [*21] (There was an inverse relationship between district wealth and the aid ratio the higher the number, the poorer the district.) Districts with a MV/PI aid ratio of 0.5000 or less were guaranteed a one percent increase; districts with an aid ratio greater than 0.5000 but no more than 0.7000 were guaranteed a 1.25 percent increase - and districts with an aid ratio greater than 0.7000 were guaranteed a 1.5 percent minimum increase.

e. Limited Revenue Supplement

To qualify for this supplement, a district's 1992-93 MV/PI aid ratio had to be equal or greater than .7000 and the district could not qualify for any other funds from the Equity Supplement. Qualifying districts received an amount equal to \$77.50 multiplied by the district's ADM.

3. Flat Increase (1995-1996)

In the 1995-1996 school year, the budget returned to a system in which every school district, regardless of wealth or student population, was guaranteed an increase in state funds. The 1995-96 subsidy per ADM was calculated as follows: (1) determine the school district's 1994-95 total allocation by totaling its Basic Education Funding and Foundation Funding for Equity allocations; (2) determine the school district's 1994-95 subsidy [*22] per ADM by dividing its 1994-95 total allocation by its 1993-94 school year ADM; and (3) determine the school district's 1995-96 subsidy per ADM by increasing its 1994-95 subsidy per ADM amount by three percent. The 1995-96 subsidy per ADM was multiplied by the 1994-95 ADM to compute the 1995-96 base allocation. Under Basic Education Funding (1995-96), the supplements described below provided an additional \$24 million:

a. Minimum Increase Component

Each school district would be provided additional funding, if necessary, so that the total increase provided by the base allocation equaled a minimum of one percent if the MV/PI aid ratio was less than or equal to .5000, two percent if the MV/PI aid ratio was greater than or equal to .5000 and less than or equal to .7000, and four percent if the MV/PI aid ratio was greater than .7000.

b. Small District Assistance

Any school district with a MV/PI aid ratio of .5000 or greater and an ADM of 1,500 or fewer qualified for this assistance in 1995; qualifying districts would receive \$95 per ADM.

4. School Year 1996-97

The 1996-97 education budget provided no additional money to school districts. Rather, it froze the funds to every school district at [*23] the amount of money that had been received in the previous year, regardless of any change in the wealth or student population of the district.

5. Conclusion

As an overall result, the Commonwealth subsidy increase in funding in the basic subsidy for each fiscal year since 1990 was as follows:¹⁸

1990-91	3.20%
1991-92	7.80%
1992-93	0.0%
1993-94	4.30%
1994-95	3.98%
1995-96	4.47%
1996-97	0.0%

B. Special Education

In FY 1994-95, the largest state appropriation for education, exceeded only by the basic education funding line item for basic education, was the \$590 million in state funding for special education. Special education did not just encompass those students that needed special help, but those who were also considered "gifted", which, by state law, were required to be given a program of instruction specifically suited to them. In recent years, the system has undergone a dramatic change in funding that may have an impact on the "ordinary" student's education.

In the recent past, state subsidies for special education to local school districts were calculated as follows:

1. Excess Cost Method

Prior to the 1991-92 fiscal year, the majority of state special education funding was paid directly to the 29 Intermediate [*24] Units (IUs) for their current year expenses in providing services to special education students. School districts received a partial advance for the current year for special education programs and a reimbursement for special education programs operated in the previous fiscal year. Known as the "excess cost" system of funding special education, the state paid the total difference

¹⁸ PARSS Exhibit 104.

between the cost of educating a special education student and a regular education student, regardless of the number of students in the district's special education program.

The Commonwealth recouped some of the costs from the district for students who were taught and received all their services through the Intermediate Unit through charges assessed each district. Known as tuition recovery, districts were charged an amount equal to their tuition rates by the state for each student enrolled at the Intermediate Unit under the belief that local districts should provide some financial support for their Intermediate Unit-educated students. These charges were deducted from each district's state aid in the following year.

2. Formula-Based Funding

In 1991, the General Assembly eliminated excess cost funding of special [*25] education and instituted a formula-based funding system beginning with the 1991-92 school year. These changes were made because state special education costs were spiraling out of control, the annual state budget for special education was unpredictable, and the General Assembly wanted to encourage inclusion of special education students in regular education classrooms. Apparently, these special education costs were spiraling out of control because districts were labeling an inordinate amount of students as "special" to gain additional state funds.

In an effort to gain some control over the escalating costs for special education, the General Assembly adopted a formula-based special education funding mechanism in FY 1991-92. Under this system, the majority of state funding for special education was paid directly to the school districts which had the option of contracting out for special education programs and services or to provide the services themselves. Under the formula-based special education funding system, each district received an annual appropriation from the state for the current year for special education costs. The two-part formula was based on an estimated fixed cost per [*26] student and an assumed incidence rate of gifted/mildly and moderately retarded handicapped students, and an estimated fixed cost and assumed incidence rate of severely handicapped students among each district's total student population, as measured by the average daily membership (ADM).

Special education funding for the 1993-94 school year was allocated to districts according to the following formula:

$(\$1,025 \text{ times } 15\% \text{ ADM}) + (\$12,000 \text{ times } 1\% \text{ ADM}).$

Because the special education formula assumed that all school districts were identical for purposes of funding, the result was that some school districts received a windfall while other school districts did not receive enough money to actually fund their

special education needs. Because special education was mandated both for gifted and disabled students, if state formulas for special education population were not sufficient to educate those special students, funds had to come from those needed to educate "ordinary" students. Also, because poorer districts may have many more "special needs" children, the impact was even greater in those schools. The Commonwealth, through the Department of Education, admitted that this was an unintended consequence [*27] of formula-based funding of special education.

C. Funding for School Employees' Social Security and Retirement Costs

The Commonwealth pays 50 percent of the employer's cost for school employees' social security and retirement contributions. The combined total of these added to the General Fund Budget line item equaled \$722 million for FY 1994-95 and, taken together, they represent the second largest state expenditure for education after basic education. Unlike the state appropriation for basic education, state funding for the employer's share of school employees' social security and retirement contributions is not allocated according to a formula that takes into account the relative wealth of a district. Because those payments are necessarily based on percentages of salaries, those districts that pay the highest teacher salaries - typically, the more affluent districts - receive a greater percentage of state funds.

D. Construction Reimbursement

The Commonwealth also provides subsidies to school districts for the construction, renovation or purchase of school buildings and sites. In order to qualify for state subsidy for the construction, renovation or purchase of a school building or site, [*28] each school district is required to go through an approval process with the Department of Education and other state agencies. Costs are reimbursed on the basis of approved costs and interest, percent equalization,¹⁹ and the rated pupil capacity of the building.

Once all the approvals have been received, the state will participate in the funding of the project based on the maximum reimbursable amount calculated from the rated pupil capacity of the building (or cost, whichever is lower), multiplied by the district's wealth aid ratio or CARF or density factor, whichever is highest. The state's participation in funding an approved project is retroactive to include all debt service payments. The maximum reimbursable amount for new construction, purchase

¹⁹Percent equalization occurs by taking into account the local fiscal capacity of the district by use of the wealth aid ratio or the capital account reimbursement fraction ("CARF") or density factor, whichever is highest. The CARF was the fiscal capacity factor and is based on the relative market value wealth for a "teacher unit" of 30 elementary or 22 secondary pupils.

or alterations to an elementary building is \$3,900, \$5,100 for a secondary building, and \$6,300 for a vocational facility multiplied by the rated pupil capacity.

School districts may undertake non-reimbursed construction projects after they undergo state review and approval of their plans and specifications.

E. Transportation Reimbursement

The state provides transportation subsidies to school districts for the transportation of public and non-public [*29] school students and is based on approved allowances considering five components — vehicle capacity, mileage traveled, utilized passenger capacity, excess driver hours in congested areas, and the type of service provided. 498 school districts and 27 intermediate units received this subsidy in 1995-96. School districts received \$234,423,000; IUs received \$76,466,000.

The amount reimbursed - Approved Reimbursable Costs ("ARC") — is calculated by taking the sum of four components multiplied by a cost index which is based on the consumer price index (3.426 for 1995-96). The state subsidy amount is the lesser of the ARC or the actual costs of transportation, multiplied by the district's MV aid ratio. In addition, Excess Cost Reimbursement limits the local share to one-half mill of the district's market value. If the ARC exceeds one-half mill on market value, the district receives this difference in addition to the regular reimbursement. Districts also receive an additional state subsidy of \$200 per non-public pupil transported.

F. Other Funds

School districts receive other grants and subsidies from the state and federal government that may be important because they are targeted but do not have [*30] a significance compared to the overall state budget for education. For example, \$28.8 million was distributed to school districts and Area Vocational Training Centers for secondary vocation education programs in 1995-96. Approximately \$40 million has presently been set aside for grants to be given to school districts for Distance Learning and Link-to-Learn programs to create a technological infrastructure to permit students to access educational resources.

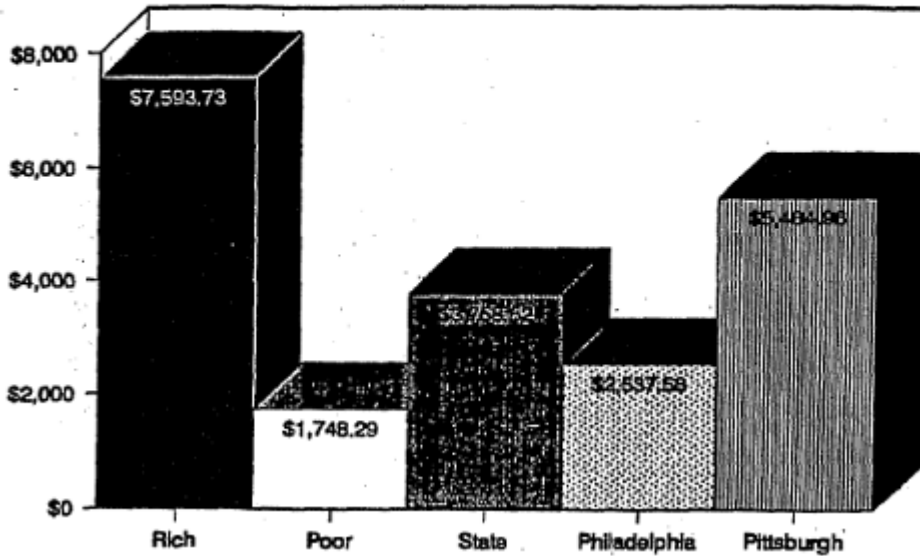
G. Conclusion

The net effect of the present state educational aid formula(s) is that poorer school districts do, in fact, receive a much larger share of state aid to fund education in their districts than the wealthier school districts. This is illustrated by the following three charts²⁰ that compare the top five percent of affluent school districts with the bottom five percent against the state average, including schools in Pittsburgh and Philadelphia, regarding different levels of revenue for the 1993-1994 school year. The first chart looks at all local revenue raised to support education in Pennsylvania:

Local Revenue per Pupil

1993-1994

**Local Revenue per Pupil
1993-1994**



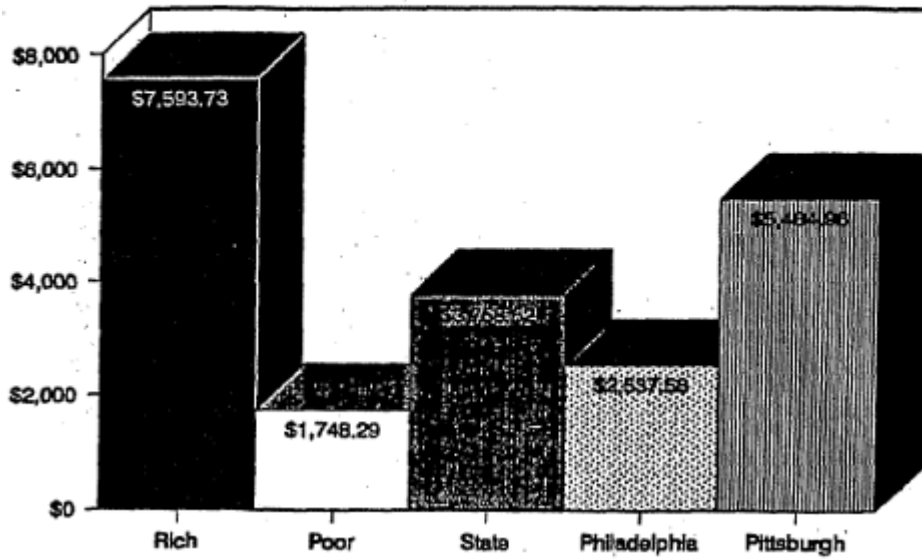
While the previous chart shows that rich districts raise significantly more revenue in taxes than [*31] poorer districts, if we look at state revenues received by local districts, it shows that poorer districts receive greater subsidies than wealthier districts:

State Revenue per Pupil

²⁰ These charts are from a report by Educational Policy Research, Inc., the firm whose principles testified at trial as expert witnesses for PARSS.

1993-1994

Local Revenue per Pupil 1993-1994

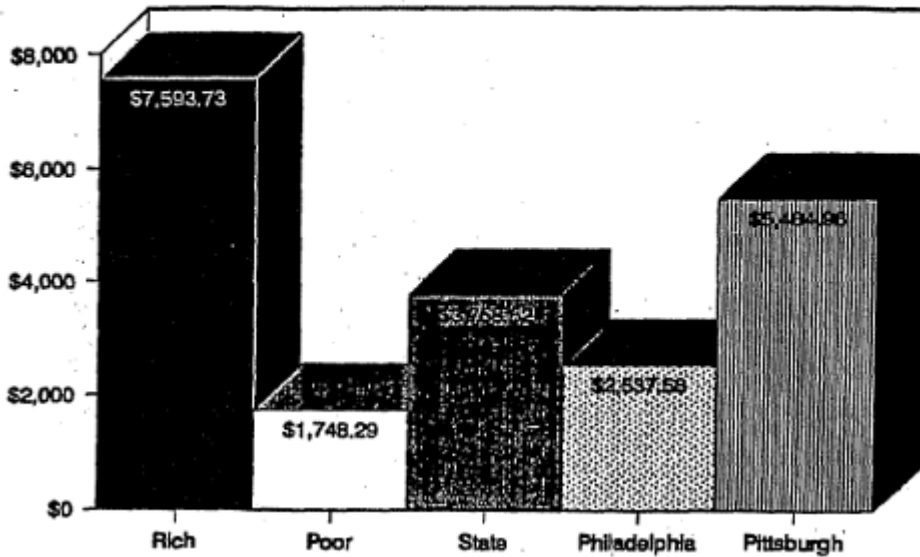


While the effect of the greater state subsidy to poorer districts lessens the disparity, it does not eliminate it totally as can be seen by the following:

Local and State Revenue Per Pupil

1993-1994

**Local Revenue per Pupil
1993-1994**



This disparity between rich and poor districts in the amount of money available to support education is at the core of PARSS' contention that the Pennsylvania educational funding scheme provides an unequal education for no valid reason and students in poorer districts are not receiving a thorough and efficient system of education they are entitled to receive.

III.

DISPARITY IN FUNDING OF EDUCATION BETWEEN DISTRICTS IN PENNSYLVANIA

No matter what obligation is imposed by the constitutional requirement on the General Assembly to provide for a thorough and efficient system of public education, to prove its equal protection claim, PARSS was required to establish that the disparity in the amount of funds available to fund education on a per pupil basis between school districts was significant, the disparity was [*32] systemic, and that it was not the result of a lack of tax efforts by local school districts. Moreover, to make out its claim that students in poorer districts were not receiving a thorough and efficient education, PARSS was required to established that any disparity in funding or the overall level of funding had a significant effect on the type of education students were entitled to receive under the Education Clause of the Pennsylvania Constitution.

To meet this burden, PARSS offered the testimony of educational and school finance experts who, using various statistical models and regression analysis, testified as to the degree of the disparity between school districts, what caused that disparity and the effect it had on students' education. To establish the degree of disparity and the relationship of "wealth" to the ability of

a district to raise money and to spend money in support of education, PARSS relied on the testimony of Dr. Richard G. Salmon and Dr. Kern Alexander.²¹ Dr. Salmon testified mainly as to the sources of revenue and the relationship that a district's wealth had on the ability to raise those revenues, the amount spent on education and the inequity that resulted. While addressing some of the same issues as Dr. Salmon, [*33] Dr. Alexander's testimony went to the educational and policy considerations underpinning PARSS' contention that students in the poorer districts were not receiving a thorough and efficient education.

Because it was and is difficult to manipulate data concerning the 501 school districts using statistically accepted practices, Dr. Salmon and Dr. Alexander divided students into categories to show the disparity in revenues and spending among the districts. One method was to divide the school districts each serving approximately 10% of the students in the state (approximately 170,000 students) into deciles.²² In a perfectly equalized system, each decile would have school districts representing 10% of the students for whatever was being measured. For the most part, what was being measured was the amount of funds that were raised or spent for instructional expenses per pupil and the taxing ability of school districts, i.e., wealth. Deciles were used mainly when Dr. Salmon or Dr. Alexander wanted to show a distribution across all school districts, excluding Pittsburgh and Philadelphia.²³ At other times, the top and bottom school districts each containing 5% of the students were compared. This compared [*34] the disparities at the extremes, and, for the most part, when Dr. Salmon and Dr. Alexander referred to "rich"²⁴ and "poor"²⁵ districts, they were referring to that comparison. From this data, they prepared numerous charts and graphs²⁶ comparing classes of school districts by wealth in terms of what was sought to be measured.²⁷ Both Drs. Salmon and

²¹ Dr. Salmon is a tenured professor in educational leadership and policy studies at Virginia Polytechnic Institute & State University (Virginia Tech.) He is the author of various articles and texts on educational finance. Dr. Alexander is president of Murray State University in Kentucky. Both have taught and published extensively in the area of educational policy and finance and both were allowed to testify as experts in their field. Both are "principals" in Educational Policy Research, Inc.

²² A "decile" is defined as any one of nine numbers that divide a frequency distribution into ten classes such that each contains the same number of individuals. WEBSTER'S NEW COLLEGIATE DICTIONARY 330 (9th ed. 1989).

²³ Philadelphia and Pittsburgh were excluded because the large number of students in each district would distort the decile in which either would fall.

²⁴ Those districts Drs. Salmon and Alexander considered as rich are: Fox Chapel Area, Quaker Valley, York Suburban, Wyomissing Area, Camp Hill, Derry Township, New Hope-Solebury, Abington, Colonial, Hatboro-Horsham, Jenkintown, Lower Merion, Lower Moreland Township, Springfield Township, Upper Dublin, Upper Merion Area, Wissahickon, Great Valley, Tredyffrin-Easttown, Unionville-Chadds Ford, West Chester Area, Haverford Township, Marple Newtown, Radnor Township, Rose Tree, Media and Springfield.

²⁵ Those districts considered poor are: Union Area, Moshannon Valley, Titusville Area, Smethport Area, Moniteau, Northwestern, Troy Area, Kane Area, Farrell Area, Windber Area, Williamsburg Community, West Branch Area, Conemaugh Valley, Forbes Road, New Castle Area, Chestnut Ridge, Ferndale Area, Carmichaels Area, Connellsville Area, Northern Potter, Meyersdale Area, Redbank Valley, Marion Center Area, Canton Area, Southeastern Greene, Portage Area, Forest Hills, Tussey Mountain, Shade-Central City, Cambria Heights, Duquesne City, Port Allegheny, Northern Cambria, Union City Area, Chester-Upland, Glendale, Blacklick Valley, Bethlehem-Center, Mount Union Area, Susquehanna Community, Northeast Bradford, United, Penns Manor Area, Brownsville Area, Northern Tioga, Harmony Area, Union, Oswayo Valley, Albert Gallatin Area, Purchase Line and Otto-Eldred.

²⁶ The data in these charts came from information provided by the Pennsylvania Department of Education. While there may be a dispute as to how data was manipulated, all of the parties used the same data, so it is not in dispute.

Alexander, as did the Commonwealth expert, relied on these charts and graphs²⁸ to such an extent that it is almost impossible to recount their testimony, except as conclusions, without reference to them, or at least to the ones that are the most probative.

As previously stated, Dr. Salmon's testimony centered around ability, i.e., the capacity local school districts had to raise local revenue to support education, the effect that had on how much a school district was able to spend on education, including state aid, and the level of inequity in funding. To show that this disparity in spending between school districts was the result of the wealth of the districts and not the result of local school boards' decisions to keep taxes low, Dr. Salmon prepared a number of charts comparing the wealth of the districts by deciles. Among the charts he prepared was one showing the property wealth of school districts, perhaps the most probative because it showed the capacity to raise revenues [*37] from property taxes, the primary tax used to fund public education at the local school district level. This chart displayed school districts by deciles based on market value aid ratios based on the cumulative value of property of the districts composing that decile. Perfect equality in property wealth would occur if 10% of property value would be in each decile. This chart showed the following:

²⁷ Other charts prepared for 1993 by decile based on total market value were:

Total Market Value by Decile — Total market value of property was displayed, ranging from \$50,922,587,100 for the first decile to \$9,938,155,300 for the tenth decile. According to this measure of fiscal capacity, school districts located in the first decile have over five times the fiscal capacity to support public-schools than school districts located in the tenth decile.

Percent of Market Value of Property by Decile — The percentage of market value of property available in each of the ten deciles. School districts located within the first decile possessed approximately [*35] 22 percent of the total market value for the state. School districts located in the tenth decile possessed approximately 4 percent.

Total Personal Income by Decile — Total personal income was displayed, ranging from \$24,661,600,700 for the first decile to \$6,162,938,673 for the tenth decile. According to this measure of fiscal capacity, school districts located in the first decile have approximately four times the fiscal capacity to support public schools than school districts located in the tenth decile.

Percent of Personal Income by Decile — The percentage of personal income available in each of the ten deciles. School districts located within the first decile possessed approximately 20 percent of the total personal income for the state. School districts located in the tenth decile possessed five percent.

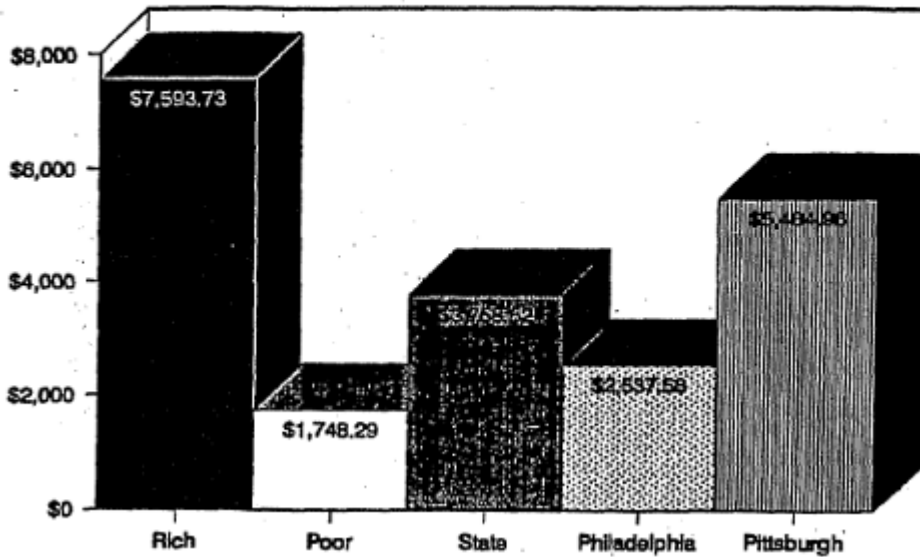
Total Actual Instructional Expenditures by Decile — School districts located in the first decile expended in actual instructional expenditures \$981,435,060 for 1993-94; concurrently, school districts located in the tenth decile expended \$593,502,083, a difference of \$387,932,977. The difference in actual instructional expenditures between the top two deciles and the bottom two deciles [*36] was \$637,913,950.

Percent of Actual Instructional Expenses by Decile — School districts located in the first decile expended in actual instructional expenditures 13.7 percent of the total for the state. School districts located in the tenth decile expended 8.3 percent. School districts located in the top two deciles captured nearly 26 percent of total actual instructional expenditures. School districts located in the bottom two deciles expended less than 17 percent.

All the charts showed approximately the same results — that the more affluent districts spend a greater percentage of educational expenses and have more wealth than other districts.

²⁸ Dr. William B. Fairley, the Commonwealth's expert, explained that today's statisticians are much more in the mode of trying to use graphics to give an understanding of data, and there is a whole school of modern mathematical statisticians whose sole focus is on graphic illustrations which are really pictures of numbers.

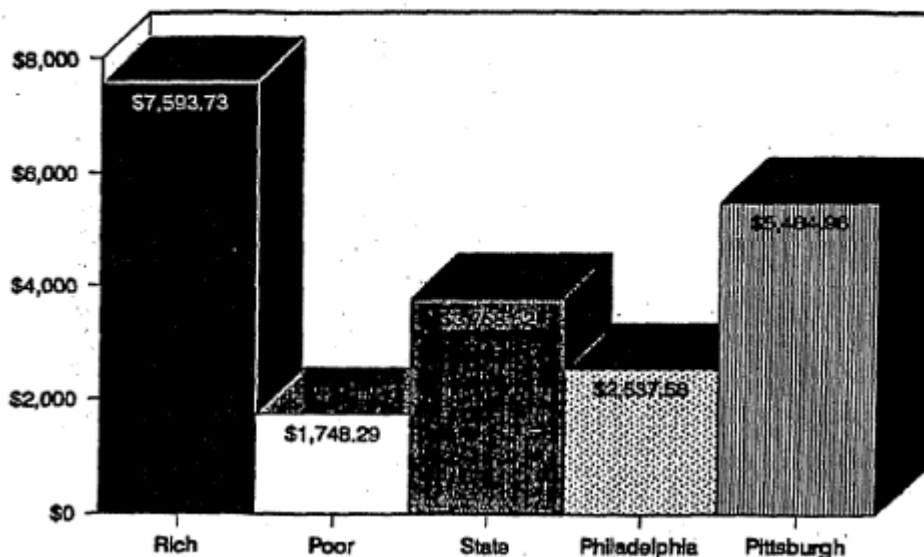
**Local Revenue per Pupil
1993-1994**



Dr. Salmon testified that this chart, among others, showed that school districts in the first decile had over five times the fiscal capacity to support their schools when compared to school districts located in the last decile, with correspondingly increasing or decreasing capacity in the intervening deciles. This, he testified, indicated that the capacity to raise funds had a direct relationship to the wealth of the district, and how much was raised was not a matter of choice but a lack of capacity to raise higher revenues.

Not only was there a disparity in revenues raised based on the wealth of the school district, Dr. Salmon also testified that there was a corresponding disparity in the amount spent on instruction on a per-pupil basis based on the wealth of the school district, even considering [*38] the state educational subsidy. He again prepared a chart that sorted districts by market value aid ratios and taking into consideration state subsidies. Dr. Salmon testified that it showed large disparities in actual instructional expenditures between high spending districts as opposed to low-spending districts:

Local Revenue per Pupil 1993-1994

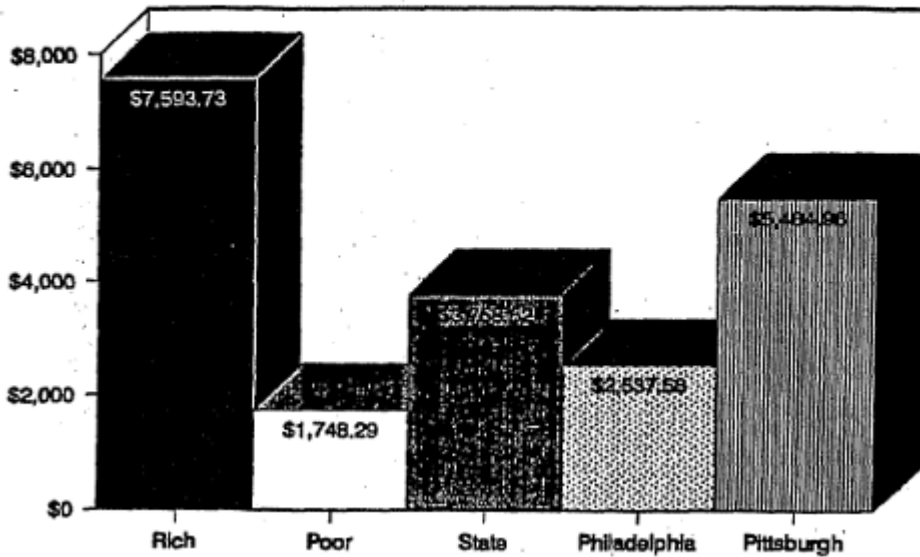


Dr. Salmon testified that this chart established that there was a correlation between what was spent on education and the amount of wealth of the district. He noted that the school districts composing the top two deciles captured 26% of state spending, while school districts located in the bottom two deciles expended less than 17% of state spending on instructional expenses. The net effect was that there could be a difference as large as 60% in spending on instruction per-pupil between the highest and lowest spending district.

To measure the relationship between market value and revenue per ADM, Dr. Salmon used a dispersion statistical technique known as Pierson R²⁹ that established a statistical correlation between wealth and revenue raised. If the Pierson R were at zero, it would depict a situation in which there was no relationship between the wealth of a student's parents and [*39] the money that was spent on that student in a public school. Dr. Salmon testified that the relationship between market value and revenue per pupil had strengthened in the period studied.

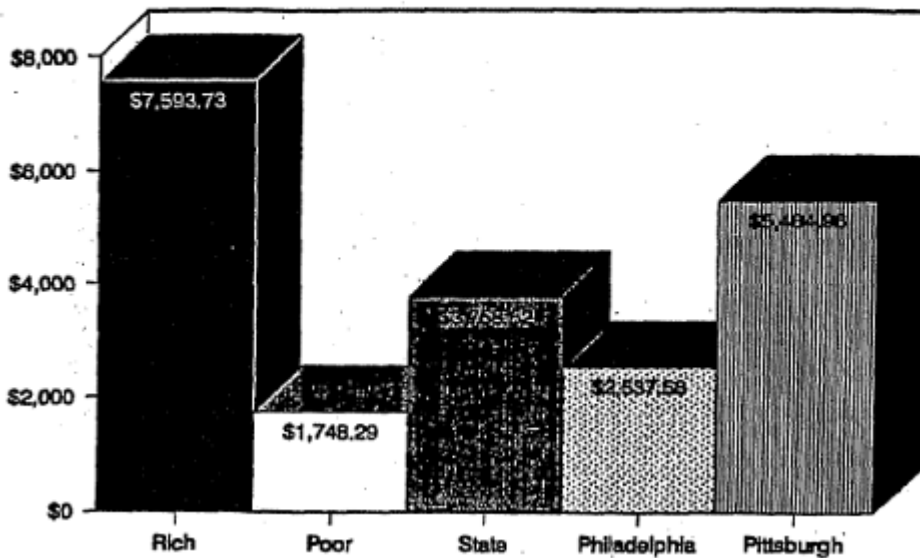
²⁹Pierson R using Revenues per ADM and Market Value of Property per ADM. The Pierson R measure, or correlation coefficient, describes the strength of the linear relationship between two variables. The value of this statistic ranges between -1 and +1, with values closer to the extremes indicating a greater relationship, either negative or positive. The variables related here are revenues per pupil and market value of property per pupil. As Pierson R approaches +1, equity decreases. The year with the greatest correlation value of 8166 was 1991. The lowest correlation for the eight years studied occurred in 1987, with a positive relationship value of .7249.

Local Revenue per Pupil 1993-1994



Not only was there a correlation between market value and the ability to raise revenues, Dr. Salmon testified that market value also had a direct relationship as to what was spent on education. Again, making Pierson R calculations for each year studied, but this time tracking actual instructional expenses, the chart Dr. Salmon prepared showed:

Local Revenue per Pupil 1993-1994

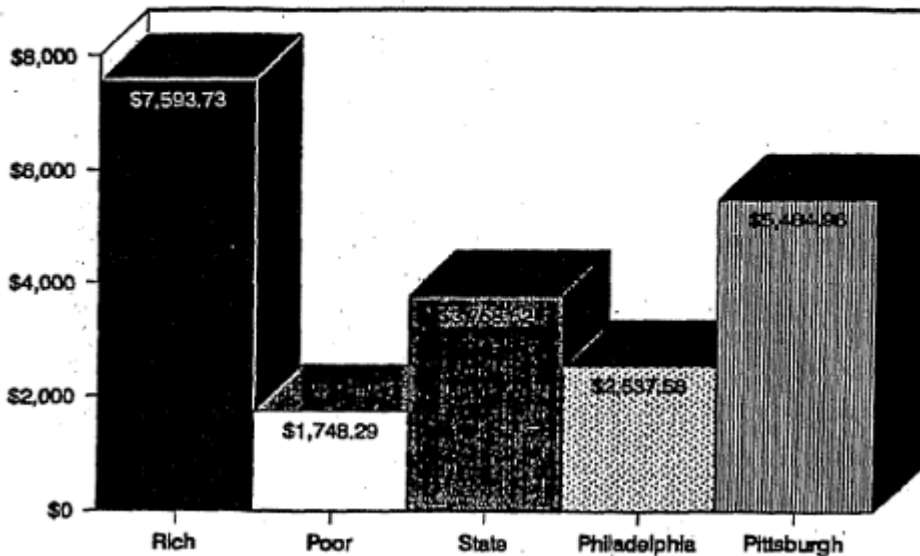


Dr. Salmon testified that this chart showed the Pierson R correlation between wealth and expenditures in Pennsylvania over the period studied was very high and was a sign of inequity that was associated with a great variance in expenditures per pupil.

Because it was very high, he testified that it showed that the relationship between the wealth of the school district as measured by market value and the amount expended on their students was extremely highly related.

To further show that the present state educational funding scheme did not make up for differences in local wealth and had not done so, at least in the recent past, Dr. Salmon also prepared various charts [*40] that measured ability to raise revenue (capacity, expenditures and revenue) over a period of time. Rather than using deciles this time, he compared only the top (rich) and bottom (poor) districts containing 5% of the students. Districts were ranked as rich or poor by the market value aid ratio and adjusted year to year by applying an educational cost of living index. The most illustrative chart was the one that showed revenue available for education per student between rich and poor districts. It showed:

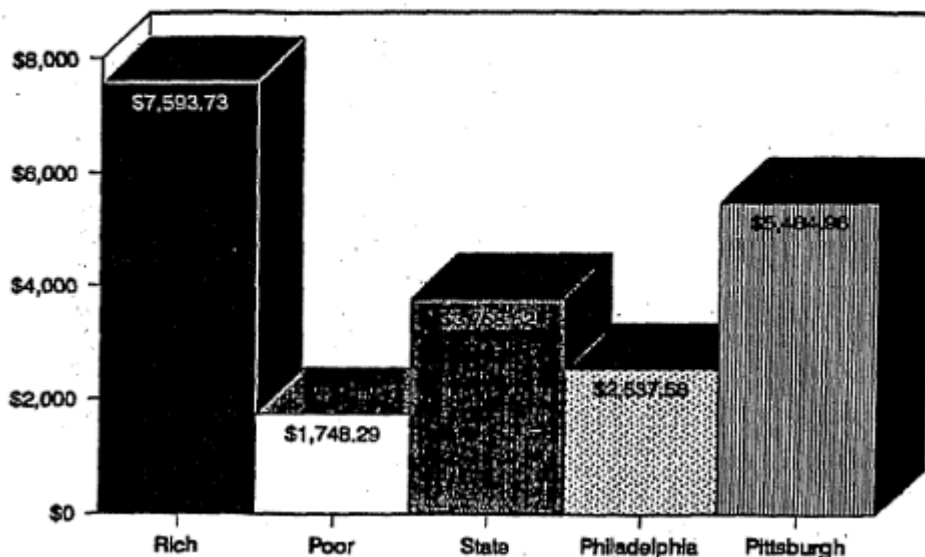
**Local Revenue per Pupil
1993-1994**



As can be seen, the gap between the top five and bottom five school districts in the amount of money that those districts have to support education had widened over the years, even though the amount of that disparity had remained at approximately \$3,500 per pupil during the period 1991 to 1992.

To show the relationship that the ability to raise the revenues had on the amount spent on education, Dr. Salmon prepared a chart that showed the Actual Instructional Expense (AIE) spent on education between rich and poor districts. That chart showed:

Local Revenue per Pupil 1993-1994



During the period-surveyed, there was a substantial difference in what was spent on actual instructional expenses in rich and poor districts and, [*41] in 1994, that difference in this measure of instructional expenses was approximately \$3,000.

To show the disparity in funding and to show if it is increasing or decreasing over the years, various dispersion indexes and mathematical formulas are used. Typical is the Gini Index,³⁰ which indicates how far the actual distribution of revenue is from

³⁰Other indexes for which districts were prepared were:

McLoone Index using Revenue and ADM — The McLoone Index measures the equity of the lower half of the revenue distribution only. It is expressed as a ratio of the actual revenue of all pupils below the median relative to the total revenue these pupils would receive if they were at the median per pupil revenue level [*42] in the state. The McLoone Index ranges from 0 to 1. As the McLoone Index increases, equity for the lower half of the distribution increases. This chart depicts the use of state and local revenues added together for each of the 500 districts analyzed and ADM to determine the McLoone Index. Values range from a low (least equitable) in 1989 of .8833 to a high (most equitable) of 9241 in 1994. The trend over the last 5 years has been towards greater equity for the lower half of the distribution when revenue and ADM are used.

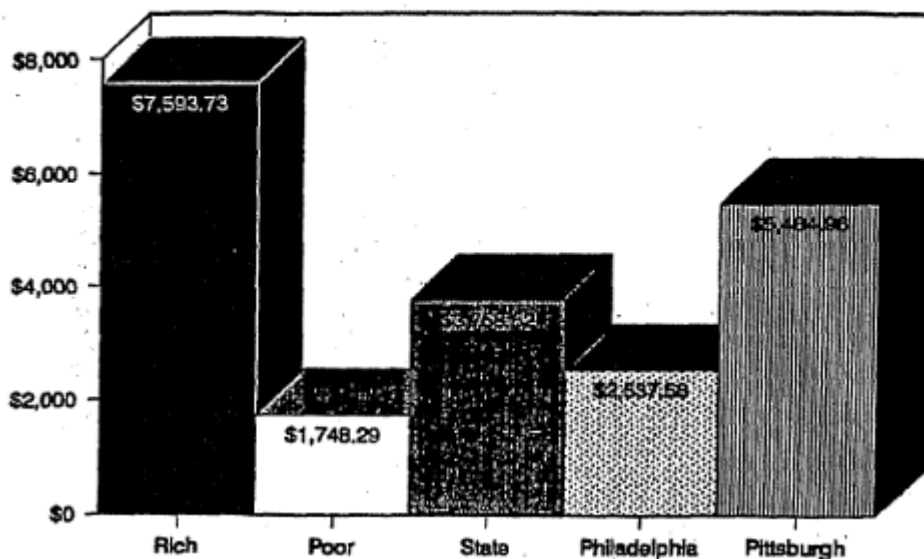
Theil Index using Revenue and ADM — The Theil Index is an overall measure of variation in resource distribution across all observations. As the Theil Index decreases, equity increases. This chart shows the change over the last 6 years of a Theil indicating increased or stable equity. Over the entire period analyzed, the Theil ranged from a low (greater equity) of .0165 in 1994 to a high (lower equity) of .0196 in 1988 for the 500 districts analyzed.

Restricted Range using Revenue and ADM — The Restricted Range is the difference, in dollars, between the revenue per pupil at the 95th percentile (higher end) and 5th percentile (lower end). Conceptually, the restricted range [*43] is a range-type measure that ignores the top and bottom 5% of the distribution. As the restricted range decreases, equity increases. Chart VII.4 shows the difference in revenue dollars between the pupils found at the 95th and 5th percentile of the entire 500-district distribution. For each year shown, 5 percent of the ADM distribution represents over 81,000 students. The smallest (most equitable) difference of \$2,805.26 occurred in 1987, while the greatest difference (least equitable) of \$3,709.66 occurred in 1992.

Federal Range Ratio using Revenue and ADM — The Federal Range Ratio is the difference between the per pupil revenue at the 95th and 5th percentiles (the Restricted Range), divided by the value at the 5th percentile. As the Federal Range Ratio decreases, equity increases. It depicts the Federal Range Ratio when ADM and revenue (state and local added together) are the variables involved. The

providing each proportion of pupils with equal proportion of revenues contrasting the actual distribution with absolute fiscal equality. The measure ranges from 0 to 1 and as the Gini level decreases and approaches zero, then the level of equity, i.e., the same amount being spent on each pupil, increases. While it can be used to compare equity from state to state, the Gini Index is used mostly to compare the movement over a period of time in a particular state from or toward equity. Graphically over a course of years, the Gini Index shows:

**Local Revenue per Pupil
1993-1994**



Dr. Salmon testified that even though the Gini Index showed that the level of inequity was on a downward trend, there still existed a high level of inequity in Pennsylvania in funding of education; in fact, Pennsylvania ranked sixth in the level of inequity of all the states.

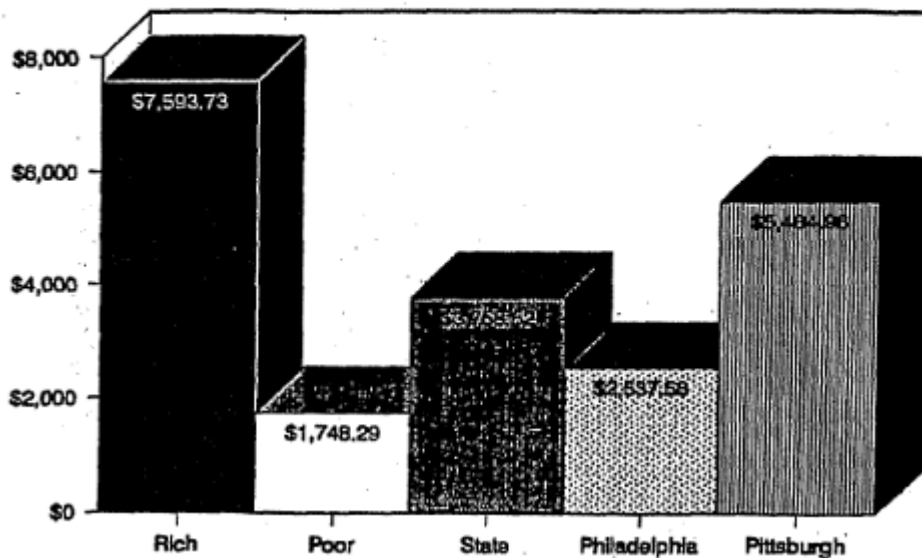
most equitable year in the series occurred in 1994 with a ratio of .7506. The least equitable year, based on this measure, occurred in 1987 with a value of .9256.

Coefficient of Variation using Revenue and ADM — The Coefficient of Variation (CV) is the standard deviation of the distribution [*44] divided by the mean, expressed as a percentage. The CV means variability in the revenue distribution around the mean observation. As the CV decreases, equity increases. In Pennsylvania for the school years 1986-87 through 1993-94, the least equitable revenue distribution as indicated by the CV was in 1988 with a value of 20.3431 percent. The most equitable distribution occurred during the 1993-94 school year, with a value of 18.7591 percent.

R Square using Revenue per ADM and Market Value of Property per ADM — The R Square, or coefficient of determination, ranges from 0 to 1, and is the percent of variation explained or accounted for by the regression equation. As R Square approaches 1, more and more of the variability is explained by the variables used. In the case of revenues per pupil (dependent variable), more of the variance in the distribution is explained by the market value per pupil (independent variable) as R Square approaches 1. The year of greatest explanation of variance in revenues occurred in 1991, with an R Square of .6668. The year with the lowest R Square, or the least amount of variance in revenue distribution attributable to market value per pupil, occurred in 1987, [*45] with a value of .5255.

While Dr. Salmon's testimony sought to establish that a school districts' wealth directly corresponded to the amount spent on education in a local school district, resulting in a high degree of inequity between school districts, Dr. Alexander's testimony, while amplifying on Dr. Salmon's conclusions, provided the educational and public policy reasons underpinning PARSS' contention that the present system violated the Education Clause and Equal Protection provisions of the Pennsylvania Constitution. Unlike in most states where the effort was constant between rich and poor districts, Dr. Alexander testified that in Pennsylvania poor districts exerted more effort to support their local schools than rich districts. Measuring the amount of revenue raised in school districts that were poor with the amount of revenue raised in rich districts (as well as Philadelphia and Pittsburgh) against property wealth resulting in what is commonly [*46] known as equalized mills, he testified that the following chart showed this increased effort by poor districts.

**Local Revenue per Pupil
1993-1994**



This chart showed that the poor districts' tax efforts³¹ were approximately 42% greater than those of rich schools. However, even though they tax their residents at a higher rate, poor districts still had less to spend on a per pupil basis than the rich

³¹ "Effort" can be defined simply as the amount of taxes that are levied by a community to support public education. The local effort of one district as compared to another district is determined by comparing the "equalized millage." Equalized millage is determined by dividing all local taxes collected by the district's market value as determined by the State Tax Equalization Board. The City and School District of Philadelphia, who have a relatively low school tax effort, but a high overall local tax effort when considering all local taxes levied, contend that the formula used to determine effort contained in the state funding statutes does not take into consideration the competing needs for urban tax dollars such as fire, police, parks and human services, that fall upon the same local taxpayer who also pays for educational services.

While the state calculation of effort does not take into consideration all the competing needs for local tax dollars or, for that matter the amount spent on education, any other method of calculating effort, at least in this case with the evidence presented, would not be appropriate because of the difficulty in determining what factors should be included.

districts, even when adding the state subsidy. For Dr. Alexander, this disparity, in effect, raised equal protection concerns because he could conceive of no educational or policy reason why poorer districts had to exert more effort to raise revenue to support education than rich districts. In fact, he testified that this was contrary to any concept of a progressive tax policy.

Dr. Alexander then went on to testify how the disparity in revenue led to differences in spending on education between rich and poor districts. To illustrate these disparities in spending, Dr. Alexander prepared a number of charts comparing school expenditures in rich and poor districts, particularly, instructional expenditures on a per-pupil basis that at least when aggregated, if not individually, show [*47] that no matter what the measure, rich districts spent more on education on a per-pupil basis than poor districts. Before setting forth some of those charts, a word of caution: instructional expense has many definitions depending on how it is modified. As a quick glossary to interpret the following charts:

Actual Instructional Expense — the net cost of instruction in school districts but does not include all costs that a school district incurs, e.g., food service. This is the measure used by the Department of Education and used by Dr. Salmon in previous charts comparing instructional expenses between rich and poor districts.

Regular Instructional Expenditures — this amount spent on core, basic or general education but does not include special or vocational or other Instructional Expenses. It is calculated from line items contained in the Report of Expenditures (REX Report) prepared yearly summarizing spending by school districts.

Total Instructional Expenditures — regular, special and vocational and other instructional expenditures. Again, prepared from line items on the REX reports.

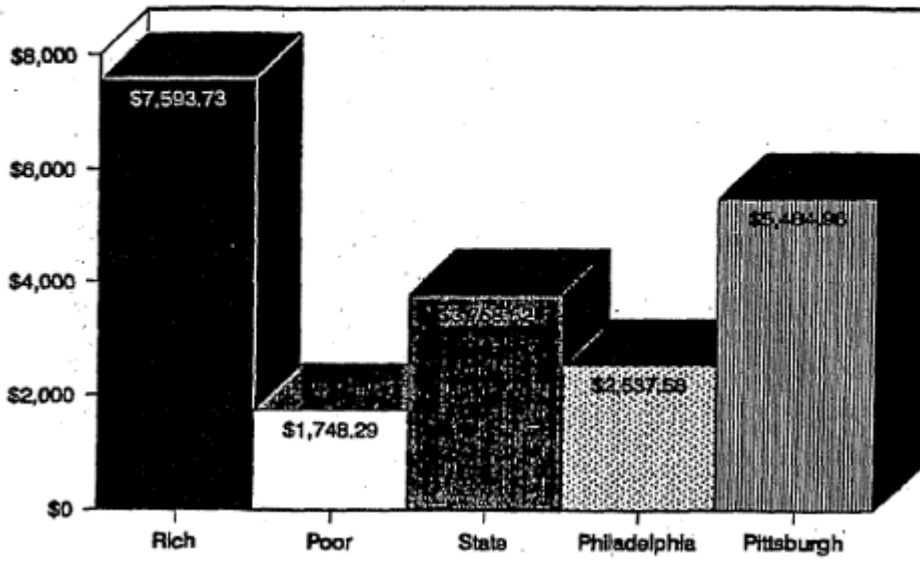
Total Expenditures — all spending on a per pupil basis but includes expenditures that include other necessary [*48] expenses, i.e., transportation for public and non-public school students but is not directly related to instruction. Again, data comes from the REX report.

For example Clairton, which has the highest local school tax effort in the state, also has a high tax effort in supporting municipal services. Because, like its school district, the city of Clairton was also distressed, it authorized a greater tax increase, more than the normal 1/2 percent authorized under the Local Tax Enabling Act, Act of Dec. 31, 1965, P.L. 1257, *as amended*, 53 P.S. §§6901 - 6924. *See Petition of City of Clairton*, 694 A.2d 372 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 550 Pa. 693, 704 A.2d 1383 (1997). In calculating Clairton's "effort", if those factors were taken into consideration, the total tax effort would make the effort put forth by its residents much higher than the already high effort they are now exerting.

While these adjustments would take into consideration the municipal overburden, it would also lead to further adjustments being made to the formula: Whose "effort" is the tax that non-residents pay to the City of Clairton credited, Clairton's or the home municipality of the non-resident taxpayer? In Philadelphia where there is a unitary tax, are the taxes paid by non-residents credited to the effort of Philadelphia or credited back to the school district in which they reside? Because a new calculation of "effort" to take into consideration the municipal overburden would involve more policy choices and statistical studies than the evidence here warrants, the only way to calculate effort is the method embodied in the legislation apportioning state aid for education to local school districts.

To show that there was a disparity in spending in total expenditures between rich and poor districts (including Philadelphia and Pittsburgh), Dr. Alexander prepared a chart that showed what rich and poor districts spent to fund all of their operational activities.

**Local Revenue per Pupil
1993-1994**

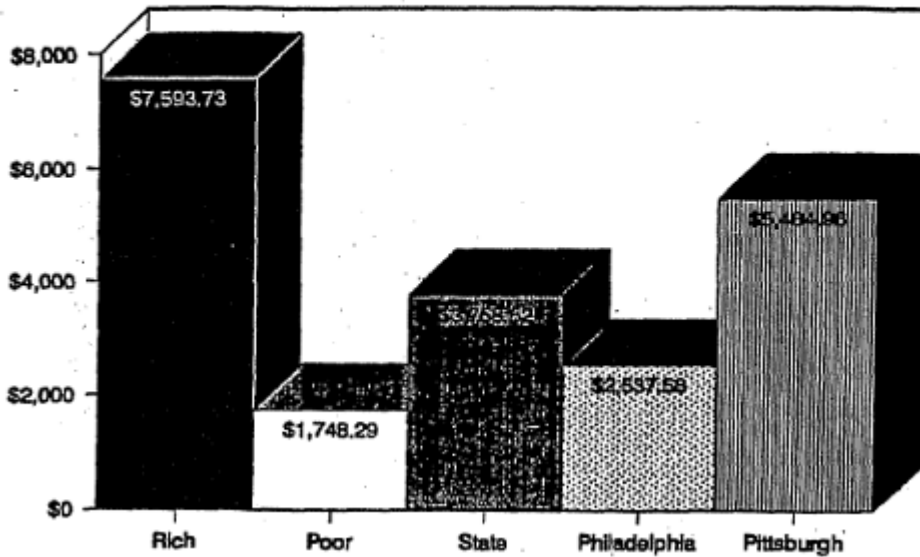


While this chart showed that there existed a \$3,100 difference in spending between rich and poor districts, because total expenditures do not measure education per se but all the activities in which a school district engages, including support services and, presumably since all of it does not go to instruction but other activities, Dr. Alexander prepared another chart showing total instruction costs to the district including vocational, special and other instructional costs.

Total Instructional Expenditures³²

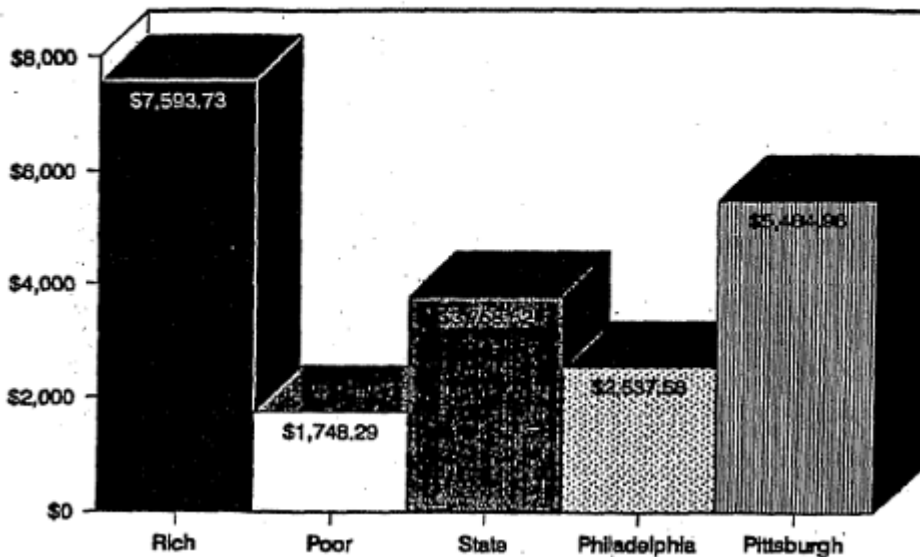
³²Dr. Alexander also prepared a chart showing Actual Instructional Expenditures, the figure that the Department of Education uses to compare instructional expenses. It only showed a slight difference from the chart "Total Instructional Expenditures":

**Local Revenue per Pupil
1993-1994**

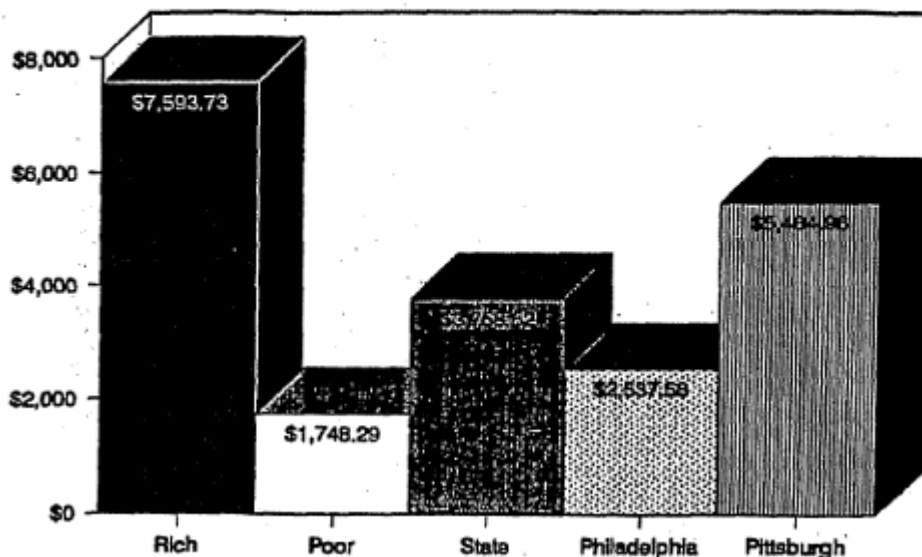


Even though this chart again showed a substantial difference in total instructional costs of approximately \$1,800 between rich and poor districts, presumably, because special education was funded at the state level and vocational education was mainly done through intermediate [*49] units, Dr. Alexander used the amount spent on regular instruction to determine the severity of the disparity. He felt that this was the best measure because it is the amount spent on the regular, core, basic or general education of students and is the measure of instructional costs that affects the most number of students.

**Local Revenue per Pupil
1993-1994**



**Local Revenue per Pupil
1993-1994**



Dr. Alexander testified that this chart showed that there was approximately a \$1,700 per pupil difference in what each child received which could be translated in \$1,700 less units of education. When this difference was extrapolated out over a classroom of 25 students, this represented a difference of approximately \$42,500 less in spending per classroom between rich and poor districts. He testified that there was no educational or school finance policy to justify this disparity.

From the disparity on what was spent on regular instructional costs between school districts, Dr. Alexander testified that this was tantamount to students in the poor districts not receiving a "thorough and efficient" education because money was the best way to measure the quality of education received by a student. He reasoned that money is used in all endeavors, including education, to purchase [*50] either in quantity or quality, goods or services. When comparing spending in all 501 school districts in Pennsylvania, Dr. Alexander testified that statistically all school districts are presumed to be equally efficient or inefficient in their spending. As a result, one dollar spent on education can be considered equal to one unit of education. Because Pennsylvania's educational funding scheme resulted in some students having substantially more funds being spent on their education than other students, they were not receiving the same "quality" of education as those students and were being deprived of a thorough and efficient education. Moreover, he testified that there was no legitimate reason that students in those districts should have less spent on them and receive an education unequal to that received by students who happen to reside in rich districts.

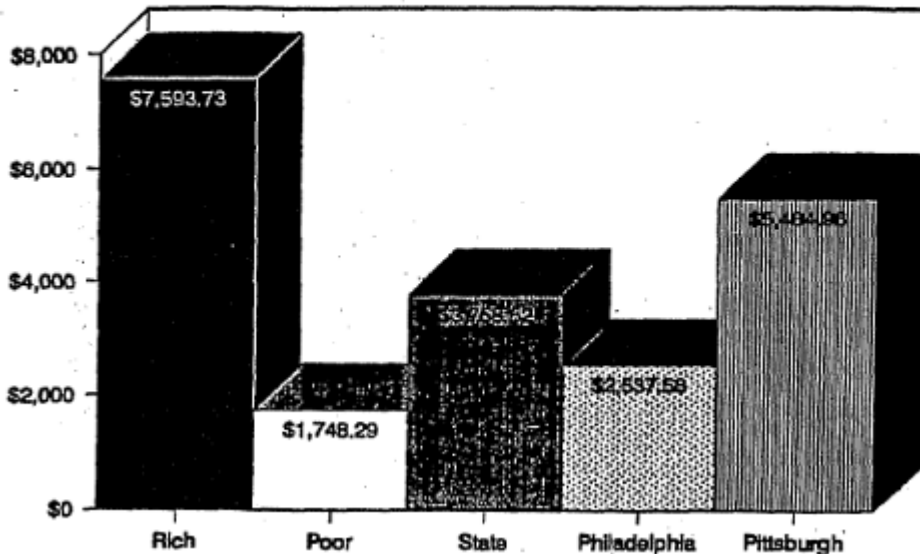
In response, the Commonwealth notes that PARSS' expert witnesses exaggerate the degree of disparity because they compare the top and bottom five percent of school districts in spending. It contends that even though there are disparities between school

districts, those disparities, upon further analysis and taking into consideration [*51] all school districts, are not as significant as they first seem.

Not only is the comparison improper because it represents the statistical extremes, the Commonwealth also contends that any comparison is irrelevant because it does not measure education in any objective sense but only by comparing what is being spent. For example, if poor districts were spending \$60,000 per student and the more affluent districts were spending \$100,000 per student, all the various dispersion statistics and indexes would show the same large disparity and inequity between school districts. It argues that PARSS could still contend that children in poorer schools would not be receiving a quality education, even though an inordinate amount, *albeit* less than in the more affluent districts, is being spent on their education. The Commonwealth contends that because all these statistical measures are comparative, it does not mean that the present system of education does not provide students with an adequate or even quality education.

To support the Commonwealth's contention that the disparities are not as large as PARSS suggests, Dr. William B. Fairley³³ performed a valid statistical analysis addressing the same [*52] considerations as Drs. Salmon and Alexander. He also used deciles in his analysis, but instead of breaking the deciles down by school districts representing 10% of the students, he broke them down by school districts regardless of the number of students each had. Based on that analysis, for school districts ranked by property wealth, the revenues per pupil for each decile were as follows:

**Local Revenue per Pupil
1993-1994**



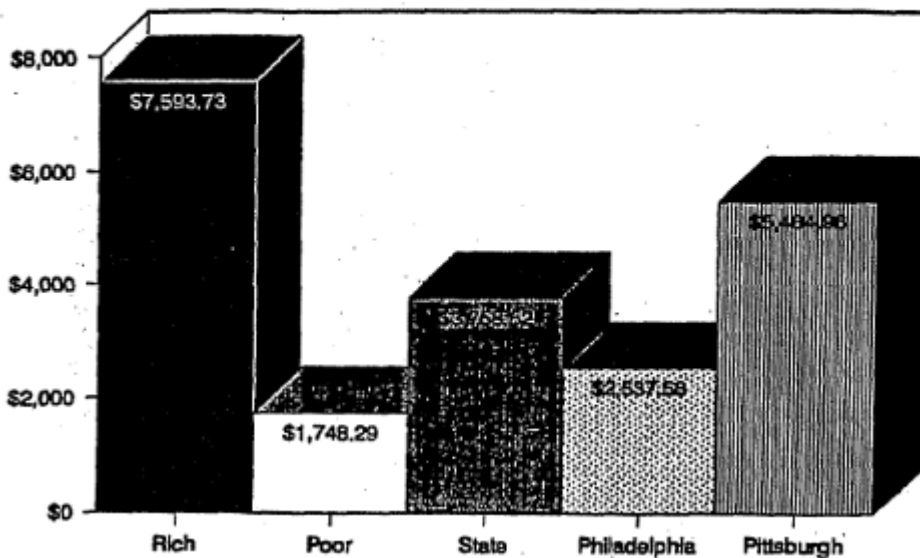
³³Dr. Fairley is a former Harvard professor and is now a principal in Analysis and Inferences, a statistical accounting firm, and was accepted as an expert in his field.

He testified that this chart showed that the median total revenue for the 250 school districts composing the first five deciles was practically the same, it rose slightly in the sixth and seventh decile and increased markedly for the eighth, ninth and tenth deciles.³⁴ However, because state educational aid ameliorated some of the disparities in wealth between the districts, while there was a relationship of total revenues to property wealth, that relationship was not strong.

Corresponding with what was occurring in revenues available to school districts, Dr. Fairley testified that the same picture (or graph) emerged when examining total expenditures spent on education. This time, Dr. Fairley used a box chart, again dividing school districts into deciles by property value and drawing a line across the middle [*53] of the page representing the state median by district in spending on education. The white horizontal line in the middle of each box gave the median value of spending within that decile. The box itself represented 75% of the districts in that decile, within the brackets was the other 25% of the school districts except for the "outliers" represented by a single line. With that explanation, the chart showed:³⁵

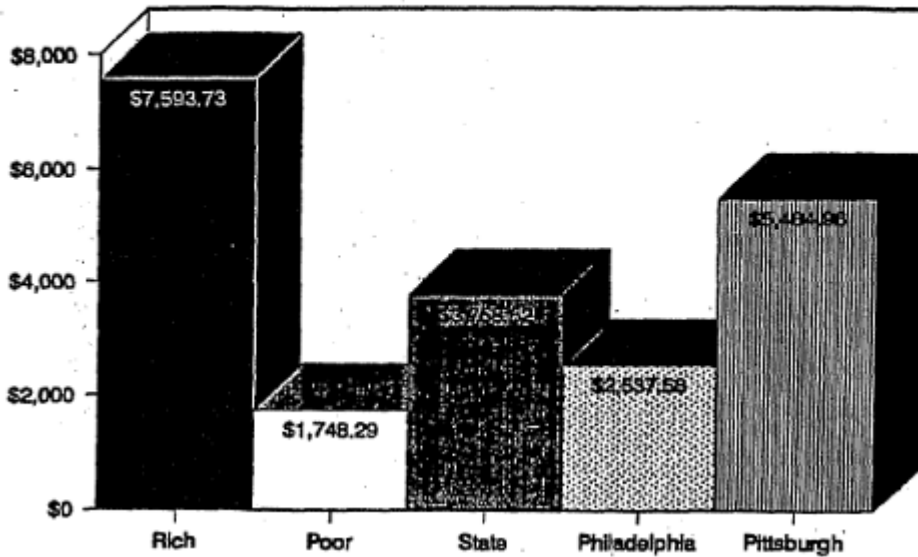
³⁴ Dr. Fairley, however, agreed that the taxing effort to raise taxes at a local level was greater in deciles where schools have a lower property wealth. He prepared the following chart to show that there was an inverse correlation between wealth and effort:

**Local Revenue per Pupil
1993-1994**



³⁵ The figure is a series of 10 "box plots". A box plot describes the distribution of a quantity, like total spending per pupil. The white horizontal line in the middle of each box gives the value of the median of the quantity within its property decile. The upper boundary of the box gives the third quartile (75th percentile) of the quantity, and the lower boundary of the box gives the first quartile (25th percentile). The dotted line from each end of the box represents a distance chosen, roughly, to indicate where most of the rest of the values lie. The horizontal lines appearing above and below the box beyond the dotted lines represent values that are extreme in terms of the great majority of values. Finally, the horizontal line drawn across the entire graph is at the median value of the quantity for all 500 districts.

**Local Revenue per Pupil
1993-1994**

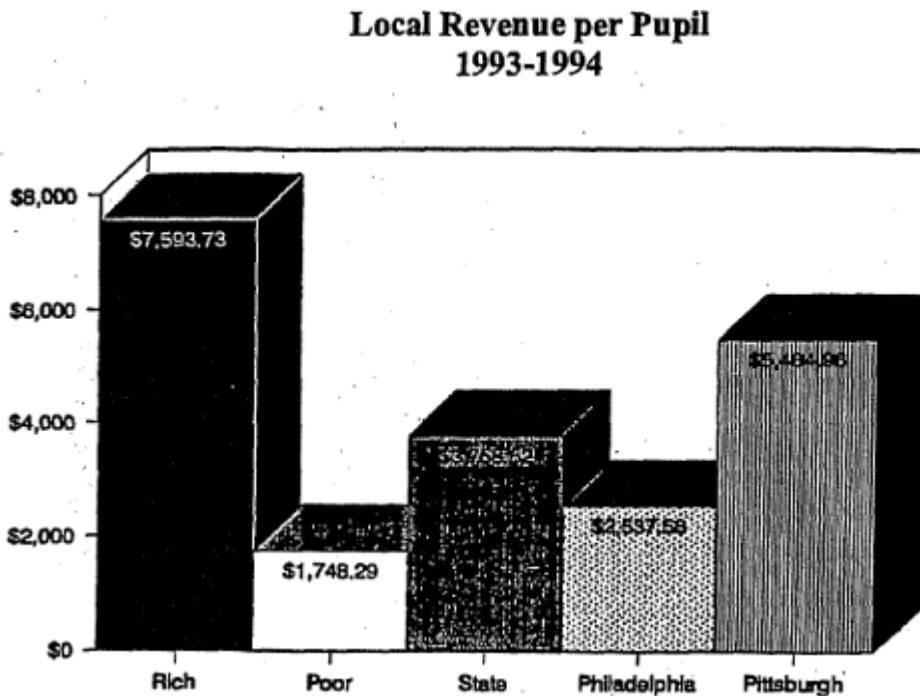


Dr. Fairley testified that except for the top three deciles, the difference in the amount of spending available to the other seven districts was relatively small with each district spending relatively the same amount. In terms of the median, the difference in spending between the medians in the first to seventh deciles was, about \$300 per pupil and there was more of a difference in spending within the decile, approximately \$2,000, than there was between deciles. It was only in the top two deciles that there was not a significant overlap in spending and those districts spent more than almost all districts in the lower deciles.³⁶ Dr.

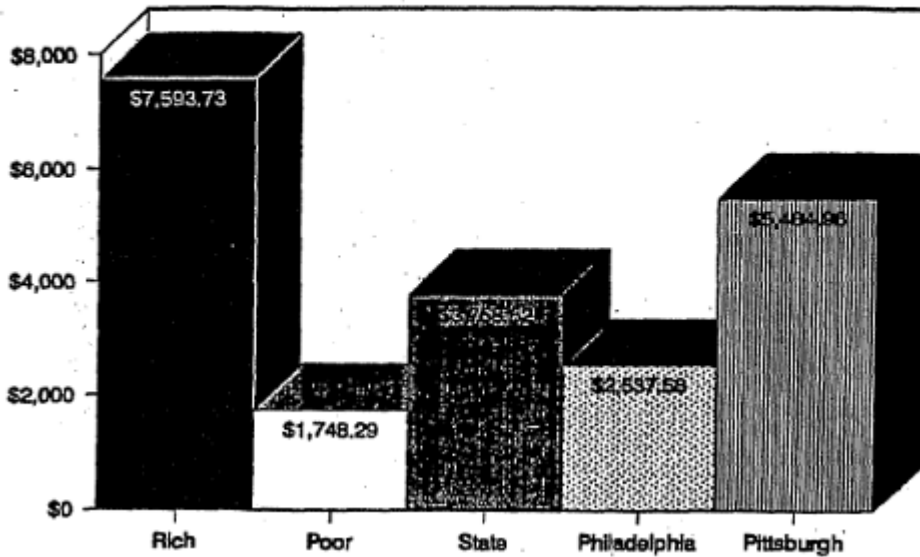
³⁶Dr. Fairley also prepared a chart based on actual instructional expenses that showed roughly the same relationship across the deciles as the chart representing total spending across the deciles.

Fairley stated this overlap in spending also showed that there was little correlation in what was spent on education and wealth in the first seven deciles [*54] but admitted that in the eighth property decile, average spending increased markedly with property value. He also stated that similar comments could be made for spending based on personal income because larger economic bases made it easier for districts in the upper property deciles to spend substantially more than districts in the lower property deciles, and, as can be seen from the chart, they did. In effect, what he was stating was that the top 30% and particularly the top 20% of all districts were, the ones creating the disparity because the districts in the bottom seven deciles spent roughly the same amount of money when compared by decile.

Dr. Fairley also prepared a chart applying a cost of living index created by the Panel on Poverty and Family Assistance at the National Research Council using data on housing costs in each metropolitan area in the United States to total spending. He stated that this chart was the most accurate way to show differences in spending. This particular index estimated price indexes for metropolitan and non-metropolitan areas in each region of the country, using data on housing costs from the 1990 census and assumed that non-housing prices were the [*55] same everywhere. Applying that index to the school districts here, he contended that it more nearly corresponded to an accurate comparison between deciles. Using that index, he produced the following chart:



**Local Revenue per Pupil
1993-1994**



As can be seen, the disparity between districts considerably flattened when the adjustment was applied and there was some overlap in what all deciles were spending except in the highest decile. Also, the evidence shows that a cost of living adjustment would be appropriate if one was applied representing an educational "basket" of goods and services or explaining how the cost-of-living adjustment being applied was a valid proxy.³⁷

³⁷ PARSS contends that the cost of living adjustment should not be used because it presents inaccurate results and, in any event, its use is not appropriate because even Dr. Fairley admitted that his calculation was not perfect. However, two witnesses offered by PARSS, Representative Ronald Cowell and Dr. Joseph Bard, both testified that there were cost of living differences that existed in Pennsylvania. In its amicus brief, the City and School District of Philadelphia contend that the cost of living index should be applied because the cost of living is less in rural areas than in urban areas, and buying power in rural areas is greater than buying power in urban areas mandating that the state educational funding formula should take that into consideration. It cites an October 1993 Report prepared by the Center for Rural Living, entitled "The Cost of Living in Rural Pennsylvania" that compares cost of living county-by-county in Pennsylvania. Taking into consideration that the national average would be 100 and Pennsylvania is 102.9, the information in that report shows:

COUNTY

COL INDEX

COUNTY

COL INDEX

COUNTY

COL INDEX

Pennsylvania

102.9

Dauphin

105.3
Monroe
108.0
Delaware
121.6
Montgomery
117.3
Adams
102.9
Elk
95.1
Montour
103.0
Allegheny
117.7
Erie
102.3
Northampton
105.3
Armstrong
96.7
Fayette
94.9
Northumberland
100.0
Beaver
111.8
Forest
100.5
Perry
101.7
Bedford
99.1
Franklin
99.6
Philadelphia

131.0
Berks
104.9
Fulton
96.5
Pike -
108.9
Blair
101.8
Greene
95.3
Potter
98.2
Bradford
104.4
Huntingdon
100.0
Schuylkill
100.7
Bucks
115.2
Indiana
100.4
Snyder
103.5
Butler
99.9
Jefferson
99.1
Somerset
100.2
Cambria
100.4
Juniata
100.4
Sullivan

100.9

Cameron

96.1

Lackawanna

103.2

Susquehanna

100.7

Carbon

101.6

Lancaster [*56]

105.2

Tioga

99.9

Centre

98.8

Lawrence

105.2

Union

99.9

Chester

1152

Lebanon

1032

Venango

99.9

Clarion

96.0

Lehigh

106.1

Warren

102.9

Clearfield

99.4

Luzern

102.3

Washington

96.3

Clinton

99.8

Lycoming

101.8

Wayne

103.3

Columbia

101.2

McKean

98.2

Westmoreland

98.5

Crawford

100.8

Mercer

104.0

Wyoming

101.8

Cumberland

104.0

Mifflin

101.9

York

104.7

All the charts and graphs, whether prepared by PARSS' or the Commonwealth's expert(s), whether the charts dealt with revenues or expenses, or whether the decile was composed of pupils or school districts, presented a remarkably consistent, if complicated, picture of what was occurring in school finance. From the charts, graphs and testimony, I conclude that:

- the capacity to raise local taxes to support education varied widely between school districts. While the difference between deciles rose incrementally and almost in a straight line from the decile that has least property wealth to the seventh decile, the last three deciles and especially the richest decile had capacity far in excess of the other deciles.
 - the effort of a school district to raise local revenues was the highest in the lowest wealth deciles and decreased almost proportionately to the wealth of the district with the highest [*57] wealth district having the least effort to raise local funds for education.
 - the state educational subsidy ameliorated the difference in property wealth between the districts in revenues available for education but did not eliminate it.
 - after taking into consideration that the five lowest wealth deciles had approximately the same to spend, the sixth and seventh had slightly more and the eighth, ninth and tenth had substantially more revenue to support education.
 - correspondingly, the first five lowest wealth deciles spent roughly the same amount to support education; the sixth and seventh deciles spent slightly more; while the districts in the top three deciles spent significantly more than the other districts in the other seven deciles.
 - there is a disparity in the amount spent on education between school districts, but the exact amount was difficult to discern because of differences in measurements. The degree in disparity in spending between poor (the bottom 5% in wealth) and the rich (the top 5% in wealth), the top 5% spent \$1,700 per student or \$42,500 per classroom, more than the
-

bottom 5%. But using that measurement heightened the disparity because we were looking at the extremes. [*58] Looking at the spending on actual instructional expenses across the first seven deciles, spending, while disparate, was not so significant that those differences could not possibly be explained by local differences in effort and program. The disparity that implicated equal protection considerations was the disparity coming from the highest level of spending in the highest spending deciles, representing those districts in the affluent suburbs, a substantial number of which were located in the southeastern portion of the Commonwealth. Spending in those deciles were from \$1,000 to \$1,700 more per pupil for regular instructional expenses than the lowest spending decile and that disparity is substantial.

- the application of a cost of living adjustment is appropriate. However, the cost of living adjustment applied by Dr. Fairley was not sufficiently proxy to warrant the adjustment in this case. Dr. Fairley applied the cost of living for housing expenses without satisfactorily explaining its application to educational costs. He also only applied the adjustment to the chart comparing total spending by decile and not to the other charts so necessary comparisons or correlations could not be [*59] made. Nonetheless, I recognize that if a cost of living index was applied, it would tend to lessen the disparity.

IV. EDUCATIONAL IMPACT OF DISPARITY IN FUNDING BETWEEN SCHOOL DISTRICTS

To have the entire state educational funding scheme found unconstitutional, not only did PARSS have to establish that there was a disparity, it also had to show that this disparity had a substantial and systemic effect on the opportunity for students in the poorer districts to receive a thorough and efficient education. To meet this burden, PARSS adopted a mechanical approach, where, if the underlying premise is accepted then all results flow accordingly. As explained earlier, this approach assumes that each school district is equally efficient or inefficient in spending its money, and PARSS contends that education is whatever a school district can purchase with the funds that it has available. Because education is equated with money, then each dollar more or less spent per student means that student is receiving one unit more or less in education. If there is a significant disparity in money spent per pupil in a significant number of school districts, PARSS' position is that such disparity necessarily [*60] means that there is a significant number of students not receiving the education to which they are entitled.

PARSS takes this position even though it does not argue that any school district is not providing its pupils with an "adequate" education. It argues that a "thorough and efficient system of public education" is not met when a child in a less affluent district does not receive the same "quality" education that a child who lives in a more affluent district with more money to spend on its students receives. In short, PARSS argues that a thorough and efficient system of a child's education should only be a function of the educational needs of the children, not the wealth of the community. To provide for a "thorough and efficient system of

public education," it contends that all school districts in Pennsylvania must have the same ability as any other school district to provide their students with equal access to *all* the educational system has to offer, including, *inter alia*, similar facilities, advanced placement courses and technological aids, such as computers. Because the present system does not provide that to all students, PARSS contends that the General Assembly has not complied [*61] with the Education Clause mandate that there be a "thorough and efficient system of public education". It contends that such a system does not exist when there is such structural and systematic disparity in educational opportunities among public school students and, accordingly, the educational funding system should be declared unconstitutional.

A. School Educational Programs and Conditions

Even though it appears that such evidence is not essential to its theory of the case, nonetheless, to illustrate the effect that disparity has on educational programs and conditions in various school districts, PARSS presented evidence of the social and economic characteristics of those school districts based on the testimony of ten representatives of "poor school districts." Those poor districts can be roughly divided into two types: districts that are stable, generally "rural districts", and those districts that have suffered serious dislocations with a decline in tax base and with either declining student population or, the opposite, an influx of students who have special needs because they are either poor or do not speak English as a first language.

Generally, the testimony regarding the stable districts' problems [*62] related to the lack of funding and the inability to raise funds for the education of students in those districts because the districts are "property poor." Of the ten representative districts, the following would fall within that classification:

- Donegal School District is in Lancaster County with mainly a agricultural based economy with an average per capita income of \$14,000 but with only 3% of their students from a family on AFDC.
- Everett School District in Bedford County comprises 9,000 people spread over 300 square miles with a per capita income of \$14,500, ranking 64th out of 67 counties in per capita income with 514 percent of students coming from families on AFDC. Because of the far-flung nature of the district, it has inordinate transportation expenses.
- Northern Bedford School District is contiguous to the Everett School District with dairy farming as the main industry. There is only one manufacturing facility in the entire district employing over 20 people. Otherwise, it has generally many of the same characteristics as the Everett School District.
- Salisbury Elk-Lick School District is located in Somerset County and is one of the smallest districts in the state. Dairy [*63] farming is the main industry in the communities it serves. Thirty-five to forty percent of its students come

from homes who are eligible for AFDC. The District shares many of the characteristics of the Everett School District and the Northern Bedford School District.

- Connellsville School District is located in Fayette County and is largely a rural district, but, in addition, has some of the characteristics of an urban district because the City of Connellsville, a third-class city, is located within its confines. Largely because of the decline of the coal industry, it has high unemployment and 17% of the families are eligible for AFDC and 60% of the students are entitled to a free or reduced-price lunch.

In general, these districts complained that they lacked the resources to have the same educational programs that the more wealthy districts have;³⁸ the conditions of the school buildings were deplorable; the districts lacked the technology/availability of updated computers; and educational opportunities of their students were less than those in the more affluent districts. When each of those districts' superintendents was asked what their district's greatest strength was, they all said [*64] parental involvement but, dishearteningly, all said that it was not as great as it was before.

Turning now to the other category of poor districts, the testimony elicited from the superintendents of the less stable districts in the non-rural areas indicated that more funds were needed, not only to rectify some of the same problems confronting the rural schools, but also to meet the additional challenges and increased costs due to declining tax bases and demographic changes that required different types of programs. These challenges, they testified, were imposing strains on the educational system. The poverty of the non-rural districts is generally worse than in rural districts caused by severe economic dislocation and demographic changes. This category includes the following school districts:

- Clairton School District is located in Allegheny County. Once a thriving district with 25,000 people in 1970, it now has only a population of roughly 8,000 with a declining tax base due to the decline of the steel industry. It has been declared a distressed district and placed under a Board of Control twice since the 1980's. While it has high unemployment and a generally poor and elderly population, [*65] it also has the highest tax rate of any school district in Pennsylvania.
- Harrisburg School District is located in Dauphin County. Like most urban centers, Harrisburg's population and wealth has declined over the past 40 years. About 70% of its students live in poverty.
- Reading School District is located in Berks County. It has a declining tax base but a rapidly increasing student population, with a 25% increase since 1990. It has a large and increasing Spanish-speaking population that moves in and out of the district and from school to school within the district.

³⁸ The evidence included disparity in sizes of classes and availability of advanced placement programs and extracurricular activities.

- York School District is located in York County. It has characteristics that are similar to Reading, with a declining tax base and a poor population with an increasing student population consisting largely of Spanish-speaking students. About 70% of the students receive a free or reduced lunch. It has 13 teachers teaching Spanish-speaking students English.
- Southeast Delco School District is located in Delaware County. Of the entire group, the testimony regarding Southeast Delco School District was the most sparse and would be best described as a "changing district" with a large influx of Spanish-speaking students. Its problems [*66] don't appear to be anywhere near those of the other school districts composing this group.

The following is the wealth, spending and source of funding for the 1994-1995 school year for the ten districts on a per-pupil basis that PARSS put forth as representative of districts similarly situated. As used in this chart and generally, the following terms mean:

Average Daily Membership (ADM) — is the aggregate number of school days represented by all pupils on the active duty roll divided by the days the school is in session. If all students came to school every school day then the number of students enrolled would equal the average daily membership. Other definitions that follow use ADM and student interchangeably.

Total Revenue per ADM — is the total amount that would be available to support a student's education from local taxes and state subsidies. It does not include any federal funds or revenues from other sources.

Local Revenue per ADM — the amount raised from local taxes on a per-student basis to fund that student's education.

State Revenue per ADM — the state subsidy under the various state education formulas that rises and falls based on the district's wealth. Relative wealth is determined [*67] by Market Value Aid Ratio. See II. State Funding of Education, *supra*.

Equalized Mills — is a way to compare the local taxing effort between districts. It is calculated by dividing the local taxes by the market value of the district as determined by the State Tax Equalization Board multiplied by 1000.

PARSS' Representative Poor School Districts

School District	Average Daily Membership	Total Revenue per ADM \$	Local Revenue per ADM \$	State Revenue per ADM \$	Equalized Mills (Effort)
Clairton	1175	9146	2543	5763	39.9

School District	Average Daily Membership	Total Revenue per ADM \$	Local Revenue per ADM \$	State Revenue per ADM \$	Equalized Mills (Efort)
Connellsville	6270	5881	1548	3923	19.8
Donegal	2546	6227	3793	2331	21.3
Everett	1671	5875	2421	3183	20.3
Harrisburg	9318	7458	3541	3408	31.9
Northern Bedford	1139	5714	1788	3970	16
Reading	13711	6804	2869	3430	35.2
Salisbury-Elk Lick	443	5855	2013	4186	17.1
Southeast Delco	3890	7379	4598	2406	26
York	7597	6193	2378	3437	28.7

To contrast the educational opportunities offered in poor districts with more wealthy districts, PARSS offered the testimony of the Superintendent of Lower Merion School District, a wealthy school district located in Montgomery County, while Intervenors offered the testimony of the Superintendents or Acting Superintendents of four "wealthy" suburban districts that generally spent more money per pupil on educating children than "poor" districts. Besides Lower Merion, [*68] those districts included Fox Chapel in Allegheny County; Radnor and Wallingford-Swathmore both located in Delaware County; Upper Merion, located in Montgomery County; and Susquehanna Township School District in Dauphin County.³⁹ All of these districts were suburban in nature, had a relatively low poverty rate and had residents who had higher than average personal incomes. Even though the Superintendents and Acting Superintendents testified that they had to be frugal and could not do everything they wanted, the general impression gained from their testimony was that they had sufficient resources to do what was deemed necessary to educate their students.

Those district expenditures per pupil and sources of funding for the 1994-1995 school year were as follows:

Despite the extensive testimony offered about each of those school districts, no generalized conclusions can be drawn from that testimony about the state of education in "wealthy" versus "poor" districts. As to the conditions that exist in poor school districts, while the testimony was illustrative of specific conditions in specific school districts, no coherent picture emerged from the evidence that any of the problems experienced [*69] by any one district was universal as to the ten representative districts, let alone to the Commonwealth's 501 school districts.⁴⁰

³⁹ Surprisingly, despite their higher levels of spending, 40% of the pupils in Lower Merion and 30% in Radnor went to private schools.

⁴⁰ At Attachment 1 are statistics concerning revenue and spending statistics of all school districts in Pennsylvania for the 1994-1995 fiscal year. Among those statistics is the Market Value Personal Income (MVPI) aid ratio for all 501 school districts in Pennsylvania. It is a measure of the relative wealth of the community. A ratio of .5 is the median aid ratio and .15 is the lowest aid ratio number possible because all school districts are guaranteed a minimum amount of state aid. Also one of the statistics included the rank in spending of all the districts as compared to all other districts in the state. Attachment 2 contains roughly the same statistics but organizes school districts by county.

One reason for the lack of coherence is that conditions in one representative district cannot be applied to another because each school district has different priorities: one district may place a greater emphasis on school facilities than on school books and computers; another may place emphasis on retaining the best possible staff causing them not to spend as much on facilities. Compounding that problem was that a comparison of choices that school districts made was not presented consistently from district to district. PARSS understandably placed the emphasis on what was "bad" in those districts, leaving gaps in the data, e.g., although there was testimony that school books were outdated in one district, no testimony was given about the status in the other poor districts or, for that matter, the wealthy districts.

Simply put, there is no common data set that compares conditions in one representative school district to those in another representative school district, let alone that would provide a basis for conclusions about what conditions exist in the roughly [*70] 490 other school districts in Pennsylvania. Other than a study of curriculum offered by PARSS and a study for the Commonwealth concerning the correlation between spending and outcomes on standardized tests, no testimony was offered as to what conditions exist in education statewide. There is simply insufficient evidence to even address how funding affects education in all of the 501 school districts in the Commonwealth.

Nonetheless, even though generalized conclusions are impossible to make, recounting the evidence offered and the gloss that the parties place on that evidence aids in understanding the underlying dispute. It also provides a basis for examining PARSS' position that the disparate revenues and expenditures between the districts inevitably leads to inequality of education.

1. Facilities

PARSS contends that Pennsylvania's funding scheme has led to many districts having facilities that are inadequate or in deplorable condition. No testimony was offered on whether there was a systematic survey of the condition of school buildings in any of the districts whose representatives testified or whether there was some other study regarding an overall survey of the condition of buildings [*71] based on the relative "wealth" of the district.⁴¹

To support its proposition that present school funding leads to inadequate facilities, PARSS relies on the evidence regarding three school districts: Clairton, Salisbury Elk—Lick and Connellsville, which shows the following:

⁴¹ PARSS did offer into evidence a report that stated, according to the United States General Accounting Office survey, as of the 1990-91 school year, 21% of Pennsylvania schools had at least one inadequate building, 42% had at least one inadequate building feature, and 57% had unsatisfactory environmental features, a category that includes lighting, heating, ventilation, indoor air quality and physical security. However, we do not know if the buildings were from rich or poor districts.

- ◆ Clairton School District. While conceding that the building housing K-12 is a modern up-to-date building, due to lack of funds, the Clairton School District has to use an annex that is substandard and lacks the funds to demolish school buildings that are no longer used;
- ◆ Salisbury Elk-Lick School District. The Salisbury Elk-Lick High School, built in 1954, has insufficient classroom space, insufficient office space, wiring that is not compatible with modern technology, a leaking roof and faulty boilers; and
- ◆ Connellsville School District. The Connellsville School District has buildings where the floors are unsafe and the roofs leak, and the high school auditorium has been closed due to asbestos contamination for five years. Although admitting that Connellsville is putting \$27 million into renovating its facilities, PARSS contends that was scaled back from \$50 million that would have alleviated all their problems with [*72] its buildings.

The Commonwealth contends that PARSS distorts the evidence. It asserts that the Clairton Education Center is less than 10 years old and the Miller Annex underwent a \$30,000 renovation before it was placed back into service as an alternate education center. As to Salisbury Elk-Lick School District, the Commonwealth argues that the condition of its facilities is the result of local action and not lack of funds. It points out that the district has no long term debt, ranks low in its equalized millage, i.e., it was 420th out of 501 districts, yet when confronted, with remodeling the high school, residents expressed sentiments that it would rather merge with an adjoining district than spend funds to renovate. As to Connellsville, the Commonwealth notes that the present superintendent testified that the condition of the schools was the result of the previous school board's failure to maintain and improve the physical facilities of its schools. It also notes that the testimony, e.g., Northern Bedford, shows that other districts with the same demographics and relative spending and aid ratios had facilities that are modern and efficient.

Again, even if all the findings of fact [*73] were made in PARSS' favor, there is simply not enough probative evidence for any finding that disparity in funds leads to inadequate facilities. Most of the witnesses from PARSS' representative district testified that their facilities were adequate or offered no testimony at all concerning the condition of the facilities in their districts. In the end, though, even if the facilities are generally adequate, what PARSS is contending is that those school districts should not have to "get by" with their facilities; they should have the same type and quality of facilities that the more affluent districts have.

2. Educational Programs

a. Curriculum

PARSS contends that the evidence produced at trial demonstrates beyond question that the large disparities in funding between wealthy and poor school districts in Pennsylvania translates directly into differences in the quality and extent of the educational offerings of those districts. In making this argument, it has placed specific emphasis on Advanced Placement⁴² programs that it contends is an important part of the educational curriculum in terms of breadth and depth of the educational experience. PARSS argues that the current funding system shows [*74] that poor school districts are able to offer few, if any, Advanced Placement courses. For the representative districts, it points to the following evidence to support its contention:

- ◆ Clairton has eliminated all Advanced Placement courses;
- ◆ Northern Bedford is unable to offer Advanced Placement courses;
- ◆ Everett cannot afford to offer any Advanced Placement courses due to a shortage of teachers. Students wishing to take Advanced Placement courses must do so at a local community college at their own expense;
- ◆ Connellsville is able to offer only two Advanced Placement courses, one in English and one in math; and
- ◆ Donegal is able to offer Advanced Placement courses only in English, math and social studies.

While these school districts have insufficient Advanced Placement programs, PARSS points out that wealthy school districts are able to provide a much larger array of Advanced Placement courses:

- ◆ Fox Chapel offers 12 Advanced Placement courses;
- ◆ Lower Merion offers nine;
- ◆ Radnor offers 57 Advanced Placement courses in almost every subject area; and
- ◆ Susquehanna Township School District offers 10.

As a result, PARSS contends the evidence shows that students in poorer districts are at a [*75] disadvantage because those students are deprived of more rigorous courses and that impacts on their ability to obtain a higher education.

As further evidence of that disparity, PARSS offered the testimony of Dr. Deborah Collins,⁴³ qualified as an expert in the field of educational research and evaluation, whom, after studying the Department's data regarding the respective curriculums, found the following and, defining wealthy or rich districts as the top or bottom as did Drs. Salmon and Alexander, opined:

⁴² "Advanced Placement" is a term of art for college level courses that specifically prepare students to take Advanced Placement examinations given by an educational testing organization. Many colleges award college credits based on an acceptable performance on the test.

⁴³ Dr. Collins has her doctorate in education research from Virginia Polytechnic Institute and State University (Virginia Tech) and is Acting Director of the Virginia Tech Center for Survey Research. She performed her study under contract with Educational Policy Research, Inc. and was accepted as an expert in her field.

When observing student enrollment in advanced level subject areas, students in wealthy districts are enrolled in such courses to a greater extent than students from poor ones. Even when taking into account the size of the school, students in poor schools participate in advanced subject area courses far less than their counterparts in rich schools.

In two of the five advanced subject areas—social studies and art— more of the rich schools reported enrollments in advanced courses than did poor schools which may account for greater student participation among the rich schools. However, while a comparable proportion of poor and rich schools offered advanced math courses, student enrollment [*76] among poor schools was only 11 percent compared to 23 percent among rich schools. Similar disparities in student participation were observed among foreign languages and science course offerings.

Students enrolled in rich schools were far more-likely to have access to and enroll in advanced placement (AP) courses. Regardless of the size of the school, students in rich schools were enrolled in advanced placement courses to a greater extent than students in poor schools. Overall, the number of rich students enrolled in AP courses represented 23 percent of high school students compared to only four percent in poor schools. A little over 86 percent of rich schools offered at least one AP course; while only 37 percent of poor schools reported having at least one AP course.

In responding, the Commonwealth argues that PARSS' focus on the availability of Advanced Placement seems to assume that the number of these types of courses is the exclusive indicator of a quality educational program. First, the Commonwealth challenges the very assumption that Advanced Placement courses are alone any indicator of the quality of education that students in any particular district are receiving. It further [*77] contends that in many districts, vocational training is just as important an indicator of an appropriate education as are Advanced Placement courses, and local school boards, in deciding to address the educational needs of their children, can emphasize either.

It points to PARSS' expert, Dr. Collins, testimony that there is no difference in vocational education availability between rich and poor districts and that regardless of the size of the school, larger numbers of students in poor schools were enrolled in vocational courses whereas among schools in the rich districts, there were some schools that reported no vocational enrollments. Contrary to PARSS' focus on Advanced Placement courses, the Commonwealth argues that those students who pursue a curriculum of vocational courses can receive a perfectly adequate education and take their places as productive citizens in skilled professions.

Nonetheless, the Commonwealth argues that even if Advanced Placement courses were the hallmark of quality educational programs, the "poor" districts discussed in Petitioners' brief have offered more of-those courses than PARSS suggests. It points out the following:

- ◆ Clairton School District. While [*78] Clairton eliminated Advanced Placement courses for the 1993-1994 school year, in the 1994-95 school year, it offered Advanced Placement chemistry, and in 1995-96, offered Advanced Placement courses in chemistry and physics.
- ◆ Connellsville School District. At various times since the 1990-91 school year began, Connellsville has offered Advanced Placement courses in art, calculus, biology, American history and European history. Moreover, a higher percentage of high school students in Connellsville are enrolled in Junior College level courses than the percentage of students enrolled in similar districts from a statewide sample. Connellsville reported that 44.3% of its tenth graders were enrolled in at least one college level course, while only 8.6% of the statewide sample of tenth graders had enrolled in at least one such course. Similarly, the district reported that 31.8% of its eleventh graders and 38.7% of its twelfth graders were enrolled in at least one college level course, while the statewide sample showed respective enrollments of 14.7% and 24%.
- ◆ Everett and Northern Bedford School Districts. While Everett and Northern Bedford did not offer Advanced Placement courses, Everett did [*79] offer a variety of advanced level courses such as advanced biology, physics, advanced English, calculus and French IV. Northern Bedford offered its students the opportunity to take several college courses through distance learning.⁴⁴ Moreover, at various times, Northern Bedford students had the opportunity to take advanced Russian, Japanese, German, microeconomics, and college level calculus. These courses were provided through distance learning which is how Northern Bedford provides its students with college level calculus courses through its affiliation with the University of Pittsburgh.

Finally, the Commonwealth argues that careful examination of PARSS' expert's study of curriculum "disparities" between "rich" and "poor" schools reveals that advanced level courses vary widely when offered, even among the schools with the same spending levels, indicating that it was a matter of local choice to serve a local need that determined the extent that those courses would be offered.

While none of the testimony indicates that any child is not receiving an "adequate" level of courses, the more affluent districts are able to offer more advanced placement courses than those of poorer districts [*80] despite the size of the district. Whether it has been a matter of student interest in the school districts involved as the Commonwealth suggests or lack of available funds as PARSS suggests, or both, neither was established. In any event, if a school district had more funds, it would have more

⁴⁴ "Distance learning" is any technology that enables a teacher in one geographic location to teach students in another location. Current forms of distance learning include satellite link-ups, interactive video conferencing and Internet connections.

options. Therefore, even if a school district placed a lower priority on Advanced Placement courses, that priority would more likely be filled if there were more funds available.

b. Class Size

PARSS also contends that educational programs suffer because of larger class sizes in poorer as opposed to more affluent districts.⁴⁵ The point that their witnesses made when testifying was that smaller, classes, especially for the lower grades, translated into more individual attention per student where more learning could take place. Again, PARSS does not rely on any statistical comparison about how class size relates to expenditure per pupil; they merely point out that many of the poorer districts testified that poor districts' student/teacher ratios⁴⁶ are higher than those of more affluent districts.

Among those districts that testified, the more affluent districts do seem to have lower student/teacher ratios. [*81]⁴⁷ The Commonwealth responds not by attempting to show that class size is substantially the same between rich and poor districts, but by arguing that class size is irrelevant because it is not a predictor of educational performance and is not an indicator of educational achievement. While the testimony offered by PARSS about class size simply assumed that a smaller class was "good" and testimony by the Commonwealth assumed that it was irrelevant, neither offered a detailed analysis to support its conclusion. However, even in the absence of evidence, I recognize at a certain point the size of the class does impact on the education received; otherwise, we could just place everyone in one classroom.

c. Textbooks

⁴⁵ Generally, PARSS' argument goes to class size in elementary school, although that problem could exist in some of the high schools in the larger districts but for other reasons. The problem with the smaller schools is that because of their size, when separate courses of study are introduced at the high school level, it causes both a financial burden on the district; as well as a lack of opportunity to their students. Financial problems are caused by the fact that they do not have the economy of scale of larger districts. For example, if you are offering advanced calculus, it costs just as much to educate ten students in a small district as it does to educate 25 in a large district. Also, because of the large number of students in larger systems, there can be a broader and deeper offering of courses than what is offered in small districts. PARSS contends that children in small districts are deprived of an equal opportunity to have the same educational experience and the state educational funding system should be used to equalize those opportunities.

⁴⁶ In Donegal, kindergarten classes are approaching a student/teacher ratio of 28 to one; sixth grade classes are approaching a ratio of 29 to one; and senior high classes are approaching 30 or 35 to one. (Everett, Shaneyville Elementary School and Everett Elementary School have class sizes with greater than 30 to one pupil/teacher ratios. In Northern-Bedford, the student/teacher ratio in primary grades is now approximately 30 to one. In Reading, elementary classes have a pupil/teacher ratio of 24 or 25 to one and high school classes have a pupil/teacher ratio of 34 or 35 to one.)

⁴⁷ For example, in Lower Merion, in the early elementary years, the ratio is about 21 pupils to one teacher. Throughout the school, the average number of aids are included in the component; the pupil to professional ratio is 23 to one, while pupils to teachers in Lower Merion is 12 to one. In Radnor, between kindergarten and second grade, class sizes range from 18 to 20 students per class; school board policy prohibits classes in excess of 20 students.

PARSS also argues that the evidence shows that due to inadequate funding, poorer school districts are unable to purchase up-to-date textbooks. However, only two of the ten representative school districts offered testimony concerning their inability to purchase textbooks. Everett's superintendent testified that two-thirds of their textbooks were older than ten years because of lack of money to replace them. A teacher at Southeast Delco testified that in certain classes, students do [*82] not have their own books; an entire classroom will share one book and two-thirds of the textbooks have not been updated for ten years because of lack of money.

The Commonwealth responds by arguing that the paucity of PARSS' evidence cannot support any finding that there are insufficient funds to purchase textbooks. In any event, it contends that the evidence shows that the "poorer" districts are capable of maintaining updated instructional materials. It points to the Northern Bedford district which is contiguous to the Everett district and states, while Northern Bedford actually has a higher aid ratio than Everett, i.e., is poorer, Northern Bedford's textbooks are not outdated because it gives them a high priority. In addition, the district developed its own instructional materials in areas where textbooks could become outdated quickly. The Commonwealth further states that Everett can't purchase textbooks because they have placed a higher emphasis on raising school teachers' salaries than purchasing textbooks. They contend the same is true for Southeast Delco. From the 1993-94 school year to the 1994-95 school year, the average teacher's salary increased by 14% and the total expenditure [*83] for teachers' salaries was over \$10.6 million. During the same period, expenditures for books and periodicals used for instruction declined by 48% from \$211,813 to \$109,893. As with Everett, the Commonwealth contends that priorities, and not resources, have been the problem in Southeast Delco.

For reasons expressed before, again, there is simply insufficient evidence to make a specific finding that among the representative districts that textbooks are inadequate, let alone making a finding as to whether poorer districts throughout the state have inadequate textbooks.

d. Technology

PARSS contends that a substantial percentage of computers in most of the ten representative school districts are outmoded or nearly obsolete, while the more affluent districts have state-of-the-art equipment. PARSS contends that students living in poor and rural districts have a greater need for this in-school technology because they do not have access to this technology at home. For example, they point to Fox Chapel, where, in addition to computer laboratories, there are four computers in every elementary and middle school classroom and the district is in the process of putting the same number of computers [*84] in

every classroom in the high school. Poorer districts, it argues, as a general rule, simply do not have the funds to make the necessary investments in technology that would allow their students to have the same access to technology.

The Commonwealth responds that whether a school district's computers are up-to-date is dependent upon how a school district chooses to allocate its funds. It argues that there are many poor school districts that have up-to-date equipment because that is where they have placed the emphasis for their districts. In any event, the Commonwealth contends that all school districts, including some of the wealthier ones, have experienced problems in implementing instructional technology because the field changes rapidly. Finally, it states that the Commonwealth has implemented a Link-to-Learn program that will provide assistance to poor and rural school districts so that they have adequate technology.

Generally, it appears that the more affluent districts have more up-to-date computers than less affluent districts. It also appears, however, that through the Link-to-Learn Program, the Commonwealth will ameliorate, if not eliminate, that problem.

3. Spending and Performance [*85]

There are completely divergent views as to whether spending has any impact on performance of children in schools. In support of its proposition that it does, PARSS offers an illustration of a comparison of the quartile placement in Pennsylvania State Scholastic Achievement (PSSA) tests for fifth grade students in mathematics that it argues is illustrative of the effects on educational outcomes. Those statistics show the following:

Poor Districts	Percentage of Students in Bottom Two Quartiles
Clairton	87.6
Duquesne	93.2
Everett	61.0
Harrisburg	92.2
Oswayo Valley	70.6
Reading	74.1
York	78.5
Wealthy Districts⁴⁸	Percentage of Students in Top Two Quartiles
Council Rock	77.9
Lower Merion	81.0
State College	74.0

Because wealthier districts out performed poorer districts, PARSS argues that is a result of inadequate funding. If funding were sufficient so that each child in each district could have the same education, then the outcomes would also be the same.

⁴⁸ Other than Lower Merion, no testimony was offered at trial as to the other districts, although the test scores of those districts, as with all school districts, were in evidence.

The Commonwealth contends that the evidence shows no such thing. It argues this illustration is not a true picture since spending alone indicates nothing about the quality of the education a student receives and has no discernable relationship to what students actually [*86] achieve. It contends that the witnesses repeatedly acknowledged a variety of factors other than the amount of money spent by school districts that impacted on what a child accomplished academically, including parental support and the level of education achieved by the children's parents and the socioeconomic status of the children. They argue that this second factor affects childrens' ability to achieve with low socioeconomic status generally corresponding to lower scores on achievement tests.

The Commonwealth's expert, Dr. Fairley, unlike PARSS' expert, did not equate the amount of money spent with the amount of education received; to him it was an expense because increased spending did not guarantee any student an increased education. This position was based on his study examining spending and achievement and he testified that he discovered no meaningful relationship between the two. Dr. Fairley examined instructional spending by school districts in relation to the scores received by their students on the statewide Testing for Essential Learning and Literary Skills (TELLS) test for 1991. When Dr. Fairley plotted the instructional expenditures by school districts, which were not adjusted [*87] for different costs of living in different districts against students' TELLs scores, he discovered a modest association between the two. When he did a further analysis to determine how other factors affected the scores - the socioeconomic status and the ability of the students - he testified that there was no genuine association between spending and the TELLs-scores. Dr. Fairley's subsequent analysis of PSSA scores and school district expenditures lead to the same conclusion, that is, when socioeconomic status and ability are held constant, any apparent relationship between spending and achievement disappears. The Commonwealth contends that Dr. Fairley's finding is consistent with numerous other national and local studies⁴⁹ that have concluded that merely spending more money does not meaningfully enhance achievements.

The Commonwealth also contends that Dr. Fairley's conclusions are borne out by comparisons of districts in other areas of the state that show that higher spending school districts do not necessarily achieve better results academically than lower spending districts. Illustrating this point, it gives [*88] three separate examples contrasting school districts from various parts of the Commonwealth.

Harrisburg and Susquehanna Township

Harrisburg

Susquehanna Township

⁴⁹ See Coleman, James S., *Equality of Educational Opportunity*, Volume I and II, United States Department of Health, Education and Welfare, 1966; Chubb, John E. and Moe, Terry M., *Politics, Markets and America's Schools*, The Brookings Institution, 1990.

Harrisburg

◆ Harrisburg City School District is in the top 20% of school districts statewide in spending. In 1994-95 the district spent \$7,526 per ADM and it spent \$5,020 per ADM in actual instructional expenditures.

◆ Harrisburg's PS SA scores are significantly lower than the scores of every other district in Dauphin County. None of the elementary schools in Harrisburg had 25% of fifth graders score in the top quartile of the PS SA tests. In fact, all of the schools but one had less than 10% of fifth graders score in the top quartile. In addition, the

Susquehanna Township

◆ Susquehanna Township School District is among the lowest spending school districts in Dauphin County and is rather average in its spending when compared with the rest of the state. In 1994-95 Susquehanna Township spent a total of \$6,094 per ADM and it spent \$4,111 per ADM in actual instructional expenditures spending almost \$1,500 per student in total expenditures and a \$900 per student difference for actual instructional expense, less than Harrisburg.

◆ Susquehanna Township schools significantly outperform Harrisburg on the PS SA tests. Forty-one percent of the fifth graders at the Herbert Hoover Elementary School scored in the top quartile of the PSSA test in reading [*89] and 38% scored in the top quartile in math. Over 30% of the eighth graders scored in the top quartiles in reading and math; and

Harrisburg

only intermediate school that had test results reported, had just 2% of its eighth graders score in the top quartile for reading.

Susquehanna Township

over 3 5% of] the eleventh. graders scored in the top quartiles of both tests

Upper Merion and Windber

Upper Merion

◆ 1994-95, the Upper Merion School District ranked second in the state both in total expenditures per ADM and in actual instructional expenditures per ADM. Spending a total of \$12,377 per student with actual instructional expenditures per student of \$8,233.

◆ Percent in top quartile state wide fifth grade reading test: 39%; fifth grade math test: 48%; eighth grade reading: 32%; eighth grade math: 27%; eleventh grade reading: 45%; eleventh grade math: 39%.

Windber

◆ During the same period the Windber School District ranked 500 statewide in both total expenditures per-student and actual instructional expenditures per student Windber spent a total of \$4,196 per student with actual instructional expenditures of \$2,902 per student

◆ Percent in top quartile statewide fifth grade reading: 47%; fifth grade math tests: 40%; eighth grade reading: 35%; eight grade [*90] math: 24%; eleventh grade reading: 39%; eleventh grade math: 26%.

Pittsburgh and Duquesne City School Districts and Plum Borough School District

Pittsburgh and Duquesne City School Districts

◆ The Pittsburgh City and Duquesne City School Districts spend more per

Plum Borough School District

◆ Plum Borough School District is one of the lowest spending school

**Pittsburgh and Duquesne
City School Districts**

student than most school districts statewide and more than most school districts in Allegheny County. In 1994-95 Pittsburgh spent a total of \$9,620 per student, and it spent \$6,261 per student in actual instructional expenditures. In the same school year, Duquesne spent a total of \$8,470 per student, and it spent \$5,272 per student in actual instructional expenditures

◆ Nonetheless, the schools in these districts are among the lowest scoring schools in Allegheny County, and for that matter in the state, [*91] on the PSSA tests.

**Plum Borough
School District**

districts in Allegheny County and is an average spender compared to the rest of the state. In 1994-95 Plum Borough spent a total of \$6,053 per student, and it spent \$4,195 per student in actual instructional expenditures

◆ Plum Borough students generally out perform Duquesne City and Pittsburgh students on the PSSA tests.

Essentially, what the Commonwealth and Dr. Fairley are echoing is the Coleman Report's⁵⁰ conclusion that family influences drive academic achievement and that (p. 296) "[i]t appears that valuations in the facilities and curriculum account for little valuation in pupil achievement."⁵¹ While I accept Dr. Fairley's conclusion that students' outcomes on test scores, TELLs or PSSA do not correlate with the amount spent on education, those tests measure what they are designed to measure. It is doubtful, though, whether those test scores tell the "whole story" of the education or educational opportunities that are available or not available to students⁵² as a result of differences in educational resources.

⁵⁰ See *supra*, text accompanying note 12.

⁵¹ *Id.* at 296.

⁵² When I asked Dr. Fairley if test scores had no relevance to what was spent on a student's education, and if wealthy districts who spend significantly more are wasting money for funding education, Dr. Fairley admitted that the TELLs' scores were not the "whole story."

V.

EDUCATION IN PENNSYLVANIA

A.

Early History

At the core of this case is the determination of the obligations that are imposed on the General Assembly by Article III, Section 14 of the Pennsylvania Constitution which mandates that "it shall provide for the maintenance and support of thorough and efficient system of public education to serve the needs of the Commonwealth." To provide background to that mandate that the Pennsylvania Constitutional Convention adopted in 1873, it is necessary to briefly examine the history [*92] of education in Pennsylvania, the intellectual foment at the time of the Constitutional Convention in 1873 and the debates of the delegates when they proposed the Education Clause.

The importance of education has been evident throughout the history of Pennsylvania, from the colonial period through the passage of the present Education Clause of the Pennsylvania Constitution.⁵³ While Pennsylvania has been uniquely influenced by such factors as immigration and industrial development, the Commonwealth has shared much with the rest of the nation as it embraced the idea of universal public education. Pennsylvania's colonial history indicates an initial commitment to public education, but subsequent immigration by groups committed to instruction in parochial schools distinguished the Commonwealth from the New England states that were founded by dissenters from the Church of England. In 1681, William Penn's first "Frame of Government" provided for the creation of schools. The first school laws were passed by the colonial assembly in 1683. William Penn stressed the importance of the education of children: "For their learning be liberal.... Spare no

⁵³The following information was taken from these sources: Philip S. Klein and Ari Hoogenboom, *A History of Pennsylvania* (2d ed. 1973); Lawrence A. Cremin, *The Transformation of the School* (1961); Adolph E. Meyer, *An Educational History of the American People* (1957); R. Freeman Butts and Lawrence A. Cremin, *A History of Education in American Culture* (1953); Lawrence A. Cremin, *The American Common School* (1951); Stuart G. Noble, *A History of American Education* (1938); Ell wood P. Cubberley, *Public Education in the United States* (2d ed. 1934); James Mulhem, *A History of Secondary Education in Pennsylvania* (1933); Edwin G. Dexter, *A History of Education in the United States* (1904); *Pennsylvania: Colonial and Federal*, (Howard M. Jenkins, ed., 1903); James P. Wickersham, *History of Education in Pennsylvania* (1886).

cost; for by such parsimony all is lost that is saved." William Penn, quoted in Philip S. Klein and Ari Hoogenboom, *A History of Pennsylvania* [*93] 384 (2d ed. 1973).

However, the Charter of Privileges of 1701, which was in effect until 1776, did not mention schools. This omission, coupled with the ethnic makeup of Pennsylvania's colonists, led to a neglect of public education. German immigrants supported their own parochial schools that promoted the German language and culture, while English settlers brought with them the belief that education was a private matter and that the state should provide education only for children of families unable to afford private tuition.

The Federal Constitution, ratified in 1789, contained no provision for education and reflected the widespread notion that education was a luxury available only to those who could afford it. Some of those too poor to afford tuition received an education in church-run schools [*94] on a charity basis. Only in Calvinist New England was education considered to be a duty of the state. The European Catholic countries had long followed a tradition of instruction in church-run schools. In England, the state played no role in education other than providing for "pauper schools." Only in the German Protestant states did the idea of public education emerge.

Education was considered one of the unenumerated powers reserved to the states by the Tenth Amendment.⁵⁴ The interest in public education was generally confined to the New England states. In 1800, seven of the sixteen states including Pennsylvania, had constitutional provisions relating to public education. However, not until the second quarter of the nineteenth century did the common school movement begin to have an impact in state legislatures.

Pennsylvania's first constitution included a provision for education: "A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth at low prices..." Pa. Const. of 1776, §44. However, this section was amended by the constitutional convention of 1789-90 [*95] to read: "The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." Pa. Const. of 1790, art. VII, §1. This language remained in effect until it was changed at the Constitutional Convention of 1873 and implemented by the Constitution of 1874. The revision of 1790 required only the establishment of pauper schools, a notion closely identified with the English tradition. Laws effectuating the constitutional provision, passed in 1802,⁵⁵ 1804⁵⁶ and 1809,⁵⁷ allowed parents who declared themselves

⁵⁴ The tenth amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const, amend. X.

⁵⁵ Pa. Laws of 1801-03, ch. XXIV.

⁵⁶ Pa. Laws of 1803-04, ch. LXV.

paupers to receive state aid to pay tuition at private institutions. But the "pauper school" approach reached few children and as late as 1828, the state had paid the tuition of only 4,477 children that year. Ellwood P. Cubberley, *Public Education in the United States* 192 (2d ed. 1934). Over half of the state's 400,000 children were not enrolled in a school. Stuart G. Noble, *A History of American Education* 160 (1938).

The cause of universal public education gained wide support during the 1820's. The Pennsylvania Society for the Promotion of Public Schools, founded in 1827, petitioned for a revision [*96] of the state's school laws. None of the governors during the period that the 1809 law was in effect believed that the constitutional mandate was being fulfilled. In his 1823 inaugural address to the state legislature, Governor Schulze stated:

The object of the convention seems to have been, to diffuse the means of rudimental education so extensively, that they should be completely within the reach of all—the poor who could not pay for them, as well as the rich who could. Convinced that even liberty without knowledge, is but a precarious blessing, I cannot therefore too strongly recommend this subject to your consideration.

Journal of the Thirty Fourth House of Representatives, 1823-24 151-52, quoted in Lawrence A. Cremin, *The American Common School* 104 (1951). George Wolf, another advocate of public education, was elected to two successive terms as governor, beginning in 1829. In his message to the legislature in 1830, Governor George Wolf forcefully stated:

Of the various projects which present themselves, as tending to contribute most essentially to the welfare and happiness of a people, and which come within the scope of legislative action, and require legislative aid, there is none [*97] which gives more ample promise of success, than that of a liberal and enlightened system of education, by means of which, the light of knowledge will be diffused throughout the whole community, and imparted to every individual susceptible of partaking of its blessings; to the poor as well as to the rich, so that all may be fitted to participate in, and to fulfil all the duties which each one owes to himself, to God, and to his country. The constitution of Pennsylvania imperatively enjoins the establishment of such a system. Public opinion demands it. The state of public morals calls for it; and the security and stability of the invaluable privileges which we have inherited from our ancestors, require our immediate attention to it.

VI Register of Pennsylvania 386 (1830), quoted in Cremin, *The American Common School* 104-05. In his 1831 message to the legislature, Governor Wolf said:

The improvement of the mind should be the first care of the American statesman, and the dissemination of learning and knowledge ought to form one of the principle objects of his ambition. Virtue and intelligence are the only appropriate

⁵⁷ Acts of 1808, ch. CXTV.

pillars upon which a Republican Government can securely rest . . . r Under [*98] these impressions, no opportunity has been omitted earnestly to press upon the attention of the legislature, the indispensable necessity of establishing by law a general system of common school education . .

Pennsylvania Archives, Fourth Series, V, 962-64, quoted in Klein and Hoogenboom, *A History of Pennsylvania XXX* (2d ed. 1973).

The efforts of the proponents of public education eventually produced results. In 1831, the Report of the House Committee on Education addressed the shortcomings of the pauper school laws:

[T]he unremitting attention of your committee has been directed to the labour of compiling the details of a system of common schools, in which eventually all the children of our commonwealth may at least be instructed in reading, and a knowledge of the English language, in writing, arithmetic and geography—subjecting them to such regulations as may best promote their future usefulness—securing competent and able teachers, and providing for their support. . . .

VII *Register of Pennsylvania* 386 (1830), quoted in Cremin, *The American Common School* 105. This report contributed to the passage of a bill creating a permanent school fund.⁵⁸ During the 1833-34 session, Senator Samuel [*99] Breck was appointed chairman of a joint committee on education which produced a report stating the following:

A radical defect in our laws upon the subject of education, is that the public aid now given, and imperfectly given, is confined to the poor. Aware of this, your committee have taken care to exclude the word *poor*, from the bill which will accompany this report, meaning to make the system *general*, that is to say, to form an educational association between the rich, the comparatively rich, and the destitute. Let them all fare alike in the primary schools; receive the same elementary instruction; imbibe the same republican spirit, and be animated by a feeling of perfect equality. (Emphasis added.)

XIII *Register of Pennsylvania* 97 (1834), quoted in Cremin, *The American Common School* 106. The bill accompanying the report was passed into law and created a system of public schools.⁵⁹ The act created school districts in every ward, township and borough, which were given the choice of participating in the new system or continuing to operate under the 1809 mandate of providing only for the education of the poor. To participate in the disbursement of state funds, each district was required [*100] to raise by local effort an amount twice that to be received from the state.

⁵⁸ Pa. Laws of 1830-31, No. 181.

⁵⁹ Pa. Laws of 1833-34, No. 102.

While the new law was passed almost unanimously and received broad support among the New England settlers of the northern tier counties and the Scotch-Irish Presbyterians of the western counties, opponents rallied to repeal the law in the Senate and almost succeeded in the House. Three groups were allied in their opposition to public education: property owners who opposed the use of taxes to fund the system; religious groups like the Friends, the Lutherans and the Mennonites who supported their own parochial schools; and the German-speaking settlers of the east-central counties who were opposed to the English language requirements. Thaddeus Stevens, then a member of the House of Representatives, eloquently spoke in defense of the school act and the supporters of public education were able to prevent the repeal of the law.

It was left to Governor Wolf's successor, Joseph Ritner, and the first superintendent of common schools, Thomas H. Burrowes, to implement the newly-designed system. By 1837, 742 of the 987 districts were participating in the state system. XVI *Pennsylvania School Journal* 155 (1867-68). The notion [*101] of the pauper school had been dismissed, and most parts of the state accepted a tax-based system of education.

The 1850's saw an expansion of legislative activity concerning education. In 1851, the Pennsylvania Supreme Court ruled that the clause concerning free education for the poor, contained in the education provision of the constitutions of 1790 and 1838,⁶⁰ was not a limitation on the power of the legislation. *Commonwealth v Hartman*, 17 Pa. 118 (1851). The court held that the clause defined the minimum legislative effort and did not enjoin the legislature from doing more. *Id.* In 1852, another staunch supporter of public education, William Bigler, was elected governor. His superintendent of public schools, Charles A. Black, would later sit on the education committee of the Constitutional Convention of 1873. Governor Bigler oversaw an expansion of state efforts in education, which included the establishment of the first state normal schools and the State Teachers' Association and the first publication of the *Pennsylvania School Journal*.

During this period, Pennsylvania was not alone in its efforts to institute a universal system of public education. People like Horace Mann in Massachusetts, Henry Barnard in Connecticut, Samuel [*102] Lewis in Ohio, and John Pierce in Michigan led movements advocating publicly-funded universal education. Some states added education clauses to their constitutions or strengthened their commitment to education by passing new legislation. The phrase "thorough and efficient" was first included in the Education Clause of the Ohio Constitution of 1851 and over the next several decades was added to the constitutions of Minnesota, Maryland, New Jersey, Pennsylvania and West Virginia. During this period, when the idea of universal public education was gaining broad acceptance, Horace Mann was influential not only in his home state of Massachusetts but

⁶⁰The education clause was found at Article VII, Section 1 in both constitutions. It provided: "The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." Pa. Const. of 1838, Art. VII, §1; Pa. Const. of 1790, art VII, §1.

throughout the country. The phrase can be traced to a lecture Mann delivered in 1840: "[T]he efficient and thorough education of the young was not merely commended to us, as a means of promoting private and public welfare, but *commanded*, as the only safeguard against such a variety and extent of calamities as no nation on earth has ever suffered." Horace Mann, *Lectures on Education in II Life and Works of Horace Mann* 191 (1891).

Mann (1796-1859) has been called "the father of American public education."⁶¹ He studied law at Litchfield, Connecticut and was admitted to the Massachusetts bar in 1823. [*103] He served in the Massachusetts House of Representatives from 1827 to 1833 and the Senate from 1833 to 1837. In 1837, he was appointed the first secretary of the state board of education and led the reform movement to reassert state influence over schools. He served as secretary for twelve years and issued influential annual reports, containing his thoughts and proposals on a wide range of issues affecting public education. In 1848, he was elected to the United States Congress and later served as president of Antioch College until his death.

To give meaning to the phrase "thorough and efficient," it is necessary to ascertain what Mann meant by it and to understand the influence he had on the public education movement in the states. Though Mann is not explicitly mentioned in the debates leading to the adoption of education clauses in Ohio⁶² or Pennsylvania, his ideas serve to give context to the discussions that took place during these states' constitutional conventions.

Mann believed that universal public education was essential to democracy. He believed that investment in education led to economic prosperity and better public welfare: "An educated people is a more industrious and productive people." *The Republic and the School: Horace Mann and the Education of Free Men* 61 (Lawrence A. Cremin ed., 1957) (hereinafter *The Republic and the School*). In his *Lectures on Education*, Mann stated: "Thoroughness, therefore,—thoroughness, and again I say *thoroughness*, for the sake of knowledge, and still more for the sake of habit,—should, at all events be enforced; and a pupil should never be suffered to leave any subject, until he can reach his arms around it, and clench his hands upon the

⁶¹ This biographical information was gathered from the following sources: 14 *Encyclopaedia Britannica* 795-96 (1969); Mary Tyler Mann, ed., *Life and Works of Horace Mann* (1891), 5 vols.; Jonathan Messerli, *Horace Mann* (1972); Robert B. Downs, *Horace Mann: Champion of Public Schools* (XXXX); E.I.F. Williams, *Horace Mann* (1937).

⁶² At the Ohio convention, one delegate stated that a "thorough and efficient system of common schools" had to be "as perfect as can be devised." II *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State* [*104] of Ohio 698 (J.V. Smith, ed., 1851) (hereinafter *Ohio Debates of 1851*). "Intelligence is the foundation-stone upon which the mighty Republic rests—its future destiny depends upon the impulse, the action of the present generation. . . ." II *Ohio Debates of 1851* 14. "Educate them and they become useful members of the community that has cared for them. . . . Education will tend to make men moral and useful members of society; therefore let us provide for the education of every child in the state." II *Ohio Debates of 1851* 11, 13. "I think it must be clear to every reflecting mind that the true policy of the statesman is to provide the means of education, and consequent moral improvement, to every child." II *Ohio Debates of 1851* 11. "In my opinion, the great object to be attained is a system of education, general and complete, which shall extend its advantages to all the children of the State, and afford to each an opportunity to secure all the benefits which it affords." II *Ohio Debates of 1851* 710.

opposite side." Mann, *Lectures on Education in II Life and Works of Horace Mann* 69 (1891). Mann placed the responsibility on legislators:

In our country and in our times, no man is worthy the honored name of a statesman, who does not include the highest practicable education of the people in all his plans of administration. He may have eloquence, he may have a knowledge [*105] of all history, diplomacy, jurisprudence; and by these he might claim, in other countries, the elevated rank of a statesman; but, unless he speaks, plans, labors, at all times and in all places, for the culture and edification of the whole people, he is not, he cannot be, an American statesman.

Mann, *Lectures on Education in II Life and Works of Horace Mann* 188 (1891). The legislators had a duty to provide for education because, for Mann, education was a natural right:

I believe in the existence of a great, immutable principle of natural law...which proves the *absolute right* of every human being that comes into the world to an education. . . . [U]nder a republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge;—such an education as teaches the individual the great laws of bodily health; as qualifies for the fulfillment of parental duties; as is indispensable for the civil functions of a witness or juror; as is necessary for the voter in municipal affairs; and finally, for the faithful and conscientious discharge of all those duties which [*106] devolve upon the inheritor of a portion of the sovereignty of this great republic.

The Republic and the Schools 63. The ideas espoused by Mann had great impact on public education movements across the country and contributed to the adoption of education clauses in various state constitutions.

B.

The Constitutional Convention of 1873

After the Civil War, the movement to reform the Pennsylvania's legislative practices led to a constitutional convention in 1873. Advocates of public education, armed with a succession of legislative actions, wanted to solidify the constitutional basis of public schools by proposing new language for the education article. The article was rewritten to exclude two clauses found in the earlier constitutions, one concerning free education for the poor, which had earlier been interpreted as a limitation on legislative power, and the other requiring legislative action "as soon as conveniently may be," which had rendered the article

discretionary. Other than the provision requiring that a million dollars per year be appropriated by the General Assembly to support education, the main part of the amendment text that was eventually adopted in the 1874 Constitution and [*107] survives today was submitted in a resolution by J. Alexander Simpson.⁶³ I *Debates of the Convention to Amend the Constitution of Pennsylvania* 90 (1873) (hereinafter *Pennsylvania Debates of 1873*). An education committee was appointed, which then met to consider the resolution. I *Pennsylvania Debates of 1873* 109. After the committee's report was presented, the committee of the whole considered the report of the education committee. II *Pennsylvania Debates of 1873* 250, 419. William Darlington explained that "the general objects and scope" of the clause were to address the inadequacy of the earlier texts:

We have out-grown that state of things long since. The Legislature, with the entire sanction of the people of this Commonwealth, has gone far in advance of the constitutional injunction placed there in the early history of the Commonwealth. . . . [W]e felt that it was better for this Convention that it ought so to recognize the existence of that admirable system of public schools which now prevails all over the Commonwealth as the existing state of things require.

II *Pennsylvania Debates of 1873* 419. Darlington concluded his remarks by stressing the connection between democracy and education: [*108] "If we are all agreed upon one thing it is, that the perpetuity of free institutions rests, in a large degree, upon the intelligence of the people, and that intelligence is to be secured by education." II *Pennsylvania Debates of 1873* 421. This sentiment was echoed by Harry White: "The section on education is second in importance to no other section to be submitted to this Convention." II *Pennsylvania Debates of 1873* 421.

The committee considered and rejected a proposal to insert the word "uniform" before the word "thorough" so that the phrase would have read "the support of a uniform, thorough and efficient system." Its sponsor, Samuel Minor, was concerned that the provision, as submitted, would have authorized the legislature to create different systems of education in every county: "There is no limitation upon the power of the Legislature, as to uniformity, or its counterpart, variety in the location, in the time, in the degree of schools, or of education." II *Pennsylvania Debates of 1873* 422. The amendment's opponents were numerous. Mr. Lilly argued: "If uniformity means uniformity in everything, it is very impracticable. . . . [Y]ou will find that different regulations will have [*109] to be made for different parts of the state." II *Pennsylvania Debates of 1873* 422. Mr. Hazzard maintained that city schools had different requirements than schools in rural areas and that the word could be construed to require the use of the same kind of text books throughout the state. II *Pennsylvania Debates of 1873* 423. He stated:

⁶³ The text read: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools when all children of this Commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose" Pa. Const. of 1874 art. X §1. The provision was renumbered on May 16, 1967 and amended to read: "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." Pa. Const. art. III, §14.

We do not want to have a "uniform" system. We want to have the right to introduce when and where we please some of these higher branches into our common schools, so that our children who cannot go to colleges and academies away from home may go into their own schools paid for and sustained by the people of the State, and study these higher branches with a teacher of competence. We do not want this word 'uniform' here for it may be construed so as to lead to a conclusion on the part of school directors and others that we have only the elementary branches so as to be 'uniform' with similar schools elsewhere in the country. It will admit of that construction.

II *Pennsylvania Debates of 1872* 425-26.

Likewise, Mr. Stanton objected to the use of the word uniform because it would render the system rigid and insensitive to the needs of local communities. He pointed [*110] out, "[T]here are graded institutions throughout the State, but there are certain school districts wherein it would be utterly impossible to establish the same classes and grades of schools as those which we have in Philadelphia." *Id.*

Mr. Hazzard believed that the amendment would prevent local school directors from responding to local-needs when sufficient funds were available: "[T]his word would operate even as against the introduction of chemical or philosophical apparatus into one school because in another school they could not afford to have it. . . . [I]f we choose to pay something more for the privilege I speak of, over and above the tax, let us have the right to do it. Let us have the right to a higher class of studies where we want it." II *Pennsylvania Debates of 1873* 426. Augustus S. Landis argued that the word "uniform" was superfluous: "The word 'system,' of itself, suggests sufficient symmetry, and a sufficient measure of uniformity, without annexing to it so rigid a word as 'uniform'" He went on to state:

[W]hen we affix to that word "uniform," you require the Legislature to so legislate that they shall create a system which shall be unbending in all its features; [*111] and no matter what may be the requirements of any part of the State, no matter what may be the length of school terms required in one part over another, no matter what may be the kind of books which one district may require, no matter, in short, what may be the different local requirements throughout the State, by the use of the word "uniform" you compel the enactment of an iron law.

II *Pennsylvania Debates of 1873* 423. J. Alexander Simpson suggested that the section was complete without the amendment: "[T]he system is intended to give an opportunity to every child in the Commonwealth to get an equal chance for a good and proper education" II *Pennsylvania Debates of 1873* 423-24.

At the time, rural, sparsely populated areas had only one-room schoolhouses, in which all students regardless of age or ability were taught together. Because there were no high schools in these areas, some of the subjects usually offered only in high

schools were taught to older students in the common schools. In the more populated areas, a more specialized system that included graded schools offering a wider variety of instruction was available. The comments of convention delegates indicate concerns [*112] that adding the word "uniform" would inhibit efforts to address local educational needs or to create greater opportunities than those available elsewhere. There was a fear that high schools would be required even in the rural areas or that certain subjects could not be taught in the common schools.

While the delegates did not insert the word uniform, the requirement that the General Assembly was required to appropriate at least one million dollars for the support of education was added. Mr. Lear noted that the state funding of public education "is an assistance and help to those localities where children prevail to a greater extent than wealth." II *Debates of 1873*, 436. Regarding this requirement, Mr. Beebe stated that:

The result has been that in the poorer districts or portions thereof, of this State, the maximum tax would not keep up the public schools for the four months required by law; and that is perhaps why this clause [the one million dollar minimum appropriation clause] is inserted here; at least it is a reason why it should be here, so that we shall not make a farce of our public school system by ordaining in the Constitution that we shall have public schools and then force [*113] the poorer counties to assess the maximum of tax authorized by law to support a four months' school, whereas, in the wealthier counties in the State a tax of two mills would be all that it would be requisite for them to have for better schools and for a longer term. The failure of the Legislature to make such appropriations as would equalize the burdens of supporting the system is therefore, I take it, a reason why this proposition is inserted.

II *Pennsylvania Debates of 1873*, 679.

However, others believed that the addition of the funds was a way to gain state influence over local school boards. Mr. Mann, the delegate who offered the amendment adding the funding requirement, explained the reason for adding the funding requirement as follows:

[T]he appropriation enables the Superintendent of Public Instruction to extend his influence to every district in the State, and to keep them up to a better standard in regard to instruction, which would entirely fail with a smaller appropriation. When an appropriation of only half a million dollars is divided up, it becomes so small that it cannot possess much influence in the various districts, but if it is provided that the appropriation shall [*114] not be less than a million dollars, it then becomes a very considerable item, and furnishes an inducement to every board of school directors in the State to obtain all the requirements prescribed by law, in order to secure a portion of its benefits. This is the argument in favor of retaining this provision in the Constitution, and the Committee upon Education have reported it simply because it will give

a new impetus to the educational system in Pennsylvania and it will give the Superintendent of Public Instruction far more influence throughout the various counties because there will be a larger inducement held out everywhere to school directors to comply with the law.

Commenting on the adoption of the new Education Clause, J.P. Wickersham, who served as superintendent of common schools from 1866 to 1880, remarked on the importance of the new constitutional language at a meeting of the State Teachers' Association in August 1874:

On the whole, the educational provisions of the new Constitution, in comparison with those of the old, show a wonderful degree of progress. Indeed, their adoption marks a new era in our school affairs. We have now a firm foundation embedded in the organic law of the State, on [*115] which to erect the grand educational structure of the future. Those of us who have spent the greater part of our lives and our best efforts in the good cause of the education of the people find here the fruition of our labors. The past at least is secure, crystallized in a constitution that may last a century, and the door of the future is wide open to admit the throng of vigorous young workers whose task it is to extend, strengthen and perfect.

J.P. Wickersham, quoted in J.P. Wickersham, *A History of Education in Pennsylvania* 577 (1886).

Both PARSS and the Commonwealth offered a historian to give a historical perspective and context to the delegates' remarks at the convention. While they both recounted generally the same history set forth-above, they emphasized-different aspects to place a different gloss on the remarks. PARSS offered the testimony of Richard J. Altenbaugh, an Associate Professor of History at Slippery Rock University. Dr. Altenbaugh testified that the intellectual view of the day was that children were economic assets that were too important for the state to ignore, and relying on parents alone was insufficient to assure that literacy would occur and that civic values [*116] would be instilled. It was that imperative that was driving the delegates in 1873 to recommend the adoption of the Education Clause. Relying on the comments of Delegate Landis that "the word 'system' of itself suggests sufficient symmetry and sufficient measure of uniformity without annexing to it to so rigid a word as uniform" and that the state had ultimate control over all children, Dr. Altenbaugh opined that what was accepted at the convention was that the system of education was to be uniform.

The Commonwealth called Dr. Charles Glenn, professor and Chairman of Administration, Training and Policy Studies at the Boston School of Education. Contending that Dr. Altenbaugh placed, the wrong interpretation on the evidence and ignored comments of the delegates that showed his interpretation was wrong, he stated that the delegates did not intend uniformity in funding but wanted local school districts rather than the state to retain control, but with state encouragement. Delegates, for example, feared inclusion of the word "uniform" would be "construed to mean, among other things: uniform textbooks; and

that is where the difficulty will commence." II Pennsylvania Debates of 1873, 424. Dr. Glenn testified [*117] that apart from textbooks, no proposals were made by any of the delegates that would require or provide for uniformity among public schools, whether in teaching methods, disciplinary procedures, facilities, staff, or other resources. The "excellence of the school system of Pennsylvania," it was pointed out:

is the fact of it being so completely localized, that the control and superintendence of the schools in any immediate neighborhood is under a board chosen by the people who support those schools and who send [their children] to the schools. The State supervision is a mere incident of the system. II Pennsylvania Debates of 1873, 435.

Dr. Glenn also stated that the debates surrounding the adoption of the education provisions of the 1874 *Constitution* made it clear that the delegates did not see themselves as breaking significant new ground in the direction of state control, much less "ownership" of children, but rather as confirming what had already been accomplished by local initiatives and state encouragement. He pointed to the comments made by the chairman of the Committee on Education at the 1873 Convention, noting when the proposed education clause was introduced that:

The Legislature, [*118] with the entire sanction of the people of this Commonwealth, has gone far in advance of the constitutional injunction placed there in the early history of the Commonwealth. Indeed there cannot be any absolute necessity for the expression of an opinion on this general subject of education by this Convention. ... we felt that it was better for this Convention that it ought so to recognize the existence of that admirable system of public schools which now prevails all over the Commonwealth as the existing state of things required. It will be therefore perceived that, instead of depending upon the Legislature to establish a system of education, the phraseology of the first section, now before us, we think shall provide for the maintenance and support, merely recognizing the fact as it exists, and merely changing the phraseology from common schools to a system of public schools."

II Pennsylvania Debates of 1873, 419-420.

Drs. Altenbaugh and Glenn's opinions are helpful in adding new insights into the intellectual currents leading up to the Constitutional Convention of 1873 and the debates that led to the subsequent adoption of the Education Clause, ultimately, it is the role of the courts to determine what [*119] the Constitution means. Both this court and our Supreme Court have examined the constitutional history and have already determined the constitutional obligation imposed on the General Assembly by the Education Clause.

VI.

THE CONSTITUTIONALITY OF THE PRESENT EDUCATIONAL FUNDING SCHEME

PARSS contends that the Pennsylvania system of school financing violates both the Education Clause and Equal Protection provisions of the Pennsylvania Constitution because the present legislative educational funding scheme creates large disparities in the funds that wealthy school districts can spend educating their students as opposed to the funds that poor school districts can spend educating their students. PARSS contends that to meet the constitutional responsibility to provide a "thorough and efficient education," the General Assembly must eliminate this funding disparity and provide all students with an education that has roughly the same resources so that each and every student can receive a "quality" education.

The Commonwealth, however, contends that the present funding scheme meets the General Assembly's obligation under the Education Clause because it has established a system that allocates funds to substantially make up for any disparities in wealth between school [*120] districts. It points out that PARSS has offered no evidence to show that any student in Pennsylvania is not receiving an adequate education. It also argues that the term "quality" education is a comparative one that improperly compares one district to another based solely on the amount of money spent, and such a comparison has no bearing on whether the General Assembly has met its constitutional obligation because money does not directly correspond to the education any student receives. In short, it argues that the Commonwealth has met any and all constitutional obligations to provide for a "thorough and efficient system of public education."

Even though it argues that the present educational funding scheme meets the goal of providing students with a "thorough and efficient" education and is constitutional, the Commonwealth also argues the question of whether it has met that standard and what is a "basic," "minimal," "adequate," or "quality" education is not for the Court to decide. It contends that the amount of funding and how funds are distributed are political questions and decisions solely for the General Assembly to make. As a result, PARSS' challenge to the present funding scheme [*121] is non-justiciable and, for that reason alone, its complaint must be dismissed.

Recently this court in *Marrero v. Commonwealth of Pennsylvania*, 709 A.2d 956 (Pa. Cmwlth. 1998), agreed with the Commonwealth's position that the extent of the Commonwealth's obligation to provide for a thorough and efficient education is a political nonjusticiable question. *Marrero* dealt with an action brought by the City and School District of Philadelphia and others contending that the local tax base could not provide sufficient revenues so that students within the Philadelphia School District could receive an adequate education. They contended that the General Assembly was obligated by Article 3, Section 14 of the Pennsylvania Constitution to appropriate sufficient funds to meet its obligation that all students receive a "thorough and

efficient" education. Agreeing with the Commonwealth that the courts were without power to address this issue, this Court held that once a system of public education was in place, it was solely within the discretion of the General Assembly to determine the type of education that students of the Commonwealth were to receive because there was no constitutional mandate that public school students of the Commonwealth were entitled to receive any particular level of education. This court stated:

The [*122] purpose of Article 3, Section 14, and its predecessor provision, was to shift some of the control of the operation of the public school system in this Commonwealth from the various localities to the General Assembly. To defray a portion of the expenses incurred under this system, some funds are appropriated from the General Assembly for the operation of the schools. It was never the intention of the drafters of these constitutional provisions to wrest control of the schools from the local authorities, and place all of the responsibility for their operation and funding on the General Assembly. Rather, the General Assembly was charged with the responsibility to set up a "thorough and efficient system of public education" in the Commonwealth. The General Assembly has satisfied this constitutional mandate by enacting a number of statutes relating to the operation and funding of the public school system in both the Commonwealth and, in particular, in the City of Philadelphia.

In addition, Article 3, Section 14 places the responsibility for the maintenance and support of the public school system squarely in the hands of the legislature. Thus, this court will not inquire into the reason, wisdom, or expediency [*123] of the legislative policy with regard to education, nor any matters relating to legislative determinations of school policy or the scope of educational activity. In short, as the Supreme Court was unable to judicially define what constitutes a "normal program of educational services" in *Danson [v. Casey]*, 484 Pa. 415, 399 A.2d 360 (1979)], this court is likewise unable to judicially define what constitutes an "adequate" education or what funds are "adequate" to support such a program. These are matters which are exclusively within the purview of the General Assembly's powers, and they are not subject to intervention by the judicial branch of our government. *Danson; Teachers' Tenure Act Cases; Ross' Appeal. See also School District of Newport Township v. State Tax Equalization Board*, 366 Pa. 603, 79 A.2d 641 (1951). (The appropriation and distribution of the school subsidy is the peculiar prerogative of the General Assembly for no other branch of our government has the power to appropriate funds).

Thus, prominent on the surface of this case is a "textually demonstrable constitutional commitment of the issue to a coordinate political department", i.e., the General Assembly. Likewise, there is a lack of judicially manageable standards for resolving the instant claims, and it would be impossible to resolve the claims without [*124] making an initial policy determination of a kind which is clearly of legislative, and not judicial, discretion. *Baker; Sweeny*. In sum, we are precluded from addressing the merits of the claims underlying the instant action as the resolution of those issues have been

solely committed to the discretion of the General Assembly under Article 3, Section 14 of the Pennsylvania Constitution.
(Most citations omitted) (Footnotes omitted).

Because PARSS is making the same challenge as the plaintiffs did in *Marrero*, its claim is also a political question and, correspondingly, makes it non-justiciable. For that reason, its action must be dismissed and a verdict rendered in favor of the Commonwealth.

Nonetheless, even though *Marrero* is controlling, it is necessary to examine the underlying constitutional claims as if they were justiciable because *Marrero* and this case will certainly going to be subject to further judicial review.

A.

Before addressing the underlying constitutional claims, I would reiterate the reasons set forth in my dissent in *Marrero* as to why I believe a challenge to the constitutionality of the current educational funding scheme is not a political question and is justiciable.⁶⁴ A political question that makes an issue non-justiciable [*125] is one that arises concerning a function of the separation of powers among co-equal branches of government. *Pennsylvania Human Relations Commission v. School District of Philadelphia (PHRC)*, 667 A.2d 1173 (Pa. Cmwlth. 1183). In *Blackwell v. City of Philadelphia*, 546 Pa. 358, 364, 684 A.2d 1068, 1070 (1996), our Supreme Court described this doctrine as follows:

A nonjusticiable political question is presented where there is a challenge to legislative power which the constitution commits exclusively to the legislature. ... Courts will not review actions of another branch of government where political questions are involved because the determination of whether the action taken is within the power granted by the constitution has been entrusted exclusively and finally to political branches of government for self-monitoring. *Id.* at 509, 375 A.2d at 706. In deciding whether a dispute concerns a nonjusticiable political question, this Court in [*Sweeney v. Tucker*, 473 Pa. 493, 375 A.2d 698 (1977)] adopted the standards enunciated in *Baker v. Carr*, [369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663] (1962)...⁶⁵

⁶⁴In *Coalition for Adequacy and Fairness in School Funding v. Chiles*, 680 So.2d 400 (Fla. 1996), and in *City of Pawtucket v. Sudlin*, 662 A.2d 40 (R.I. 1995), both Florida and Rhode Island's Supreme Courts also held that constitutional challenges to state funding schemes are non-justiciable.

⁶⁵The full text of the Supreme Court's opinion in *Baker v. Carr* that is ordinarily cited for this proposition is as follows:

It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more [*126] elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual

Determination of whether a complaint involves a nonjusticiable political question requires making an inquiry into the precise facts and posture of that complaint, since such a determination cannot be made merely by semantic cataloguing....

However, even if a question is determined to be a political question, that does not end our inquiry. As this Court stated in *Jubelirer v. Singel*, 162 Pa. Commw. 55, 638 A.2d 352, 358-59 (Pa. Cmwlth. 1994):

[O]ur conclusion that these matters are constitutionally committed to the Legislature by Article 11 of the Pennsylvania Constitution does not end our inquiry. A determination that an issue is a nonjusticiable political question is essentially a matter of judicial abstention or restraint. As our Supreme Court [*127] has said: "To preserve the delicate balance critical to a proper functioning of a tripartite system of government, this Court has exercised restraint to avoid an intrusion upon the prerogatives of a sister branch of government.... Whatever theory is employed, the legitimacy of the abstention is dependent upon the situation presented.

Here, Petitioners allege various constitutional violations. In such cases, we will not abdicate our responsibility to "insure that government functions within the bounds of constitutional prescription ... under the guise of deference to a co-equal branch of government. ... It would be a serious dereliction on our part to deliberately ignore a clear constitutional violation." As the Supreme Court stated in *Baker v. Carr*:

Deciding whether a matter has in any measure been committed by the constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate responsibility of this Court as the ultimate interpreter of the Constitution....⁶⁶

need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. at 217. The Pennsylvania Supreme Court has held that the presence of any one of these elements will prompt a court to refrain from considering the claim asserted. See *Zemprelli v. Daniels*, 496 Pa. 247, 436 A.2d 1165 (1981).

⁶⁶ *Pennsylvania AFL-CIO v. Commonwealth*, 691 A.2d 1023, 1031 (Pa. Cmwlth. 1997):

[J]udicial restraint to avoid intrusion by the judiciary into the prerogatives of a co-equal branch of government, the legitimacy of such abstention [*128] is dependent upon the situation presented. *Common Cause of Pennsylvania v. Commonwealth*, 668 A.2d 190, 195 (Pa.Cmwlth.1995), *off d per curiam*, 544 Pa. 512, 677 A.2d 1206 (1996); *Consumer Party*, 510 Pa. at 177, 507 A.2d at 333. The countervailing concern is the judiciary's mandate to insure that government functions within the bounds of constitutional prescription. *Consumer Party*, 510 Pa. at 177, 507 A.2d at 333.-The judiciary may not abdicate this responsibility under the guise of its deference to a co-equal branch of government. *Id.* at 177-78, 507 A.2d at 333.

Our Supreme Court has stated that "[w]hile it is appropriate to give due deference to a coequal branch of government as long as it is functioning within constitutional constraints, it would be a serious dereliction on our part to deliberately ignore a clear constitutional violation." *Id.* at 178, 507 A.2d at 333; *Common Cause*, 668 A.2d at 195.

While it is beyond cavil that courts should not intrude in the affairs of another branch of government, whether the General Assembly has complied with the Constitutional mandate is not an usurpation of power on our part or an intrusion into the affairs of another branch, but a duty that is vested in the courts by Article III of the Pennsylvania Constitution. We must, of course, apply the proper standard in undertaking that review. If this issue is nonjusticiable, the courts may as well close their doors to challenges to the constitutionality of any statute, because I cannot think of any such challenge that could not properly be characterized as a political question. Moreover, our Supreme Court has repeatedly examined and found justiciable challenges to educational legislation, including challenges to the educational funding scheme and, accordingly, determined whether the General Assembly's [*129] actions conform to the mandates of the Pennsylvania Constitution that there be a thorough and efficient system of public education. *See, e.g., School District of Philadelphia v. Twer*, 498 Pa. 429, 447 A.2d 222, 225 (1982) (noting that interpretation of legislation relating to public schools should be reviewed in context of the responsibility that the Education Clause imposes upon General Assembly); *Danson v. Casey*, 484 Pa. 415, 399 A.2d 360 (1979); *Ehret v. School Dist. of Borough of Kulpmont*, 333 Pa. 518, 5 A.2d 188 (1939) (judiciary can interfere with legislature's control of school system only if constitutional limitations so require); *Teachers' Tenure Act Cases*, 329 Pa. 213, 197 A. 344, 86 Pitts. Leg. J. 71 (1938).⁶⁷

The effect of holding that once the General Assembly has established that a system of public education is non-justiciable means that the courts are foreclosed from examining whether that system is providing children in Pennsylvania with a thorough and efficient education no matter how that term is defined. For example, if the system of funding education in Pennsylvania does not provide school districts with sufficient revenues to hire teachers, turn on the lights or heat buildings, because the General Assembly has created a "system" of funding education, under *Marrero*, it has fulfilled its mandate under the Education Clause and the level of funding, no matter how inadequate, cannot be challenged because it is a non-justiciable political issue.

Contrary [*130] to this court's holding in *Marrero*, if an educational funding scheme produces a result that is plainly and palpably in violation of the General Assembly's constitutional mandate, it is incumbent upon the courts to consider a challenge to that system and to order a remedy. There is no basis to conclude that any and all systems fulfill the General Assembly's constitutional mandate to "maintain and support" a "thorough and efficient system of public education" under the Education

⁶⁷ Other state courts have specifically found that the challenges to state funding are justiciable. *See, e.g., Lujan v. Colorado State Bd. of Education*, 649 P.2d 1005 (Colo. 1982); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156 (Ga. 1981); *Rose v. Council for a Better Education*, 790 S.W.2d 186 (Ky. 1989); *Idaho Schools for Equal Education Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (*Id.* 1993); *Leandro v. State of North Carolina*, 346 N.C. 336, 488 S.E.2d 249 (N.C. 1997); *DeRolph v. State*, 78 Ohio St. 3d 193, 1997-Ohio-84, 677 N.E.2d 733 (Ohio 1997); *Tennessee Small Schools v. McWherter*, 851 S.W.2d 139 (Tenn. 1993), *cause remanded*, 894 S.W.2d 734 (Tenn. 1995); *Edgewood Independent School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989); *Seattle School District No. 1 of King Co. v. State of Washington*, 90 Wn.2d 476, 585 P.2d 71 (Wash. 1978); *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824, 66 L.Ed. 2d 28, 101 S.Ct. 86 (1980).

Clause. If the General Assembly had established such a "system" with a funding scheme not providing school districts with sufficient revenues to hire teachers, turn on the lights or heat their buildings, I would hold that a challenge to such a funding scheme is justiciable and unconstitutional.

B.

If a challenge to the state's funding scheme is justiciable, the question then becomes whether the General Assembly's present funding system, creating disparities in educational resources available to students in rich and poor districts, meets the Education Clause of the Pennsylvania Constitution mandate to "provide for the maintenance and support of a thorough and efficient system of public schools."⁶⁸ Although it recognizes that the phrase has never been defined, PARSS contends that a "thorough and efficient" [*131] system of public education is one that assures that every student in Pennsylvania has equal access to all that the educational system has to offer.

However, unlike some other states that have given detailed definitions⁶⁹ of the level of education that their constitutional provisions mandate, our Supreme Court has expressly declined to provide a specific meaning to that phrase because what

⁶⁸ Agreeing that the phrase has never been defined, PARSS contends that from the constitutional history behind the enactment of the Education Clause, a "thorough and efficient" system of public education is one that must assure that every student in Pennsylvania has equal access to all that the educational system has to offer.

⁶⁹ For example, the West Virginia Supreme Court in *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979), a state that has a constitutional provision almost identical to Pennsylvania that requires the legislature to provide a thorough and efficient system of free schools, defined education as follows:

We may now define a thorough and efficient system of schools: It develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically.

Legally recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, [*133] multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work — to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility-with others in this society.

Implicit are supportive services: (1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competence.

In *McDuffy v. Secretary of the Executive Office of Education*, 415 Mass. 545, 615 N.E.2d 516 (Mass. 1993), with a constitutional provision that requires their General Assembly to "provide for an efficient system of schools throughout the state" gave perhaps one of the most expansive definitions of education when it stated:

The crux of the Commonwealth's duty lies in its obligation to educate all of its children. As has been done by the courts of some of our sister States, we shall articulate broad guidelines and assume that the Commonwealth will fulfill its duty to remedy the constitutional violations we have identified. The guidelines set forth [*134] by the Supreme Court of Kentucky fairly reflect our view of the matter and are consistent with the judicial pronouncements found in other decisions. An educated child must possess "at least the seven following capabilities: (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 students to make informed choices;

constitutes a proper education changes depending on the needs of the time. In *Teachers' Tenure Act Cases*, 329 Pa. 213, 224, 197 A. 344, 352, 86 Pitts. Leg. J. 71 (1938), *quoted with approval* in *Reichle v. Commonwealth*, 533 Pa. 519, 626 A.2d 123 (1993), our Supreme Court explained:

When the people directed through the Constitution that the General Assembly should "provide for the maintenance and support of a thorough and efficient system of public schools," it was a positive mandate that no legislature could ignore. The power over education is an attribute of government that cannot be legislatively extinguished. . . .

In considering laws relating to the public school system, courts will not inquire into the reason, wisdom or expediency of the legislative policy with regard to education, but whether the legislation has a reasonable relation to the purpose expressed in [Education Clause], and whether the fruits or effects of such legislation impinge the Article by [*132] circumscribing it or abridging its exercise by future legislatures within the field of "a thorough and efficient system of public schools." So implanted is this section of the Constitution in the life of the people as to make it impossible for a legislature to set up an educational policy which future legislatures cannot change. The very essence of this section is to enable successive legislatures to adopt a changing program to keep abreast of educational advances. The people have directed that the cause of public education cannot be fettered, but must evolute [sic] or retrograde with succeeding generations as the times prescribe.

See also Danson v. Casey, 484 Pa. 415, 426, 399 A.2d 360, 366 (1979) (where our Supreme Court specifically declined to define what would be considered a "normal" program of educational services.)

Instead of defining specifically the type of education to which each student is entitled, our Supreme Court has taken an *ad hoc* approach to what "education" encompasses. As long as school finance legislation bears some sort of rational basis to providing a thorough and efficient system of "education in the context of the legislation being examined, it has held that the General Assembly has fulfilled its constitutional duty and the courts will not inquire as to whether there is a better way of accomplishing the purpose or the soundness of the policy. *School District of Kulpmont, supra* (the General Assembly is

(iii) sufficient understanding of governmental processes to enable the student to understand the issues which affect his or her community, state, or 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 skills so as to enable each child to choose and pursue like work intelligently; and (vii) sufficient level of academic and vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. [*135]

615 N.E.2d at 554, 415 Mass. At 618. *See also Rose v. Council for a Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989).

empowered to establish what is efficient in school management); *Teachers' Tenure Act Cases*, 329 Pa. 213, 224, 197 A. 344, 86 Pitts. Leg. J. 71 (1938).⁷⁰

In *Damon v. Casey*, the leading Pennsylvania case regarding school funding, our Supreme Court reiterated this view. As in *Marrero*, in *Danson*, parents of Philadelphia school children alleged that the statewide school funding formula violated both the Equal Protection and the Education Clauses of the Pennsylvania Constitution. The parents argued that the formula inadequately subsidized the Philadelphia School District, providing Philadelphia school children with only "a truncated and uniquely limited program of education services." *Id.* At 424, 399 A.2d at 365. According great deference to the General Assembly, our Supreme [*136] Court held, "As long as the legislative scheme for financing public education 'has a reasonable relation' to '[providing] for the maintenance and support of a thorough and efficient system of public schools,' the General Assembly has fulfilled its constitutional duty" *Id.* at 427, 399 A.2d at 367.

More recently, in *Reichley v. North Penn School District*, 533 Pa. 519, 626 A.2d 123 (1993), our Supreme Court again set forth the standards to be applied in considering laws relating to the public school system. Rejecting the application of the strict scrutiny test, it again held that courts should not evaluate the "reason, wisdom or expediency of the General Assembly educational policy" stating:

The inquiry, then, must focus on (a) whether the legislation relates to the purpose of the constitutional provision - providing a system of public education is a basic duty of government that the legislature cannot ignore - without regard to the way the legislature has chosen to fulfill achieve this purpose, and (b) whether the legislation purports to limit the further exercise of legislative power with respect to the subject of public education.

Id. At 527, 626 A.2d at 128.

Accordingly, unless another standard is now applicable, the present educational funding scheme would have survived PARSS' challenge under [*137] both the Education Clause and Equal Protection provisions if there was some rational basis for establishing the present educational funding system. *Commonwealth v. Bell*, 512 Pa. 334, 516 A.2d 1172, 1178 (1986).

C.

⁷⁰In fact, the court has interfered only reluctantly with the public school system. This reluctance has a long history. For instance, in *Wharton v. School Directors of Cass Township*, 42 Pa. 358, 364, 2 Luz. Legal Obs. 257, 19 Legal Int. 180 (1862), the court noted that it could provide a remedy if directors refused to perform their duties or if they transcended their powers. However, if directors merely exercised their powers unwisely, there could be no judicial remedy. *Id.* The United States Supreme Court exhibits a similar attitude. *See, e.g., Epperson v. Arkansas*, 393 U.S. 97, 104, 21 L.Ed.2d 228, 89 S.Ct. 266 (1968) (stating that courts can only intervene in school conflicts which implicate basic constitutional values).

There is one exception to the use of the rational basis test when examining the constitutionality of legislation and that is when a challenge is brought under the Equal Protection provisions of the Pennsylvania Constitution. Unlike the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Equal Protection provisions in the Pennsylvania Constitution must be discerned from three different provisions of the Pennsylvania Constitution:⁷¹

Article I, Section 1

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness;

Article I, Section 26

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right; and

Article III, Section 32

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law [under eight identified [*138] categories].

Article I, Section 1 and Article III, Section 32 have generally been considered to guarantee the citizens of this Commonwealth equal protection under the law. *Fischer v. Department of Public Welfare*, 509 Pa. 293, 502 A.2d 114 (1985). As to Article I, Section 26, our Supreme Court in *Fischer* stated:

Article I §26 does not in itself define a new substantive civil right. *Id.* at 511, 296 A.2d at 633. What Article I §26 does is make more explicit the citizenry's constitutional safeguards not to be harassed or punished for the exercise of their constitutional rights. It cannot however be construed as an entitlement provision; nor can it be construed in a manner which would preclude the Commonwealth, when acting in a manner consistent with state and federal equal protection guarantees, from conferring benefits upon certain members of a class unless similar benefits were accorded to all.

Id. at 310-311, 502 A.2d at 123.

Unlike the challenge brought under the Education Clause that goes to the level of funding, i.e., the "level" of education, the equal protection challenge is based on the concept that more money is spent on some students' education based solely on

⁷¹ See *Klein v. State Employees Retirement System*, 521 Pa. 330, 344-45, 555 A.2d 1216, 1224 (1989), *affirmed*, *Goodheart v. Casey*, 523 Pa. 188, 565 A.2d 757 (1989) (identifying the "the equal protection provisions" of the Pennsylvania Constitution as Article III, Section 32, Article I, Section 1 and Article 1, Section 26); see also *Love v. Borough of Stroudsburg*, 528 Pa. 320, 324, 597 A.2d 1137, 1139 (1991) (Article I Sections 1 and 26); *Kroger Co. v. O'Hara. Twp.*, 481 Pa. 101, 117, 392 A.2d 266, 274 (1978) (Article III, Section 32).

whether they live in a poor or wealthy district. However, principles of equal protection do not always prohibit a state from classifying persons differently and treating the classes in different ways. [*139] *James v. Southeastern Transportation Authority*, 505 Pa. 137, 477 A.2d 1302 (1994). In analyzing the equal protection provisions of the Pennsylvania Constitution to determine whether a classification based on wealth is permissible, the same standards are used as those utilized by the United States Supreme Court when reviewing a claim under the Fourteenth Amendment. Quoting from *James*, our Supreme Court in *Nicholson v. Combs*, 550 Pa. 23, 703 A.2d 407, 413 (1997), reiterated those standards as follows:

Under a typical fourteenth amendment analysis of governmental classifications, there are three different types of classifications calling for three different standards of judicial review. The first type—classifications implicating neither suspect classes nor fundamental rights—will be sustained if it meets a "rational basis" test. In the second type of cases, where a suspect classification has been made or a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny. Finally, in the third type of cases, if "important," though not fundamental rights are affected by the classification, or if "sensitive" classifications have been made, the United States Supreme Court has employed what may be called an intermediate standard of review, or a heightened standard of review.

The determination of which classification is involved and [*140] which test to apply depend on either the constitutional importance of the right that is granted or impaired on a unequal basis (in this case, education) or whether the classification upon which the inequality rests is suspect (student's residence). This threshold question of what level of scrutiny to apply often decides the case because for each level of scrutiny, there is a well-settled mode of analysis that often preordains a particular result.

PARSS contends that as a result of our Supreme Court's statement in *School District of Wilkinsburg v. Wilkinsburg Education Association*, 542 Pa. 335, 667 A.2d 5 (1995), that education is a fundamental right in Pennsylvania,⁷² the strict scrutiny test now applies rather than the rational relationship test. Under that test, they argue that there is no way the Commonwealth can justify a classification as constitutional under the Equal Protection provisions⁷³ of the Pennsylvania Constitution when that

⁷²In *Danson*, our Supreme Court did not address whether education was a fundamental constitutional right, but by applying a rational basis test rather than the strict scrutiny standard suggested that the Court believed education was not a fundamental right in Pennsylvania. In *Bensalem Township School District v. Commonwealth*, 105 Pa. Commw. 388, 524 A.2d 1027 (Pa. Cmwlth. 1987), *remanded*, 518 Pa. 581, 544 A.2d 1318 (1988), we cited both *Danson* and *Malone* for the proposition that Pennsylvania courts have refused to recognize a fundamental right to education subject to strict judicial scrutiny.

⁷³The outcome of equal protection challenges to disparities in funding of education between districts could have a great impact on the way all goods and services are provided at the local level. For example, assume residents of a relatively poor municipality claim they are receiving a lower level of police services than residents of a relatively wealthy municipality. Challenges can be made that are very similar to those made in the school finance cases, i.e., police services are funded primarily from local taxes, wealthier areas can spend more on technologies for police, can hire more officers per capita, and afford more and better equipment than is found in poorer local municipalities. Is being safe in

classification allows some students to have less spent on their education solely as a result of the school district in which they reside.⁷⁴

The impact of determining that a right is fundamental, as developed by the federal courts under the Fourteenth Amendment, is to shift the burden to the government to show not only that it had an interest, but [*141] that it had a compelling interest to do what it did when treating people differently. Unlike the "rational basis test," the strict scrutiny test allows courts to determine what constitutes a compelling interest so that courts can inquire into the wisdom of legislative or administrative action.⁷⁵

To illustrate the difference in the tests, it is necessary to show [*142] how each test applies to this case. Under the rational relationship test, the person or entity challenging the legislation's constitutionality has the burden to establish that the classification does not have a rational basis. The basis for a classification need not be set forth in the statute or legislative history and the government agency is not required to advance the reasons for its actions in defending the classification. If the reviewing court detects a rational basis from any source, the legislation must be upheld. *Pennsylvania Liquor Control Board v. Spa Athletic Club*, 506 Pa. 364, 485 A.2d 732, 735 (Pa. 1984,) (quoting *James*); see also *Parker v. Department of Labor & Industry*, 115 Pa. Commw. 93, 540 A.2d 313, 326 (Pa. Cmwlth. 1988) (explaining that while courts can apply the rational basis test to determine whether challenged economic or social law deprive someone of substantive due process, they must refrain from deciding what constitutes wise economic or social policy). Under this standard then, PARSS must show that there is no state interest whatsoever advanced by the educational funding scheme, a difficult standard to meet as evidenced by the uniform lack of success anyone has had in challenging actions of the General Assembly as to whether it has provided a thorough and efficient system of public education.

If, however, as PARSS contends, the strict [*143] scrutiny standard applies, that would mean as the United States Supreme Court stated in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 16-17, 36 L.Ed.2d 16, 93 S.Ct. 1278 (1973),

your home and on the streets just as or more important than receiving an education? This possible extension of this rationale to other governmental services, perhaps, is the reason that "second wave" cases based on state equal protection provisions were largely unsuccessful.

⁷⁴ PARSS does not suggest that all students must always have the same amount of funds spent on each of them; more can be spent if there is a demonstrated need such as a handicap or poverty. They are simply contending that where a student lives should not be a criteria for determining the amount spent.

⁷⁵ As explained in Tribe, *American Constitutional Law* (Second Edition), Section 16-6:

There is a case to be made for a significant degree of judicial deference to legislative and administrative choices in some spheres. Yet the idea of strict scrutiny acknowledges that other political choices - those burdening fundamental rights, or suggesting prejudice against racial or other minorities - must be subjected to close analysis in order to preserve substantive values of equality and liberty. Although strict scrutiny in this form ordinarily appears as a standard for judicial review, it may also be understood as admonishing lawmakers and regulators as well to be particularly cautious of their own purposes and premises and of the effects of their choices.

When expressed as a standard for judicial review, strict scrutiny is, . . . "strict" in theory and usually "fatal" in fact. (Footnotes omitted.)

that "the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a 'heavy burden of justification,' that the State must demonstrate that its educational system has been structured with 'precision,' and is 'tailored' narrowly to serve legitimate objectives and that it has selected the 'less drastic means' for effectuating its objectives, ..." (footnote omitted.) In short, the strict scrutiny standard as developed by the federal courts gives extensive leeway to the courts to determine the validity of a statute because the state must justify to the courts that the legislation or administrative effort is "wise" and not "unfair" and that there is no better way to accomplish its objective. In this case, rather than PARSS having to establish that the educational funding system is "bad," the Commonwealth is required to establish that it is "good."

Whether the strict scrutiny test applies,⁷⁶ to a large degree, is determined by whether education has been found in Pennsylvania to be a fundamental right.⁷⁷ While our Supreme Court in *Wilksburg* [*144] did state *in dicta* that education was a fundamental right, it cannot fairly be read into that decision that it meant to reverse prior case law that education was not a fundamental right and a strict scrutiny standard should apply when reviewing the General Assembly's actions in funding education. *Wilksburg* involved an appeal from a preliminary injunction prohibiting the school district from contracting with a private corporation to operate one of its schools. The trial court granted the preliminary objection without holding a hearing and, after we affirmed, our Supreme Court reversed the grant of the preliminary injunction holding that a hearing was necessary. As to the merits of that case, the Court specifically decided that it did not reach any constitutional issues stating:

[W]e do not depart from the usual order of analysis, under which constitutional questions are avoided if a case may be decided on non-constitutional grounds, because we do not "address" as such the constitutional issue presented. Rather we determine only that the appellants have not had a full and fair opportunity to develop their case, as to either the constitutional or statutory issue.

Id. at 346, 667 A.2d at 10.

Thus, contrary to [*145] PARSS' analysis, the Court in *Wilksburg* did not reach the constitutional issue, then it necessarily did not reach the issue of whether education was not only a right, but a fundamental right — let alone go on to determine

⁷⁶ Most rights that have been deemed to be fundamental flow from the Bill of Rights or otherwise protect personal rights of every citizen to be free from unwarranted governmental interference. However, challenges to benefits and services authorized by the General Assembly are analyzed under the rational basis test. This level of review is appropriate because it gives due deference to the General Assembly's function of allocating state resources. If the strict scrutiny test were applied to matters of benefits or services, the General Assembly would, in effect, have to justify to the courts that the legislation meets a compelling state interest and that it could not be done in a different or better way. Such a role that is beyond our ken.

⁷⁷ Several states did not apply the strict scrutiny standard, even though they found education to be a fundamental right. See *Shofstall v. Hollins*, 110 Ariz. 88, 515 P.2d 590 (Ariz 1973); *Bismarck Public School District No. 1 v. North Dakota*, 511 N.W. 2d 247 (N.D. 1994).

whether "strict scrutiny" was the proper method of analysis to determine whether legislation was in accord with the Equal Protection provisions. This seems especially true, when two years earlier in *Reichley*, it specifically rejected the application of such a method of analysis.⁷⁸ Accordingly, a strict scrutiny analysis does not apply to determine whether the educational funding scheme is constitutional.

D.

Even if the strict scrutiny test does not apply, PARSS contends that it has met its burden of proving the educational funding scheme is unconstitutional by showing that there is no rational [*147] basis for relating the amount of money spent on a child's education based solely upon where the child lives. However, based on the case law and the evidence presented at trial, PARSS has not met its heavy burden of establishing that the present funding scheme is not rationally related to any state goal.

In *Danson*, after considering whether the educational funding formula violated both the Equal Protection provisions and Education Clause of the Pennsylvania Constitution, our Supreme Court found that it violated neither. The Court found that the principle of local control of schools was a legitimate state objective, and that school funding schemes that relied heavily on local taxation bore a reasonable relation to that objective. *Id.* At 427, 399 A.2d at 367. It reasoned that "the framers [of the Constitution] endorsed the concept of local control to meet the diverse local needs and took notice of the right of local communities to utilize local tax revenues to expand educational programs supported by the state." *Id.* It rejected plaintiffs' view that the Education Clause mandated any level of funding because to do so would violate the "essence" of the Education Clause which is to prevent courts from binding future legislatures and schools by prescribing a judicial view of a

⁷⁸ Essentially, what PARSS is asking us to do in holding that *Wilksburg* created a fundamental right is to adopt Justice Manderino's dissent in *Danson* where he stated:

Implicit in this conclusion is its converse that had the right to a public education been afforded explicit or implicit protection by the federal constitution, it would have been a "fundamental" right, and any legislation interfering with that right would be required to withstand strict judicial scrutiny.

"[S]trict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a 'heavy burden of justification,' that the State must demonstrate that its educational system [*146] has been structured with 'precision,' and is 'tailored' narrowly to serve legitimate objectives and that it has selected the 'less drastic means' for effectuating its objectives"

The Pennsylvania system of financing public education impinges upon Philadelphia's children's constitutionally mandated right to a "thorough" public education, a right explicitly recognized and protected by Article III, Section 14 of the constitution of this Commonwealth. Because appellants' petition alleges that the statutory financing scheme interferes with that constitutional right, it must be closely scrutinized to ascertain whether the alleged discrimination may be justified by "a showing of a compelling state interest, incapable of achievement in some less restrictive fashion" The majority therefore errs when it concludes that because the public education financing scheme passes constitutional muster simply it is "reasonably related" to the maintenance and support of the state's public education system. (Citations omitted.)

484 Pa. at 435, 399 A.2d at 371.

constitutionally [*148] required "normal" program of educational services. As a result, our Supreme Court refused the plaintiffs' request to force the Commonwealth to provide a uniform education throughout the Commonwealth. *Id.*

As to whether all school children were required to have the same funds spent on them, the Court went on to state:

[E]xpenditures are not the exclusive yardstick of educational quality, or even educational quantity. It must be obvious that the same total educational and administrative expenditures between two school districts does not necessarily produce the same educational service. The educational product is dependent on many factors including the wisdom of the efficiency and the economy with which the available sources are utilized.

Danson, 484 Pa. at 427, 399 A.2d at 366. It concluded that appellants in that case were attempting to engraft "uniformity" onto the Education Clause, contrary to the intent expressed during the 1873 debates when the Education Clause was proposed and later adopted by the electorate. *See also Lisa H. v. State Board of Education*, 67 Pa. Commw. 350, 447 A.2d 669 (Pa. Cmwlth. 1982), *affirmed*, 502 Pa. 613, 467 A.2d 1127 (1983) (the Education Clause "does not confer an individual right upon each student to a particular level or quality of education. . . ."). Because *Danson* holds that it is constitutional to allow different levels of funding on a per-pupil basis between [*149] school districts, PARSS' claim that the educational funding system in Pennsylvania is unconstitutional because the same resources do not support all students must similarly fail under the challenges brought pursuant to both the Education Clause and the Equal Protection provisions.

To meet its burden in this case, PARSS had to show that the present system of funding education produced the result that a substantial number of districts did not have funds to provide a basic or minimal education for their students. Such a system would not have been rationally related to any state interest and would have violated the Education Clause mandate for the state to provide for the maintenance of a thorough and efficient system of public education. Even though in *Danson* our Supreme Court specifically declined to determine what constituted a thorough and efficient education, it is clear from its holding that if children are receiving an adequate education, then the existing statutory scheme for funding education is rationally related to the goals of the system created by the General Assembly. Not one of PARSS' witnesses testified that any of the children in their districts were receiving an inadequate education. In fact, superintendents of various school [*150] districts testified as to the impressive efforts they were making to educate students in their districts, even though, like all of us, they wanted more resources to do an even better job. However, when a school district is providing a basic education, under *Danson*, if it wants to provide more, it is matter within the discretion of the local school board or the General Assembly to provide those resources.

Accordingly, we will enter a decree nisi dismissing PARSS' Petition for Review. Post-trial motions are to be filed within ten (10) days of the date of the decree.

/s/ Dan Pellegrini

DAN PELLEGRINI, JUDGE

DECREE NISI

AND NOW, this 9th day of July, 1998, it is ORDERED that Petitioners' Petition for Review is dismissed. Unless post-trial motions are filed within ten (10) days from the date of this Order, the Prothonotary shall enter this Decree Nisi as the final Decree.

/s/ Dan Pellegrini

DAN PELLEGRINI, JUDGE

APPENDIX I

ALABAMA

CONSTITUTIONAL PROVISION:

"The Legislature shall establish, organize and maintain a liberal system of public schools throughout the state for the benefit of the children thereof." Ala. Const. art XIV, §256.

LEADING CASE:

Alabama Coalition for Equity v. Hunt, No. CV-90-883-R (Ala. Cir., filed April [*151] 1, 1993), appendix to *Opinion of the Justices*, 624 So. 2d 107 (Ala. 1993) (Supreme Court of Alabama holding in advisory opinion that legislature was required to comply with circuit court order).

1. **Education Clause Defined.** The circuit court read the constitutional provision to create a duty in the legislature to provide for the right to education. *Alabama Coalition for Equity*, appendix to *Opinion of the Justices*, 624 So. 2d at 146-47. The court

interpreted the word "system" to require equal opportunity throughout the state. *Alabama Coalition for Equity*, appendix to *Opinion of the Justices*, 624 So. 2d at 148-49. "Equal' educational opportunities need not necessarily be strictly equal or precisely uniform, whether these opportunities are discussed in terms of school finding, of the programs purchased with such funds, or of the actual educational benefits offered." *Alabama Coalition for Equity*, appendix to *Opinion of the Justices*, 624 So. 2d at 114. The court found that "the Alabama constitution's education guarantee is one that accords schoolchildren of the state the right to a quality education that is generous in its provision and that meets minimum standards of adequacy." *Alabama Coalition for Equity*, appendix to *Opinion of the Justices*, 624 So. 2d at 154.

2. Is Education a Fundamental Right? Yes. The court held that education was a fundamental right and applied a "strict scrutiny" standard under the state's equal protection provision. [*152] *Alabama Coalition for Equity*, appendix to *Opinion of the Justices*, 624 So. 2d at 157.

3. School Financing System Constitutional. No. "Thus, the Court, in reviewing the evidence, has focused its inquiry broadly on the issue of substantial equity and fairness in the way the state's system of public schools allocates educational opportunity to its students. In this area, the Court finds that Alabama's public school system falls dramatically short." *Alabama Coalition for Equity*, appendix to *Opinion of the Justices*, 624 So. 2d at 115.

4. Remedy. After the court entered an order to increase finding, state constitution amended to take away from court's ability to order public school funding.

ARIZONA

CONSTITUTIONAL PROVISIONS:

Ariz. Const. art XI, §1: "The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system." Ariz. Const. art. XI, §6: "The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years."

LEADING CASES:

Shofstall v. Hollins, 110 Ariz. 88, 515 P.2d 590 (1973).

1. **Education Clauses Defined.** The court found that education was a fundamental right under the state constitution, which "by its provisions, assures to every [*153] child a basic education." *Shofstall*, 110 Ariz. at 90, 515 P.2d at 592.

2. **Is Education a Fundamental Right?** Yes. "We hold that the Constitution does establish education as a fundamental right of pupils between the ages of 6 and 21 years." *Id.*, 515 P.2d at 592.

3. **School Financing System Constitutional.** Yes. Even though it characterized education as a fundamental right, the court did not find a violation of equal protection. The court found that the system met all of the constitutional mandates and was rational and reasonable, even though citizens paid varying amounts of taxes and received varying levels of educational quality. *Shofstall*, 110 Ariz. at 90-91, 515 P.2d at 592-93.

Roosevelt Elementary School District No. 66 v. Bishop, 179 Ariz. 233, 877 P.2d 806 (1994).

1. **Education Clause Defined.** The court reviewed the history and text of the constitutional provision, as well as how other states have addressed similar issues. The court found two principles. First, the provision did not require identical schools: "Funding mechanisms that provide sufficient funds to educate children on substantially equal terms tend to satisfy the general and uniform requirement. School financing systems which themselves create gross disparities are not general and uniform." *Roosevelt Elementary School District No. 66*, 179 Ariz. 233, 877 P.2d at 814. Second, the provision did not create tension between the principle of local control and statewide standards because the constitution did not prevent local districts [*154] from spending more than what was required to create a general and uniform system. *Roosevelt Elementary School District No. 66*, 179 Ariz. 233, 877 P.2d at 814-15.

2. **Is Education A Fundamental Right?** The court held that *Shofstall v. Hollins*, 110 Ariz. 88, 515 P.2d 590 (1973), was not dispositive because it failed to apply "strict scrutiny" to a fundamental right. *Roosevelt Elementary School District No. 66*, 179 Ariz. 233, 877 P.2d at 811.

3. **School Financing System Constitutional.** No. "We therefore hold that the present system for financing public schools does not satisfy the constitutional mandate of a general and uniform school system. We emphasize that a general and uniform school system does not require perfect equality or identity." *Roosevelt Elementary School District No. 66*, 179 Ariz. 233, 877 P.2d at 815-16. "[T]he system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities. There is nothing unconstitutional about relying on a property tax. There is nothing unconstitutional about creating school

districts. But if together they produce a public school system that cannot be said to be general and uniform throughout the state, then the laws . . . fail in their purpose." *Roosevelt Elementary School District No. 66*, 179 Ariz. 233, 877 P.2d at 815.

4. **Remedy.** Judgment of Superior Court reversed and remanded for entry of judgment declaring that article XI, §1 of the Arizona Constitution requires the legislature to enact appropriate laws to finance education in the public schools in a way that does not itself create substantial [*155] disparities among schools, communities or districts. The trial court shall retain jurisdiction to determine whether, within a reasonable amount of time, legislative action has been taken.

Hull v. Albrecht, 190 Ariz. 520, 259 Ariz. Adv. Rep. 5, 950 P.2d 1141 (1997).

1. Constitutionality of "ABC" Legislation: The court reviewed whether the legislature complied with the mandate it had previously set forth in *Roosevelt Elementary School District No. 66 v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994), in response to which the legislature amended the financing system to establish the "Assistance to Build Classrooms" Fund, or ABC Legislation. The proposed ABC Legislation attempted to remedy the disparities in the system by providing a steady, need-based stream of income to low wealth school districts through an allotment formula which attempted to "raise the bottom" by providing low wealth districts with access to bond revenues and "lower the top" by placing limits on the amount-per-pupil that districts with high property wealth may raise for capital projects.

After analyzing the effect of the ABC Legislation, the court held that legislation was not sufficient to comply with its mandate because it could not obtain full or even substantial equalization and, therefore, inadequately dealt with the symptoms and failed to address the core problem of the financing [*156] system — heavy reliance on the district property taxation with unequalized districts. The net effect was that the state imposed vastly different tax burdens on citizens in different districts to support a state obligation and improperly delegated responsibility for a general and uniform system to individual districts. The court, citing its prior holding in *Roosevelt Elementary School*, held that the duty under Article XI, Section 1 of the Arizona Constitution is a state responsibility and ABC Legislation ignored the uniformity requirement because the dollar amount chosen to cure inadequacies in public school districts was arbitrary and bore no relation to actual need.

ARKANSAS

CONSTITUTIONAL PROVISIONS:

Ark. Const. art xiv, §1: "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education."

LEADING CASES:

Dupree v. Alma School District No. 30 of Crawford County, 279 Ark. 340, 651 S.W.2d 90 (1983).

1. **Education Clause Defined.** The court provided no historical background and did not define the constitutional mandate. The court concluded that the clause was violated by a funding system based on disparities [*157] of property wealth from district to district. *Dupree*, 279 Ark. at 349, 651 S.W.2d at 95.

2. **Is Education a Fundamental Right?** The court did not use this language in its analysis.

3. **School Financing System Constitutional.** The court held: "We find no legitimate state purpose to support the system. It bears no rational relationship to the educational needs of the individual districts, rather it is determined primarily by the tax base of each district." *Dupree*, 279 Ark. at 345, 651 S.W.2d at 93. "Bare and minimal sufficiency does not translate into equal educational opportunity." *Dupree*, 279 Ark. at 347, 651 S.W.2d at 93.

4. **Remedy.** Trial court affirmed.

Jim Guy Tucker, Governor v. Lake View School District, et al, 323 Ark. 693, 917 S.W.2d 530 (1996)

School Funding System Constitutional. No. The chancery court found that the state funding system was in violation of the equal protection clause of the Arkansas Constitution because it had no rational relationship to the educational needs of the school district and it failed to provide a general, suitable and efficient free public educational system. *Tucker*, 323 Ark. at 695, 917 S.W.2d at 532; *see also* Ark Const., art. II §§ 2, 3, and 18, and art. XIV, § 1. However, the chancellor stayed her decision for two years to allow the General Assembly to enact and implement appropriate legislation in conformity with her opinion. The General Assembly did enact legislation that repealed the previous funding system at issue. The Supreme Court dismissed the appeal because [*158] the chancellor did not issue a final order. It held that the case was not ready for appellate review because the chancellor failed "to grant specific relief requested by the prevailing parties [making her decision] a deferral." *Tucker*, 323 Ark. at 697, 917 S.W.2d at 533. Jurisdiction may arise again if further proceedings before the court result in another appeal. *Id.*

CALIFORNIA

CONSTITUTIONAL PROVISIONS:

Cal. Const. art IX, §5: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year."

LEADING CASES:

Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (*Serrano II*).

Serrano v. Priest, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971), *cert. den.* 432 U.S. 907, 97 S. Ct. 2951, 53 L. Ed. 2d 1079 (*Serrano I*).

1. **Education Clause Defined.** The court held that the provision did not require uniform educational expenditures. *Serrano I*, 5 Cal.3d at 596, 487 P.2d at 1249, 96 Cal.Rptr. at 609.

2. **Is Education a Fundamental Right?** "We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest.'" *Serrano I*, 5 Cal.3d at 608-09, 487 P.2d at 1258, 96 Cal.Rptr. at 618.

3. **School Funding System Constitutional.** The court invalidated the system on federal equal protection grounds. The court found: "this system conditions the fill entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend [*159] upon the resources of his school district and ultimately upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest." *Serrano I*, 5 Cal.3d at 614, 487 P.2d at 1263, 96 Cal.Rptr. at 623. The court held "we are satisfied that plaintiff children have alleged facts showing that the public school financing system denies them equal protection of the laws because it produces substantial disparities among school districts in the amount of revenue available for education." *Serrano I*, 5 Cal.3d at 618, 487 P.2d at 1265, 96 Cal.Rptr. at 625.

4. **Remedy.** None provided. Judgment reversed and remanded for further proceedings regarding procedural issues.

COLORADO

CONSTITUTIONAL PROVISIONS:

Colo. Const. art. IX, §2: The general assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously."

LEADING CASE:

Lujan v. Colorado State Board of Education, 649 P.2d 1005 (Colo. 1982) (plurality opinion).

1. **Education Clause Defined.** The provision "is not a mandate for absolute equality in educational services or expenditures. Rather, it mandates the General Assembly to provide to each school age child the opportunity to receive a free education, and to establish guidelines [*160] for a thorough and efficient system of public schools." *Lujan*, 649 P.2d at 1018-19. The court engaged in no historical analysis: "[W]e are unable to find any historical background to glean guidance regarding the intention of the framers." *Lujan*, 649 P.2d at 1024-25.

2. **Is Education a Fundamental Right?** Following *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973), the court refused to hold that education was a fundamental right under the Colorado Constitution. *Lujan*, 649 P.2d at 1017. For the court, the issue was about the separation of powers and the role of the judiciary. The court found no "direct correlation between school financing and educational quality and opportunity." The court held: "We refuse, however, to venture into realm of social policy under the guise that there is a fundamental right to education which calls upon us to find that equal educational opportunity requires equal expenditures for each school child. Even if we were to accept appellees' contention, we would, nonetheless, refuse to adopt their priori argument whereby a lack of complete uniformity in school funding between all of the school districts of Colorado necessarily leads to violation of the equal protection laws in this state." *Lujan*, 649 P.2d at 1018.

3. **School Financing System Constitutional.** The court held that the school financing system was constitutionally [*161] permissible: "[W]hether a better financing system could be devised is not material to our decision." *Lujan*, 649 P.2d at 1025.

The court emphasized that local control over taxation and administration was the objective of the financing system. *Lujan*, 649 P.2d at 1022-23.

CONNECTICUT

CONSTITUTIONAL PROVISIONS:

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 appropriate legislation." The provision has its origin in the constitutional convention of 1965. Section 4 of Article VIII requires that the school fund "shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof." Conn. Const. art. VIII, §4.

LEADING CASE:

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

1. **Education Clause Defined.** The court reviewed the history of education in Connecticut dating to 1650 and concluded that the 1965 enactment constitutionalized a state duty to provide equal educational opportunity for all children. *Horton*, 172 Conn. at 646-48, 376 A.2d at 373-74. The court held that absolute equality of funding was not required and could not be attained: "The very uncertainty of the extent of the nexus between dollar input and quality of educational opportunity requires allowance for variances as do individual and group disadvantages and local conditions." [*162] *Horton*, 172 Conn. at 651-52, 376 A.2d at 376.

2. **Is Education a Fundamental Right?** Yes. The court found that education was a fundamental right under the state constitution. *Horton*, 172 Conn. at 645, 376 A.2d at 373.

3. **School Financing System Constitutional.** No. The court held that the present legislation enacted by the General Assembly to discharge the state's constitutional duty to educate its children, depending, as it does, primarily on a local property tax base without regard to the disparity in the financial ability of the towns to finance an educational program and with no significant equalizing state support, is not 'appropriate legislation' . . . to implement the requirement that the state provide a substantially

equal educational opportunity to its youth in its free public elementary and secondary schools. *Horton*, 172 Conn. at 649, 376 A.2d at 374-75.

4. **Remedy.** The court retained jurisdiction and remanded for further proceedings to give the legislature an opportunity to act in accord with the court's opinion. *Horton*, 172 Conn. at 653, A.2d at 376.

FLORIDA

CONSTITUTIONAL PROVISIONS:

Fla. Const. art. IX, §1: "Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require." [*163]

LEADING CASE:

Coalition for Adequacy and Fairness in School Funding, Inc., __ Fla. __, 680 So.2d 400 (1996).

1. **Education Clause Defined.** The Court reviewed the history of the constitutional requirement that there be a uniform system of education and looked to more recent cases that defined "uniform system" as one where the constituent parts, although unequal in number, operate subject to a common plan or serve a common purpose. *School Board of Escambia County v. State*, 353 So.2d 834 (Fla. 1977).

2. **Is Education a Fundamental Right?** The Court did not use the words "fundamental right" but found that the Fla. constitution required a system be provided that gave every student an equal chance to achieve basic educational goals prescribed by the legislature.

3. **School Funding System Constitutional.** Yes. Uniformity clause not intended to require that each school district be a mirror image of every other one. *Coalition for Adequacy*, 680 So.2d at 406. The constitutional mandate is not that every school district in the state receive equal funding or that that each educational program be equivalent.

4. **Remedy.** Trial court's order of dismissal affirmed. Issue non-justiciable. Judiciary will not usurp the exercise of the appropriations power allocated exclusively to the legislature under the Fla. Const. to decide if the legislature's appropriation of funds is adequate.

GEORGIA

CONSTITUTIONAL PROVISIONS:

Ga. Const. art. VIII, §1: "The provision of an adequate [*164] education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided by taxation." The language, "adequate education," first appeared in the Constitution of 1945.

LEADING CASE:

McDaniel v. Thomas, 248 Ga. 632, 285 S.E.2d 156 (1981).

1. **Education Clause Defined.** The court reviewed the records of the 1945 constitutional convention and concluded that "the 'adequate education' provisions of the constitution do not restrict local school districts from doing what they can to improve educational opportunities within the district, nor do they require the state to equalize educational opportunities between districts." *McDaniel*, 248 Ga. at 641-44, 285 S.E.2d at 163-65. The court equated "adequate" with "minimum" and deferred to the state legislature in giving meaning to the term. *McDaniel*, 248 Ga. at 644, 285 S.E.2d at 165.

2. **Is Education a Fundamental Right?** No. "[T]he key to discovering whether education is 'fundamental' is not to be found in comparison of the relative societal significance of education as opposed to subsistence or housing . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution . . . In our view, such an 'answer' cannot govern state constitutional analysis. The equal protection clause of the Georgia Constitution itself provides: Protection [*165] to person and property is the paramount duty of government, and shall be impartial and complete.' . . . The 'explicit or implicit' guarantee model, it can be seen, is one without meaningful limitation insofar as our state constitution is concerned." *Id.*, 285 S.E.2d at 166.

3. **School Financing System Constitutional.** Yes. "The fact that the state has not funded a large-scale equalization plan does not render the current public school finance system invidiously discriminatory." **McDaniel**, 248 Ga. at 648, 285 S.E.2d at 168.

IDAHO

CONSTITUTIONAL PROVISIONS:

Idaho Const. art. 9, §1: "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools."

LEADING CASES:

Thompson v. Engelking, 96 Idaho 793, 537 P.2d 635 (1975).

1. **Education Clause Defined.** The court reviewed the debates that took place at the Constitutional Convention of 1889, as well as subsequent legislative actions, and concluded that "funds from various revenue sources need not be appropriated equally on a per student basis ..." *Thompson*, 96 Idaho at 807, 537 P.2d at 650. The court emphasized that it was the intention of the legislature to fund the public schools with a combination of state funds and local property taxes, with an emphasis on local control. Nonetheless, [*166] the court held that taxation and administration were not within the complete discretion of local authorities. *Thompson*, 96 Idaho at 808-09, 537 P.2d at 650-51.

2. **Is Education a Fundamental Right?** No. "[W]e refuse to venture into the realm of social policy under the guise of equal protection of the laws or fundamental right to education. The courts are ill-suited to a task which is the province of the legislature." *Thompson*, 96 Idaho at 800, 537 P.2d at 642.

3. **School Financing System Constitutional.** The court held that the Legislature had complied with its constitutional mandate, which does not "require that the public schools be financed so that equal amounts are expended per pupil, subject only to such variables as geographic or demographic location." *Thompson*, 96 Idaho at 811, 537 P.2d at 653.

Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993) (ISEEO I); *Idaho Schools for Equal Educational Opportunity v. Evans*, 128 Idaho 276, 912 P.2d 644 (1996) (ISEEO II).

1. **Education Clause Defined.** The court did not define the constitutional requirement, stating only that the meaning of the word "thorough" was unresolved.

2. **Is Education a Fundamental Right?** No. The court followed *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975), which held that education was not a fundamental right and that the funding scheme did not violate the state equal protection clause.

3. **School Financing System Constitutional.** Yes. "We decline the appellant's invitation to extend the reach of *Thompson* because we continue to believe the uniformity requirement of the education clause requires [*167] only uniformity in curriculum, not uniformity in funding." *Id.*, 850 P.2d at 730-731.

4. **Remedy.** The court vacated the district court's order, dismissing plaintiffs "thoroughness" claims and remanded to the trial court for a determination of whether the law met the "thoroughness" requirement of the Education Clause, at 735, at 584. In *ISSEO II*, the Idaho Supreme Court held that a justiciable issue existed. Although the legislature made the changes . . . , at the time that the summary judgment motion was heard, there still remained in place the Idaho constitutional requirement of a thorough education." *ISSEO II*, 128 Idaho at 283, 912 P.2d at 651. The court stated that the constitutional provision had not been amended or repealed during proceedings such that the changes enacted by the legislature did not "answer the question whether a constitutionally 'thorough' education is provided." *Id.* The court vacated the district court's dismissal of the case on the basis of mootness and remanded it for further proceedings.

ILLINOIS

CONSTITUTIONAL PROVISION:

"The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly [*168] provides by law." Ill. Const. art. X, §1.

LEADING CASES:

Committee for Educational Rights v. Edgar, 267 Ill. App. 3d 18, 641 N.E.2d 602, 204 Ill. Dec. 378 (Ill. App. Ct. 1994); *affirmed*, 672 N.E.2d 1178, 174 Ill. 2d 1, 220 Ill. Dec. 166 (1996).

1. **Education Clause Defined.** "The education article does not mandate equal educational benefits and opportunities among the State's school districts as the constitutionally required means of establishing and maintaining an 'efficient' system of free public schools." *Committee for Educational Rights*, 267 Ill. App. 3d at 21-22, 641 N.E.2d at 605. The court did not explain its conclusion or engage in a historical analysis.

2. **Is Education a Fundamental Right?** Education not a fundamental right for equal protection purposes. *See Committee for Educ. Rights*, 174 Ill. 2d 1, 36, 672 N.E.2d 1178, 1194, 220 Ill. Dec. 166.

3. **School Funding System Constitutional.** Yes. The court reasoned that the elimination of spending disparities was a goal, one left to the legislature to address.

IOWA

CONSTITUTIONAL PROVISION:

The legislature shall "encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." Iowa Const. art. IX, §3.

LEADING CASE:

Exira Community School District v. Iowa, 512 N.W.2d 787 (Iowa 1994).

1. **Education Clause Defined.** The court did not cite the Education Clause. The plaintiffs alleged only due process and equal protection violations.

2. **Is Education a Fundamental Right?** Appellants did not allege an infringement upon a fundamental right which would trigger a strict scrutiny analysis. Instead, the court used a rational basis test for due process and equal protection challenges.

3. **School Funding System Constitutional.** [*169] Yes. The court applied a rational basis test and concluded that the law "assures every student roughly the same amount of funds for his or her education wherever that student is educated." *Exira Community School District*, 512 N.W.2d at 796.

KANSAS

CONSTITUTIONAL PROVISION:

"The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools ..." Kan. Const. art. 6, §1. Another section provides in part: "The legislature shall make suitable provision for finance of the educational interests of the state." Kan. Const. art. 6, §6(b).

LEADING CASE:

Unified School District No. 229 v. Kansas, 256 Kan. 232, 885 P.2d 1170 (Kan. 1994), *cert. denied*, 515 U.S. 1144, 132 L.Ed.2d 832, 115 S.Ct 2582 (1995).

1. **Education Clause Defined.** The court did not provide a historical analysis and left the definition to the discretion of the legislature.

2. **Is Education a Fundamental Right?** Following *Rodriguez*, the court held that education was not a "fundamental right." *Unified School District No. 229*, 885 P.2d at 1188-89.

3. **School Funding System Constitutional.** Yes. Quoting the trial court's conclusions of law, the court held that the constitutional provision requiring "suitable" funding did not mandate excellence or quality and "does not imply any objective, quantifiable education standard against which schools can be measured by a court." *Unified School District No. 229*, 885 P.2d at 1185.

KENTUCKY

CONSTITUTIONAL PROVISIONS:

The Kentucky Constitution mandates that [*170] the General Assembly "provide for an efficient system of common schools throughout the state." Ky. Const. §183. This provision was effected by the Kentucky Constitution of 1890.

LEADING CASE:

Rose v. Council for Better Education, Inc., 790 S.W.2d 186 (Ky. 1989).

1. **Education Clause Defined.** The court reviewed the constitutional debates that took place in 1890 and concluded that an "efficient" system was to be universal, that all children were entitled to equal state support. *Rose*, 790 S.W.2d at 206. The court found support for this precedent and deduced a set of principles. The court concluded that the General Assembly was mandated to create and maintain a system that provided equal educational opportunities for all students. *Rose*, 790 S.W.2d at 208. The court held that an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (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 [*171] 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. *Rose*, 790 S.W.2d at 212.

The court summarized the essential characteristics of an "efficient" 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 schools 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 are operated with no waste, no duplication, no mismanagement and [*172] 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 that has as its goal the development of the seven capacities recited previously.

Rose, 790 S.W.2d at 212-13.

2. **Is Education a Fundamental Right?** Education is a fundamental right under the Kentucky Constitution. *Rose*, 790 S.W.2d at 206.

3. **School Funding System Constitutional.** No. The court held that due to property value disparities and a lack of uniformity in tax rates, the funding system was "inefficient" and failed to meet the constitutional mandate. *Rose*, 790 S.W.2d at 215-16.

4. **Remedy.** The court did not remand or issue any extraordinary writs. The court withheld the finality of its decision until after the close of the next legislative session. *Rose*, 790 S.W.2d at 216. The legislature responded with the sweeping Kentucky Education Reform Act.

LOUISIANA

CONSTITUTIONAL PROVISION:

Article VIII concerns "a public educational system." La. Const. art. VIII, §1. Another section states: "The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all [*173] public elementary and secondary schools." La. Const. art. VIII, §13(B).

LEADING CASE:

Louisiana Association of Educators v. Edwards, 521 So. 2d 390 (La. 1988).

1. **Education Clause Defined.** The court held that it was the purpose of the minimum foundation program "to insure that each public school child in this state receives an equal educational opportunity regardless of the wealth of the parish in which the child resides." *Louisiana Association of Educators*, 521 So. 2d at 391.

2. **Is Education a Fundamental Right?** Not addressed by the Court.

3. **School Funding System Constitutional.** Yes. "[T]he legislature possesses the sole authority to set the level of funding of the 'minimum foundation program,' subject only to the constitutional mandate that the funds be sufficient to insure a 'minimum foundation program in all public elementary and secondary schools' . . ." *Louisiana Association of Educators*, 521 So. 2d at 394.

MARYLAND

CONSTITUTIONAL PROVISIONS:

The state constitution provides in part that the General Assembly is to "establish throughout the State a thorough and efficient System of Free Public Schools; and [to] provide by taxation, or otherwise, for their maintenance." Md. Const. art. VII, §1. This language was enacted by the Constitution of 1867.

LEADING CASE:

Hornbeck v. Somerset County Board of Education, 295 Md. 597, 458 A.2d 758 (1983).

1. **Education Clause Defined.** The court concluded that the phrase did not mandate equality in per pupil expenditures among all school districts. *Hornbeck*, 295 Md. at 619, 458 A.2d at 770. The court noted that the language adopted in 1867 replaced an earlier [*174] phrase calling for a "uniform" school system. Some delegates to the 1867 Convention "assailed the large expense associated with the operation of the uniform system, with its centralized administration, lack of local control, and with the performance of the Superintendent of Public Instruction." *Hornbeck*, 295 Md. at 650, 458 A.2d at 786. The court recounted legislative efforts that took place over the years to provide state funds on a per pupil basis as a supplement to locally generated tax revenues. *Hornbeck*, 295 Md. at 629-31, 458 A.2d at 775-76. The court held that the language of the provision did not

impose a duty on the legislature to enact laws to effect an equal distribution of expenditures. *Hornbeck*, 295 Md. at 631-32, 458 A.2d at 776-77.

2. **Is Education a Fundamental Right?** No. *Hornbeck*, 295 Md. at 650, 458 A.2d at 786.

3. **School Finance System Constitutional.** The efforts of the legislature to address the disparity of funding among school districts satisfied the requirements of the state constitution. *Hornbeck*, 295 Md. at 639, 458 A.2d at 780.

MASSACHUSETTS

CONSTITUTIONAL PROVISION:

The Massachusetts Constitution provides:

"Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, [*175] and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of this country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humour, and all social affections, and generous sentiments among the people." Mass. Const. part II, ch. 5, §2. This language was adopted in 1780.

LEADING CASE:

McDuffy v. Secretary of Education, 415 Mass. 545, 615 N.E.2d 516 (1993).

1. **Education Clause Defined.** The court extensively reviewed the text and history of the constitutional provision and the development of public education in the state. The court found that the constitutional text and the constitutional structure indicated that education was fundamental and that the legislature had a duty to provide for it: [A]n educated people [*176] is

viewed as essential to the preservation of the entire constitutional plan: a free, sovereign, constitutional democratic State." *McDuffy*, 415 Mass. at 561, 615 N.E.2d at 524. The court painstakingly examined the use and meaning of the words "duty," "cherish" and "shall" and found that the plain meaning of the provision created a duty for the legislature. *McDuffy*, 415 Mass. at 564, 615 N.E.2d at 526. In terms of the constitution's structure, the court found two things significant. First, the framers devoted an entire chapter of the constitution to education instead of including it within the powers of the legislative or executive branch. *McDuffy*, 415 Mass. at 564-65, 615 N.E.2d at 526-27. Second, "the framers' decision to place the provisions concerning education in 'The Frame of Government'—rather than in the Declaration of Rights'—demonstrates that the framers conceived of education as fundamentally related to the very existence of government." *McDuffy*, 415 Mass. at 565, 615 N.E.2d at 527.

Next, the court recounted the state's long history of support for public education, which included the first law establishing a system of public schools passed in 1647. Based on its reading of the debates leading to the adoption of Massachusetts constitution in light of the state's tradition, the court concluded: "The framers created a Constitution which by its words and its [*177] structure states plainly that providing for the education of the people is both duty of and prerequisite for a republican government . . ." *McDuffy*, 415 Mass. at 585, 615 N.E.2d at 537. The court also reviewed in great detail the legislative responses to the constitutional mandate, as well as its own case law, and found support for its conclusions. *McDuffy*, 415 Mass. at 606, 615 N.E.2d at 547-48.

2. **Is Education a Fundamental Right?** Not addressed by the Court.

3. **School Funding System Constitutional.** No. Because the plaintiffs did not specify which statute they had sought to have declared unconstitutional, the court confined itself to the question of whether the education clause was "merely horatory, or aspirational, or imposes instead a duty on the Commonwealth to ensure the education of its children in the public schools." *McDuffy*, 415 Mass. at 550-51, 615 NE.2d at 519. After reviewing the funding system and the evidence submitted on specific deficiencies in the plaintiffs' schools, the court found that the legislature had failed to meet its obligation. *McDuffy*, 415 Mass. at 614-17, 615 N.E.2d at 552-54. The court cited *Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989), and adopted that decision's detailed formula for giving content to a constitutional right to education. *McDuffy*, 415 Mass. at 618-19, 615 NE.2d at 554.

4. **Remedy.** Cases remanded to county court for entry of judgment declaring provision of Part II, ch.5, §2 of Massachusetts Constitution impose an enforceable duty on the magistrates [*178] and legislatures of the Commonwealth to provide education in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the

community or district in which such children live . . . [I]t is the responsibility of the Commonwealth to take such steps as may be required in each instance effectively to devise a plan and sources of funds sufficient to meet the constitutional mandate.

MICHIGAN

CONSTITUTIONAL PROVISION: "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law." Mich. Const. art. VIII, §2.

LEADING CASE:

Milliken v. Green, 390 Mich. 389, 212 N.W.2d 711 (1973), *vacating* 389 Mich. 1, 203 N.W.2d 457 (1972).

1. **Education Clause Defined.** The court offered no historical analysis and refused to define "educational opportunity," reasoning that the topic was too complex. *Milliken*, 390 Mich. at 399, 203 N.W.2d at 716.

2. **Is Education a Fundamental Right?** Court did not address this issue.

3. **School Funding System Constitutional.** Yes. "[I]t has not been shown that eliminating disparities in expenditures will significantly improve the quality or quantity of educational services or opportunity to Michigan school children." *Milliken*, 390 Mich. at 404, 212 N.W.2d at 719.

MINNESOTA

CONSTITUTIONAL PROVISION:

"The stability of a republican form of government depending mainly upon the intelligence [*179] of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state." Minn. Const. art. XIII, §1.

LEADING CASE:

Skeen v. Minnesota, 505 N.W.2d 299 (Minn. 1993).

1. **Education Clause Defined.** The court held that the clause created a right to education, but that financing was governed by another section requiring that taxation be "thorough and efficient." *See* Minn. Const. art. XIII, §1. The court made no mention of the "thorough and efficient" provision in the education clause.

2. **Is Education a Fundamental Right?** Yes. The court found that education was a fundamental right. However, the court distinguished between the establishment of a school system and its financing: "[A] clear reading of the original constitution indicates that the drafters intended to draw a distinction between the fundamental right to a 'general and uniform system of education' and the financing of the education system, which merely must be 'thorough and efficient.'" *Skeen*, 505 N.W.2d at 315.

3. **School Funding System Constitutional.** Yes. "The challenged statutes provide an adequate level of education to all students, and local districts merely have the capacity to supplement [*180] these amounts once the baseline level of funding has been provided." *Skeen*, 505 N.W.2d at 316.

MISSOURI

CONSTITUTIONAL PROVISION:

"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." Mo. Const. art. IX, §1(a).

LEADING CASE:

Committee for Educational Equality v. Missouri, 878 S.W.2d 446 (Mo. 1994).

1. **Education Clause Defined.** The court did not discuss the history or text of the clause.

2. **Is Education a Fundamental Right?** Court did not address this issue.

3. **School Funding System Constitutional.** Unclear.

4. **Remedy.** The court dismissed the state's appeal without a final judgment and let stand a lower court ruling that the funding scheme was unconstitutional and education was a fundamental right.

MONTANA

CONSTITUTIONAL PROVISIONS:

Mont. Const. art. X, §1: "It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. . . . The legislature shall provide a basic system of free quality public elementary and secondary schools. . . . It shall fund and distribute [*181] in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system." The language of this provision was first proposed during the Constitutional Convention of 1972.

LEADING CASE:

Helena Elementary School District No. 1 v. State, 236 Mont. 44, 769 P.2d 684 (Mont. 1989), *amended*, 236 Mont. 44, 784 P.2d 412 (Mont. 1990).

1. **Education Clause Defined.** The court held that the plain language of the provision required the state to guarantee equal educational opportunity. *Helena Elementary*, 236 Mont. at 53, 769 P.2d at 689.
2. **Is Education a Fundamental Right?** The court did not reach this issue.
3. **School Funding System Constitutional.** No. The court found that discrepancies in spending translated into unequal opportunity in violation of the Montana constitution. *Helena Elementary*, 236 Mont. at 55, 769 P.2d at 690. The court found significance in comments contained in the record of the Constitutional Convention indicating that the delegates were concerned with the level of funding. *Helena Elementary*, 236 Mont. at 54-55, 769 P.2d at 690. The court indicated that "financial considerations are [not] the sole elements of a quality education or of equal educational opportunity." *Helena Elementary*, 236 Mont. at 55, 769 P.2d at 691.
4. **Remedy.** Not provided.

NEBRASKA

CONSTITUTIONAL PROVISION:

"The Legislature shall provide for the free instruction in the common schools of the state of all persons between the ages of five and twenty-one years." Neb. Const. art. VII, §1.

LEADING CASE:

Gould v. Orr, 244 Neb. 163, 506 N.W.2d 349 (1993).

1. **Education Clause Defined.** The majority opinion did not mention the state's [*182] Education Clause.
2. **Is Education a Fundamental Right?** Not addressed by the Court.
3. **School Financing System Constitutional.** Yes. "While appellants' petition is replete with examples of disparity among the various school districts in Nebraska, they fail to allege in their petition how these disparities affect the quality of education the students are receiving." *Gould*, 244 Neb. at 168-69, 506 N.W.2d at 353.

NEW HAMPSHIRE

CONSTITUTIONAL PROVISION:

New Hampshire's education clause, adopted in 1784, was modeled on Massachusetts' and differs only slightly:

"Knowledge and learning, generally diffused through the community, being essential to the preservation of free government,; and spreading the opportunities and advantages of education in the various parts of the country, being highly conducive to promote this end, it shall be the duty of legislatures and magistrates, in all future periods of this government, to cherish the interests of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of this country; to countenance and inculcate the principles of humanity and general [*183] benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people." N.H. Const. of 1784, part II, art. 83. The article was amended in 1877 and 1903.

LEADING CASES:

Claremont School District v. Governor, 138 N.H. 183, 635 A.2d 1375 (1993) (*Claremont I*).

1. **Education Clause Defined.** The court cited *McDuffy v. Secretary of Education*, 415 Mass. 545, 615 N.E.2d 516 (1993), with approval, due to the states' common history and nearly identical constitutional provisions. *Claremont School District*, 138 N.H. at 186, 635 A.2d at 1378. The Education Clause "expressly recognizes that a free government is dependent for its survival on citizens who are able to participate intelligently in the political, economic, and social functions of our system." *Claremont School District*, 138 N.H. at 192, 635 A.2d at 1381.

2. **Is Education a Fundamental Right?** Court did not use this language, but states that a free public education is, at the very least, an important substantive right.

3. **School Funding System Constitutional.** The court reversed and remanded the trial court's decision dismissing the petition for failure to state a claim. "We hold that part II, article 83 imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding." *Claremont School District*, 138 N.H. at 184, 635 A.2d at 1376.

Claremont School District v. Governor, 703 A.2d 1353, 142 N.H. 462, 1997 N.H. LEXIS 120 (*Claremont II*).

Claremont I was remanded for trial on [*184] the merits and, following a trial, the trial court held: "(1) the education provided in the plaintiff school districts is constitutionally adequate; (2) the New Hampshire system of funding public elementary and secondary education guarantees constitutionally adequate funding to each of the plaintiff school districts; (3) the New Hampshire system of school funding does not violate the plaintiffs' right to equal protection under the State Constitution part L articles 1, 2 and 12; and (4) the system of school financing does not violate part II, article 5 of the State Constitution." *Claremont II*, 1997 N.H. LEXIS 120 at [*3].

1. **Education Clause Defined.** Addressed in *Claremont I*.

2. **Is Education a Fundamental Right?** Yes. The right to a state funded constitutionally adequate elementary and secondary education is a fundamental right because the State Constitution specifically charges the legislature with the duty to provide a public education. *See* N.H. CONST., part II, article 83. *Claremont II*, 1997 N.H. LEXIS 120 at [*19]. (*citing Claremont I*, 138 N.H. 183, 635 A.2d 1375). The second factor, of persuasive force, is "the simple fact that even a minimalist view of educational adequacy recognizes the role of education in preparing citizens to participate in the exercise of voting [*185] and first amendment rights. The latter being recognized as fundamental, it is illogical to place the means to exercise those rights on less substantial constitutional footing than the rights themselves." *Id.*, at [*20].

3. **School Funding System Constitutional.** No. The court stated that providing an adequate education is a duty of state government mandated by the State Constitution. *Id.*, at [*11]. The school tax levied has a State purpose and is dispositive of the character of the tax to be a State tax, *Id.* at [*10], and "[a]lthough the taxes levied by local school districts are local in the sense that they are levied upon property within the district, the taxes are in fact State taxes that have been authorized by the legislature to fulfill the requirements of the New Hampshire Constitution." *Id.* at [11-12].

Next, the court concluded that the school tax, as presently structured throughout the State, is unreasonable because it is not in accordance with the requirements of part II, article 5 of the State Constitution due to the spending disparities between the local school districts of the state. *Id.* at [*13] and part II, article 5 requires that the legislature impose and levy taxes that are equal in valuation and uniform in rate throughout the state. [*186] *Id.* at [*8] (*citing Johnson & Porter Realty Co. v. Comm'r of Rev. Admin.*, 122 N.H. 696, 448 A.2d 435 (1982)). The court stated that because the State Constitution mandated that knowledge and learning be "generally diffused" and educational "opportunities and advantages" be spread through various parts of the State, there was no intent for the educational funding system to have the wide disparities that currently exist in the system. *Id.* at [*14-15].

The court agreed with the seven criteria articulated by the Supreme Court of Kentucky as establishing general, aspirational guidelines for a constitutionally adequate public education: "(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 [*187] in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient level 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 [*22-23] (*citing Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186, 212 (Ky. 1989)).

4. **Remedy.** Not addressed. The court stayed all further proceedings until the end of the upcoming legislative session to permit the legislature to address the issues involved in the case. However, the present funding system, though unconstitutional, will remain in effect until an orderly transition to a new system is made. *Id.* at [*28].

NEW JERSEY

CONSTITUTIONAL PROVISIONS:

N.J. Const. art. VIII, §4: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." The provision was originally effected by the 1875 amendment to the Constitution of 1844.

LEADING CASES:

Abbott v. Burke, 149 N.J. 145, 693 A.2d 417 (1997) (*Abbott IV*).

Abbott v. Burke, 136 N.J. 444, 643 A.2d 575 (1994) (*Abbott III*).

Abbott v. Burke, 119 N.J. 287, 575 A.2d 359 (1990) (*Abbott II*).

Abbott v. Burke, 100 N.J. 269, 495 A.2d 376 (1985) (*Abbott I*).

Robinson v. Cahill, 69 N.J. 449, 355 A.2d 129 (1976) (*Robinson II*).

Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), *cert. denied sub nom. Dickey v. Robinson*, 414 U.S. 976, 94 S. Ct. 292, 38 L. Ed. 2d 219 (1973). (*Robinson I*).

The New Jersey Supreme Court has invalidated the state Public School Education Act [*188] on three occasions, in *Abbott III*, *Abbott II* and *Robinson II*. Its most detailed analysis of the issues can be found in *Abbott II*.

1. **Education Clause Defined.** The *Abbott II* court noted that what constitutes a "thorough and efficient" education is an evolving concept, initially construed to require equality of educational opportunity. *Abbott II*, 119 N.J. at 304-05, 575 A.2d at 367-68. In *Robinson I*, the court defined the constitutional standard as requiring an "educational opportunity . . . needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market." *Robinson I*, 62 N.J. at 515, 303 A.2d at 295. In *Robinson II*, the court held that the state constitution required a certain level of education and not simply equality of funding. *Robinson II*, 69 N.J. at 459-60, 355 A.2d at 134.

2. **Is Education a Fundamental Right?** The Court did not use this language in its analysis.

3. **School Finance System Constitutional.** *Abbott II* invalidated the funding system because it failed to give disadvantaged students the ability to compete with relatively advantaged students. *Abbott II*, 119 N.J. at 313, 575 A.2d at 371. The court examined such factors as disparity in expenditures per pupil, course breadth and staffing, as well as characteristics not related to funding, such as management, community relations, parental involvement and staff experience and attention. *Abbott II*, 119

N.J. at 318-19, 575 A.2d at 375. [*189] The court concluded that a significant number of poorer urban districts do not provide a thorough and efficient education for their students; that the measurement of the constitutional requirement must account for the needs of the students; that in most poorer urban districts, the education needed to equip the students for their roles as citizens and workers exceeds that needed by students in more affluent districts; that 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—and the ability to innovate. *Abbott II*, 119 N.J. at 319, 575 A.2d at 375.

3. **Remedy.** The court required that the Act be amended to "assure that these poorer urban districts have a budget per pupil that is approximately equal to the average of the richer suburban districts, whatever that average may be, and be sufficient to address their special needs." *Abbott II*, 119 N.J. at 388, 575 A.2d at 409. In *Abbott III*, the court again invalidated the state funding scheme, though it recognized that progress had been made since *Abbott II*. *Abbott III*, 136 N.J. at 447, 643 A.2d at 576. The court retained jurisdiction, but issued no order, noting that it would not intervene "if substantial equivalence of the special needs districts and the wealthier districts in expenditures per pupil [*190] for regular education is achieved for school year 1997-1998 along with provision for the special educational needs of students in those special needs districts." *Abbott III*, 136 N.J. at 447, 643 A.2d at 576. In *Abbot IV*, the Court held that the regular education funding provisions of the Comprehensive Educational Improvement and Financing Act of 1996 (CEEFA) enacted into law on December 20, 1996, to accomplish the goals set forth by the Court in *Abbot III* were unconstitutional as applied to special needs districts. The Court also stated that the Act did not adequately address the unique educational disadvantages facing children attending schools in the poor urban districts. The Court ordered the Legislature to provide remedial relief to assure that by the beginning of the 1997-98 school year, per-pupil expenditures in the poor urban districts were equivalent to the average per-pupil expenditure in the wealthy suburban districts. It also ordered the State to immediately increase funding for regular education in the special needs districts to achieve equality. Finally, the Court remanded the case to the Superior Court to examine potential remedial relief involving supplemental programs and facilities needs. On January 22, 1998, [*191] the Superior Court issued a decision regarding supplemental programs and improvements to facilities necessary for educating students in the State's poorer urban districts.

NEW YORK

CONSTITUTIONAL PROVISION:

"The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. Const. art. XI, §1.

LEADING CASE:

Board of Education, Levittown Union Free School District v. Nyquist, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982), *appeal dismissed*, 459 U.S. 1138, 103 S. Ct. 775, 74 L. Ed. 2d 986 (1983).

1. **Education Clause Defined.** "What appears to have been contemplated when the education clause was adopted at the 1894 Constitutional Convention was a State-wide system assuring minimal acceptable facilities and services in contrast to the unsystematized delivery of instruction then in existence within the State. Nothing in the contemporaneous documentary evidence compels the conclusion that what was intended was a system assuring that all educational facilities and services would be equal throughout the State." *Nyquist*, 57 N.Y.2d at 47, 439 N.E.2d at 368, 453 N.Y.S.2d 653 (1982).

2. **Is Education a Fundamental Right?** "The circumstance that public education is unquestionably high on the list of priorities of governmental concern and responsibility, involving the expenditures of enormous sums of State and local revenue, enlisting the most active attention of our citizenry and of our Legislature, [*192] and manifested by express articulation in our State Constitution, does not automatically entitle it to classification as a 'fundamental constitutional right' triggering a higher standard of judicial review for purposes of equal protection analysis." *Id.*, 439 N.E. 2d at 366.

3. **School Funding System Constitutional.** Yes. "Interpreting the term education, as we do, to connote a sound basic education, we have no difficulty in determining that the constitutional requirement is being met in this State, in which it is said without contradiction that the average per pupil expenditure exceeds that in all other States but two. *Nyquist*, 57 NY.2d at 48, 439 N.E.2d at 369, 453 N.Y.S.2d at 653.

NORTH CAROLINA

CONSTITUTIONAL PROVISION:

"The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in a year, and wherein equal opportunities shall be provided for all students." N.C. Const. art. IX. §2. The provision was originally part of the Constitution of 1868, though it then required segregation by race. The current language was adopted in 1970.

LEADING CASE:

Leandro v. State of North Carolina, 122 N.C. App. 1, 468 S.E. 2d 543 (1996).

1. **Education Clause Defined.** Citing *Lane v. Stanly*, 65 N.C. 153 (1987), the Court of Appeals stated that the general and uniform clause of Article IX is a "system", is to be "general" [*193] and is to be "uniform." It is not to be subject to the caprice of localities, but every locality, yea, every child, is to have the same advantage, and be subject to the same rules and regulations. If every township were allowed to have its own regulations, and to consult its own caprices there would be no "uniformity" and but little usefulness, and the great aim of the government in giving all of its citizens a good education would be defeated. *Id.* at 8, 468 S.E. 2d at 548.

2. **Is Education a Fundamental Right?** Relying on the holding in *Britt v. North Carolina Board of Education*, 86 N.C. App. 282, 357 S.E. 2d 432, *cert. denied.*, 320 N.C. 790, 361 S.E. 2d 71 (1987), the Court held there is no fundamental right to equal educational opportunities, but simply equal access to public schools. "...[E]very child has a fundamental right to an education in our public schools." *Leandro*, 122 N.C. at 9, 468 S.E. 2d at 549.

3. **School Funding System Constitutional.** Yes. The North Carolina Constitution is limited to one of equal access to education, and it does not embrace a qualitative standard. The parties have not alleged that they are being denied an education.

NORTH DAKOTA

CONSTITUTIONAL PROVISION:

"The legislative assembly shall provide for a uniform system of free public schools throughout the state." N.D. Const. art. VIII, §2.

LEADING CASE:

Bismarck Public School District v. North Dakota, 511 N.W.2d 247 (N.D. 1994).

1. **Education Clause Defined.** Though it engaged in no historical analysis, the court construed [*194] the provision to require an "equal educational opportunity" for all children. *Bismarck Public School District*, 511 N.W.2d at 259. The court rejected "local control" as a compelling state interest justifying the funding disparities: "[L]ocal control in North Dakota is undercut and limited by the Legislature's enactment of requirements for statewide uniformity of education." *Bismarck Public School District*, 511 N.W.2d at 260.

2. **Is Education a Fundamental Right?** Yes. The court held that education was a fundamental right, but refused to apply "strict scrutiny" because such a standard would not allow for legislative flexibility in determining funding levels that accounted for "numerous variables involved with the actual cost of educating pupils in the different school districts." *Bismarck Public School District*, 511 N.W.2d at 257.

3. **School Funding System Constitutional.** The court was precluded from declaring the funding law unconstitutional because it failed to get the votes of four members of the court as required by the state constitution when the constitutionality of a law is at issue. *See* N.D. Const. art. VI, §4. The court found: "The present educational funding system seriously discriminates against some students and significantly interferes with their right to equality of educational opportunities. Because educational opportunities are not substantially [*195] uniform, the existing system of educational funding needs fixing." *Bismarck Public School District*, 511 N. W.2d at 262.

OHIO

CONSTITUTIONAL PROVISIONS: The 1851 Ohio Constitution was the first to use the phrase "thorough and efficient." The constitution provides in part: "The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, Will secure a thorough and efficient system of common schools throughout the state...." Ohio Const. art VI, §2.

LEADING CASES:

Board of Education v. Walter, 58 Ohio St.2d 368, 390 N.E.2d 813 (1979), *cert. denied*, 444 U.S. 1015, 100 S. Ct. 665, 62 L. Ed. 2d 644 (1980).

1. **Education Clause Defined.** The court did not define the terms used in the clause or engage in a review of the historical background concerning the adoption of the provision. The court stated that the legislature had great discretion in formulating the system of finance, and that the legislature had ensured that each child received an adequate education. *Walter*, 58 Ohio St.2d at 387-88, 390 N.E.2d at 825-26.

2. **Is Education a Fundamental Right?** "We have not found helpful the concept of a fundamental right. No one has successfully defined the term for this purpose." *Id.*, 390 N.E.2d at 819.

3. School Financing System Constitutional. Yes. "Although the Ohio system of school financing is built upon the principle of local control, resulting in unequal expenditures between children who live in different school districts, we cannot [*196] say such disparity is a product of a system that is so irrational as to be an unconstitutional violation of the Equal Protection Clause." *Id.*, 390 N.E.2d at 822.

DeRolph v. The State of Ohio, 78 Ohio St. 3d 193, 1997-Ohio-84, 677 N.E. 2d 733 (1997).

3. School Financing System Constitutional. No. The Supreme Court held that the current legislation failed to provide for a thorough and efficient system of common schools in violation of Section 2, Article VI of the Ohio Constitution. In reaching that conclusion, the Court dismissed as unfounded any suggestion that the problems presented by the case should be left for the General Assembly to resolve. The Court stated that, "[a] thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of the, school districts of the state lacked teachers, buildings or equipment." *DeRolph*, 78 Ohio St. 3d at 204. The Supreme Court did not suggest that funds should be diverted from wealthy districts and given to poorer districts, or that more affluent school districts should have ceilings imposed on their spending. However, it stated, "We recognize that money alone is not the panacea that will transform Ohio's school system into a model of excellence. Although a student's success depends upon numerous factors besides money, we must [*197] ensure that there is enough money that students have the chance to succeed because of the educational opportunity provided, not in spite of it." *Id.* at 211.

4. Remedy. The Court concluded that even though it found the school financing system unconstitutional, it would not instruct the General Assembly as to the specifics of the legislation it should enact to correct the problem. However, it stated that the General Assembly had to create an entirely new school financing system. The Court then reversed the decision of the District Court and remanded the case to the trial court to enter judgment consistent with its opinion.

OKLAHOMA

CONSTITUTIONAL PROVISIONS:

"Provisions shall be made for the establishment and maintenance of a system of public schools ..." Okla. Const. art. I, §5. "The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated." Okla. Const. art. XIII, §1.

LEADING CASE:

Fair School Finance Council of Oklahoma, Inc. v. Oklahoma, 1987 OK 114, 746 P.2d 1135 (1987).

1. **Education Clause Defined.** The court held that the sections did not mandate equal per pupil expenditures: "[T]he right guaranteed in Article 13, §1 is a basic, adequate education according to the standards that may be established by the State Board of Education." *Fair School Finance Council*, 746 P.2d at 1149.

2. **Is Education a Fundamental Right?** This case does not involve [*198] a fundamental right in the sense of one among the rights and liberties protected by the federal constitution. (Education is not a fundamental right guaranteed by the federal constitution.) While education is recognized as important, importance of a service performed by the state does not determine whether it must be regarded as fundamental for purposes of the Equal Protection clause. Regardless, this case does not involve a class-based denial of public education which would be incompatible with the Equal Protection Clause.

3. **School Financing System Constitutional.** Yes. We find no requirement under the Equal Protection Clause of the 14th amendment to the United States Constitution that a state's school financing system guarantees equal expenditures per child. Similarly, the Oklahoma Constitution does not require equal expenditures. "School finance laws cannot be said to regulate impermissibly the affairs of a school district merely because the districts financial situation limits the options available to it." *Id.*, 746 P.2d at 1150.

OREGON

CONSTITUTIONAL PROVISIONS:

"The Legislative Assembly shall provide by law for the establishment of a uniform and general system of common schools."
Or. Const. art. VII §3.

LEADING CASES:

Olsen v. Oregon, 276 Or. 9, 554 P.2d 139 (1976).

1. **Education Clause Defined.** The provision "is complied with if the state requires and provides for a minimum of educational opportunity in the [*199] district and permits the districts to exercise local control over what they desire, and can furnish, over the minimum." *Olsen*, 276 Or. at 27, 554 P.2d at 148. The court rejected the claim that "uniform" meant "that the amounts available for providing educational opportunities in every district must approach equality." *Olsen*, 276 Or. at 26, 554 P.2d at 148.

2. **Is Education a Fundamental Right?** No. The court stated that finding education to be a fundamental interest was not a helpful method of analysis. *Olsen*, 276 Or. at 19, 554 P.2d at 145.

3. **School Funding System Constitutional.** Yes.

Coalition for Equitable School Funding, Inc., 311 Ore. 300, 811 P.2d 116 (1991).

1. **"Safety Net" Legislation.** The court considered whether the "safety valve" legislation of that state violated Article VII, Section 3 of the Oregon Constitution because it failed to "provide by law for the establishment of a uniform and general system of common schools." The "Safety Net" legislation, enacted in 1987, allows school districts to continue to levy property taxes for operating purposes, without additional voter approval, in an amount "not in excess of the amount levied for operating purposes in the preceding year." Moreover, it explicitly directs school districts to meet state standards with property taxes and permits district-to-district disparities in taxation and level of funding per-pupil. Appellants (a non-profit group consisting of 55 Oregon [*200] School Districts, individual taxpayers and parents of students enrolled in various districts), argued that the "Safety Net" provision violated Article VIII, Section 3 of the Oregon Constitution.

The court held that provision contemplates, for constitutional purposes, the kinds of disparities of which the Appellants complain and recognizes the permissibility of relying on local property taxes to fund public schools. The court concluded that Oregon's method of funding public schools does not violate its Constitution. Quoting its prior decision in *Olsen v. State ex rel. Johnson*, 276 Ore. 9, 554 P.2d 139 (1976), the court noted, "[o]ur decision should not be interpreted to mean that we are of the opinion that the Oregon system of school financing is politically or educationally desirable. Our only role is to pass upon its constitutionality."

RHODE ISLAND

CONSTITUTIONAL PROVISIONS:

R.I. Const. art. XII, §1: Duty of General assembly to promote schools and libraries. — The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages [*201] and opportunities of education and public library services.

LEADING CASE:

City of Pawtucket v. Sundlun, __R.I.__, 662 A.2d 40 (1995).

1. **Education Clause Defined.** The Court stated that the adoption of Article XII at the Constitutional Convention of 1986 signified framers did not intend to alter the state's approach to funding education to impose new constitutional requirements upon the General Assembly in respect to education. It retained the language that expressly and unequivocally assigned to the General Assembly the sole discretion to adopt all means that it deemed necessary and proper to promote public schools. The framers had the opportunity to radically alter the nature of the state's role in public education but chose not to do so. The plain language and the history of Article XII dictate that the conclusion by the Superior Court - that there is a fundamental and constitutional right for each child to receive an equal, adequate and meaningful education - is clearly wrong. "The education clause confers no such right, nor does it guarantee an 'equal, adequate and meaningful education.'" *City of Pawtucket*, 662 A.2d at 55.

2. **Is Education a Fundamental Right?** The current financing system is rationally related to legitimate state interests such as balancing competing needs and encouraging local participation [*202] in education. Wealth is not a suspect classification for purposes of an equal protection analysis.

3. **School Funding System Constitutional.** Yes. "The public school financing system in Rhode Island relies substantially on local property taxation to fund public schools and permits districts to increase their expenditures for education if the districts so choose. We hold that the preservation of local control is a legitimate state interest and that the current financing system is rationally related to that legitimate interest." *City of Pawtucket*, 662 A.2d at 62.

4. **Remedy.** Appeal sustained; Superior Court reversed. The Supreme Court determined that the issue of whether the state funding system was constitutional was not justiciable. "The quantity and quality of educational opportunities to be made available to the State's public school children is a determination committed to the legislature or to the people through the adoption of an appropriate amendment to the State Constitution." *City of Pawtucket*, 662 A.2d at 59.

SOUTH CAROLINA

CONSTITUTIONAL PROVISION:

"The General Assembly shall provide for the maintenance and support of a system of free public schools." S.C. Const. art. XI, §3.

LEADING CASE:

Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988).

1. **Education Clause Defined.** No historical analysis.
2. **Is Education a Fundamental Right?** The Court did not [*203] use this language in its analysis.
3. **School Financing System Constitutional.** "The framers of the Constitution have left the legislature free to choose the means of funding the schools of this state to meet modern needs." *Campbell*, 294 S.C. at 349, 364 S.E.2d at 472.

TENNESSEE

CONSTITUTIONAL PROVISION:

"The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools." Tenn. Const. art XI §12. This provision was added in 1978, though Tennessee had an education clause as early as 1835. *See* Tenn. Const. of 1835, art. XI, §10.

LEADING CASES:

Tennessee Small School Systems v. McWherter, 851 S.W.2d 139 (Term. 1993).

1. **Education Clause Defined.** The court believed that the 1978 amendment was a "substantive and definitive command" to the legislature to provide for public education: "[T]he word 'education' has a definite meaning and needs no modifiers in order to describe the precise duty imposed upon the legislature." *McWherter*, 851 S.W.2d at 150. The court declined to define the precise level of education mandated by the provision. *McWherter*, 851 S.W.2d at 152.

2 **Is Education a Fundamental Right? Yes.**

3. **Funding System Constitutional.** No. The court held that the disparities of funding caused by the law violated the state equal protection clause. *McWherter*, 851 S.W.2d at 156. The court held that "local control" was not a rational basis justifying "disparity in opportunity." *McWherter*, 851 S.W.2d at 154-55.

4. **Remedy.** Reversed [*204] and remanded to the trial court for further proceedings.

Tennessee Small School Systems v. McWherter (McWherter II), 894 S.W.2d 734 (Term. 1995).

This second appeal from *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Term. 1993), requested review of the chancery court's denial of the plaintiffs' demand for immediate equalization of funding for all local school systems. *McWherter*, 894 S.W.2d 734. While the prior case was pending, the legislature enacted the Educational Improvement Act of 1992 incorporating the state's earlier Basic Education Program (BEP). Plaintiffs argue that the new statutory funding scheme violates the state constitution's guarantee of constitutional rights being corrected with deliberate speed because complete equalization of funding will be accomplished over a period of years, and that the new plan does not contain a provision equalizing teachers' salaries. The defendants argue that teachers' salaries do not effect the quality of instruction or educational opportunity, and immediate equalization would not equalize educational opportunities, which is all that is required by the state constitution.

The court held that "the exclusion of teachers' salary increases from the equalization formula is of such a magnitude that it would substantially impair the objectives of the plan; consequently, the plan must include equalization of teachers' [*205] salaries according to the BEP formula." *McWherter*, 894 S.W.2d at 738. However, the BEP does address the state's constitutional obligation to maintain and support a system of free public school, and that the system affords substantially equal educational opportunities. *Id.* Furthermore, while adequate funding is required to develop a better educational program, immediate equalization of funding does not necessarily insure the immediate equalization of educational opportunities or a better program. *McWherter*, 894 S.W.2d at 739. The case is remanded for proceedings that may be appropriate in accordance with the court's opinion.

TEXAS

CONSTITUTIONAL PROVISIONS:

Texas Const. art. VII, §1: "A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public schools." This provision was first included in the Texas Constitution of 1876.

LEADING CASES:

Edgewood Independent School District v. Kirby, 777 S.W.2d 391 (Tex. 1989).

1. **Education Clause Defined.** The court noted that "because of the difficulties inherent in determining the intent of voters over a century ago, we rely heavily on the literal text. We seek its meaning with the understanding that the Constitution was ratified [*206] to function as an organic document to govern society and institutions as they evolve." *Edgewood*, 777 S.W.2d at 394. Whether the funding system is "efficient" is not wholly within the discretion of the legislature: "the language of article VII, section 1 imposes on the legislature an affirmative duty to establish and provide for the public free schools. This duty is not committed unconditionally to the legislature's discretion, but instead is accompanied by standards. By express constitutional mandate, the legislature must make 'suitable' provision for an 'efficient' system for the 'essential' purpose of a 'general diffusion of knowledge.'" *Edgewood*, 777 S.W.2d at 394.

Refusing to equate "efficient" with "economical," the court stated that: "Efficient conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste ..." *Edgewood*, 777 S.W.2d at 395.

2. **Is Education a Fundamental Right?** The Court did not use this language in its analysis.

3. **Financing System Constitutional.** No. The court found that disparities of funding were not contemplated by the drafters of the provision and could not exist within an "efficient" system. *Edgewood*, 777 S.W.2d at 395. The court observed: Property-poor districts are trapped in a cycle of poverty from which [*207] there is no opportunity to free themselves. Because of their inadequate tax base, they must tax at significantly higher rates in order to meet minimum requirements for accreditation; yet

their educational programs are typically inferior. The location of new industry and development is strongly influenced by tax rates and the quality of local schools. Thus, the property-poor districts with their high tax rates and inferior schools are unable to attract new industry or development and so have little opportunity to improve their tax base. *Edgewood*, 777 S.W.2d at 393. The court held that the state's financing scheme was not efficient and, therefore, was unconstitutional: Efficiency does not require a per capita distribution . . . There must be a direct and close correlation between a district's tax effort and the educational resources available to it. ... Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds. *Edgewood*, 777 S.W.2d at 397. Inherent in the requirement of equal educational opportunity was a recognition that different levels of funding were needed for different types of students. Also, districts were not precluded from [*208] supplementing the spending levels needed to create an efficient system. Finally, the court argued that its holding enhanced local control for school districts by requiring that funds be distributed equitably and evenly. *Edgewood*, 777 S.W.2d at 398.

4. **Remedy.** The court issued a stay and retained jurisdiction, pending legislative action to address the court's requirements. *Edgewood*, 777 S.W.2d at 399. In *Edgewood IV*, 893 S.W. 2d 450 (1995), the Supreme Court affirmed the constitutionality of the public school finance system enacted in Senate Bill 7, which provides a two-tiered education finance structure. The first tier is to guarantee "sufficient financing for all school districts to provide a basic program of education that meets accreditation and other legal standards." *Id.* at 461. The second tier comprises a guaranteed yield system, the stated purpose of which is "to provide each school district with the opportunity to supplement the basic program at a level of its own choice and with access to additional funds for facilities." *Id.*

VERMONT

CONSTITUTIONAL PROVISIONS:

Vt. Const. Chapter II, §68: Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general [*209] assembly permits other provisions for the convenient instruction of youth.

LEADING CASE:

Brigham v. State, 166 Vt. 246, 692 A.2d 384 (1997).

1. **Education Clause Defined.** Present education clause arose from Vt. Const. of 1777 that provided: "A school or schools shall be established in each town by the legislature for the convenient instruction of youth." Education was the only governmental service considered worthy of constitutional status at that time. Supreme Court concluded that the clause was violated by the current funding system for public education with its substantial dependence on local property taxes and resultant wide disparities in revenues available to local school districts because it deprived children of equal educational opportunities.

2. **Is Education a Fundamental Right?** The Court discussed the right to education in Vt. based on the Constitution, but did not rely on the "strict scrutiny" standard or any other standard. It concluded that regardless of which test it applied, "the right to education is so integral to our constitutional form of government. . . that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification." *Brigham*, 692 A.2d at 390.

3. **School Financing System Constitutional.** No. "We find no authority [*210] for the proposition that discrimination in the distribution of a constitutionally mandated right such as education may be excused merely because a 'minimal' level of opportunity is provided to all." *Brigham*, 692 A.2d at 397. The Court stated that in so holding, absolute equality of funding was neither a necessary nor a practical requirement to satisfy the constitutional command of equal educational opportunity; to fulfill its constitutional obligation, the state had to ensure substantial equality of educational opportunity throughout Vt.

4. **Remedy.** Vt. legislature left to fashion the specific means to make educational opportunity available on substantially equal terms. The Court entered a declaratory judgment for the student and school district plaintiffs and remanded so that jurisdiction could be retained until valid legislation was enacted and in effect, and for any further proceedings on plaintiffs' remaining claim as to a right to tax-rate equity.

VIRGINIA

CONSTITUTIONAL PROVISION:

"The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is [*211] established and continually maintained." Va. Const. art. VIII, §1. "Standards of quality for the several school divisions shall be determined

and prescribed from time to time by the Board of Education, subject only to revision by the General Assembly." Va. Const. art. VII, §2.

LEADING CASE:

Scott v. Commonwealth, 247 Va. 379, 443 S.E.2d 138, 10 Va. Law Rep. 1192 (1994).

1. **Education Clause Defined.** The court held that the second clause of Section 1 was aspirational, while Section 2 left standards of quality and funding completely to the discretion of the General Assembly. *Id.*, 247 Va. at 385, 443 S.E.2d at 141-42.

2. **Is Education a Fundamental Right?** Yes. However, the court held that "nowhere does the Constitution require equal, or substantially equal, funding or programs among and within the Commonwealth's school divisions." *Id.*, 247 Va. at 386, 443 S.E.2d at 142.

3. **School Financing System Constitutional.** Yes. "While elimination of substantial disparity between school divisions may be a worthy goal, it simply is not required by the Constitution." *Id.*, 247 Va. at 386, 443 S.E. 2d at 142-143.

WASHINGTON

CONSTITUTIONAL PROVISION:

"It is the paramount duty of the state to make ample provision for the education of the children residing within its borders without distinction or preference on account of race, color, caste or sex." Wash. Const. art. IX, §1. The next section requires that education be provided through a "General and uniform system of public schools." Wash. Const. art. IX, §2. These sections were adopted in 1889.

LEADING [*212] CASE:

Seattle School District No. 1 of King County v. Washington, 90 Wn.2d 476, 585 P.2d 71 (1978).

1. **Education Clause Defined.** The court found that the provision was mandatory and created a judicially enforceable duty on the legislature. *Seattle School District No. 1 of King County*, 90 Wn. 2d. at 496, 585 P.2d at 83. The court rejected the argument that the clause "is merely a statement of Moral principle and that it is the sole prerogative of the Legislature to interpret,

construe and give it substantive content." *Seattle School District No. 1 of King County*, 90 Wn.2d at 503, 585 P.2d at 87. In response to the argument that the provision was not self-executing, the Court stated: "The power of the judiciary to enforce rights recognized by the constitution, even in the absence of implementing legislation, is clear ... Just as the Legislature cannot abridge constitutional rights by its enactments, it cannot curtail mandatory provisions by its silence." *Seattle School District No. 1 of King County*, 90 Wn.2d at 503 n.7, 585 P.2d at 87 n.7 (citations omitted).

2. **Is Education a Fundamental Right?** "Children residing within the state's border have a 'right' to be amply provided with an education." *Id.*, 585 P.2d at 92.

3. **School Funding System Constitutional.** No. The court held that "the Legislature has not expressly determined a level of funding (or deployment of resources) which would be fully sufficient to provide the 'basic education' or a basic program of education mandated by [the Constitution.]" [*213] *Seattle School District No. 1 of King County*, 90 Wash. at 537, 585 P.2d at 104.

4. **Remedy.** Duty of legislature to enact legislation that would determine a level of funding that would be fully sufficient to provide the basic education or a basic program of education mandated by the Constitution, art. 9 §§1 and 2.

WEST VIRGINIA

CONSTITUTIONAL PROVISIONS:

W. Va. Const. art. XII, §1: "The legislature shall provide, by general law, for a thorough and efficient system of free schools." The third state, to do so, West Virginia adopted this language, originally proposed in 1863, at its Constitutional Convention in 1872.

LEADING CASE:

Pauley v. Kelly, 162 W. Va. 672, 255 S.E.2d 859 (1979).

1. **Education Clause Defined.** The court held that a thorough and efficient system of schools . . . develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically. Legally recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons

and issues that affect his own governance; (4) self-knowledge and knowledge [*214] of his or her total environment to allow the child to intelligently choose life work to know his or her options; (5) work training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society. *Pauley*, 162 W.Va. at 705-06, 255 S.E.2d at 877.

2. Is Education a Fundamental Right? Education is a fundamental constitutional right under the West Virginia Constitution. *Pauley*, 162 W.Va. at 707, 255 S.E.2d at 878.

3. School Financing System Constitutional. The school finance system violates the state equal protection clause, "unless the state can demonstrate some compelling State interest to justify the unequal classification." *Pauley*, 162 W.Va. at 707, 255 S.E.2d at 878.

4. Remedy. The court remanded to the trial court to develop "suitable standards to set the core values of a thorough and efficient educational system." *Pauley*, 162 W.Va. at 707, 255 S.E.2d at 878. Additionally, the court required that on remand, the leaders of both houses of the legislature be named as defendants.

WISCONSIN

CONSTITUTIONAL PROVISION:

"The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools [*215] shall be free and without charge for tuition to all children between the ages of 4 and 20 years..." Wis. Const. art. X, §3. The provision was first included in the Constitution of 1848.

LEADING CASES:

Kukor v. Grover, 148 Wis.2d 469, 436 N.W.2d 568 (1989).

1. Education Clause Defined. The court used a three-part analysis established in *Buse v. Smith*, 74 Wis.2d 550, 247 N.W.2d 141 (1976), which examined the plain meaning of the text, the original intent of the framers of the provision, and the first legislative interpretation of the provision. *Kukor*, 148 Wis.2d at 485, 436 N.W.2d at 574. The court concluded that "the uniformity provision thus could only have been intended to assure that those resources distributed equally on a per-pupil basis were applied in such manner as to assure that the 'character' of instruction was as uniform as practicable." *Kukor*, 148 Wis.2d at

492, 436 N.W.2d at 578. The "character" of instruction was governed by regulations setting minimum standards for teacher certification and school curriculum.

2. **Is Education a Fundamental Right?** Yes. However, the court found that "equal opportunity for education does not mandate absolute equality in districts' per-pupil expenditures." *Kukor*, 148 Wis. at 496, 436 N.W.2d at 579.

3. **School Financing System Constitutional.** Yes. The court held that "the present system of school finance is not inconsistent with uniformity provision ..." *Kukor*, 148 Wis. at 484, 436 N.W.2d at 574.

Davis v. Grover, 66 Wis. 2d 501, 480 N.W.2d 460 (1992), *recon. denied*, 490 N.W.2d 26 (Wis. 1992).

1. **Constitutionality of Milwaukee Parental Choice [*216] Program (MPCP).** The court was faced with the issue of whether the MPCP violated Article X, Section 3 of the Wisconsin Constitution (which requires the establishment of uniform school districts.) The MPCP is a parental choice program under which a K — 12 student residing in a city of the first class (Milwaukee) may attend at no charge to the student, any non-sectarian private school located in the city if certain criteria are met by the student and the school. Appellants, families of participating students, challenged a number of regulatory actions taken by the State Superintendent of Public Instruction. The State of Wisconsin, on its own behalf, argued that the MPCP is constitutional in all respects. The circuit court held that the MPCP was constitutional, but Intervenor Chaney — representing various school administrative organizations and the NAACP — challenged the MPCP on constitutional grounds. The court of appeals reversed the circuit court and held that the MPCP violated the private/local legislation clause of Article IV, Section 18 of the Wisconsin Constitution. It did not reach the uniformity clause issue.

On appeal to the Supreme Court of Wisconsin, Chaney argued, *inter alia*, that the MPCP violated the uniformity clause of Article X, Section 3 of the Constitution because private schools [*217] are "district schools" within the meaning of the uniformity clause and the participating private schools violated that clause by offering a "character of instruction" that is different from the one found under the statutory mandate. The court held that the MPCP in no way deprives any student the opportunity to attend a public school with a uniform character of education, and that all the uniformity clause requires is that the legislature provide the opportunity to all children in Wisconsin to receive a free uniform education — which the legislature had done. The court concluded that the legislature fulfilled its constitutional duty to provide for the basic education of Wisconsin's children, and the mere appropriation of public funds to a private school did not transform that school into a public one.

WYOMING

CONSTITUTIONAL PROVISION:

"The Legislature shall provide for the establishment and maintenance of a complete and Uniform system of public instruction, embracing free elementary schools of every needed kind and grade ..." Wyo. Const. art. VII, §1. "The right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated [*218] to advance the sciences and liberal arts." Wyo. Const. art. I, §23. "The legislature shall make laws for the establishment and maintenance of systems of public schools which shall be open to all the children of the state and free from sectarian control." Wyo. Const. art. XXI, §28.

LEADING CASE:

Washakie County School District v. Herschler, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824, 66 L.Ed.2d 28, 101 S.Ct. 86 (1980).

1. **Education Clause Defined.** "In light of the emphasis which the Wyoming Constitution places on education, there is no room for any conclusion but that education ... is a matter of fundamental interest." *Washakie County School District*, 606 P.2d at 333. The court did not review any historical materials.

2. **Is Education a Fundamental Right?** Yes. "It is our view that until equality of funding is achieved, there is no practicable method of achieving equality of quality." *Washakie County School District*, 606 P.2d at 334.

3. **School Financing System Constitutional.** No. "The right to an education cannot constitutionally be conditioned on wealth in that such a measure does not afford equal protection." *Washakie County School District*, 606 P.2d at 332.

4. **Remedy.** Reversed and remanded to district court with directions to vacate its order of dismissal, enter judgment consistent with opinion and retain jurisdiction until a constitutional body of legislation is enacted and in effect, taking such action as may be necessary to assure conformity.

Campbell County School District v. State of Wyoming, 907 P.2d 1238 (Wyo. 1995).

After *Washakie*, the legislature enacted statutes to redesign [*219] financing, including a mandated local twenty-five mill levy, a state twelve mill levy and a county six mill levy. In response to *Washakie's* holding that school funding had to depend upon state wealth and not local wealth, solutions were proposed to redistribute some local wealth to other districts. One of those

solutions were to include the following five components in making up the school finance system — the divisor feature, the municipal divisor feature, the recapture feature, the optional mills feature and the capital construction feature. In *Campbell*, the district court held the municipal divisor, recapture and optional mills features of the school finance system unconstitutional, but held that the divisor and capital construction features of the system were constitutional. On appeal, the Supreme Court affirmed the court's decision that the municipal divisor, recapture and optional mills features were unconstitutional but reversed its decision regard the other two features, ultimately finding the entire finance system still unconstitutional.

APPENDIX II

FINDINGS OF FACT

The Court's findings on PARSS' proposed findings of fact are as follows. To the extent that the following rulings [*220] can be construed in conflict with any part of the Opinion, the Opinion controls. In any finding of fact made concerning where "rich" or "poor" is made, it is assumed that that classification means the top and bottom five percent of the continuum in wealth based upon MVPI ratio. When a finding was not made, it either means that there was insufficient evidence in the record, the finding was not understood, or that not sufficiently relevant or that it was not a proper proposed finding of fact. For all conclusions of law, *see* Opinion.

PARSS' PROPOSED FINDINGS OF FACT

Proposed Finding(s)	Finding
1-9	GRANTED
10	DENIED
11-15	GRANTED
16-17	DENIED
18	GRANTED
19-20	GRANTED
21-38	NEITHER GRANTED NOR DENIED. See Opinion.
39	
40-98	GRANTED
99	GRANTED , insofar as the finding indicated to what representation Cowell testified and his belief as to reasons behind education fund.
100	GRANTED
101	DENIED . Stated funding for basic subsidy reduced disparity but does

Proposed Finding(s)	Finding
	not eliminate. <i>See</i> Opinion.
102-105	GRANTED
106-117	GRANTED
118	NEITHER ADMITTED NOR DENIED
119-128	GRANTED
129-130	DENIED
131	DENIED
132-139	GRANTED
140-141	NEITHER ADMITTED NOR DENIED
142	GRANTED
143-144	NEITHER ADMITTED NOR DENIED
145-147	GRANTED
148	GRANTED in part. Subsidies are calculated because [*221] of a higher percentage of children in district.
149-182	GRANTED
183	GRANTED but there are supplemental funds provided by the General Assembly to districts with unusually high special education expenses.
184-192	GRANTED
193	NEITHER ADMITTED NOR DENIED
194-219	GRANTED
220	DENIED
221 - 306	GRANTED insofar as the statements quoted were made.
307	GRANTED
308	NEITHER GRANTED NOR DENIED
309-310	GRANTED
311-315	NEITHER GRANTED NOR DENIED
316	GRANTED
317-320	NEITHER GRANTED NOR DENIED
321	GRANTED
322	GRANTED insofar as credible. DENIED in all other respects. <i>See</i> Opinion.
323-325	GRANTED
326	GRANTED insofar as credible and to some conclusions she drew. <i>See</i> Opinion.

Proposed Finding(s)	Finding
327-340	GRANTED
341 - 350	GRANTED
351	GRANTED with elimination of term dramatically.
352	GRANTED
353	GRANTED
354	NEITHER ADMITTED NOR DENIED
355	GRANTED
356	GRANTED
357-362	GRANTED
363	NEITHER GRANTED NOR DENIED
364	DENIED
365	GRANTED
366	DENIED
367	DENIED
368	GRANTED
369-378	NEITHER GRANTED NOR DENIED
379	GRANTED as to first two sentences; the third sentence is DENIED .
380	GRANTED
381 - 384	NEITHER ADMITTED NOR DENIED
385 - 386	GRANTED
387 - 388	NEITHER ADMITTED NOR DENIED
389	GRANTED
390	DENIED
391-392	GRANTED
393	GRANTED
394	GRANTED
395-399	GRANTED
400	DENIED
401-445	GRANTED
446	DENIED
447	GRANTED
448 - 451	NEITHER GRANTED NOR DENIED
452	DENIED
453 [*222]	NEITHER ADMITTED NOR DENIED as stated. <i>See Opinion.</i>
454	DENIED
455-461	GRANTED
462-465	DENIED

Proposed Finding(s)	Finding
466-475	GRANTED
476	DENIED
477-481	NEITHER GRANTED NOR DENIED.
482	GRANTED insofar as small and rural schools are poor small and rural schools. Second sentence is DENIED .
483-484	NEITHER ADMITTED NOR DENIED.
485	GRANTED insofar as problems faced by all small schools because of economy of scale, including equipment purchases. DENIED in all other respects.
486 - 488	NEITHER ADMITTED NOR DENIED
489	GRANTED
490	DENIED
491	DENIED
492	NEITHER ADMITTED NOR DENIED.
493	GRANTED
494	NEITHER ADMITTED NOR DENIED.
495-498	GRANTED
499 - 500	NEITHER ADMITTED NOR DENIED
501-519	GRANTED
520	GRANTED if it refers to appointment of Second Board of Control.
521	GRANTED if it means only local tax revenue.
522	GRANTED
523 - 526	NEITHER ADMITTED NOR DENIED
527-537	GRANTED
538	NEITHER GRANTED NOR DENIED
539	GRANTED
540-564	GRANTED
565	DENIED
566	GRANTED
567	DENIED
568 - 571	GRANTED
572-2596	GRANTED
597	NEITHER ADMITTED NOR DENIED.
598 - 755	GRANTED

Proposed Finding(s)	Finding
756	DENIED
757 - 761	GRANTED
762 - 768	GRANTED
769	DENIED
770	NEITHER GRANTED NOR DENIED.
771	NEITHER GRANTED NOR DENIED.
772 - 1084	GRANTED
1085	NEITHER GRANTED NOR DENIED.
1086 - 1087	GRANTED
1088	NEITHER GRANTED NOR DENIED.
1089 - 1095	ADMITTED
1096	NEITHER ADMITTED NOR DENIED.
1097 [*223]	DENIED
1098 - 1100	NEITHER ADMITTED NOR DENIED.
1101 - 1171	GRANTED
1172 - 1176	GRANTED
1177	DENIED AS STATED
1178	NEITHER ADMITTED NOR DENIED.
1179 - 1182	GRANTED
1183	GRANTED but stadium was renovated with private funds.
1184 - 1193	GRANTED
1194	GRANTED as to first two sentences; neither GRANTED NOR DENIED as to third sentence.
1195 - 1213	GRANTED
1214 - 1228	NEITHER GRANTED NOR DENIED.
1229 - 1241	GRANTED
1242	GRANTED , but he testified correlation was slight.
1243 - 1252	GRANTED
1253 - 1255	NEITHER GRANTED NOR DENIED.
1256	DENIED as stated.
1257 - 1399	GRANTED
1400	GRANTED that Dr. Fortune was credible. DENIED in all other respects.
1401 - 1404	GRANTED

Proposed Finding(s)	Finding
1405	DENIED as stated.
1406 - 1408	NEITHER GRANTED NOR DENIED.
1409	DENIED
1410	GRANTED
1450 - 1462	DENIED as not proper subject for findings of fact.

PARSS' PROPOSED SUPPLEMENTAL FINDINGS OF FACT

Proposed Finding(s)	Finding
1463	GRANTED but was held to be expert statistician.
1464	GRANTED
1465	DENIED AS STATED. The visual impression from Dr. Fairley's charts are not substantially different than PARSS' decide charts.
1466 - 1467	DENIED AS STATED. See 1465.
1468	GRANTED
1469	DENIED AS STATED. See 1465.
1470 - 1471	DENIED AS STATED. It may have been better to have a census corresponding with market value data.
1472	GRANTED [*224] AS STATED , but there is a category called Total Educational Spending.
1473	NEITHER ADMITTED NOR DENIED.
1474	GRANTED insofar as he used different measurement.
1475 - 1476	GRANTED
1477	NEITHER GRANTED NOR DENIED.
1478	NEITHER GRANTED NOR DENIED.
1479	GRANTED insofar as Dr. Fairley testified that the correlation was extremely high.
1480	NEITHER ADMITTED NOR DENIED.
1481	DENIED
1482	DENIED
1483	GRANTED

Proposed Finding(s)	Finding
1484	GRANTED as to be unreliable on evidence here.
1485 - 1486	NEITHER ADMITTED NOR DENIED.
1487	GRANTED
1488	GRANTED but <i>see</i> Finding No. 1484.
1489 - 1493	GRANTED
1494	<i>See Opinion.</i>
1495 - 1509	GRANTED
1510	DENIED
1511	NEITHER ADMITTED NOR DENIED.
1512 - 1535	NEITHER ADMITTED NOR DENIED.

COMMONWEALTH'S PROPOSED FINDINGS OF FACT

Proposed Finding(s)	Finding
1 - 42	GRANTED
43	MODIFIED to read: Those mechanisms have been amended often on an annual basis, to meet the needs of the education system <u>or</u> the fiscal requirements of the Commonwealth.
44 - 115	GRANTED
116 - 117	NEITHER GRANTED NOR DENIED.
118 - 189	GRANTED
190	DENIED
191	MODIFIED to read: Each county sets its predetermined ratio and the State Tax Equilization Board sets the common-level ratio.
192 - 291	GRANTED
292	NEITHER GRANTED NOR DENIED.
293 - 298	GRANTED
299	NEITHER GRANTED NOR DENIED.
300 - 302	GRANTED
303	NEITHER GRANTED [*225] NOR DENIED.
304 - 339	GRANTED
340 - 379	GRANTED

Proposed Finding(s)	Finding
380 - 381	NEITHER ADMITTED NOR DENIED.
382 - 394	GRANTED
395 - 397	NEITHER ADMITTED NOR DENIED.
398 - 417	GRANTED
418 - 419	NEITHER GRANTED NOR DENIED.
420 - 421	GRANTED
422	NEITHER GRANTED NOR DENIED.
423 - 441	GRANTED
442	NEITHER GRANTED NOR DENIED.
443 - 444	GRANTED
445 - 449	NEITHER GRANTED NOR DENIED.
450	GRANTED
451 - 498	GRANTED
499	NEITHER GRANTED NOR DENIED.
500 - 501	GRANTED
502	NEITHER GRANTED NOR DENIED.
503 - 508	GRANTED
509	GRANTED that they have a library; NEITHER GRANTED NOR DENIED that its materials are adequate.
510 - 534	GRANTED
535 - 536	NEITHER GRANTED NOR DENIED.
537	
538 - 560	GRANTED
560	NEITHER GRANTED NOR DENIED.
560 - 601	GRANTED
602	DENIED AS STATED.
603	MODIFIED ; offsets but does not eliminate disparities in funding.
604	DENIED AS STATED.
605 - 618	<i>See Opinion.</i>
619 - 621	GRANTED
622	DENIED
623	GRANTED
624	DENIED
625 - 627	GRANTED

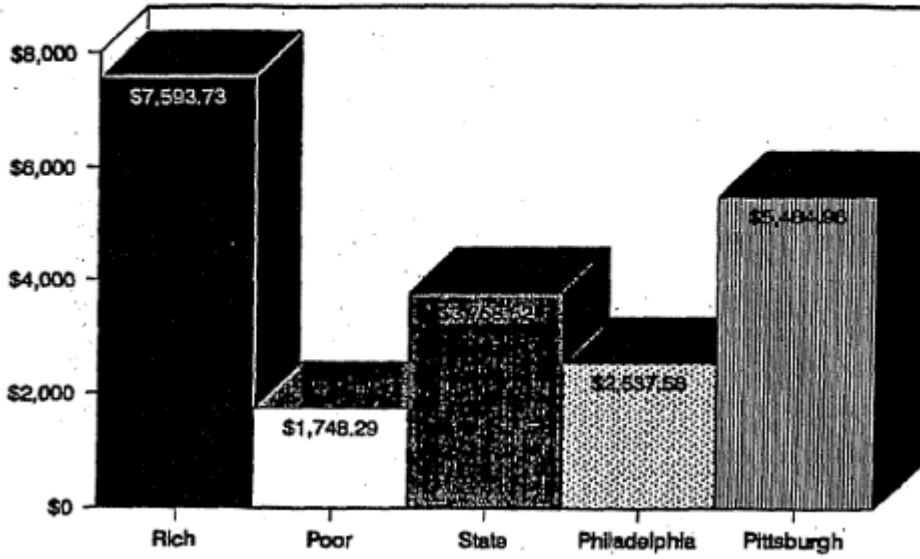
Proposed Finding(s)	Finding
628 - 629	NEITHER GRANTED NOR DENIED.
630 - 635	GRANTED
636	NEITHER ADMITTED NOR DENIED.
637-647	See Opinion.

COMMONWEALTH'S PROPOSED SUPPLEMENTAL FINDINGS OF FACT

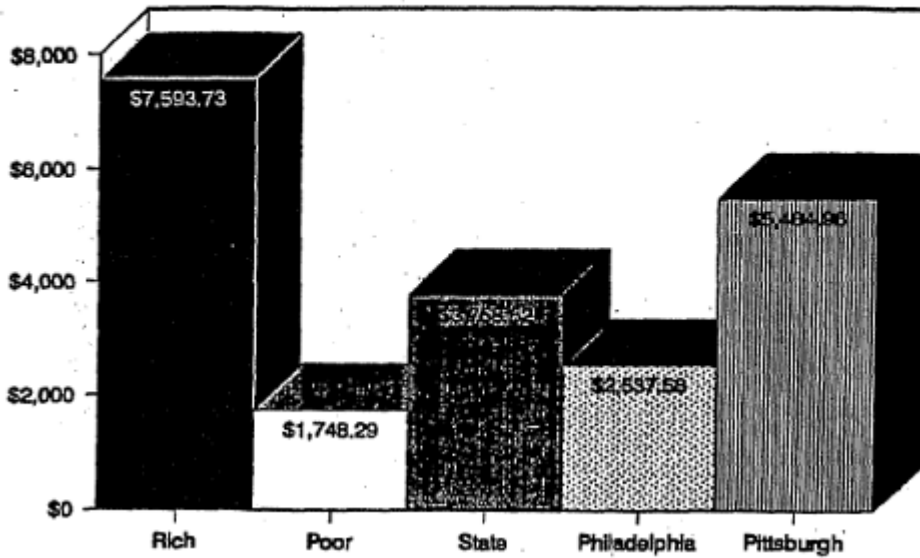
Proposed Finding(s)	Finding
1	MODIFIED to read: Petitioners have failed to show that all poor or rural districts have physical facilities that are incorrigible.
2 - 4	GRANTED
5	NEITHER ADMITTED NOR DENIED.
6 - 7	GRANTED
8	NO FINDING [*226] REQUESTED.
9-12	GRANTED
13	NEITHER GRANTED NOR DENIED.
14	MODIFIED to read: It is not incumbent on the Commonwealth to prevent the Commonwealth from making poor decisions regarding facilities or revenues until they become so severe that the Commonwealth is required to make them "distressed".
15 - 17	GRANTED
18 - 19	NEITHER GRANTED NOR DENIED.
20 - 29	GRANTED
30	NEITHER GRANTED NOR DENIED.
31	GRANTED
32	MODIFIED. There is some evidence in Salisbury Elk-Lick and Connellsville that some facilities were inadequate.
33 - 39	GRANTED

Attachment 1

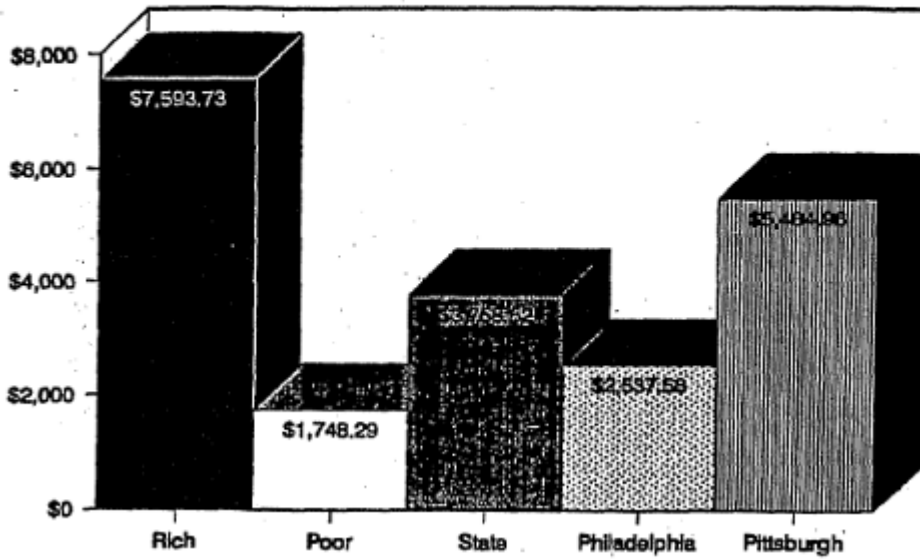
**Local Revenue per Pupil
1993-1994**



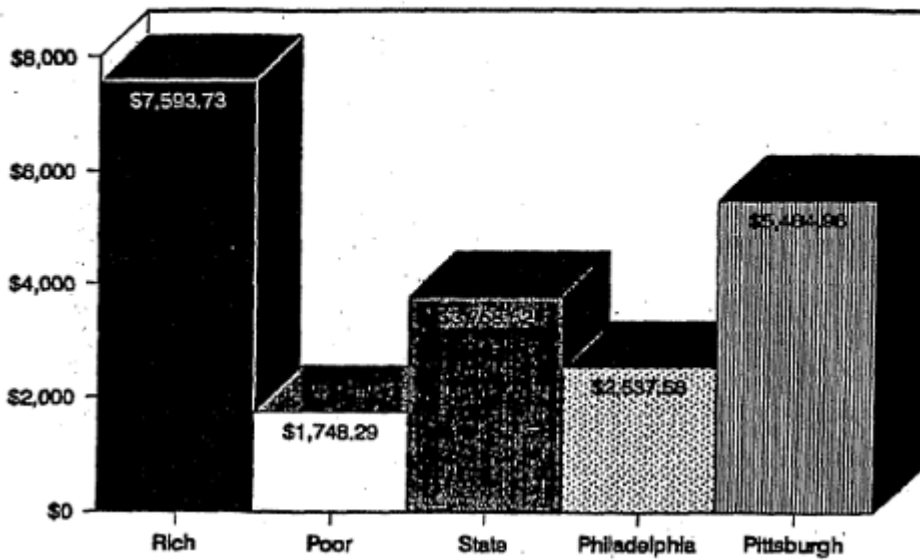
**Local Revenue per Pupil
1993-1994**



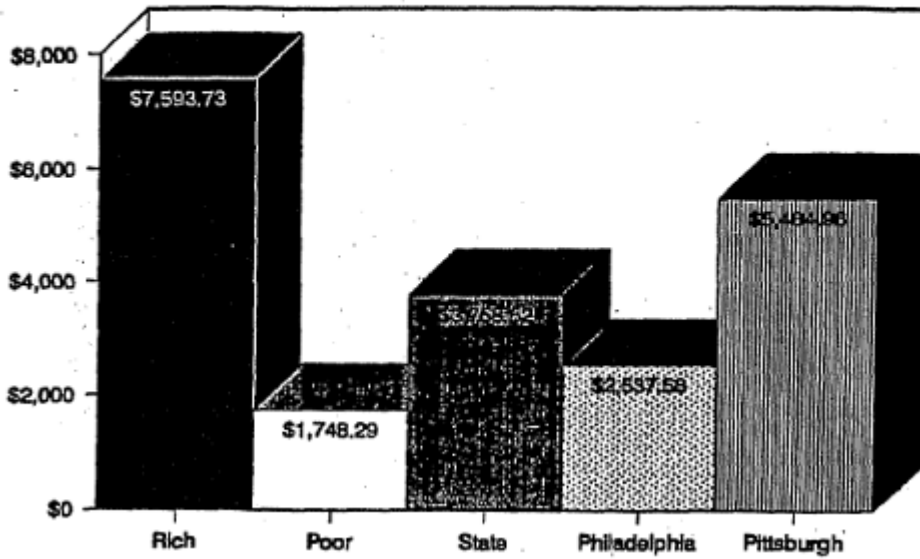
Local Revenue per Pupil 1993-1994



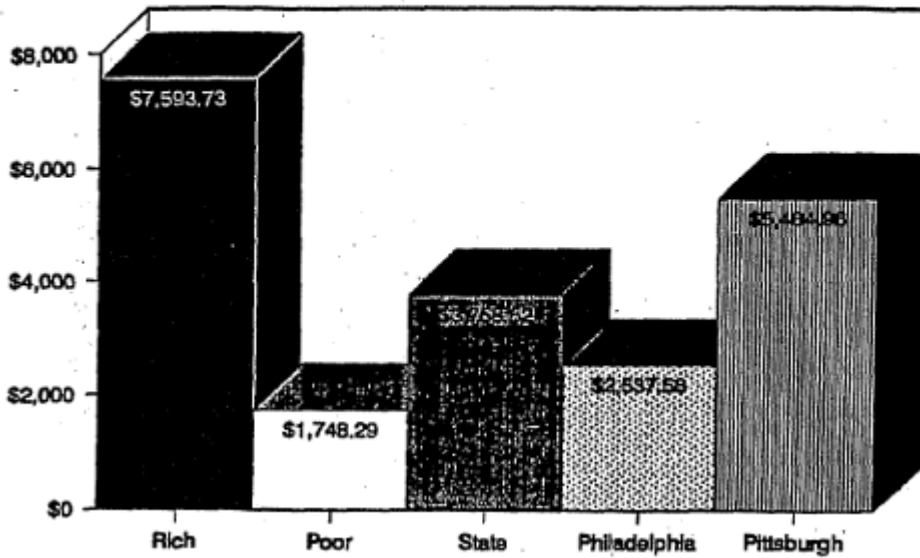
Local Revenue per Pupil 1993-1994



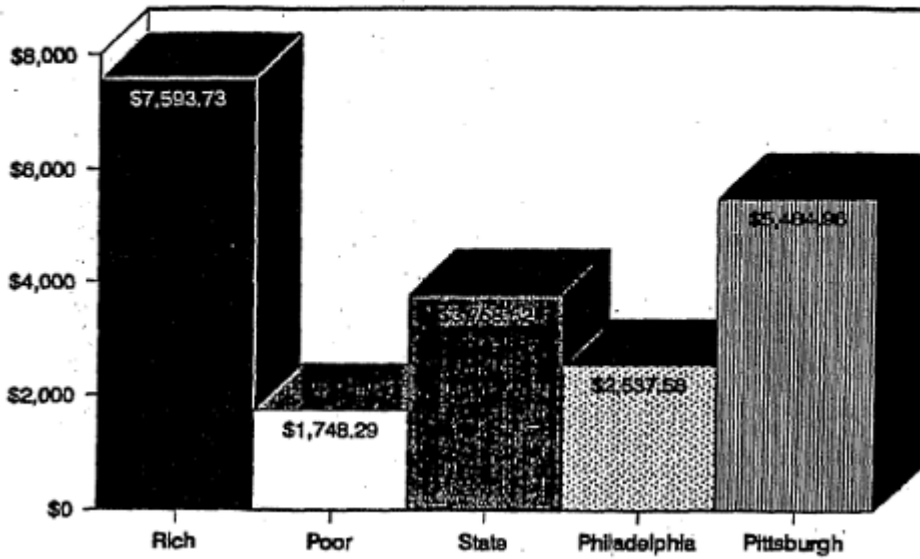
Local Revenue per Pupil 1993-1994



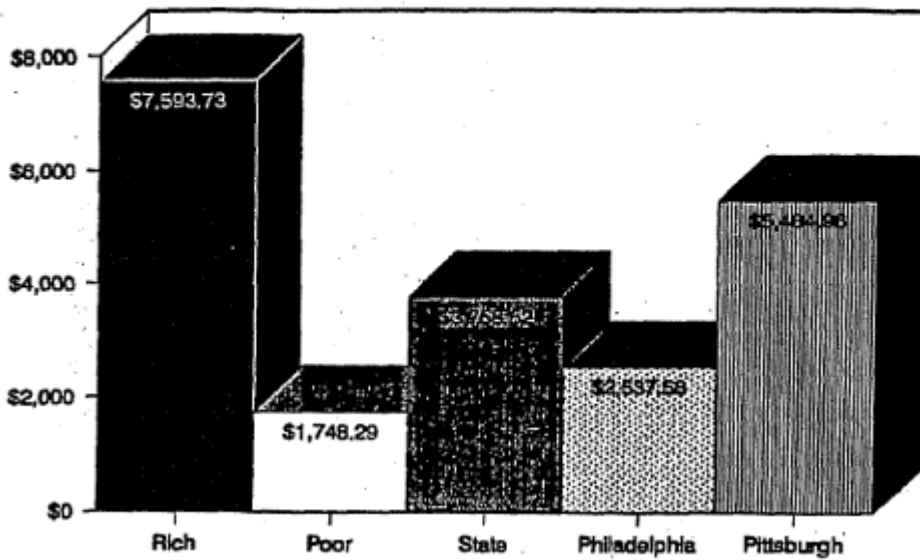
Local Revenue per Pupil 1993-1994



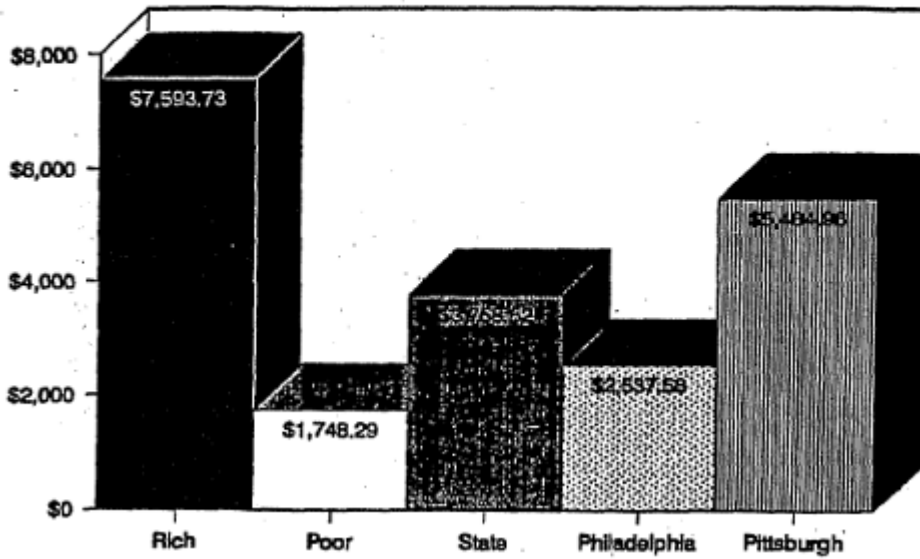
Local Revenue per Pupil 1993-1994



Local Revenue per Pupil 1993-1994

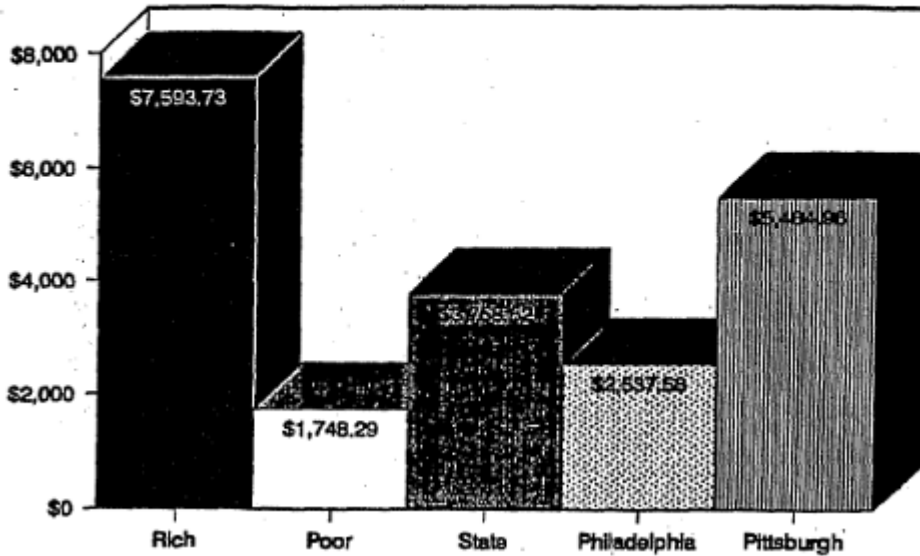


Local Revenue per Pupil 1993-1994

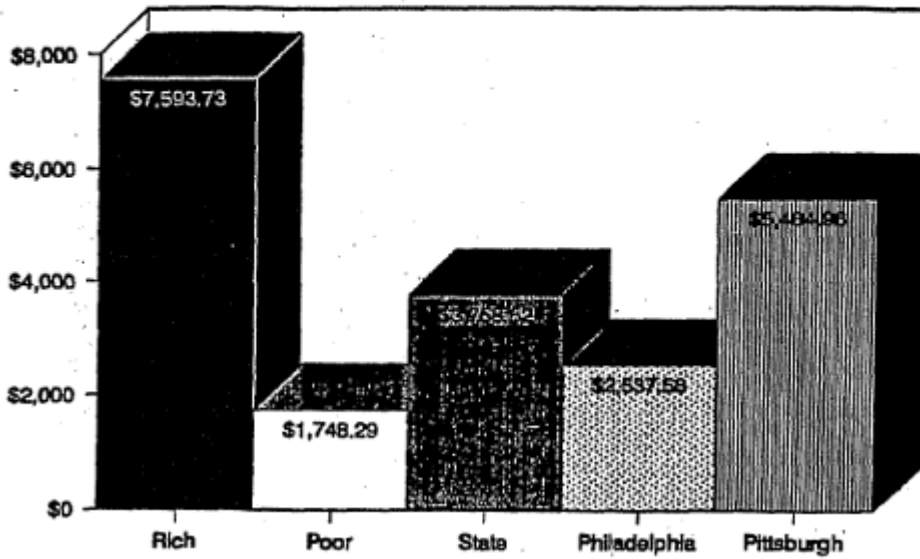


Attachment 2

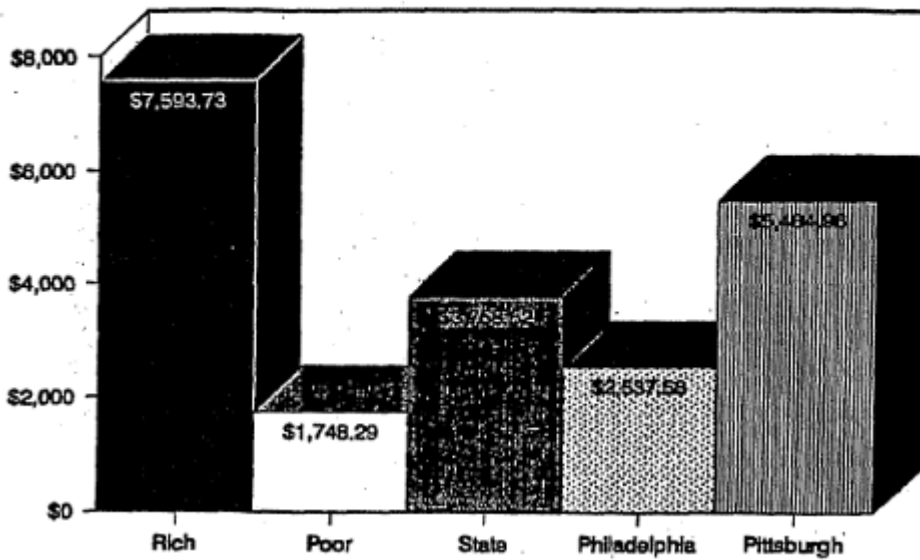
Local Revenue per Pupil 1993-1994



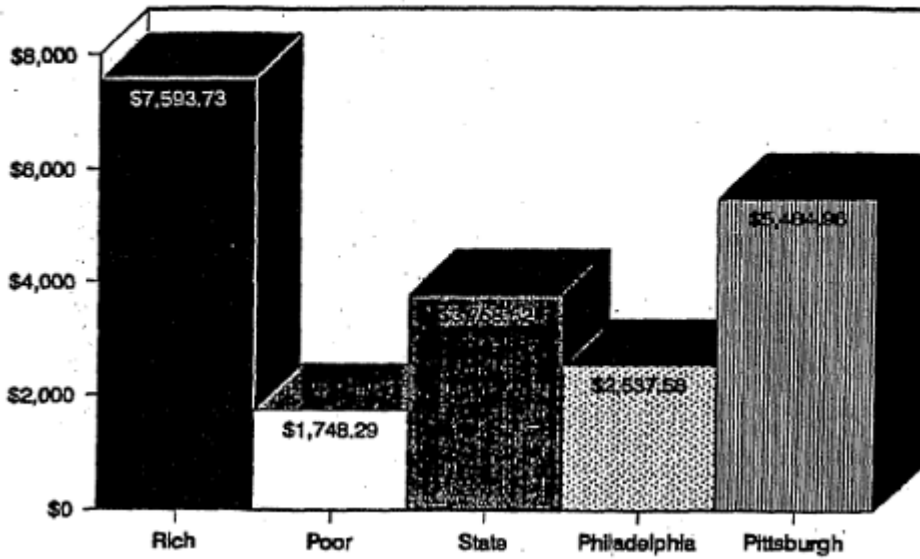
Local Revenue per Pupil 1993-1994



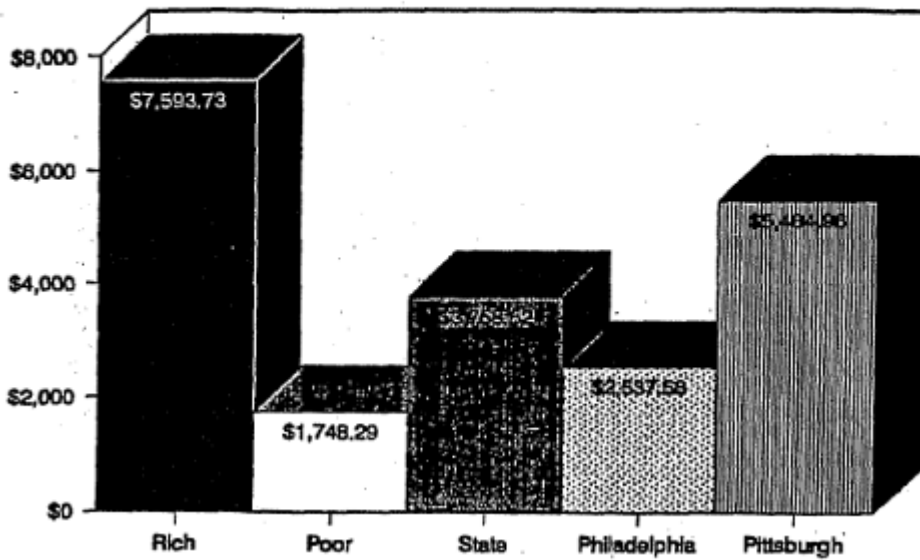
Local Revenue per Pupil 1993-1994



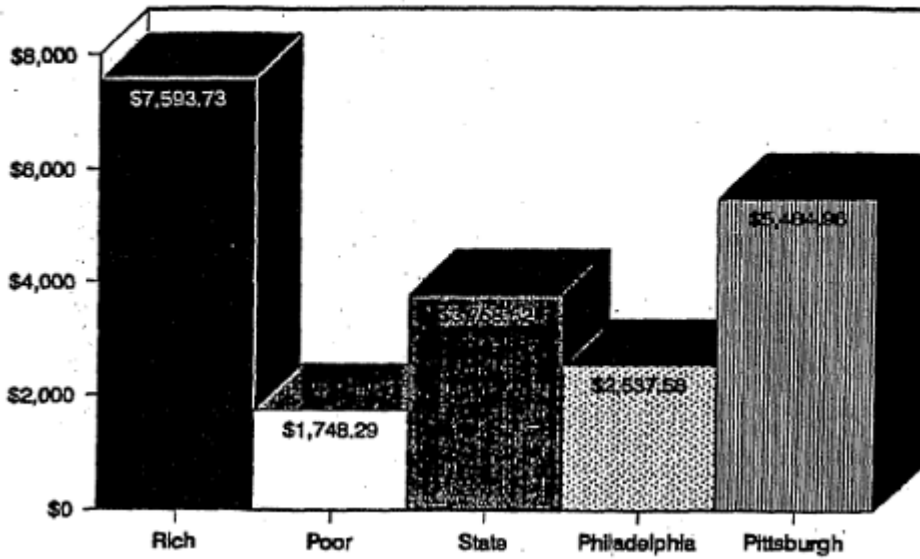
Local Revenue per Pupil 1993-1994



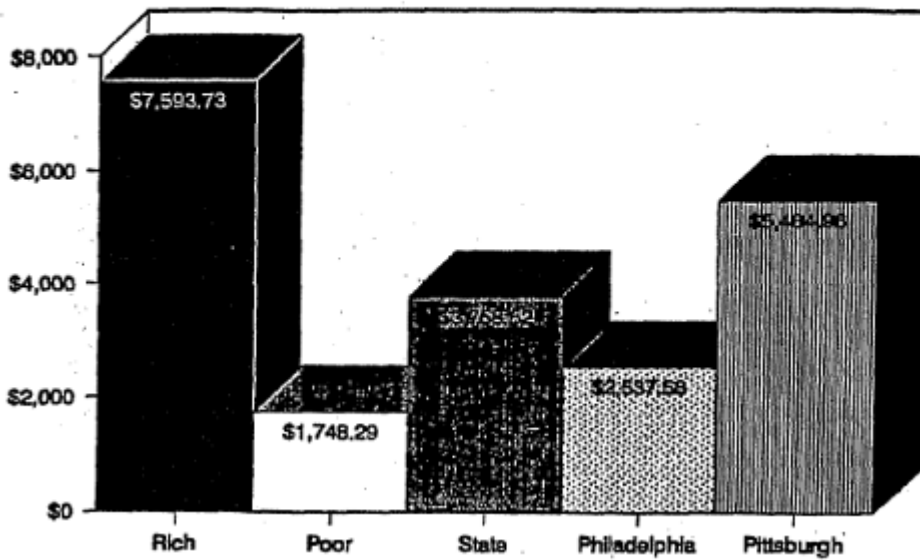
Local Revenue per Pupil 1993-1994



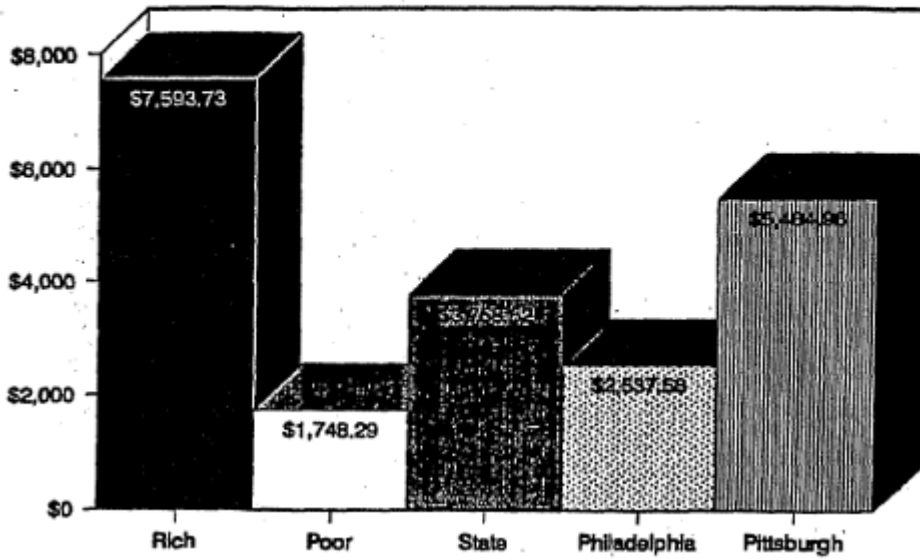
Local Revenue per Pupil 1993-1994



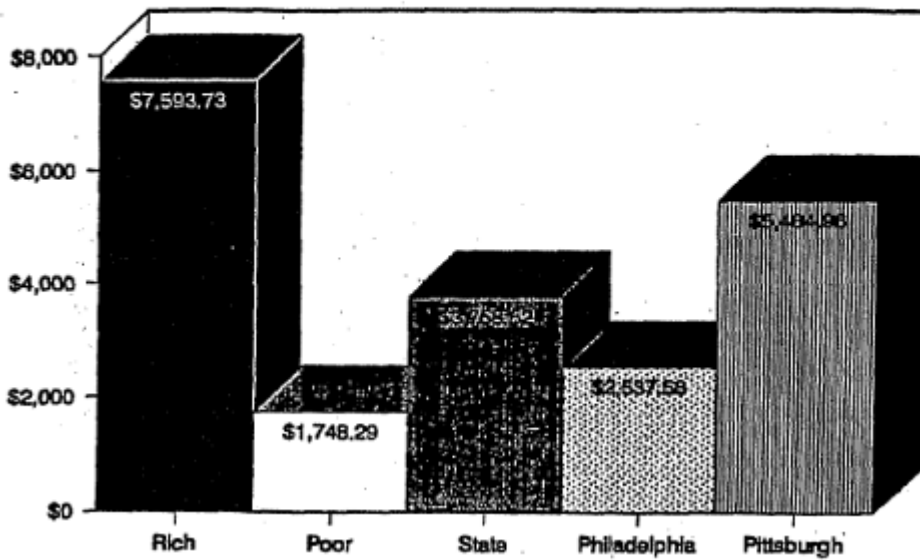
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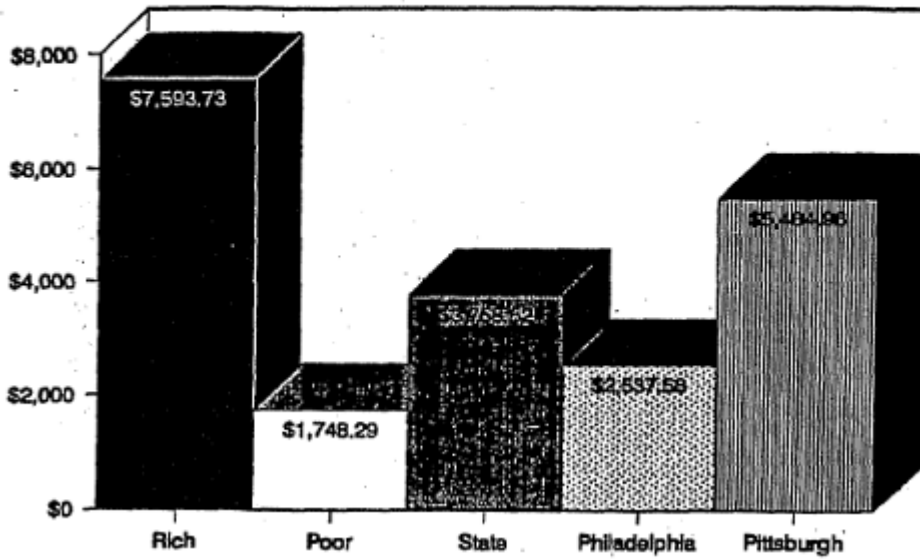
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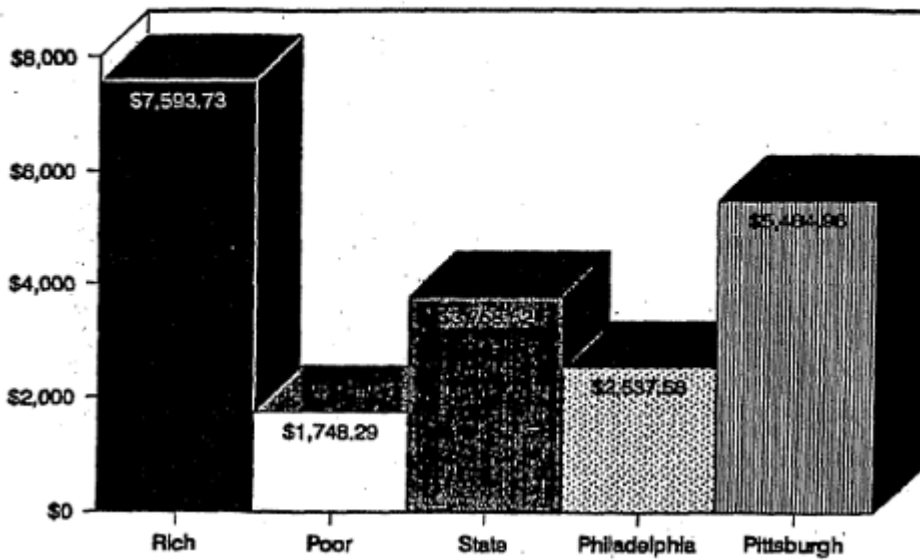
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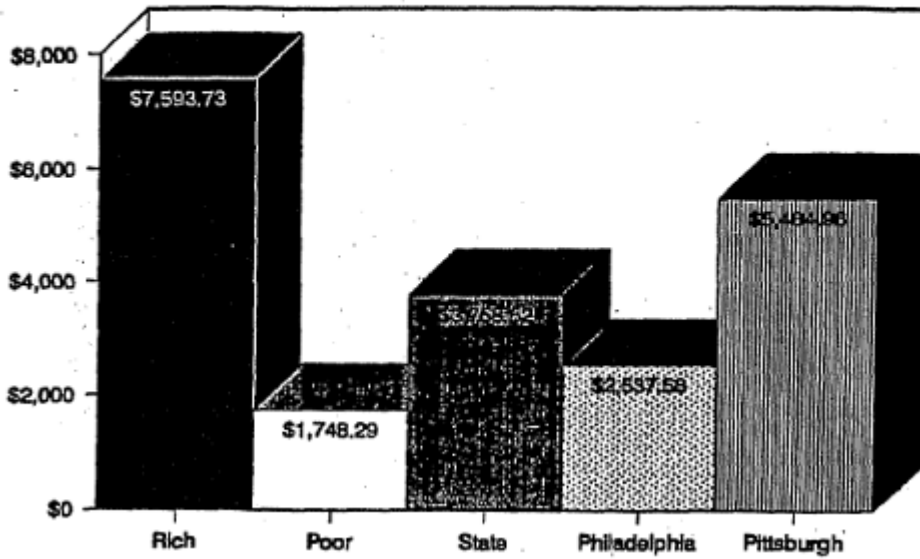
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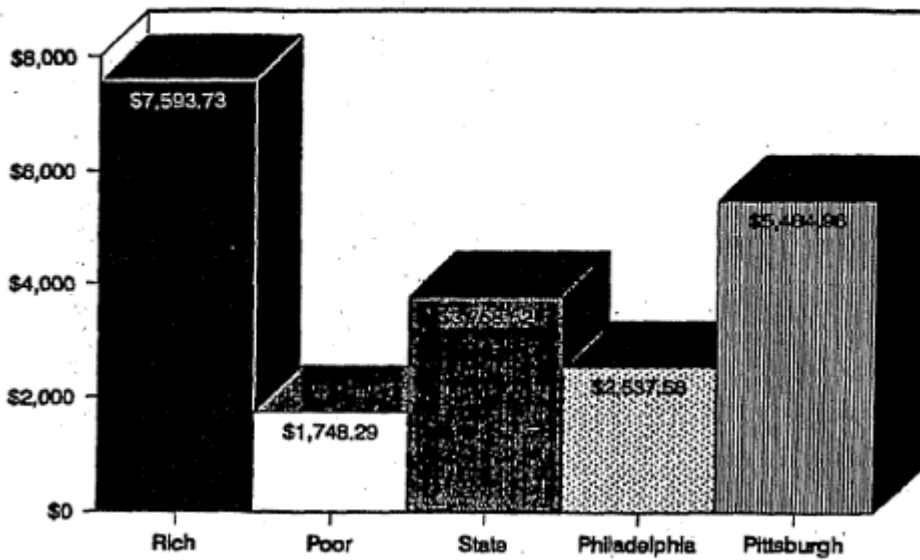
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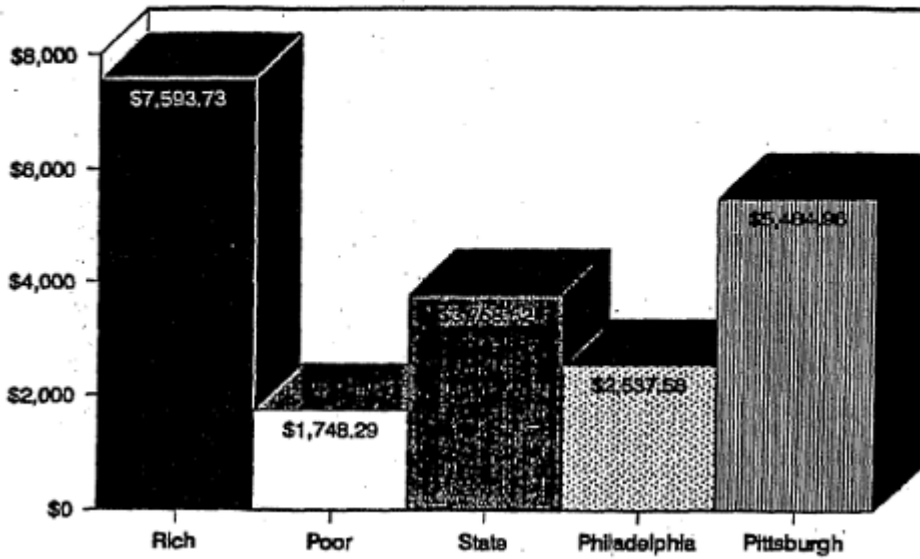
Local Revenue per Pupil 1993-1994



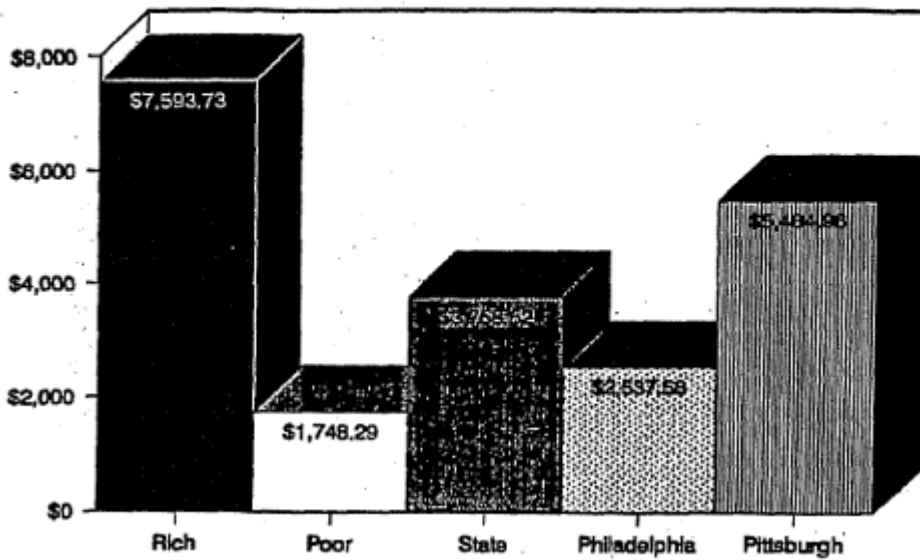
Local Revenue per Pupil 1993-1994



Local Revenue per Pupil 1993-1994



Local Revenue per Pupil 1993-1994



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