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Public School Finance Reform and the Role of Local Control of the Schools

Anne-Marie Eileraast†

Large funding disparities among the public school districts of many states have sparked intense criticism of local property taxes as the primary basis for school funding.1 In the last two years, the supreme courts of several states have struck down school finance systems on the basis of such disparities in per pupil funding.2 These decisions, by identifying education as a state duty,3 also may signal greater state involvement in the traditionally locally-managed school districts.

Because of state supreme court decisions invalidating their public school funding schemes, many state legislatures have become involved in the debate over how best to achieve educational equity in a system funded largely by local tax revenues.4 So far, the states have retained locally-based funding.5 However, particular legislative reforms have reflected a difference in the value which the states place on local financial and substantive control of the schools.6 With similar school funding challenges pending in at least thirteen states,7 many other states soon may have to balance the

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3 See, for example, Rose v Council for Better Educ., Inc., 790 SW2d 186, 207 (Ky 1989).

4 The median local share of school expenditures is 50 percent. The highest local share, in New Hampshire, is over 90 percent of total funds. See Norman C. Thomas, Equalizing Educational Opportunity Through School Finance Reform: A Review Assessment, 48 U Cin L Rev 255, 256 (1979).

5 Hawaii, whose schools are fully state funded, is the only exception. Id at 255.

6 Compare New Jersey’s Quality Education Act of 1990, 1990 NJ Seas Law Serv 52, §§ 6 and 23, which restrict local budget increases, with the Kentucky Education Reform Act of 1990, 1990 Ky Acts 476 § 7, which sharply increases funding to poorer districts, but preserves the ability of local districts to supplement their budgets with local funds.

sometimes competing values of absolute financial equality and local initiative as they respond to court orders to restructure school finance.

I. The Shift Toward Greater State Involvement in Public School Finance

Lawsuits seeking to redress school funding disparities are not new. However, since early 1989, state supreme courts have asserted a new, state law ground for invalidating public school finance schemes: the state constitutions' education clauses. The result is that several state legislatures, in pursuit of equal funding, are taking a greater role in school finance. Although different states have adopted different reform strategies, all provide for some shift in fiscal control from localities to the states.

A. The Movement Toward Public School Finance Reform: Redefining the States' Duty to Educate

Most states fund their public schools with a combination of state and local property tax revenues. In many of those states, property taxes account for the majority of overall funds spent on education. This dual (state and local) funding system is based in part on the rationale that demand for education works like demand for goods and services in the marketplace: people will choose...
to pay, through their local property taxes, the price of what education is worth to them.\textsuperscript{12}

Of course, in districts where the property tax base is low and school tax rates are high, municipalities may be unable to raise enough revenues to accommodate demand for education.\textsuperscript{13} As a result, the amount of money spent on an individual child's education depends to a large extent on the property wealth of the district in which that child resides.\textsuperscript{14} The resulting funding disparity among school districts\textsuperscript{15} has sparked numerous attempts to reform school finance.

At first, plaintiffs seeking to reform public school finance based their challenges on the equal protection guarantees in the U.S. Constitution\textsuperscript{16} and in some state constitutions.\textsuperscript{17} Many litigants used the United States Supreme Court's language in \textit{Brown v Board of Educ.}\textsuperscript{18} that "education is perhaps the most important function of state and local governments. . . . Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."\textsuperscript{19} Based on the \textit{Brown} dictum, reformers argued that education is a fundamental right and that school finance systems are thus subject to strict judicial scrutiny.\textsuperscript{20}


An additional factor urged in support of the property tax system is that local funding maximizes local control. See the Supreme Court's decision in \textit{San Antonio School Dist. v Rodriguez}, 411 US 1, 53 n 109 (1973).

\textsuperscript{13} This so called "municipal overburden" occurs in poorer urban districts that have a high level of governmental need and relatively low property values. See the New Jersey Supreme Court's opinion in \textit{Abbott by Abbott v Burke}, 119 NJ 287, 575 A2d 359, 393 (1990).

\textsuperscript{14} See Thomas, 48 U Cin L Rev at 265-66.

\textsuperscript{15} In some states, poor students receive only one-fifth the funds available to pupils in wealthier districts. In Illinois, for example, per pupil spending for the 1990-91 school year ranged from $12,866 to $2,095. Casey Banas, \textit{NJ School Financing Latest To Fail Court Test}, Chicago Tribune 1-1 (June 6, 1990).

\textsuperscript{16} US Const, Amend XIV, § 1, provides that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."


\textsuperscript{18} 347 US 483 (1954).

\textsuperscript{19} Id at 493.

\textsuperscript{20} See \textit{Serrano v Priest}, 18 Cal 3d 728, 557 P2d 929 (1976) ("Serrano II"); \textit{Serrano v Priest}, 5 Cal 3d 584, 487 P2d 1241 (1971) ("Serrano I") (holding that state school funding system violated the federal and California equal protection clauses). See also Stuart Biegel, \textit{Reassessing the Applicability of Fundamental Rights Analysis: The Fourteenth Amend-
However, in *San Antonio School Dist. v Rodriguez,* the Supreme Court held that education is not a fundamental federal right and effectively foreclosed arguments that the federal equal protection clause mandates equal school funding. At issue in *Rodriguez* was a state school finance system that relied to a large extent on local property taxes and therefore allowed significant disparities in per pupil funding among districts. Holding that the Texas system was not subject to strict judicial scrutiny, the majority recognized that some trade-off between equal funding and local control may result:

[I]t is no doubt true that reliance on local property taxation for school revenues provides less freedom of choice with respect to expenditures for some districts than for others. . . . It is also well to remember that even those districts that have reduced ability to make free decisions with respect to how much they spend on education still retain . . . authority as to how available funds will be allocated. . . . Other systems of school financing, which place more of the financial responsibility in the hands of the State, [may] result in a comparable lessening of desired local autonomy.

Although it reveals the majority’s concerns, the Court’s dictum about local control does not limit a state’s ability to establish any public school financing system of its choosing, including one that may abridge local control. *Rodriguez* grants full control of school funding to the states.

After *Rodriguez,* litigants turned to state constitutional provisions in order to argue that inequality of school funding is impermissible. These state clauses all provide for some statewide system of public schools. However, the wording of the clauses differs in terms of the clarity and strength of the states’ commitment to

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*ment and the Shaping of Educational Policy After Kadrmas v. Dickinson Public Schools, 74 Cornell L Rev 1078, 1079 (1989).*

* 411 US 1, 18 (1973).

* Id at 19.

* Id at 50-52.

* For Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law,* 1986 Wis L Rev 83, 110, noting that “school districts are mere subdivisions of the states” and that the *Rodriguez* Court’s “deference to local autonomy [is not] elevated to the level of a formal holding.”

* For a discussion of the role of state constitutions in education finance reform, see Thro, 19 J L & Educ 219 (cited in note 2), and Note, 75 Va L Rev 1639 (cited in note 9).*
Several commentators have noted that the provisions fall into four general categories: Category I contains the least explicit commitment to education; Category II requires a "thorough," "efficient," and/or "uniform" school system; and Categories III and IV express a clear commitment to education as one of the paramount duties of the state. Based on these wording differences, some commentators have predicted that those states whose education clauses fall into the stronger categories would be the first to reform public school finance.

Within the past two years, several state supreme courts, including Kentucky, Montana, New Jersey, and Texas, have invalidated public school funding systems as violating their state constitutional education clauses. It is significant that these four state supreme courts interpreted their respective states' Category II constitutions as mandating greater equality in school funding because Category II provisions contain the second-weakest expression of state commitment to education. Therefore, one could expect any of the 35 states in Categories II, III, and IV to be susceptible to similar attacks.

Furthermore, although the Category II states' education provisions are worded similarly, each of these states has adopted a different strategy to restructure its schools in accordance with its constitutional standard. At the very least, the divergence in

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27 See id; Gershon M. Ratner, A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills, 63 Tex L Rev 777, 815 (1985); Thro, 19 J L & Educ at 243 n 130.
29 For example, the New York provision states that "[t]he legislature shall provide for the maintenance and support of a system of free common schools. . . ." NY Const, Art XI, § 1. Fourteen other provisions are included in Category I. See Thro, 19 J L & Educ at 243.
30 New Jersey's provision, calling for "the maintenance and support of a thorough and efficient system of free public schools" is typical. NJ Const, Art VIII, § 4, ¶ 1.
31 See Grubb, 9 Harv CR-CL L Rev at 68-69. For example, California's guarantee that "the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement" falls into Category III. Cal Const, Art IX, § 1.
37 Ky Const, § 183; Mont Const, Art X, § 1; NJ Const, Art VIII, § 4; Tex Const, Art VII, § 1.
strategies suggests that the state constitutional text itself does not determine that state’s approach to finance reform.

The recent reform litigation’s focus on the intent and meaning of state education clauses does not implicate federal constitutional law. Nevertheless, because the education clauses of most state constitutions contain wording similar to or stronger than that used recently to invalidate school systems, the states’ role in public school reform has become an issue of nationwide significance. In addition, the trend of many state supreme courts to take an increasingly activist approach toward state constitutional jurisprudence may sustain a wave of similar decisions in other states.

B. Greater State Involvement in School Finance: The Examples of Kentucky and New Jersey

The recent state court decisions, along with the legislation to implement them, could potentially radically restructure the public schools in their respective states. The legislative reforms sparked by two of these decisions—Rose v Council for Better Educ., Inc.41 in Kentucky and Abbott by Abbott v Burke42 in New Jersey—exemplify two alternative strategies for reworking state public schools. Kentucky’s legislation has retained a “minimum level” approach to funding that, while it allows districts to supplement state funds with local property taxes, dramatically boosts state funding and completely redesigns school governance.43 In contrast to the Kentucky plan, New Jersey’s Quality Education Act of 199044 is more explicitly equality-oriented, limiting the amount by which local districts may increase their budgets based on local taxes.45 These two approaches serve as alternative models for other states seeking to restructure their public schools.

40 Although state constitutions may give courts the freedom to protect individual rights not guaranteed in the federal constitution, state constitutional law has its own unique difficulties. For instance, the frequency of amendments and the states’ practice of borrowing from earlier state constitutions may make the intent of a particular provision difficult to discern. See Thro, 19 J L & Educ at 226-27 n 35.
41 See William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 Harv L Rev 489 (1977), arguing that, given the conservative majority on the U.S. Supreme Court, state high courts have become increasingly active in the protection of individual liberty. See also Stanley Mosk, State Constitutionalism: Both Liberal and Conservative, 63 Tex L Rev 1081, 1088 (1985).
42 790 SW2d 186 (Ky 1989).
45 1990 NJ Sess Law Serv 52.
46 Id at § 85.
Council for Better Educ., Inc. found that the “virtual hodgepodge of educational opportunities” offered Kentucky schoolchildren justified invalidating the entire school system as unconstitutional.\(^{46}\) The court interpreted the constitution’s education clause, “[providing] for an efficient system of common schools,”\(^{47}\) to require that “each and every child in [the] state should receive a proper and adequate education.”\(^{48}\) The court considered both intrastate inequality and the inadequacy of Kentucky schools with respect to national standards relevant to its holding. Although the court found all districts’ funding inadequate, the decision specifically criticized reliance on “permissive” local taxes as a source of discrimination against 80 percent of the state’s pupils.\(^{49}\)

The Council for Better Educ., Inc. court also emphasized that education is a state duty—“a constitutional mandate placed by the people” on the General Assembly.\(^{50}\) The court called for “strong, centralized control (by the state)” of the public schools and “re-stated the overall goals of the system as ‘uniformity and equality’ for the school children of the state ‘as a whole.’ What could be clearer?”\(^{51}\) Although the court left the specific design of the new school system to the legislature, the opinion cited a West Virginia case\(^{52}\) for the proposition that “[c]ourts may, should and have involved themselves in defining the standards of a constitutionally mandated educational system.”\(^{53}\)

In such a system, the legislature has the duty to provide each and every child in the state “with an equal opportunity to have an adequate education” and to monitor the system “on a continuing basis . . . so that there is no waste, no duplication, no mismanagement, at any level.”\(^{54}\) That obligation “cannot be shifted to local counties and local school districts.”\(^{55}\)

Despite the strong language about equality and fundamental rights, the Council for Better Educ., Inc. court nevertheless ac-

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\(^{46}\) Council for Better Educ., Inc., 790 SW2d at 198.

\(^{47}\) Ky Const, § 183.

\(^{48}\) Council for Better Educ., Inc., 790 SW2d at 189.

\(^{49}\) Id at 198-99.

\(^{50}\) Id at 211.

\(^{51}\) Id at 207, quoting Commonwealth ex rel Baxter v Burnett, 237 Ky 473, 35 SW2d 857, 859 (1931).

\(^{52}\) Pauley v Kelly, 162 W Va 672, 255 SE2d 859 (1979), used the state constitution’s education clause to hold that education is a fundamental right in West Virginia and that the existing school finance system was inadequate.

\(^{53}\) Council for Better Educ., Inc., 790 SW2d at 210.

\(^{54}\) Id at 211.

\(^{55}\) Id.
knowledged the General Assembly’s power to create a partially localized funding system:

If the General Assembly decides to establish local school entities, it may also empower them to enact local revenue initiatives to supplement the uniform, equal educational effort that the General Assembly must provide. . . . This includes . . . the power to assess local ad valorem taxes on real property and personal property. . . . Such local efforts may not be used . . . as a substitute for providing an adequate, equal and substantially uniform educational system . . . .

Although the court recognized the potential conflict between "supplementary" local funding and equality by warning that local funding could not substitute for the state’s constitutional obligation, the court explicitly stated that "a supplementary effort in no way reduces or negates the minimum quality of education required" statewide. In other words, a minimum funding level (albeit a high one), rather than an equal level, will suffice to meet Kentucky’s constitutional mandate.

The Kentucky legislature followed Council for Better Educ., Inc. with the Education Reform Act of 1990 ("the Kentucky Act"), which both substantially increases state funding and completely overhauls the structure of the state school system. The new system’s structure redirects significant decisionmaking authority away from the state and local school boards to individual schools, but holds those schools much more accountable to the state for performance.

The Kentucky Act, consistent with the goals presented in Council for Better Educ., Inc., outlines seven “capacities” that public school students are to acquire and directs the new State Board for Elementary and Secondary Education to present a model curriculum framework which school districts may consult as they develop their own curriculum. In addition, the Education Reform Act delegates much of the day-to-day management of the schools to state-mandated school councils composed of two par-
ents, three teachers, and the principal." However, the Kentucky Act implements a strict performance assessment system for schools, including a state “takeover” provision for schools which fail to comply with their improvement plan. Schools have more latitude to make decisions, but if those decisions fail, a state-appointed board will run the errant school and give students the opportunity to go elsewhere.

The Kentucky Act calls for an increase in state funding by $1.3 billion from state sales and corporate tax hikes as well as from elimination of a state income tax deduction for federal taxes. In keeping with Council for Better Educ., Inc., the Act continues to allow supplementary funding through local taxes.

Although the Kentucky legislation does not mandate equal per pupil funding, the massive increase in state funding will decrease local revenues as a percentage of total school expenditures. As a result, the new funding scheme effectively dilutes the impact of local funding. Therefore, while Kentucky’s approach to finance reform is a “minimum level” approach, the scope of the new appropriation provides students a substantially equal education without forcing some districts to cut back their budgets.

Since the Kentucky Act does not restrict local districts’ ability to raise taxes, future funding inequalities are still possible. However, if the minimum funding level is high enough, the inequalities may not be sufficient to compromise the substantive quality of education. Further, the large local tax increases necessary to fuel any substantial inequality may not be possible politically, especially given the increase in state taxes.

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* Id at § 14(2)(a).
* Id at § 10(4): Failure by an educationally deficient school district to meet the process goals, interim performance goals, or timelines set in the district improvement plan shall constitute grounds for removal of the superintendent and local board members from office. . . . The State Board for Elementary and Secondary Education shall appoint the members of the district’s board of education. . . . The appointed members shall serve a four (4) year term or until the district qualifies for an elected board . . . .

* Harrington-Lueker, 177 Am School Bd J at 20.

* Id at § 93 provides in part: “It is the intention of the General Assembly to assure substantially equal public school educational opportunities for those in attendance in the public schools of the Commonwealth, but not to limit nor to prevent any school district from providing educational services and facilities beyond those assured by the state supported program.”
In contrast to Kentucky's minimum level funding approach, New Jersey's Abbott by Abbott v Burke decision has led to more dramatic egalitarian reforms. The New Jersey Supreme Court found that the education provided in 28 of the state's poor urban school districts violated the state constitution. Perhaps because of the decision's limited scope, the court's holding was much more explicit in its call for educational equality. The Abbott court's reinterpretation of the state constitution's education provision to require that "poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students" established the groundwork for the court's theory of equal education. Abbott explicitly encourages the legislature to take a redistributive approach to school funding:

We find that in order to provide a thorough and efficient education in these poorer urban districts, the State must assure that their educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts, and that, in addition, their special disadvantages must be addressed. Under the court's rationale, equality of results may depend on unequal funding—poorer districts may need more money per pupil to address the special needs of their disadvantaged students.

The Abbott decision signals New Jersey's decreasing reliance on local property taxes for school funding. Interestingly, the Abbott court mentioned that retaining some local financing is justified by the legislature's finding that local funding encourages local involvement in the public schools; however, the opinion did not discuss at any length the relative importance of local involvement. Abbott did sharply criticize local self-monitoring as one of the

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**67** Id at 408.
**68** NJ Const, Art VIII, § 4, ¶ 1 ("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."). Previously, the New Jersey court's definition of the constitutionally mandated system of education "was based on the proposition that the Constitution required a certain level of education, that which equates with thorough and efficient; it is the level that all must attain; that is the only equality required by the Constitution." Abbott, 575 A2d at 368, referring to the decision in Robinson v Cahill, 62 NJ 473, 519, 303 A2d 273 (1973). Under this earlier definition, the inevitable funding disparities were not in themselves sufficient to render the funding system unconstitutional. Abbott, 575 A2d at 370-71.
**69** Abbott, 575 A2d at 372.
**70** Id at 408.
**71** Id at 372.
problems with the old school system. Under the old system, local monitoring “operated largely as a self-improvement system. Beyond a few state-mandated courses, the local board could approve any curriculum it chose or, presumably, could afford.”

New Jersey’s Quality Education Act of 1990 (“the New Jersey Act”), drafted in response to Abbott, extends much farther than the court-ordered overhaul of the poor urban school districts. The New Jersey Act provides that “by the 1995-1996 school year, the per pupil expenditures in the poorer urban districts will be substantially equal to those in the wealthy suburban districts.” To achieve this “substantial equality,” the New Jersey Act provides for stricter state board monitoring of local school budgets and a more restrictive cap on local districts’ ability to raise their spending through increased local levies. In addition, the plan calls for $1.3 billion in increased state personal income taxes as well as local property tax increases in 150 designated “wealthy” districts to compensate for cuts in state funding of teacher pensions in those districts. As a result, New Jersey’s reform legislation is more likely to achieve substantial equality among school districts than Kentucky’s minimum level funding program.

Although Kentucky and New Jersey illustrate two different approaches to school finance reform, they both demonstrate a characteristic common to nearly all reform proposals: an increase in overall education expenditures. Every state wishing to redress funding inequalities is likely to do the same. Without a tax increase, a requirement of equal funding would mandate an equally

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72 Id at 392.  
74 Id at § 2(5).  
75 Id at § 84.  
76 Id at § 85.  
77 See Daily Rep for Executives (BNA) No 8 (Jan 11, 1991), which also reports a legislative proposal to cap annual budget increases at 13.5 percent for poor districts and 8.5 percent for other districts. These spending caps would allow increased school aid to reduce local property taxes rather than to increase overall education spending. See also, David Sacks, Is Florio’s Plan Stiff Medicine or Poison? It Will Murder the Middle Class, NY Times A19 (July 11, 1990); Patricia Van Tassel, Schools Preparing for Changes in Financing, NY Times 12NJ1 (Sept 2, 1990); and Patrick Reardon, School suit could lead to tax hike, Chicago Tribune 3-1 (Nov 15, 1990).  
78 See Teachers Union Urges State to Resume Funding of Pensions, 18 Pens Rep (BNA) 1, 16 (Jan 7, 1991).  
79 In fact, legislative action following the rulings in all four states (Montana, Texas, Kentucky, and New Jersey) has resulted in school funding increases ranging from 30 percent to 50 percent. See Casey Banas, Chicago Joins 46 Districts in Legal Action, Chicago Tribune 2-1 (Nov 13, 1990).
mediocre education for all and would drive those who could afford it to seek private schooling. Given the low popularity of tax increases, however, passing such legislation might prove to be politically impossible.

II. THE IMPACT OF EQUAL FUNDING LEGISLATION ON LOCAL CONTROL OF THE PUBLIC SCHOOLS

State equalization of public school finance, regardless of the strategy used, necessarily involves increased state involvement in public school funding. Historically, public schools have received most of their funding from local property taxes; a state funding takeover may consequently increase state substantive control over schools as well. Legislators will at least have a political incentive to monitor schools because voters will now hold state rather than local legislators accountable for the large state tax increases. Should local schools fail to improve, voters can blame the state government as a result of its increased involvement in funding.

Although the concept of local control has helped to shape public education throughout the United States, there is little state or federal constitutional basis for the notion. The concept has figured

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80 See McCarty & Brazer, 9 Econ of Educ Rev at 254 (cited in note 12) ("[P]eople in the high-demand district are likely to spend more than the state allowance, either by supplementing the public school experience with lessons in the private sector or by moving into the private school system.").

81 School reform proposals "in the interest of equalizing educational costs and services almost necessarily involve reductions in that local freedom of choice." Thomas, 48 U Cin L Rev at 267 (cited in note 4). This is clearly the result under both the Kentucky and New Jersey schemes. In New Jersey, close state monitoring is essential to the maintenance of "substantially equal" funding. See Quality Education Act of 1990, 1990 NJ Sess Law Serv 52, § 84. The Kentucky legislation provides for state oversight of local district budgets as well. For example, a new provision sets minimum equivalent tax rates, with removal of the local school board as the penalty for noncompliance. Education Reform Act of 1990, 1990 Ky Acts 476, § 105(12). Both schemes, by vastly increasing state funds as a percentage of education spending, also increase state influence.

82 See San Antonio School Dist. v Rodriguez, 411 US 1, 49-50 (1973): "[L]ocal control means . . . the freedom to devote more money to the education of one's children. Equally important . . . is the opportunity it offers for participation in the decisionmaking process that determines how those local tax dollars will be spent." Furthermore, "[t]his theme—that greater state control over funding will lead to greater state power with respect to local educational programs and policies—is a recurrent one in the literature on financing public education. . . . [I]t certainly cannot be doubted that there is a rational basis for this concern on the part of parents, educators, and legislators." Id at 53 n 109.

Since a state bureaucracy is less accountable to voters than are locally elected officials, state controlled funding would make it easier for the state to impose its substantive as well as fiscal will. See Thomas, 48 U Cin L Rev at 268-69.
prominently in dictum in several Supreme Court decisions,\textsuperscript{83} most notably \textit{Rodriguez},\textsuperscript{84} in which the majority emphasized the importance of local control. However, since the structure of education is a state matter, the Court's statements about the primacy of local control are not binding on state lawmakers.\textsuperscript{85} Because city and local governments "have no set place in the American constitutional structure,"\textsuperscript{86} any power that local authorities may have over education must be delegated to them by the state legislature.\textsuperscript{87} The vaguely worded state constitutional education provisions do not explicitly protect local control of the public schools.

Though not expressly protected by the law, local control is nevertheless valued as a positive force in the public schools. Some state courts have joined the federal courts in espousing the merits of local control. For instance, the Maryland Supreme Court has held that an implicit "primary objective" of the school financing system is to "establish and maintain a substantial measure of local control" over the public schools, including determining both the level of funding and the way those funds should be spent.\textsuperscript{88}

Furthermore, school reformers often call for decentralization of the public schools in order to foster closer interaction between communities and schools.\textsuperscript{89} Like the \textit{Rodriguez} majority, commentators argue that local control allows for educational experimentation that might be chilled or suppressed by a large bureaucracy.\textsuperscript{90}

\begin{footnotesize}
\begin{enumerate}
\item For a discussion of Supreme Court decisions which have emphasized local control, see Note, \textit{Education and the Court: The Supreme Court's Educational Ideology}, 40 Vand L Rev 939, 967 n 161 (1987):

Traditionally, the Court has been hesitant to intervene in educational disputes because it viewed the educational process as a local matter. The cultural transmission ideology supports this position and its corollary that if values and beliefs are to be inculcated, the appropriate body to carry out this function is the local school board.

\item 411 US at 49-53.

\item See Williams, 1986 Wis L Rev at 110 (cited in note 24).

\item Id.

\item This has become increasingly evident as more state supreme courts reaffirm that constitutional education clauses place authority over public schools with the legislature. For example, the \textit{Rose v Council for Better Educ., Inc.} court states that "[t]he sole responsibility for providing the system of common schools is that of our General Assembly. . . . This obligation cannot be shifted to local [bodies]." 790 SW2d 186, 211 (Ky 1989).


\item See Jack B. Weinstein, \textit{Equality, Liberty, and the Public Schools}, 48 U Cin L Rev 203, 230-31 (1979), presenting the argument that a school system is more responsive to community needs when local officials are accountable to the public for school management decisions.
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Ironically, even as some states are moving toward greater centralization in school finance, localities are experimenting with more community involvement. For instance, the Chicago public schools adopted a decentralized management structure organized around newly created local school councils dominated by parents. In addition, many districts nationwide (Milwaukee is the most obvious example) have discussed establishing special schools to implement an Afrocentric curriculum. All of these measures seem to underscore the importance of local initiative in tailoring the schools to meet particular community needs.

The extent to which state fiscal dominance will infringe on local control depends in part on which approach a state has chosen to reform its school finances. Even under Kentucky's minimum level funding model, districts may be subject to greater state substantive as well as fiscal control. For instance, state monitoring could lead to a complete state "takeover" of failing districts and the ouster of the ineffectual school boards. Any reform plan which extends state fiscal power is likely to expand state substantive influence as well.

In New Jersey's equality-driven system, however, budget caps—restrictions on how much a district may raise its budget through local funds in a given year—are a greater structural avenue for state control. Moreover, the spending restrictions necessitate state monitoring of school budgets as well as substantive performance. Of course, the poor districts under a locally funded

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* See E. Mark Hanson, School-based Management and Educational Reform in the United States and Spain, 34 Comp Educ Rev 523, 527-29 (1990). See also Fumarolo v Chicago Bd. of Educ., No 69558, 1990 WL 186394 (Ill Nov 30, 1990) (Illinois Supreme Court found that the method of electing local school council representatives violated the "one person-one vote" principle articulated in Reynolds v Sims, 377 US 533 (1964)).

* See Isabel Wilkerson, Blacks Look to Basics, NY Times 4-26 (Nov 4, 1990).


* One commentator argues that even full-state funding would not restrict local substantive control aside from forcing property-rich districts to "make hard fiscal choices" such as that "between updating their computer hardware and building a new fieldhouse." The author speculates that "parents and communities may become more involved in the educational process when they are not assured that their tax dollars will purchase a superior education." Note, Equal Educational Opportunity Revisited, 40 Rutgers L Rev 193, 235 n 223 (1987). This assumes (improbably) that parents who want and can afford more education will not simply opt out of the public schools. Once parents opt out, they will be less likely to support increased public school funding. Further, the argument ignores the effects of political pressure on the state legislature to monitor how its money is being spent by the local districts.

system often labor under an effective budgetary ceiling. With an eroded tax base, high tax rates, and numerous competing expenses, poorer districts may be unable to raise enough money to implement educational programs. Nevertheless, an adequately funded "minimum level" approach could afford poorer districts sufficient choice while at the same time allowing a greater measure of local initiative.

III. CHOOSING A SCHOOL FINANCE REFORM STRATEGY: THE ROLE OF LOCAL CONTROL

The challenge facing states seeking to reform school finance lies in creating an equitable funding system which is able to incorporate meaningful local influence in the schools. Since restructuring school funding is really a matter of integrating fiscal and substantive reforms, Kentucky's approach may have the greatest potential for success. Aside from substantially increasing school funding, Kentucky's Education Reform Act of 1990 has completely overhauled the public schools in a way that makes constructive use of local initiative.

In order to assess the proper role of local influence, it is important to recognize those aspects of local control that are problematic. A major premise underlying any defense of local influence in the schools is that the schools best able to transmit cultural values are those subject to community control. Sociological research showing that parochial schools tend to outperform public or secular private schools demonstrates the benefits of shared values to educational quality. However, "local values" are hard to identify.

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96 See San Antonio School Dist. v Rodriguez, 411 US 1, 68 (1973) (White, dissenting): If the State aims at maximizing local initiative and local choice . . . it utterly fails in achieving its purpose in districts with property tax bases so low that there is little if any opportunity for interested parents, rich or poor, to augment school district revenues.
98 See Thomas, 48 U Cin L Rev at 305 (cited in note 4): Removal of political and budgetary constraints and substantial increases in the level of state foundation grants sufficient to raise each district to, say, the eightieth or ninetieth percentile level would preserve the existing structure's reliance on local control of funding and secure a substantial measure of equality.
99 After its supreme court ruled the entire public school system unconstitutional, Kentucky "has gone back to the drawing board and rebuilt its entire education system." Harrington-Lueker, 177 Am School Bd J at 17 (citation omitted) (cited in note 59).
100 1990 Ky Acts 476.
101 See Note, 40 Vand L Rev at 969 (cited in note 83).
102 See James S. Coleman and Thomas Hoffer, Public and Private High Schools: The Impact of Communities (Basic Books, 1987).
Attempting to teach “local values” in the public schools poses a danger that, in trying to avoid serving the needs of only part of their constituency, the schools will not stand for any values at all. Furthermore, control of the schools may fall to narrow special interest factions elected for political, rather than educational, reasons. Under such circumstances, simply decentralizing control of the schools likely will fail to effect meaningful reforms.

Despite these pitfalls, Kentucky’s legislation seems to be drafted carefully enough to make use of the strengths of local control. Day-to-day control is centered in the individual schools themselves, through the educator-dominated school councils rather than in the community at large. This structure decentralizes the school bureaucracy, but not at the cost of turning over education entirely to the arena of local politics. The Kentucky legislation’s “anti-patronage” provisions both reflect and support the state’s desire to keep school governance as free as possible from political concerns.

Also, the strict accountability of local schools to the state in terms of meeting performance standards should help the state board keep control of the system without involving the state in daily school management. The state effectively monitors the output of the system—student achievement—rather than promulgating detailed regulations governing school management. On the whole, although Kentucky’s reform plan emphatically locates ultimate authority in the state, the state’s authority is primarily a monitoring power. Local school councils gain control over the specifics of making the schools work. This solution makes sense as a balance of state and local control, since a large state bureaucracy seems less well-suited to daily management than would be a school-based council.

Achieving a state/local balance in the structure of school finance is somewhat more difficult. Ultimately, the appropriate bal-

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103 See John E. Chubb and Terry M. Moe, Politics, Markets, and America’s Schools 54-55 (Brookings Inst, 1990).
105 See, generally, Hanson, 34 Comp Educ Rev at 536-37 (cited in note 91).
106 Id at 524: The goal of school-based management is to end the “excessively centralized, bureaucratic control of urban schools.”
107 See 1990 Ky Acts 476, § 92, which establishes the Office of Education Accountability to ensure that the schools are operated free of political influence.
108 The new state board “will stop regulating and start providing technical assistance—including help designing curricula and assessing student performance—to local school districts.” Harrington-Lueker, 177 Am School Bd J at 18 (cited in note 59).
109 Id.
ance depends on whether educational equity demands actual funding equality. Proponents of funding equality suggest that arguments for any local funding of the schools are thinly-disguised attempts to institutionalize the "assured, predatory self-interest" of the privileged class.\textsuperscript{110} Property tax-based school funding enables wealthy districts to have choices but deprives property-poor districts of any real educational control.\textsuperscript{111} The only way to remedy the situation, according to those who demand equal revenues, is to eliminate local funding altogether.\textsuperscript{112}

In the opposing camp, those who wish to retain districts' ability to supplement state funding with local tax revenues respond that mandated funding equality is inefficient. Equal funding cannot take into account different levels of demand for education.\textsuperscript{113} If some districts are willing to raise property taxes to fund their local schools, the state would not improve overall education quality by eliminating those districts' incentives to raise school spending. Judicially-mandated equality may actually cause more people to turn to the private education market.\textsuperscript{114} Therefore, the state should increase its funding to the poor districts without limiting the ability of all districts to levy local taxes.

Ultimately, the decision of whether to implement a minimum level or an equality-based school finance system may depend on what a state regards as the proper role for education. If education is seen primarily as a leveling device, perhaps a strictly equal funding system is better. Under this theory, those who are better educated benefit from a comparative advantage over others. A truly equal funding system would attempt, to the extent possible, to place all public school students on an equal footing. Of course, a fully equal system must be funded sufficiently to prevent statewide mediocrity.\textsuperscript{115}

\textsuperscript{110} Kern Alexander, \textit{Equitable Financing, Local Control, and Self-Interest}, in Julie Underwood and Deborah Verstegen, eds, \textit{The Impacts of Litigation and Legislation on Public School Finance} 293, 305 (Harper & Row, 1990). Alexander continues: "A loss of local control inevitably means a forced sharing of money with the inferior [classes]. . . . Because of . . . the recognition that education is, in a real sense, power, the dominant classes have held most strongly to their educational privilege by asserting local prerogative."

\textsuperscript{111} Id. See also White's dissent in \textit{San Antonio School Dist. v Rodriguez}, 411 US 1, 63 (1973).

\textsuperscript{112} See Alexander, \textit{Equitable Financing}, in Underwood & Verstegen, eds, \textit{The Impacts of Litigation} at 305.

\textsuperscript{113} McCarty & Brazer, 9 Econ of Educ Rev at 254 (cited in note 12).

\textsuperscript{114} Id. See also Thomas, 48 U Cin L Rev at 319 (cited in note 4).

\textsuperscript{115} McCarty & Brazer, 9 Econ of Educ Rev at 254.
On the other hand, if more funding for education increases overall productivity, then a minimum level funding system may be better for the community as a whole. If the minimum level of state funding is set high enough to assure everyone of a quality education, allowing supplemental local spending can only help districts provide additional opportunities for their students. Moreover, the effects of local discretionary funding on educational equality are likely to be minimal, since local revenues would be a small percentage of aggregate school funds.

More importantly, a minimum level funding system, like that of Kentucky, has the greatest potential to make use of the benefits of local control. School districts are freer to experiment and respond to differences in community demand for education. Also, the public schools are less likely to lose substantial numbers of students to the private sector. Keeping people in the public sector benefits the system as a whole, since people who have an interest in the schools are more likely to vote for the necessary reform packages.

**CONCLUSION**

Funding disparities among school districts can only be resolved through a greater state commitment to education. This commitment necessarily involves both financial and substantive reforms in order to sustain local initiative within a framework of state-monitored performance standards. While state constitutional provisions increasingly will serve as a basis for reform, the particular wording of a state's education clause will not dictate which finance reform strategy that state ultimately must adopt. Hopefully, as other states restructure their school systems, the approaches taken by Kentucky and New Jersey will provide a useful example of how such reforms might work.

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116 Id.
117 Thomas, 48 U Cin L Rev at 319.