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Cooter & Gell v. Hartmarx Corp., Caveat Advocatus, The Growing Impact of Rule 11 Sanctions

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NOTE

FUNDING INDIANA'S PUBLIC SCHOOLS: A QUESTION OF EQUAL AND ADEQUATE EDUCATIONAL OPPORTUNITY

It will be a great day when the Schools get all the money they need and the air force has to hold a bake sale to buy a bomber.¹

INTRODUCTION

Indiana public schools must provide equal and adequate educational opportunity for all the state's children,² yet Indiana schools face a funding crisis. Indiana has traditionally funded public education at a level below the national average, and the funding gap between Indiana and the national average continues to grow.³ The educational performance of Indiana students also ranks below the national average, despite recent efforts to improve Indiana schools.⁴ Furthermore, Indiana's funding formula for public education creates significant disparities in the ability of individual school districts to meet student needs.⁵

The problem of inadequate and unequal school funding is not unique to Indiana. Since 1973,⁶ school officials, students, parents, and taxpayers in over twenty states have vented their frustrations over insufficient school funding by challenging state funding formulas on state constitutional grounds.⁷ Recently, Indiana's funding formula for public schools has been challenged in state court as violative of the Indiana Constitution.⁸

This note argues that Indiana's funding formula must be challenged under the Indiana Constitution's education clause in order to ensure that all Indiana

1. (Sentiment printed on a tee shirt worn by a school board member at an Indiana School Board Association legislative dinner. Fall, 1989).

2. See *infra* notes 229-31 and accompanying text.

3. See *infra* notes 140-46 and accompanying text.

4. See *infra* notes 143-46 and accompanying text.

5. See *infra* notes 130-39 and accompanying text.

6. See *infra* notes 54-65 and accompanying text.

7. See *infra* notes 66-102 and accompanying text.

8. See *infra* notes 147-56 and accompanying text.

children are provided with equal and adequate educational opportunity. Section I will give a brief overview of the national context of public school funding,⁹ including the funding schemes of various states,¹⁰ the problems school districts face because of specific funding mechanisms,¹¹ and legal challenges that have been brought against various state funding formulas under state constitution equal protection and education clauses.¹² Section II will explore how Indiana funds its public schools¹³ and the problems created by Indiana's current funding formula, both in terms of disparities and inadequacies.¹⁴ In addition, section II will discuss the pending court challenge to Indiana's public education funding formula.¹⁵

Section III will closely examine strategies for a constitutional challenge to Indiana's funding formula.¹⁶ This section will initially discuss the shortcomings of an Indiana equal protection approach¹⁷ and will then analyze the advantages of a challenge to the funding formula based on the Indiana Constitution education clause.¹⁸ After interpreting the Indiana education clause, this section will argue that the education clause's directive to the Indiana General Assembly to provide for an educated citizenry creates a constitutional mandate for equal and adequate¹⁹ educational opportunity.²⁰ In conclusion,

9. See *infra* notes 22-53 and accompanying text.

10. See *infra* notes 25-35 and accompanying text.

11. See *infra* notes 36-53 and accompanying text.

12. See *infra* notes 66-102 and accompanying text.

13. See *infra* notes 105-29 and accompanying text.

14. See *infra* notes 130-46 and accompanying text.

15. See *infra* notes 147-56 and accompanying text.

16. See *infra* notes 157-253 and accompanying text.

17. See *infra* notes 157-83 and accompanying text.

18. See *infra* notes 184-253 and accompanying text.

19. The terms "equal" and "adequate" will be used throughout this note to describe two desirable attributes of educational funding and opportunity. Equal funding refers not to identical funding but to funding that achieves relative parity among school districts by recognizing districts' special needs. See T. JONES, INTRODUCTION TO SCHOOL FINANCE 163-64 (1985) (discussing replacement of strict equal spending per pupil with more flexible approach of "equal educational opportunity" which takes into account relevant differences among student needs as well as differences in school district costs due to size, geographic location and social characteristics). For discussion of the shift in the educational agenda from equity in funding to quality of educational opportunity, see Colvin, *School Finance: Equity Concerns in an Age of Reforms*, EDUC. RESEARCHER 11 (Jan.-Feb. 1989); Berne, *Equity Issues in School Finance*, 14 J. EDUC. FINANCE 159 (1988). Adequate funding is funding sufficient to meet specified purposes. See *infra* note 100 and accompanying text. See generally Ward, *Remedies in School Finance Equity Litigation*, 36 WEST EDUC. L. REP. 1, 5-6 (1987).

The relationship between spending and quality of education is the subject of considerable debate, the consideration of which is beyond the scope of this note. This note presumes a positive correlation between funding levels and opportunity, a presumption which has been accepted in various school litigation cases. See *infra* note 46. See also R. Lehnen, *Public Education in the American States and the Development of Human Capital* (May 1989) (unpublished paper presented to Regional Development Administration Conference). For a contrary view, see Perelman, *The*

this note will argue that a challenge to Indiana's funding formula must be based on this note's interpretation of the education clause of the Indiana Constitution in order to ensure that Indiana schools have sufficient funds to meet the needs of all Indiana children.²¹

I. BACKGROUND--THE NATIONAL PERSPECTIVE

A. Public School Funding in the United States

Since responsibility for education is one of the powers reserved to the states under the tenth amendment of the United States Constitution,²² public school financing is usually controlled by state legislatures, subject only to restrictions imposed by state constitutions.²³ A state legislature's power to control public education includes the authority to raise revenue for education through public taxation.²⁴ State funding schemes vary from state to state.²⁵ A legislature may support the public schools of the state by a state-wide tax²⁶ or delegate to

'Acanomia' Deception, HUDSON INST. BRIEFING PAPER (May 1990); Hanushet, *The Economics of Schooling*, 24 J. ECON. LIT. 1141 (1986).

20. See *infra* notes 229-31 and accompanying text.

21. See *infra* notes 232-53 and accompanying text.

22. By omission from the United States Constitution, education is a state power. E. GEE & D. SPERRY, *EDUCATION LAW AND THE PUBLIC SCHOOLS* S-21 (1978). This section is meant to serve as a brief introduction to school finance. For a general discussion of school finance, see E. GEE & D. SPERRY, *supra*, at S-20 to S-30; T. JONES, *supra* note 19.

23. E. GEE & D. SPERRY, *supra* note 22, at S-21. All state constitutions contain education clauses, which set out state legislative responsibilities as to public education. See *infra* notes 90-97 and accompanying text.

24. E. GEE & D. SPERRY, *supra* note 22, at S-21. The state may delegate to local school districts the power to raise revenue for public schools through local taxes, but such funds remain state not local funds, subject to state control. Local school districts have no inherent power to levy taxes. *Id.* See also *Robinson v. Schenk*, 102 Ind. 307, 318, 1 N.E. 698, 705 (1885) (The legislature may in its discretion support schools through a general levy or through local taxation, but the duty to provide for public education remains that of the legislature.).

25. See *infra* notes 28-35.

26. See E. GEE & D. SPERRY, *supra* note 22, at S-22 (State revenue comes from several tax sources, including personal income tax, sales tax, and inheritance and gift tax.).

At this point a preliminary definition of tax terms to be used in this note is useful.

Assessed Valuation: The total dollar value assigned to real property subject to taxation. The taxable valuation is generally a percentage of the fair market value of the property.

Property Tax Levy: The dollar amount of taxes collected.

Property Tax Rate: A statement in dollars and cents, expressed per each hundred dollars of assessed valuation that will yield a specified amount of money from property taxes. For instance, a tax rate of \$1.00 in a community with an assessed valuation of five million dollars will yield a levy of fifty thousand dollars.

Revenue Receipt: Money received by a school district from state and local levies. INDIANA FARM BUREAU, *SCHOOL STATISTICAL REPORT 19-20* (1990) [hereinafter INDIANA FARM BUREAU].

local districts the power to raise the necessary revenue.²⁷ State funding schemes generally rely on a mix of state and local revenue, with most of the funding coming from the state.²⁸ The local revenue portion comes primarily from property taxes.²⁹

State revenues are distributed to local districts through various mechanisms.³⁰ State aid may come in the form of a flat grant,³¹ a foundation grant,³² or a percentage equalizing grant.³³ Any individual state's funding formula might consist of a mixture of these various mechanisms.³⁴ State formulas may be very complex, providing percentage increases based on varying local and state factors and restraining the amount local districts might raise to supplement state revenue.³⁵ Despite the range of funding alternatives available, state funding schemes often fail to meet state educational needs.

B. General Problems with State Funding Schemes

The number of challenges to state funding formulas evidences problems in

27. See *supra* note 24.

28. The local share of tax support has declined from 80% in the 1920's to 45% in the mid-1980's, while the state share has increased. T. JONES, *supra* note 19, at 15. In Indiana, the state provides approximately 63% of school district revenue. INDIANA FARM BUREAU, *supra* note 26, at 18. In some states, however, the state share can be as low as 10%. T. JONES, *supra* note 19, at 15.

29. See T. JONES, *supra* note 19, at 73. See also INDIANA FARM BUREAU, *supra* note 26, at 17.

30. For a full discussion of school funding mechanisms, see T. JONES, *supra* note 19, at 95-139.

31. A flat grant is state aid based upon a fixed unit, such as the number of pupils in a school district. T. JONES, *supra* note 19, at 100-02.

32. A foundation plan sets minimum local property tax rates and minimum spending levels for each school district. State aid to any school district is equal to the difference between the minimum amount a district should be spending and the minimum local revenue. T. JONES, *supra* note 19, at 105-12.

33. An equalizing grant directs state resources toward poorer school districts. E. GEE & D. SPERRY, *supra* note 22, at S-24.

34. See, e.g., *infra* notes 105-27 and accompanying text (Indiana's formula consists of combination of flat grant, foundation program and equalizing factor.). In addition, the state may provide categorical grants, money earmarked for specific programs, such as Indiana's Prime Time Program, which provides state funds to schools reducing the sizes of primary grade classrooms. INDIANA FARM BUREAU, *supra* note 26, at 24-25.

35. The legislature also makes adjustments to the funding scheme, such as providing a percentage of new state money each year to accommodate rising cost of living expenses, and restricting the minimum or maximum amounts of local revenue a local district is allowed to raise. See R. LEHNEN & C. JOHNSON, FINANCING INDIANA'S PUBLIC SCHOOLS: AN ANALYSIS OF THE PAST AND RECOMMENDATIONS FOR THE FUTURE 11-14 (1984).

public school funding schemes.³⁶ State funding formulas may not meet the needs of local districts in an equal manner³⁷ and may be generally inadequate to meet the educational needs of the state.³⁸ When state revenues are insufficient, the local district usually must rely on "local effort"³⁹ and raise additional revenue by increasing local property taxes.⁴⁰

Reliance on local property taxes creates significant problems in funding equality.⁴¹ All districts are not equally able to supplement inadequate state revenues. Because property taxes are based on local assessed valuations,⁴² a district with a high assessed valuation is able to raise more local revenue with a smaller tax hike than can a district with a low assessed valuation.⁴³ The property-poor district needs a much higher tax rate in order to raise the same number of dollars as the richer district.⁴⁴ Depending on the assessed

36. A full discussion of the many challenges to state funding schemes is beyond the scope of this note. For a survey of school finance litigation, see Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639 (1989).

37. See, e.g., *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (State educational funding formula struck down because formula created spending per student differences from \$2,112 to \$19,333).

38. See, e.g., *Seattle School Dist. No. 1 of King City v. State*, 90 Wash. 2d 476, 585 P.2d 71 (1978) (State educational funding formula struck down because formula fails to make ample provision for the basic education of the state's children).

39. "Local effort" is a phrase that refers to revenue raised by local property taxes. T. JONES, *supra* note 19, at 146-47.

40. See, e.g., *Edgewood*, 777 S.W.2d at 392 (State foundation program does not cover even the cost of meeting state-mandated minimum requirements and local districts must make up difference with local funds. State funding scheme struck down). See also R. LEHNEN & C. JOHNSON, *FINANCING INDIANA'S PUBLIC SCHOOLS: UPDATE 1989* (Under-funding of Indiana's state foundation program resulted in districts depending more on local property taxes.).

41. Local school property taxes provide more than 40% of all school revenues and are the root cause for school spending disparities in most states. T. JONES, *supra* note 19, at 89-90.

42. See *supra* note 26 for definition. For a discussion of assessed valuation, see T. JONES, *supra* note 19, at 75-83. Local school districts rarely have any say in the setting of assessed valuations which are generally established by other units of local government. *Id.*

43. See, e.g., *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989) ("The lower expenditures in the property-poor districts are not the result of lack of tax effort. Generally, the property-rich districts can tax low and spend high while the property-poor districts must tax high merely to spend low. In 1985-86 ... [t]he 100 poorest districts had an average tax rate of 74.5 cents and spent an average of \$2,978 per student. The 100 wealthiest districts had an average tax rate of 47 cents and spent an average of \$7,233 per student.").

44. For a discussion of the effect of property tax rates on metropolitan development, see T. JONES, *supra* note 19, at 85-89. Sharp discrepancies between tax rates of neighboring school districts can adversely affect the ability of the community with the higher tax rate to compete for new businesses and development necessary to raise the poorer districts assessed valuation and bring the poorer district's tax rate down. Low assessed valuation and high tax rates may become a self-perpetuating cycle. See, e.g., *Edgewood*, 777 S.W.2d at 393 ("Many [low tax rate] districts have become tax havens."). When vastly different tax rates are needed to raise similar amounts of revenue, the issue of taxpayer equity is raised. This note is solely concerned with the impact of funding formulas on equality and adequacy of educational opportunity. The taxpayer equity problem

valuation, identical tax rates in different districts may result in much different expenditure levels per pupil.⁴⁵ Per-pupil expenditure capability translates into curriculum, staffing, materials, and other educational necessities and may well affect the quality of the school system.⁴⁶

Inadequate state revenue and difficulties with raising local revenue may also be compounded by freezes and caps that the legislature places on local tax rates and levies.⁴⁷ Desiring to keep tax rates down, legislators may limit the local district's ability to support the schools through local revenue.⁴⁸ Often, a local tax increase will depend on taxpayers' acceptance in a local referendum.⁴⁹ Thus, the school district's ability to raise revenue may well depend on local politics.⁵⁰

Inadequate state revenues and the difficulty of sufficiently supplementing state funds with local revenue has placed local districts in a serious financial

is beyond the scope of this note. See generally T. JONES, *supra* note 19, at 88-89.

45. In 1990, M.S.D. of Warren Township, Indiana, expended \$4,793 per pupil with a General Fund tax rate of 4.19, while Wawasee Community School Corporation, Indiana, expended only \$3,280 per pupil with a General Fund tax rate of 4.18. INDIANA FARM BUREAU ADDENDUM (1990) [hereinafter ADDENDUM].

46. The relationship between expenditure levels and quality of education has been recognized by state courts that have struck down state funding schemes. See, e.g., *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 196-198 (Ky. 1990) (overwhelming evidence that under-funding of Kentucky schools adversely affects quality of Kentucky schools); *Helena Elementary School Dist. v. State*, 263 Mont. 44, 49, 769 P.2d 684, 687-88 (1989) (positive correlation between level of school funding and level of educational opportunity); *Edgewood*, 777 S.W.2d at 393 (recognizing effect of amount of money spent on a student and educational opportunity offered that student). See also Banas, '89 School Report Cards Show Spending Can Pay, Chicago Tribune, Jan. 1, 1990, at 1,6, sec. 1. (Chicago area elementary schools with top test scores spend nearly forty percent more money per pupil than schools with the lowest scores); Broder, 'Minimal' Ability Won't Sustain the U.S., Chicago Tribune, Jan. 17, 1990, at 17, sec. 1. (need for both money and reform to improve educational performance of Nation's children). See also Lehnen, *supra* note 19.

47. See T. JONES, *supra* note 19, at 77-78.

48. For examples of state formulas restricting local district's ability to raise local revenue, see *Helena*, 769 P.2d at 688 (effect of Initiative 105 and freezing of property tax levies at 1986 levels); *Seattle School Dist. No. 1 of King City v. State*, 90 Wash. 2d 476, 483, 585 P.2d 71, 77-78 (1978) (no independent local authority to raise funds without special excess levy election).

49. When a school district is required to raise taxes through a referendum, the tax increase issue is placed on the ballot for voter approval. See, e.g., *Seattle*, 90 Wash. 2d at 483, 585 P.2d at 77-78. (Legislature authorizes local districts to supplement state funding through special excess levy elections. If the election fails twice in a year, the district must operate within the funds provided by the state. Statewide, 40% of all students resided in districts in which levy elections failed.)

50. See, e.g., *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 199 (Ky. 1990) (Response of school districts to voter resistance to taxes results in many districts not adopting permissive taxes.). See *supra* notes 48, 49. See also Andrews, *Case Note*, 7 NOLPE SCH. L.J. 104, 105-06 (1977) (right to education should not depend on local voter election).

bind.⁵¹ The total amount of state and local revenue available to educate a child in a school district may vary widely from district to district, resulting in unequal educational opportunity for children in different geographical areas within the state.⁵² Funding levels may also be generally insufficient to provide adequate education.⁵³ Educational problems resulting from unequal and inadequate school funding have precipitated various court challenges to educational funding formulas.

C. Federal and State Constitutional Challenges to State Funding Schemes

1. The Federal Challenge

The federal route to challenging state funding schemes was definitively foreclosed by *San Antonio Independent School District v. Rodriguez*.⁵⁴ In *Rodriguez*, parents on behalf of school children in property-poor school districts in Texas, challenged the state funding formula under the Equal Protection Clause of the fourteenth amendment of the United States Constitution.⁵⁵ The United

51. This bind comes at a time when the schools are under increased pressure to improve student performance. See D. Kearns, Speech at U.S. Conference of Mayors (June 16, 1987) ("America's public schools graduate 700,000 functional illiterates every year. And 700,000 more drop out.... the fact is, the basic skills of our work force -- particularly at the entry level -- are simply not good enough for the United States to compete in a world economy."); Lehnen, *supra* note 19 at 2-3 (discussing economic-development approach to educational reform. "[T]he reformers using economic and human capital arguments define a case of need based on the emergence of a global information economy and demonstrate, at least in a cross-national context, that investments in education make good business sense." *Id.* at 3.). See also Goodwin, *The Crisis in Public Education and a Rationale for Federal Intervention*, 1988 DET. C.L. REV. 937 (The inability of states and local districts to address problems of student incompetency justifies intervention by federal government in critical curricular decisions).

52. For example, in Illinois, annual per pupil spending ranges from \$12,866 to \$2,095. Spending per pupil depends increasingly on the school district's property wealth, and property wealth differences continue to grow. Spending disparities often cause disparities in educational opportunity. Harrisburg in Southern Illinois spends \$3,400 a year per pupil compared with the state average of \$4,315, is able to offer only one language course at the high school, and has only fifteen computers. Harrisburg's graduates must compete in college with students from schools able to spend much more per pupil. Banas, *School Funding Critics Seek Help*, Chicago Tribune, Feb. 19, 1990, at 5, sec. 2. Currently, 47 Illinois school districts are challenging the current Illinois funding formula in *The Committee for Educational Rights v. Thompson*. (Copy of Complaint provided by Committee).

53. In Illinois, some high schools do not offer all the courses Illinois public colleges will begin to require of incoming freshmen in the fall of 1993. *Id.* See also *supra* note 46.

54. 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973). For a full discussion of the federal role in school funding challenges, see Hubsch, *Education and Self-Government: The Right to Education Under State Constitutional Law*, 18 J.L. EDUC. 93, 101-14.

55. "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The plaintiffs argued that since the Texas funding scheme relied heavily on local property tax revenue for local school funding, districts with low property values were able to spend far less per pupil than districts with high property values, and these

States Supreme Court held that poverty was not a suspect classification,⁵⁶ that education was not a fundamental right⁵⁷ under the United States Constitution, and, therefore, refused to apply strict scrutiny.⁵⁸ Using the rational-basis test,⁵⁹ the Court held that local control over schools⁶⁰ was a legitimate state interest and that the Texas funding formula had a rational relationship to local control.⁶¹ The Court stated that only an absolute deprivation of education would violate the Equal Protection Clause.⁶² The Supreme Court also exhibited a strong inclination to stay out of state educational affairs.⁶³

disparities violated the Equal Protection Clause. 411 U.S. at 1. The plaintiffs also argued that the children in property poor districts constituted a suspect class and that education was a fundamental right. Therefore the state needed to show a compelling governmental interest to justify the disparities in per pupil expenditures. 411 U.S. at 19-20, 29. See *infra* notes 56-57 for definitions of fundamental right and suspect class. See also Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 TEX. L. REV. 777, 828-45 (1985) (discussion of fourteenth amendment Equal Protection approach to education).

56. 411 U.S. at 28. A suspect classification results when government action distinguishes between persons upon some basis, such as race, that contravenes established principles. NOWAK, ROTUNDA & YOUNG, *CONSTITUTIONAL LAW* 531 (3d ed. 1986).

57. 411 U.S. at 35. Fundamental rights are rights that the Court recognizes as having a value so essential to individual liberty that the Court is justified in reviewing acts of other branches of government with heightened scrutiny. NOWAK, *supra* note 56, at 367. The *Rodriguez* Court used an "explicit/implicit" test for fundamentality; fundamental rights are those found in the express terms of the Constitution or that are necessarily implied from those terms. 411 U.S. at 35.

58. *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 40, *reh'g denied*, 411 U.S. 959 (1973). Strict scrutiny is used when a legislative classification impinges upon the exercise of a fundamental right or works to the disadvantage of a suspect class, and requires a compelling government interest to justify the challenged legislation. NOWAK, *supra* note 56, at 530-31.

59. 411 U.S. at 40. When no fundamental right or suspect classification is involved, the legislation is presumed valid and the government must only show a legitimate interest and a means rationally related to that interest. NOWAK, *supra* note 56, at 530.

60. Local control is the term used to describe educational decision-making at the local school district level. Although education is a state, not local responsibility, states have delegated responsibility for day-to-day decisions to local school authorities, through local elected or appointed school boards. Local decision-making can be an effective means for school improvement, but without adequate funds, it is questionable how much control local officials actually have over their districts. See *infra* notes 61, 80. For background discussion on local control, see Maltby, *Local Control of Schools: Two Views*, 6 NOLPE SCH. L.J. 123 (1976); Williams, Gentry & La Morte, *The Attack on State Educational Finance Programs - An Overview*, 2 NOLPE SCH. L. J. 1, 13-15 (1972).

61. The Supreme Court pointed out the benefits of local control, including the local district's freedom to spend more than the state-provided minimum, participation by local residents in decision making, and the opportunity for experimentation, innovation, and competition. 411 U.S. at 49-51. The dissenting opinion in *Rodriguez* strongly questioned the validity of this interest. 411 U.S. at 64-69.

62. *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 37, *reh'g denied*, 411 U.S. 959 (1973).

63. 411 U.S. at 41-42.

[The Justices] lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. ... [T]his case also involves the most persistent and difficult questions

Because the Supreme Court did not find that education is a fundamental right under the United States Constitution and rejected poverty as a suspect class, the federal route to school funding challenges has been effectively closed.⁶⁴ After *Rodriguez*, funding formula challenges moved to state courts and are now based exclusively on state constitutional grounds.⁶⁵

2. State Challenges⁶⁶

A state court challenge to a school funding formula is generally based on two distinct clauses found in state constitutions, namely the state equal protection clause and the state education clause.⁶⁷ Often both clauses are used in tandem.⁶⁸

a. The Equal Protection Argument

State challenges based on state constitution equal protection clauses⁶⁹ are typically similar to federal equal protection challenges.⁷⁰ If a suspect

of educational policy, another area in which this court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the State and local levels ...

Id.. See Hubsch, *supra* note 54, at 107-08. (The Court's concerns about federalism and the lack of judicial competence in the area of education have produced a doctrine of federal judicial abstention in the area of education.).

64. For a discussion of the possibility of using federal substantive due process to protect education rights, see Hubsch, *supra* note 54, at 112-14.

65. For discussion of the renaissance of interest in state constitutions as bases for rights, see Utter & Pider, *Presenting a State Constitutional Argument: Comment on Theory and Technique*, 20 IND. L. REV. 635 (1987). In recent years state courts have begun to rediscover the unique protections their state constitutions afford. *Id.* at 636.

66. This section only gives a brief overview of state challenges. The area of state challenges to educational funding formulas has been extensively reviewed by other writers. See, e.g., Hubsch, *supra* note 54; Note, *supra* note 36.

67. State constitutions generally included clauses comparable to the United State Constitution's Equal Protection Clause and separate education clauses. For an example of a state court using a state equal protection clause to strike down a state funding formula, see *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977). Kentucky and Texas are examples of states that relied on state education clauses to invalidate their respective state funding schemes. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1990); *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989).

68. Arkansas, for example, used the state education clause to reinforce the state equal protection clause in striking down its state funding formula. *DuPree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983).

69. For an example of the wording of a state equal protection clause, see *infra* text accompanying note 157 (Indiana's equal protection clause).

70. See *Ratner, supra* note 55, at 845-51 (discussion of state constitutional equal protection approach to education). See also Note, *supra* note 36, at 1671 ("When confronted with a state equality provision in public school finance reform cases, state courts generally behave as they do

classification or a fundamental right is involved, a state court applies strict scrutiny, requiring a compelling state interest to justify the challenged legislative classification.⁷¹ If no suspect classification or fundamental right is involved, the court applies a rational-basis analysis, upholding the challenged statute if the statute bears a reasonable relationship to the state's legitimate interests.⁷²

State equal protection challenges to educational funding formulas have primarily focused on whether education is a fundamental right under the state constitution.⁷³ State courts have generally rejected the federal *Rodriguez* explicit/implicit test which finds that a fundamental right exists if the right is explicitly or implicitly found in the constitution.⁷⁴ Despite the fact that education is mentioned in state constitutions, state courts are usually reluctant to find a state fundamental right to education.⁷⁵

In refusing to apply the *Rodriguez* test, some state courts pointed to the inherent differences in state and federal constitutions, and to the need to apply different fundamentality tests to federal and state constitutions.⁷⁶ Other state

in other equality contexts and utilize the federal strict scrutiny/rational basis framework.".) *But see* Hubsch, *supra* note 54, at 94-95 (criticizing state's reliance on federal equal protection analysis and reluctance to act independently in area of education rights); Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195 (1985) (discussing under-development of state constitutional equality doctrines and arguing for analysis independent from federal framework).

71. *See, e.g.*, Horton v. Meskill, 172 Conn. 615, 631, 376 A.2d 359, 374-75 (1977) (finding fundamental right to education and applying strict scrutiny to strike down state's funding scheme).

72. *See, e.g.* Lujan v. Colorado Bd. of Educ., 649 P.2d 1005, 1022 (Colo. 1982) (applying rational-basis analysis to uphold state funding scheme). For an argument that state courts should apply an alternative mode of analysis to the strict scrutiny/rational-basis tests and use intermediate scrutiny to examine constitutional challenges to state funding schemes, see Note, *Constitutional Issues in Property Tax Based Public School Financing Systems*, 8 B. C. THIRD WORLD L. J. 121 (1988).

73. *See* Note, *supra* note 36, at 1671-78 (discussing state approaches to fundamental right to education). Following *Rodriguez*, most state courts have rejected poverty as a suspect classification. *See, e.g.*, Lujan, 649 P.2d at 1019-22 (rejecting wealth as a suspect classification). *But see* Washakie County School Dist. Number One v. Herschler, 606 P.2d 310, 334 (Wyo. 1980), *cert. denied sub nom.* Hot Springs County School Dist. v. Washakie County School Dist., 449 U.S. 824 (1980) (finds suspect classification based on wealth and strikes down state funding scheme).

74. *Rodriguez*, 411 U.S. at 35. For state rejecting *Rodriguez* test, see Robinson v. Cahill, 62 N.J. 473, 491, 515, 303 A.2d 273, 282 (court rejects *Rodriguez* test as inapplicable to state equal protection claims, but strikes down funding scheme on state education clause grounds), 295, *supp. op.* 63 N.J. 196, 306 A.2d 65, *cert. denied sub nom.* Dickey v. Robinson, 414 U.S. 976 (1973) and *on reh'g.* Robinson v. Cahill, 69 N.J. 133, 351 A.2d 713, *cert. denied sub nom.* Klein v. Robinson, 423 U.S. 913 (1975).

75. *See infra* notes 76-78 and accompanying text.

76. "State constitutions, unlike the federal constitution, are not of unlimited powers and specifically provide for a vast range of services, thus making unworkable a test that bases fundamentality on whether a right is explicitly or implicitly granted in the constitution". Note, *supra* note 72, at 132. *See* Olsen v. State, 276 Or. 9, 13, 554 P.2d 139, 144 (1976) (The Oregon Bill of

courts expressed apprehension that finding such a right would open the door to state courts acting as "super school boards" and interfering in other aspects of the educational system.⁷⁷ In addition, some state courts stressed the need to defer to the legislature in education policy areas and the lack of manageable judicial standards of educational equality.⁷⁸ Courts that refused to find a fundamental right to education generally used a rational-basis analysis and upheld state funding systems as furthering legitimate state purposes.⁷⁹ As in *Rodriguez*, local control was the state interest typically asserted to justify funding schemes.⁸⁰

Some state courts used their own tests for fundamentality and found a fundamental right to education.⁸¹ State courts that found a fundamental right to education generally used strict scrutiny to strike down funding schemes,⁸² directing the state legislature to remedy funding disparities among local school

Rights guarantees the right to sell and serve liquor by the drink; to describe such a right as fundamental would be ludicrous.). See also, e.g., *McDaniel v. Thomas*, 248 Ga. 632, 641, 285 S.E.2d 156, 166 (1981) (court expresses fear that to apply *Rodriguez* test to Georgia Constitution would place all local schemes of funding, such as police protection, under equal protection analysis).

77. See *Campbell v. Bd. of Educ. of New Milford*, 193 Conn. 93, 98-99, 475 A.2d 289, 295-97 (1984) (A student challenged the policy of a local school board that imposed academic sanctions for non-attendance, claiming that grade reduction impaired his fundamental right to education. The student argued that *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977) established a state fundamental right to education, and thus the court had to apply strict scrutiny to survey all government regulations concerning public education. The court disagreed, limiting the *Horton* holding to issues of equal educational opportunity and deferred to local school board in area of school policy). See also *supra* note 67, 71.

78. See, e.g., *McDaniel*, 248 Ga. at 260, 285 S.E.2d at 167 (court discusses inherent difficulty in establishing judicially manageable standards for education and defers to the legislature to define the state's financial commitment to education); *Thompson v. Engelking*, 96 Idaho 793, 798, 537 P.2d 635, 640 (1975) (court expressing fear of becoming 'super legislature' if entering into area of school finance.).

79. See *supra* note 72.

80. See, e.g., *Board of Educ. of the City School Dist of the City of Cincinnati v. Walter*, 58 Ohio St. 2d 368, 376, 390 N.E.2d 813, 822 (1979) (court refers to importance of local control in upholding funding system), *cert. denied*, 444 U.S. 1015 (1980). The local control rationale has been heavily criticized by some courts who have echoed the dissent in *Rodriguez*. See *supra* note 61. See, e.g., *Serrano v. Priest*, 18 Cal. 3d 728, 769, 557 P.2d 929, 948, 135 Cal Repr. 345, 369 (1976) (referring to the rationale of local control as a "cruel illusion"), *cert. denied sub nom. Clowes v. Serrano*, 432 U.S. 907 (1977).

81. See, e.g., *Horton v. Meskill*, 172 Conn. 615, 630, 376 A.2d 359, 373-74, (1977) (finding fundamental right to education due to emphasis placed on education by state legislature throughout the state's history); *Washakie County School Dist. Number 1 v. Herschler*, 606 P.2d 310, 333 (Wyo.) (finding fundamental right due to emphasis placed on education in Wyoming Constitution), *cert. denied sub nom. Hot Springs County School Dist. v. Washakie County School Dist.*, 449 U.S. 824 (1980).

82. See cases cited *supra* note 81. But see *Shofstall v. Hollins*, 110 Ariz. 88, 515 P.2d 590 (1973) (state court found fundamental right to education yet only applied rational-basis analysis and upheld funding formula).

districts.⁸³

Although some state equal protection challenges have been successful,⁸⁴ such challenges have limitations. Equal protection addresses equality of funding, but does not address adequacy of funding levels.⁸⁵ A funding formula that merely guarantees participation in the public schools or a minimum level of education may survive an equal protection challenge.⁸⁶ Theoretically, equal protection can even result in the state setting minimal equal funding levels and penalizing districts that spend above these levels.⁸⁷ A state education clause challenge, however, does not share the shortcomings of an equal protection clause challenge.⁸⁸ The education clause can be used to mandate both equality of funding and adequate funding levels.⁸⁹

b. The Education Clause Argument

Challenges based on education clauses of state constitutions are totally independent of any federal model and are potentially more effective than challenges based on state equal protection clauses.⁹⁰ An education clause challenge relies on the state court's duty to interpret the state constitution and to ensure that the state legislature's exercise of power is in compliance with the

83. See, e.g., *Washakie*, 606 P.2d at 336 (court expresses constitutional standard that the level of school spending must not be a function of wealth, but leaves the ultimate solution to be shaped by the legislature according to this standard).

84. See, e.g., cases cited *supra* notes 68, 81.

85. For a full discussion of the failings of a state equal protection challenge, see Hubsch, *supra* note 54, at 114-27. "[E]qual protection does not directly address issues of the quality of education received by the vast majority of students." *Id.* at 127. See also Note, *supra* note 36, at 1670-79. (outlining problems of state equal protection approach).

86. See, e.g., *Britt v. N.C. State Bd. of Educ.*, 86 N.C. App. 282, 287, 357 S.E.2d 432, 436 (1987) (only equal access to participation in schools is a fundamental right, *rev. denied*, 320 N.C. 790, 360 S.E.2d 71 (1987)); *Board of Educ. of City School Dist. of Cincinnati v. Walter*, 58 Ohio St.2d 368, 379, 390 N.E.2d 813, 825 (1979) (only if students are effectively deprived of educational opportunity will court interfere with legislative discretion), *cert. denied*, 444 U.S. 1015 (1980).

87. Hubsch, *supra* note 54, at 106 (discussing a lowest-common denominator approach to equalization). See also Defendant's Response to Plaintiff's Motion for Summary Judgment at 15-16, *Lake Central School Corporation v. State*, Cause No. 56C01-8703-CP-81 (Newton Cir. Ct., Jan. 29, 1990) (State projecting that equalization would require certain school districts to increase funding and others to decrease funding to meet the State's per pupil rate. "While the plaintiffs may benefit somewhat, the effect upon other school corporations would no doubt be devastating with facilities closed and teachers laid off. A small price to pay for equalization." *Id.* at 16.).

88. See *infra* notes 90-104 and accompanying text.

89. *Id.*

90. For a strong argument of the advantages of using an education clause argument in a funding formula challenge, see Hubsch, *supra* note 54, at 127-33. The Hubsch article gives the text of all fifty state education clauses. *Id.* at 134-40.

state constitution.⁹¹ In an education clause challenge, the court looks for an enforceable education mandate in the education clause of the state constitution and appraises whether the state legislature has satisfied this mandate.⁹² By interpreting the state education mandate, the court provides concrete standards by which to judge the current funding formula and gives guidelines for subsequent legislative efforts.⁹³

The court may interpret the state's education clause as mandating both equal and adequate educational opportunity.⁹⁴ State education clauses often include words such as "uniform" and "general", which provide the basis for an equality

91. See, e.g., *Seattle School Dist. No. 1 of King City v. State*, 90 Wash. 2d 476, 485, 585 P.2d 71, 87 (1978) (The judiciary has the ultimate duty to interpret the constitution. "This duty must be exercised even when an interpretation serves as a check on the activities of another branch of government ..."). State courts use a variety of factors to interpret the state education mandate. A court may look at the wording of the education clause and the uniqueness of the clause in the state constitution. See, e.g. *Seattle* 90 Wash. 2d at 484, 490-95, 585 P.2d at 84-85, 90-97 (wording of education clause and uniqueness of clause establishes 'paramount duty' of state to 'make ample provision' for education of state's children). The court may look at the intention of the framers, as seen through records of constitutional debates and contemporaneous writings. See, e.g., *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 394-96 (Tex. 1989) (court using history of state education clause and education system to interpret clause, with heavy emphasis on debates of constitutional convention). A comparison of the education clause with other state education clauses may also be used. See, e.g., *Pauley v. Kelly*, 162 W.Va. 672, 681-85, 255 S.E.2d 859, 869-74 (1979) (court exploring other states' interpretation of "thorough and efficient" in order to interpret West Virginia's education clause). But see Note, *supra* note 36, at 1660. (decisions by courts interpreting identically worded or nearly identically worded provisions often reach vastly different results).

92. See, e.g., *Edgewood*, 777 S.W.2d at 394 ("By express constitutional mandate, the legislature must make 'suitable' provision for an 'efficient' system for the 'essential' purpose of a 'general diffusion of knowledge'. While these are admittedly not precise terms, they do provide a standard by which this court must, when called upon to do so, measure the constitutionality of the legislatures actions.").

93. Such standards go beyond bare equality and define specific goals that the state education system must achieve. See, e.g., *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 193-197 (Ky. 1990) (An efficient "system of education must have as its goal to provide each and every child with an equal opportunity to an adequate education. The court lists seven areas that an efficient and adequate system of education must address, including "sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization." *Id.* at 74); *Pauley*, 162 W.Va at 688, 255 S.E.2d at 877 (A thorough and efficient system of schools must develop as best as educational expertise allows "the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship," and do so economically. The court continued to list eight areas of learning the education system needed to address, including "knowledge of government sufficient to equip the individual to make informed choices as a citizen." *Id.*).

94. See, e.g., *Rose*, 790 S.W.2d 186 (Ky. 1990) ("Each child, every child, in this commonwealth must be provided with an equal opportunity to have an adequate education.").

analysis similar to an equal protection analysis.⁹⁵ Education clauses may also include statements of purpose that emphasize the value of education to the state.⁹⁶ These statements of purpose can provide the basis for judicial assessment of the adequacy of the state's educational funding scheme and the quality of the state educational system.⁹⁷

For the state court to use the education clause as the basis for assessing quality as well as equality, the court must interpret the education clause as creating an affirmative duty of the state legislature to establish and support an educational system that will provide for an educated citizenry.⁹⁸ Because effective state government depends on citizens who possess the tools to participate meaningfully in the state system of self-government, the state legislature is mandated to provide a system of education that will produce an educated citizenry.⁹⁹ Educational quality or adequacy must be measured in

95. See, e.g., "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction. WYO. CONST. Art. VII, sec.1; Washakie County School Dist. No. 1 v. Herschler, 606 P.2d 310, 320 (Wyo.), cert. denied sub nom. Hot Springs County School Dist. v. Washakie County School Dist., 449 U.S. 824 (1980) (court uses "uniform" term in education clause to assess inequities of states educational system). But see "Plaintiffs have lacked success on claims under the education articles of the state constitution when they have merely used it as a surrogate for or reiteration of an equal protection claim." Hubsch, *supra* note 54, at 129.

96. See, e.g., "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." ARK. CONST. art. XIV, sec.1; Dupree v. Alma School Dist. No. 30, 279 Ark. 340, 343, 651 S.W.2d 90, 93 (1983) (Because of importance of education to citizenship, as stated in education clause, state must provide more than bare and minimal education).

97. For a discussion of interpreting rights and duties contained in state constitutional education clauses, based on the wording of the clauses, see Grubb, *Breaking the Language Barrier: The Right to Bilingual Education*, 9 HARV. C.R. - C.L. L. REV. 52, 66-71 (1974) (categorizing state education clauses as to potential for enforcing educational rights and duties); Ratner, *supra* note 55, at 814-22 (interpreting duty to educate based on language of state education clauses).

98. The state's duty is focused, not on the needs of the students, but on the needs of the state, and these state needs become the bases for assessing the adequacy of the state education system. See *infra* note 99. See also *infra* notes 173, 229.

99. This argument is carefully explained in Hubsch, *supra* note 54, at 95-101. Hubsch discusses the political philosophy of republicanism and how republicanism relates to the background of public education in the states. Republicanism is based on principles of self-government, which is dependent on an educated citizenry, thus the necessity of education in a republic, as recognized by early state constitutions. "Education for citizenship and self-government, ... affirmatively obligates the state to provide all citizens with the quality and character of education appropriate for participation in political and community affairs. The state must provide an education that conforms to the level of participation self-governing communities expect from the citizenry." *Id.* at 99. The requirement that the state provide for an educated citizenry involves more than providing students with a minimal education. Dupree, 651 S.W.2d at 93. Education must prepare students with the skills to exercise first amendment freedoms, but also with the skills to compete in today's market. Seattle Sch. Dist. No. 1 of King City v. State, 585 P.2d 71, 94-95 (Wash. 1978). For a catalogue

terms of whether the state educational system has, in fact, provided for an educated citizenry.¹⁰⁰

Whether focusing on equality or quality of education, challenges to funding formulas based on education clauses have had mixed results.¹⁰¹ However, the recent Montana, Kentucky, and Texas decisions indicate a growing willingness of state courts to use education clauses to overturn state funding schemes.¹⁰² By using state education clauses to decide funding formula challenges, state courts can avoid equal protection problems¹⁰³ and address questions of quality as well as equality.¹⁰⁴

of the types of skills seen as essential to an educated citizenry, see *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212-13 (Ky. 1990) and *Pauley v. Kelly*, 162 W. Va. 672, 688, 255 S.E.2d 859, 877 (1979).

100. See, e.g., *Seattle*, 90 Wash. 2d. at 494, 585 P.2d at 94-95 ("[T]he State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens ... Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival." The court continued to outline broad educational concepts of essential skills in terms of the constitutional mandate for education and held that these concepts made up the minimum of the education constitutionally required.). See also *Ratner, supra* note 55, at 781-94 (discussion of significance of adequate basic skills development to purposes of American public education, including political function). Furthermore, the duty to provide for an educated citizenry is a state duty despite the delegation of authority to local districts. *Rose*, 790 S.W.2d at 193 (court affirms importance of education to present and future of state, and stresses that sole responsibility for providing for school system is that of General Assembly's and that obligation cannot be shifted to local school districts). For an argument that a federal constitutional mission exists to educate for effective citizenship, see *Norris, Education for Sovereignty: A Bicentennial View of the Purpose of Education*, 1988 DET. C.L. REV. 928.

101. Courts have rejected education clauses challenges for various reasons, including deference to the legislature and reluctance to venture into the uncharted area of educational standards. See *supra* note 78. (state courts using both state equal protection and education clauses rejecting challenges on these grounds). Courts that have struck down funding formulas under the education clause have asserted judicial responsibility to interpret the state constitution and to ensure that the state legislature complies with constitutional mandates. Such courts have found little problem relating funding levels to equality or quality of education. See, e.g., *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391 (1989). "If the system is not 'efficient' or not 'suitable,' the legislature has not discharged its constitutional duty and it is *our* duty to say so." *Id.* at 394. "The amount of money spent on a student has a real and meaningful impact on the educational opportunity offered that student." *Id.* at 393. See also *supra* note 46.

102. *Rose*, 790 S.W.2d 186; *Helena Elementary School Dist. No. 1 v. State*, 769 P.2d 684 (1989); *Edgewood*, 777 S.W.2d 391. (All three states overturned state funding formulas because of violations of state constitution education clauses.).

103. See *supra* notes 73-77 and accompanying text.

104. See *supra* note 100.

II. FUNDING INDIANA'S SCHOOLS

Indiana's funding scheme has created inequality and inadequacy of educational opportunity in the state, and is vulnerable to an Indiana constitutional challenge. This section will discuss the background of school funding in Indiana, the specific problems caused by the funding scheme, and the pending challenge to the funding scheme.

A. How Indiana Funds Public Education

Prior to 1973,¹⁰⁵ Indiana schools were funded through a foundation program,¹⁰⁶ which guaranteed a minimum revenue amount to all school districts.¹⁰⁷ The goal of the foundation program was to increase the state share of support of the schools and reduce reliance on local property taxes.¹⁰⁸ Under the foundation program, each district was granted a fixed amount of money per pupil per year from the state; local districts could supplement state revenue through local property taxes.¹⁰⁹

Because the state grant was inadequate to meet the needs of local districts, districts were forced to raise substantial local revenue to supplement the state grant.¹¹⁰ Property-rich districts were able to raise the necessary revenue with relatively low tax rates, while poorer districts were forced to tax at much higher rates to meet basic educational requirements.¹¹¹ The amount of revenue available to school districts and district per-pupil expenditure levels often became

105. Before 1930, Indiana schools relied primarily upon local revenues from property taxes, supplemented by state distributions from a dedicated common school fund and a state tax levy for special relief to districts with low taxable wealth. In 1933, in order to provide poorer school districts with a proportionately greater share of state funds than wealthier districts, the state began to assume a substantial share of local school costs, distributing funds raised through a new gross income tax as tuition support on a per teaching unit basis. This note only gives an outline of school funding in Indiana. For history and analysis of Indiana school funding, see generally R. BOONE, A HISTORY OF EDUCATION IN INDIANA 164-217, 324-36 (1892 & photo. reprint 1941); R. LEHNEN & C. JOHNSON, *supra* note 40, at 1-12 (detailed analysis of Indiana's funding scheme); Costerison, *School Finance: the 1984 School Funding Formula*, in INDIANA SCHOOL LAW 1983 (1983).

106. *See supra* note 32.

107. Local districts that imposed a specific local tax rate received guaranteed state funds. The goal of this funding scheme was to reduce reliance on property taxes and equalize per pupil expenditures for equal local property tax effort. In other words, districts with similar tax rates would receive similar amounts of state money. R. LEHNEN & C. JOHNSON, *supra* note 40, at 1-2.

108. R. LEHNEN & C. JOHNSON, *supra* note 40, at 1.

109. R. LEHNEN & C. JOHNSON, *supra* note 40, at 2.

110. *Id.*

111. INDIANA SCHOOL STUDY COMMISSION, AN EVALUATION OF INDIANA PUBLIC SCHOOLS 423 (1949). *See supra* notes 41-45 and accompanying text for discussion of relationship between property value and taxation.

a function of local commercial or industrial development.¹¹²

In order to keep escalating property taxes down and to bring the varying expenditure levels among school corporations closer together, the Indiana General Assembly, in 1973, put a freeze on the amount of local revenues a local district could raise.¹¹³ The freeze fixed local revenue levies at the 1973 level; any additional funds needed by the district were to be supplied by the state.¹¹⁴ A local district could raise an excess levy only if the levy gained voter approval through a referendum.¹¹⁵

The freeze locked into place any inequalities between districts in expenditure levels per pupil that existed prior to 1973.¹¹⁶ When the freeze went into effect, expenditures per pupil varied widely throughout the state.¹¹⁷ These disparate spending levels became the bases for funding formula calculations over the next seventeen years.¹¹⁸

Since 1973, the funding scheme gradually has increased reliance on local property taxes.¹¹⁹ In 1979, the General Assembly authorized schools to increase the property tax levy,¹²⁰ which increased the local share of school revenue.¹²¹ In 1984, the state permitted local levies to increase according to

112. "This great disparity in taxpaying ability as represented by assessed valuation per resident pupil to a large extent grows out of the existence of many unduly small school administrative units." *Id.* In 1959, the state attempted to remedy some of these disparities with the Reorganization Act (1959 Ind. Acts ch. 202). In order to provide more equalized educational opportunities to pupils, greater equity in school tax rates and a more efficient use of funds, the Act set minimum standards for schools and allowed consolidation of schools.

113. The main purpose of this freeze was to prevent escalating tax rates resulting from the inadequacies of the foundation grants. The freeze was a measure aimed at tax-payer relief and was not formulated according to any educational policy. R. LEHNEN & C. JOHNSON, *supra* note 40, at 2.

114. Costerison, *supra* note 105, at II-2 to II-3.

115. R. LEHNEN & C. JOHNSON, *supra* note 40, at 2.

116. *Id.*

117. For instance, in 1973, South Spencer County School Corporation spent \$534 per pupil and East Chicago spent \$1,248 per pupil. R. LEHNEN & C. JOHNSON, *supra* note 35, at 2.

118. "The present school distribution formula is based largely on historical conditions rather than on policies focused on the educational needs in school corporations." R. LEHNEN & C. JOHNSON, *supra* note 40, at 1.

119. Costerison, *supra* note 105, at II-3.

120. With a levy freeze, if assessed valuation goes up, tax rates go down. Assessed valuations had generally risen from 1973 to 1979. The General Assembly restructured the rates to allow local districts to raise additional revenue from this increased valuation in property. *See* R. LEHNEN & C. JOHNSON, *supra* note 40, at 25.

121. In fact, the property tax increases resulted in fewer state dollars distributed to the schools. *Id.* at 8.

the district's increase in assessed valuations.¹²² These adjustments in the formula increased available revenue, but did nothing to reduce the disparities of per-pupil expenditures,¹²³ nor did the adjustments remedy the wide differences in tax rates from district to district.¹²⁴

Currently, the formula attempts to deal with problems of inequality.¹²⁵ In 1986, the Indiana General Assembly recognized the problems of inequalities among school districts and added an equalization factor to the formula, giving a minimum guarantee per pupil.¹²⁶ The equalization factor attempts to bring low-spending districts up to a state norm.¹²⁷ The state has also increased its share of support for schools.¹²⁸ Despite these measures, differences among district per pupil expenditure levels have actually increased.¹²⁹

B. Problems with Indiana's School Funding Formula

1. Problems of Inequality

Under Indiana's funding formula, wide disparities exist in district per-pupil expenditures and in local tax rates.¹³⁰ Local school districts are not equally

122. The formula assumed that the local district's property tax levies went up each year in proportion to the average increase in assessed valuation. School districts were not actually required to raise this maximum levy amount, but the districts would lose state money if they did not. *Id.*

123. *Id.* at 34-35.

124. *Id.* at 35.

125. *Id.* at 8-9. See IND. CODE ANN. § 21-3-1.6 (West Supp. 1990).

126. In 1989 the minimum guarantee was \$2500. R. LEHNEN & C. JOHNSON, *supra* note 40, at 8.

127. *Id.* Criticism of the equalization formula has often been vehement. See Letter from Joint Services Agreement Committee to Indiana School Superintendents (Sept. 29, 1989) (calling for districts to join in challenge of Indiana public school funding formula). "The 'Equalization Formula' — as it was written — would have provided greater parity for children and taxpayers, but it was twisted, bent, and reshaped by powerful legislators for reasons still undisclosed. Although the present formula has enabled many school districts to reach minimal levels in per-pupil expenditures, it has caused greater disparities than existed prior to its inception." *Id.*

128. In 1972-73, 67% of all school revenue came from local sources. By 1987-88 only 38% came from local sources. Indiana relies less on property tax than the national average. R. LEHNEN & C. JOHNSON, *supra* note 40, at 34.

129. *Id.* at 19. See also Wood, Indiana School Finance Equity (Occasional Paper. No. 2, June 1990) (detailed study of Indiana funding scheme inequities).

130. The inequalities of the formula can be shown by a few examples drawn from a single county in 1990. In Lake County, assessed valuation amounts behind each student range from \$133,397 in Whiting, to \$6,675 in Hobart Township. Tax rates range from \$5.42 per \$100 assessed valuation in Whiting, to \$10.65 in the City of Hobart. Amounts expended per pupil range from \$5,371 in Whiting, to \$3,138 in Lake Central school district. Statistics from ADDENDUM, *supra* note 45. Some question whether varying assessment practices among Indiana counties account for differences in assessed valuations. If some areas are under assessed, the state's disparity in tax rates may not actually reflect disparity in taxpayer burden. However, no current information supports this

willing to raise necessary revenue.¹³¹ Districts with already high tax rates may find their communities resistant to increased school taxes.¹³² Whether appointed by the local city council or elected, local school boards are sensitive to the political ramifications of tax increases.¹³³

Even if a school board is willing to raise new taxes, it may be unable to do so if the district has reached the levy ceiling placed by the state.¹³⁴ Such a district must gain voter approval through a referendum to raise revenue above this ceiling.¹³⁵ The level of expenditure per pupil is directly dependent on the ability and willingness of the local community to support local education.¹³⁶

Identical amounts spent per pupil may not ensure identical educational opportunity.¹³⁷ However, the amount of revenue available may well affect curricular and extra-curricular offerings, class sizes, supplies and materials, facilities, and counseling services.¹³⁸ Differences in expenditure among school

premise. R. LEHNEN & C. JOHNSON, *supra* note 40, at 25. Regardless of county assessment practices, local school districts have no say in the setting of assessed valuations. *See supra* note 42. *See also* Task Force Report of Financing Public Education in the State of Indiana 5 (report prepared for State Superintendent of Education, Aug. 23, 1990) [hereinafter "Task Force"] (noting "[t]he very obvious overall disparity in Indiana's financial investment per pupil compared to the North Central region or the national average. We do compare favorably to the Deep South, if that is to be this state's destiny.").

131. *See supra* note 50.

132. The statistics alone do not indicate the range of problems created by high tax rates. Increased taxes in a community with already high tax rates may severely hinder local economic development, because such a community must compete for new businesses and housing with neighboring communities with much lower tax rates. The School City of Hobart, for instance, had a 1990 tax rate of 10.65. Hobart abuts Merrillville which had a 1990 tax rate of 4.99. In terms of attracting new businesses, industry or residences, neighboring Merrillville with its lower tax rate has a distinct advantage. Statistics from ADDENDUM, *supra* note 45.

133. *See supra* note 50.

134. The current funding formula continues to require voter approval for all general fund property tax levies that exceed levels permitted by statute. R. LEHNEN & C. JOHNSON, *supra* note 40, at 10. In 1986, the School Town of Munster sponsored a successful referendum to add \$600,000 in local taxes for teachers' salaries and school improvements. Carlson, *School Funding Scored*, Post Tribune, Nov. 30, 1989, at A6. Munster has the highest community per capita income in the state but cannot raise new money without a referendum because of the freeze. *Id.*

135. Since 1973, only 23 out of 41 school districts have succeeded in winning voter approval through referendum. R. LEHNEN & C. JOHNSON, *supra* note 40, at 10.

136. The impact of local property taxes on the quality of local education appears to contradict the fact that the Indiana General Assembly, not local districts, is ultimately responsible for the state system of education. *See infra*, note 196 and accompanying text. *See also supra* notes 99-100 and accompanying text.

137. *See* T. JONES, *supra* note 19, at 163-64 (discussing need to adapt spending levels to student needs and local factors to achieve equal educational opportunity).

138. *See infra* note 152 and accompanying text. *See also* Task Force, *supra* note 130, at 5 (noting "[t]he inequities in current funding and resulting wide disparities in educational opportunities through out Indiana.").

districts often translate into differences in educational opportunity.¹³⁹

2. Problems of Adequacy

Under Indiana's funding formula for education, Indiana schools, as a whole, have been funded at lower levels than the national average.¹⁴⁰ Although critics question the relationship between funding levels and quality of education,¹⁴¹ strong evidence indicates that Indiana's low funding levels affect the quality of education in the state.¹⁴² Indiana academic performance lags well behind the national average.¹⁴³

The state has recognized the deficiencies of Indiana's educational system

139. See R. LEHNEN & C. JOHNSON, *supra* note 35, at 32-33 (discussing how Indiana's funding formula has locked some school districts into permanent conditions of low expenditures and deficient educational opportunity). "While it is recognized that expenditures are not a perfect indicator of education quality, it is a generally accepted surrogate measure of quality. By implication the lower spending districts no doubt have difficulties in offering the same quality of education opportunity as the higher spending ones". *Id.* at 33. See also *supra* note 46 and accompanying text.

140. Indiana's 1988-89 average per-pupil expenditure of \$3,858 was less than the national average of \$4,509 and was the lowest per-pupil average of all North Central States except Kentucky, Nebraska, and Missouri. *Indiana Farm Bureau, supra* note 26, at 15. Inequalities resulting from the Indiana funding formula are not as extreme as those in other states. Indiana's highest 1990 per-pupil expenditure was \$5,371 compared to the state's lowest per-pupil expenditure of \$2,763. 1990 statistics from ADDENDUM, *supra* note 45. Compare this range with the more extreme ranges of Illinois, *supra* note 52, and Texas, *supra* note 43. However, Indiana's 1990 highest per-pupil expenditure of \$5,371 closely equates to Wisconsin's 1988-89 average per-pupil expenditure of \$5,117. INDIANA FARM BUREAU, *supra* note 26, at 15.

141. See Defendant's Motion for Summary Judgment at 33, *Lake Central School Corp. v. State*, Cause No. 56CO1-8703-CP-81 (Newton Cir. Ct., Dec. 1, 1989) ("Using the most recent measure of educational performance in Indiana ... there is no mathematical correlation between test scores and educational funding among the school districts of Indiana."). See also Response, *supra* note 87, at 5.

142. See R. LEHNEN & C. JOHNSON, *supra* note 40, at 49-81 (analysis of statistical indicators of student performance and correlation with Indiana school funding levels). See also Task Force, *supra* note 130, at 5 ("An alarming and growing number of school districts are even now tempering programs which consequently inhibit the academic, social and thinking skills of our future workforce and citizens.").

143. See R. LEHNEN & C. JOHNSON, *supra* note 40, at 52-54 (Based on 6 educational performance indicators, Indiana ranks in the bottom half of all states on all 6 indicators.). See also State Education Performance Chart Supplement 1988-89 (Wall Chart), U.S. Dept. of Educ., May 1990. (Indiana ranks 32nd in the nation in its per-pupil expenditures. Among the twenty-two states using the SAT test, Indiana ranks eighteenth in average SAT scores, better only than South Carolina, North Carolina, Georgia and Washington D.C. Less than thirty per-cent of Indiana public schools offer advance placement programs. Indiana ranks forty-eighth in the nation in students scoring a 3 or above on advance placement tests. *Id.*).

and in the past few years has taken steps to improve student performance.¹⁴⁴ However, the state's willingness to create educational programs has not been followed by the state's willingness to commit the necessary funds.¹⁴⁵ Indiana continues to fall behind national averages both in per-pupil spending and in pupil performance.¹⁴⁶ Any challenge to Indiana's funding formula must focus on these problems of inadequate funding and performance as well as on problems of inequality.

C. *The Pending Challenge to Indiana's Funding Formula*¹⁴⁷

Currently, Indiana's funding formula is being challenged on state constitutional grounds.¹⁴⁸ In 1987, students, parents, taxpayers, and school officials of Lake Central School Corporation filed suit against the State Board of Tax Commissioners.¹⁴⁹ The plaintiffs claim that under the Indiana equal

144. See *Summary of the Governor's Excel for Education* (as passed by the 1989 General Assembly), INDIANA FARM BUREAU, *supra* note 26, at 26-27 (outlining reform efforts including ISTEP testing and At Risk Program).

145. See, e.g., INDIANA FARM BUREAU, *supra* note 26, at 25 (The Prime Time Program, designed to encourage school districts to reduce class sizes in the primary grades, does not fully fund the hiring of additional teachers necessary to lower pupil/teacher ratios.). See also Task Force, *supra* note 130, at 5 ("Indiana's less affluent school districts, and indeed, many who are considered relatively affluent, will find themselves impotent to respond to new standards and new expectations from [Indiana] and the nation.").

146. See R. LEHNEN & C. JOHNSON, *supra* note 40, at 55-58, 65-67 (indicating relative decline in performance scores and widening of expenditure gap despite increases in state spending for education).

147. An earlier challenge to the state funding formula came in 1973. *Jensen v. State*, Cause No. 24, 474 (Johnson County Cir. Ct. Jan. 15, 1973). Parents and students of school districts in Hamilton, Howard and St. Joseph Counties brought suit against the state based on the equal protection clauses of the United States and Indiana Constitutions, as well as the education clause of the Indiana Constitution. *Id.* at 2. The plaintiffs argued that the state's financial structure created disparities in amounts expended per pupil, resulting in unequal educational opportunities. *Id.* at 2-3. Thus, the plaintiffs contended, the quality of education became a function of the wealth of a district and geographic accident. *Id.* at 3.

The district court used a rational basis analysis, and held disparities in expenditures among districts were not unreasonable or unrelated to differing costs faced by different districts. *Id.* at 22. The court pointed to "local control" as a significant justification for variances in expenditures, stating that local control of schools was necessary to make "education a viable program responsive to local needs and yet progressive and experimental beyond set minimums." *Id.* at 27. Furthermore, the court was not convinced that differences in expenditures related to differences in quality of education. *Id.* at 25. The court concluded that ultimate relief lay properly with the legislature. *Id.* at 29. The *Jensen* decision was never appealed.

148. *Lake Central School Corp. v. State*, Cause No. 487-109 (Lake Superior Ct. filed Feb. 20, 1987) (renumbered Cause No. 56CO1-8703-CP-81, Newton Circuit Ct.). The case is currently scheduled for trial in September, 1991.

149. Lake Central is in Lake County, Indiana, and includes the communities of Schererville, St. John and Dyer. Lake Central was joined in the suit by 52 school districts comprising the Joint Services Agreement on July 9, 1990. See *supra* note 127.

protection and education clauses, Indiana fails to provide for a uniform system of schools.¹⁵⁰ The plaintiffs claim that a funding system that requires a school district to tax its residents at a rate far above the state average in order to spend less than the state average per pupil is discriminatory.¹⁵¹ Plaintiffs also contend that disparities in funding affect quality of education in Lake Central Schools.¹⁵²

The state has replied that per pupil expenditures do not reflect educational opportunity, and that disparity among school districts does not prove denial of equal protection.¹⁵³ The state has argued that absolute equality of funding is not required and that differences among school districts are justified by the state interest in local control.¹⁵⁴ The state also contends that plaintiffs have not proven inadequacy of education in Lake Central Schools.¹⁵⁵

The arguments posed by both sides in the Lake Central challenge are similar to those seen in other states' challenges, addressing both state equal protection and education clauses.¹⁵⁶ This note has previously discussed how state equal protection and education clause arguments have been employed within the national context and will now analyze how Indiana's equal protection and education clauses can be used to challenge Indiana's funding formula.

III. HOW INDIANA'S FUNDING FORMULA CAN BE CHALLENGED

A. *The Equal Protection Clause Challenge*

Article I, section 23 of the Indiana Constitution reads: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all

150. Complaint, at 6-7, *Lake Central School Corp. v. State*, Cause No. 487-109 (Lake Superior Ct. filed Feb. 20, 1987) (renumbered Cause No. 56CO1-8703-CP-81, Newton Circuit Ct.).

151. In 1984-85, Lake Central ranked 252nd out of 304 school districts in per-pupil spending, despite the fact that Lake Central taxpayers had the 7th highest tax rate in the state. *Id.* at 6. See also Plaintiff's Reply Brief at 21-22, *Lake Central School Corp. v. State*, Cause No. 56CO1-8704-CP-81 (Newton Cir. Ct. no date). In 1987, in order to meet the state average, the school district would need an additional \$1,805,097. *Id.* at 22.

152. Effects of revenue deficiency include reduced teacher salaries, larger class sizes and less support personnel than neighboring school districts. *Id.* at 23.

153. See Defendant's Motion, *supra* note 141.

154. Defendant's Response, *supra* note 87, at 3-4, 26-28 (demonstrating absurdity of results if constitution required equal expenditures per pupil and arguing that funding formula furthers state interest of local control).

155. *Id.* at 11-12 (arguing that Lake Central may actually offer more educational opportunity than richer neighbor).

156. See Complaint, *supra* note 150.

citizens."¹⁵⁷ Although this clause is commonly referred to as Indiana's equal protection clause, it actually has a very different origin than the federal Equal Protection Clause.¹⁵⁸ The Indiana clause reflects the framers' concern that no individual enjoy any special rights or privileges and focuses on prohibiting special privileges rather than guaranteeing equal rights.¹⁵⁹ Despite the differences in wording and purpose between the Indiana and federal equal protection clauses, Article I, section 23 of the Indiana Constitution has been interpreted to grant protection substantially identical to that provided under the fourteenth amendment of the United States Constitution.¹⁶⁰

In order to apply strict scrutiny to Indiana's funding formula, the funding formula must impinge upon a fundamental right to education.¹⁶¹ In *Sidle v. Majors*, the Indiana Supreme Court used the *Rodriguez* "explicit/implicit" test¹⁶² and determined that fundamental rights are those rights that have their origins in express terms of the Indiana constitution or that are necessarily to be implied by it.¹⁶³ If this approach to fundamental rights is used, a fundamental right to education exists in Indiana since Indiana's Constitution refers specifically to education.¹⁶⁴

157. IND. CONST. art. I, sec. 23.

158. For a discussion of the differences between the Indiana and federal equal protection clauses, see Baude, *Is There Independent Life in the Indiana Constitution?*, 62 IND. L.J. 263, 270-71 (1987) ("This provision, ... was once described by the Indiana Supreme Court as the 'antithesis' of the equal protection clause of the fourteenth amendment to the United States Constitution."); Utter & Pitler, *supra* note 65, at 669 ("[T]he Indiana delegates' most likely target was prohibition of special privileges.").

159. For an illustration of the different purposes of the Indiana equal protection clause from the federal equal protection clause, see C. KETTLEBOROUGH, *CONSTITUTION MAKING IN INDIANA 1780-1850* 398 (1916 & photo. reprint 1971). ("All the members of the political States of Indiana shall have the same rights, privileges, and immunities, because one man is as good as another, if not a 'leele better'." (quoting constitutional provision proposed and rejected at 1850 Indiana Constitutional Convention)). See also J. WALSH, *THE CENTENNIAL HISTORY OF THE INDIANA GENERAL ASSEMBLY 179* (1987) (Section 23 "addressed the evil of special legislation, which had grown into unmanageable proportions during the pioneer period.").

160. *Indiana High School Athletic Assoc. v. Raike*, 164 Ind. App. 169, 176 n.2, 329 N.E.2d 66, 71 n.2 (1975). (When the federal equal protection clause is violated, the Indiana equal protection clause is necessarily also violated. The rights intended to be protected under both clauses are identical). See also Utter & Pitler, *supra* note 65, at 666.

161. See *infra* note 167 and accompanying text. (Indiana uses same equal protection analysis as federal model.). See also *Rohrbaugh v. Wagoner*, 274 Ind. 661, 664, 413 N.E.2d 891, 893 (1980) (discussing use of strict scrutiny in Indiana). See *supra* notes 57-58 for definitions of fundamental rights and strict scrutiny.

162. 264 Ind. 206, 209-10, 341 N.E.2d 763, 766-67 (Ind. 1976) (issue in case was constitutionality of Indiana guest statute). See *supra* note 57 for definition of explicit/implicit test.

163. *Sidle*, 264 Ind. at 209-10, 341 N.E.2d at 766-67. The Indiana Supreme Court held that the right to bring an action for common law negligence was not a fundamental right. *Id.* at 766. In *Sidle*, both the federal and Indiana Constitutions were discussed. *Id.* at 767.

164. IND. CONST. art. 8.

Using the *Rodriguez* explicit/implicit test to ascertain a fundamental right to education presents distinct problems. First, in *Sidle*, the *Rodriguez* test was used negatively; the court refused to recognize a fundamental right to bring an action for common law negligence because the right was neither expressed in nor implied from the state constitution.¹⁶⁵ No Indiana court has found a fundamental right merely because the subject was mentioned in the Indiana Constitution.¹⁶⁶ Other Indiana decisions have held that the rights intended to be protected by the Indiana equal protection clause are identical to those protected by the fourteenth amendment and must be tested by the same standards.¹⁶⁷ Since *Rodriguez* held that no fundamental right to education exists under the United States Constitution, no fundamental right to education should exist under the Indiana Constitution.¹⁶⁸

A preferable approach to determining a fundamental right to education under the Indiana Constitution would require Indiana to break from the federal model.¹⁶⁹ Indiana would need to examine its constitution and independently assess the existence of state fundamental rights.¹⁷⁰ The use of the word "duty" in Indiana's education clause, the unique language of the education

165. *Sidle*, 264 Ind. at 209-10, 341 N.E.2d at 766-67.

166. Defendant's Motion, *supra* note 141, at 28. See also *infra* note 171.

167. See, e.g., *Gary Community Mental Health Center, Inc. v. Ind. Dept. of Pub. Welfare*, 507 N.E.2d 1019, 1023 (Ind. App. 1987); *Frame v. South Bend Community School Corp.* 480 N.E.2d 261, 265 (Ind. Ct. App. 1985); *Sunshine Promotions, Inc. v. Ridlen*, 483 N.E.2d 761, 765 n.9 (Ind. Ct. App. 1985).

168. Certain practical problems also exist in applying the "explicit/implicit" test to determine fundamental rights, due to the inherent differences in state and federal constitutions. See *supra* notes 74-76 and accompanying text.

169. See *Uter & Piter*, *supra* note 65 (arguing the value of going beyond the Federal model and offering a method for building an independent constitutional argument). Indiana courts have given some indication of a willingness to independently examine the state constitution, but now the state seldom goes beyond the federal minimum and generally acquiesces in federal decisions. *Id.* at 640, 649. See also *Baude*, *supra* note 158, at 268-69 (Indiana is generally not one of the states to go beyond the federal minimum, despite some precedence to show an independent scope to the state constitution). See also *Shepard*, *Second Wind for the Indiana Bill of Rights*, 22 IND. L. REV. 575 (1989) (encouraging use of Indiana Constitution as source of rights and the state supreme court as protector of rights).

170. See *Uter & Piter*, *supra* note 65, at 654-58 (outlining methods for building constitutional arguments, including looking at text of constitution and constitutional history and convention debates). However, a constitutional interpretation should go beyond a strict historical interpretation. "The larger principle contained in a constitutional guarantee should not be confined to what the generation that adopted it was willing to live by". *Id.* at 659. But see *Baude*, *supra* note 158, at 266-68 (skepticism of "intent of the framers"). See also *supra* note 81 and accompanying text (Other states have found independent fundamental rights to education in state constitutions.).

clause,¹⁷¹ and the intent of the framers can be used to argue for the existence of a fundamental right to education in Indiana.¹⁷²

The Indiana court may be reluctant to find a fundamental right to education because such a finding could arguably open the door to the use of strict scrutiny in school-related suits.¹⁷³ The Indiana court may avoid finding a fundamental right to education in order to preserve deference to school authorities on school issues.¹⁷⁴ If the court fails to apply strict scrutiny, the court will apply the rational-basis test and determine whether the funding formula is reasonably related to the presumed purposes of the legislation.¹⁷⁵

Although aspects of the funding formula are quite vulnerable to the rational-basis test, the rational-basis test may not adequately solve Indiana's funding problems.¹⁷⁶ Because local control has been used to justify reliance on local property taxes,¹⁷⁷ and because the funding formula's use of tax freezes clearly

171. The presence alone of the word "duty" in the Indiana Constitution is insufficient to establish a fundamental right. For instance, Article 9, sec. 1 of the Indiana Constitution contains the word "duty" (duty to provide for the support of institutions for the deaf, dumb, blind and insane), but an Indiana Court of Appeals held that the treatment of indigent mental patients is not a fundamental right. *Gary Community Mental Health Center v. Indiana Dept of Welfare*, 507 N.E.2d 1019, 1023 (Ind. Ct. App. 1987). The uniqueness of the education clause with its statement of purpose must be stressed in order to distinguish the education clause from other clauses containing the word "duty".

172. This approach would repeat the analysis used in the education clause argument, see *infra* notes 191-241 and accompanying text. For an example of a state using an education clause to support finding of a fundamental right to education, see *Washakie Co., Sch. Dist. No. 1 v. Hershler*, 606 P.2d 310, 333 (Wyo. 1980). Additional arguments for finding of a fundamental right to education include the treatment of education by Indiana's General Assembly in the Preamble to Public Law 217 ("The citizens of Indiana have a fundamental interest in the development of harmonious and cooperative relationships between school corporations and their certificated employees:" 1973 Ind. Acts ch. 217, sec. 1(a)) and the 1959 Reorganization Act. *Supra* note 112. An independent approach would solve the problems posed by the *Rodriguez* "explicit/implicit" test, by limiting fundamental rights to rights defined in the constitution by the word "duty" as well as by specialized treatment. See *supra* notes 74-76 and accompanying text. But see *supra* note 98; *infra* note 229 (The education clause traditionally establishes the duty of the state, not the rights of the individual).

173. Students attempting to question school board policy on issues as varied as discipline and course selection could claim a fundamental right to education and require the court to apply strict scrutiny. See Note, *Academic or Disciplinary Decisions: When is Due Process Required?* 6 U. BRIDGEPORT L. REV. 391, 405-18 (1985) (discussion of role of fundamental rights in student disciplinary proceedings). See also *supra* note 77.

174. See *supra* note 77.

175. See *supra* notes 56-58, 167 and accompanying text. See *Johnson v. St. Vincent Hosp.*, 273 Ind. 374, 404 N.E.2d 585 (1980) (use of rational-basis analysis in Indiana).

176. See *supra* notes 85-87 and accompanying text for limitations of equal protection argument.

177. See Defendant's Motion, *supra* note 141, at 33-36. ("The importance of local control over local schools as a justification for local property taxes to support those schools has been recognized in Indiana for over one hundred years." *Id.* at 33.).

undermines local control,¹⁷⁸ arguably the funding formula is not reasonably related to the legislative purpose of local control. The state, however, may be able to devise a funding scheme that can survive rational-basis analysis and not solve the deeper problems of the school funding crisis.¹⁷⁹ By doing away with the tax freeze, the state could enhance local control and still provide inadequate state foundation amounts.¹⁸⁰ If such "reform" required local districts to make up the differences with local taxes, unequal educational opportunities would persist.¹⁸¹

Using the equal protection approach to challenge Indiana's funding formula clearly presents problems. Finding a fundamental right to education will require the court to go beyond federal models in order to interpret rights protected under the Indiana equal protection clause.¹⁸² If a fundamental right to education is not found in the Indiana Constitution, the court will use the rational-basis analysis, which may allow the state to make minor adjustments to a formula that needs to be totally redrawn.¹⁸³

Even if successful, an equal protection challenge will not ensure that funding levels will be adequately raised and that the issue of educational quality will be addressed. The next section will analyze how an education clause challenge can address both equality and adequacy problems.

B. The Education Clause Challenge

A close analysis of Indiana's education clause will reveal that the education clause provides an effective basis on which to challenge Indiana's funding formula. This section will interpret the education clause by looking at the clause's language and history and will argue that the education clause directs the General Assembly to provide for an educated citizenry with a uniform and efficient system of education.

1. Interpreting Indiana's Education Clause

In order to provide the basis for a successful challenge to Indiana's funding

178. "There is no local control of school expenditures ... Schools are *not* free to chose their level of expenditures, nor increase property taxes, nor do they have another source of local, optional revenue." R. LEHNEN & C. JOHNSON, *supra* note 35, at 53-54.

179. See *supra* note 86 and accompanying text for examples of state formulas surviving the rational-basis standard.

180. Such a remedy would return Indiana back to the pre-1973 system. See *supra* notes 105-12 and accompanying text.

181. *Id.*

182. See *supra* notes 169-72 and accompanying text.

183. See *supra* notes 179-81 and accompanying text.

formula, the Indiana Constitution's education clause must contain a mandate that the Indiana General Assembly provide for an equal and adequate state system of education.¹⁸⁴ An education mandate provides standards by which the court can ascertain whether the General Assembly has fulfilled its obligation.¹⁸⁵ If the Indiana funding formula fails to meet the requirements of a constitutional mandate, the court has the authority to step in and invalidate the funding formula.¹⁸⁶

To interpret Indiana's education clause as containing a mandate, the language and structure of Indiana's education clause must be analyzed.¹⁸⁷ The education mandate must be found in the totality of the education clause and not in a select number of terms.¹⁸⁸ Interpretation must also take into account the history of the clause, the intention of the framers and the interpretation of the clause in subsequent Indiana cases.¹⁸⁹ Comparison with other states' interpretations of education clauses are also useful in interpreting Indiana's education mandate.¹⁹⁰ By using these tools of interpretation, this note will demonstrate that the education clause's directive to the Indiana General Assembly to provide for an educated citizenry is a clear constitutional mandate for equal and adequate educational opportunity.

a. Interpreting the Education Clause Through Language and Structure

In terms of language alone, the education clause can be interpreted as mandating the General Assembly to provide for equal and adequate educational opportunity.¹⁹¹ The education clause reads:

184. See discussion of education clause challenges in other states, *supra* notes 90-104 and accompanying text.

185. See *supra* note 92-93 and accompanying text.

186. If the General Assembly has failed to perform a specific constitutional mandate, the court has the authority to step in. If not, the court will defer to the discretion of the General Assembly as to how the state education system is supported. "The great and controlling duty of the courts, when called upon to interpret the constitution, is to give effect to the intention of the people as expressed in the instrument." *Robinson v. Schenck*, 102 Ind. 307, 308, 1 N.E. 698, 699 (1885). "[The constitution] enjoins the general duty upon the Legislature, but leaves to them much discretion as to the selection of means for the efficient performance of that duty;" *Id.* 102 Ind. at 318, 1 N.E. at 705. See also *supra* note 91 and accompanying text.

187. See *infra* notes 191-99 and accompanying text. See *supra* note 91 for general discussion of methods of constitutional interpretation used in other states.

188. See *infra* notes 194-99 and accompanying text.

189. See *infra* notes 200-42 and accompanying text.

190. See *supra* notes 91, 97.

191. For an example of a state court analyzing the state constitutional mandate through the language of the education clause, see *Seattle School Dist. No. 1 of King City v. State*, 90 Wash. 2d 476, 484, 490-95, 585 P.2d 71, 84-85, 90-97 (1978) (state funding formula struck down as violating Washington Constitution education clause).

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.¹⁹²

Indiana's education clause contains the word "duty," a term that appears infrequently in the Indiana Constitution.¹⁹³ Significantly, "duty" in the education clause is defined in terms of a specific statement of purpose: "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government."¹⁹⁴ This statement of purpose cannot be ignored as mere verbiage because this statement of purpose is unique in the constitution. No other clause elaborates in such a manner the purposes for its existence.¹⁹⁵

The education clause stands out in the Indiana Constitution as one of paramount importance, emphatically defining the General Assembly's affirmative duty as to education: because the state needs an educated citizenry, the General Assembly must provide for a system of education.¹⁹⁶ Furthermore, the system of education must be general and uniform, free and equally open to all.¹⁹⁷

192. IND. CONST. art. 8, sec. 1.

193. The uniqueness of wording was important in *Seattle*. "The duty to make 'ample provision' [for a state system of education] is the *only* instance in which our constitution declares a specific state function to be a 'paramount duty' of the State.... Undoubtedly, the imperative wording was intentional." *Seattle*, 90 Wash. 2d at 484, 490, 585 P.2d at 85, 91. The word "duty" is found elsewhere in the Indiana Constitution (for an example, *see supra* note 171), but the education clause is the only place in the Indiana Constitution where the duty of the General Assembly is specified with such elaboration. *See infra* note 195 and accompanying text.

194. IND. CONST. art. 8, sec. 1.

195. *Compare with Seattle School Dist. No. 1 of King City v. State*, 90 Wash. 2d 476, 484, 585 P.2d 71, 84-85 (1978) (court states that section of state education clause imposing duty to make ample provision for state system of education is not mere preamble or policy declaration). *See supra* notes 96-100 and accompanying text for discussion of importance of statements of purpose in state education clauses.

196. The affirmative duty of the Indiana General Assembly is reiterated in subsequent Indiana cases. *See Robinson v. Schenck*, 102 Ind. 307, 318, 1 N.E. 698, 705 (1974) ("The constitution declares in very emphatic terms the duty of the legislature respecting common schools, and the failure of that body to use all suitable means to build up and maintain the system would unquestionably be a grave breach of duty;").

197. IND. CONST. art. 8, sec. 1.

Implicit in the mandate is the requirement of efficiency;¹⁹⁸ the means employed must be adequate to the purposes of the education clause.¹⁹⁹

b. Interpreting the Education Clause Through History

The history of the education clause supports the interpretation of the clause as creating an education mandate.²⁰⁰ The education clause was original to the 1851 Constitution, but the origins of Indiana's education clause date back to the 1816 Indiana Constitution.²⁰¹ When the 1816 Indiana Constitution was drafted, the introduction of the word "duty" in the education clause was thoughtful and deliberate.²⁰² The 1816 Indiana Constitution established the

198. Although the word "efficient" is not found in the education clause, the convention debates and later cases clearly indicate that the constitution requires an efficient system to provide for an educated citizenry. See *supra* notes 208, 210, 213, 229, 231 for examples of use of the word efficient as applied to Indiana education. See also 1959 Ind. Acts, ch. 202, sec. 1 (Reorganization Act) "It is the sense of the Indiana General Assembly ... [t]hat the establishment and maintenance of a general, uniform and efficient system of public schools is the traditional and current policy of the State of Indiana."

199. The term "efficient" has been a critical factor in a number of other states' successful challenges to state funding formulas. See, e.g., *Rose v. Council for Better Educ., Inc.* 1989 Ky. Lexis 55, 62, 76-77 ("The General Assembly is mandated, is duty bound, to create and maintain a system of common schools ... The system of common schools must be efficient. ... [Efficient schools must contain seven minimal characteristics, including equality and adequacy of educational opportunity]."); *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 394, 395 (Tex. 1989) ("If the system is not 'efficient' or not 'suitable', the legislature has not discharged its constitutional duty ... 'Efficient' conveys the meaning of effective or productive results and connotes the use of resources so as to produce results ... capable of well producing the effect intended to be secured"). Both Kentucky's and Texas' education clauses include the word "efficient". Although Indiana's clause does not contain the word "efficient", the importance of the word in Indiana's constitutional history supports the position that "efficient" must be considered as part of Indiana's constitutional requirement as well. See *supra* note 198 and accompanying text.

200. For the use of history in the interpretation of a state education clause, see *Edgewood*, 777 S.W.2d at 394-96. The Indiana Supreme Court considers state constitutional debates as useful aides for interpreting the Indiana Constitution. See *In re Todd*, 208 Ind. 168, 195-201, 193 N.E. 865, 875-78 (1935).

201. The 1816 Constitution coincided with Indiana's entry into statehood. The 1816 Constitution's education clause contained a lengthy statement of purpose and a designation of the General Assembly's duties to apply funds and to pass laws calculated to encourage education (sec. 1). The clause also designated the duty of the General Assembly, as soon as circumstances permitted, to provide for a general system of free education, graduating from township schools to a state university (sec. 2). IND. CONST. art. IX (1816). The origins of the 1816 Indiana Constitution go back to the Territorial Ordinance of 1787 which contained a rudimentary education clause calling for the encouragement of education in non-specific terms. For a discussion of the early history of education in Indiana, see R. BOONE, *supra* note 105; 2 R. BULEY, *THE OLD NORTHWEST* 326-416 (1950).

202. Although neighboring state constitutions formed the bases for the rest of Indiana's 1816 constitution, the framers cleared new ground with the education clause. "In no part of its work did the convention do so much constructive thinking or show more vision than in that part of the constitution which dealt with education". 1 R. BULEY, *supra* note 201, at 73. Article IX was

duty of the general assembly to provide for a general system of education as soon as circumstances permitted.²⁰³

The attention given to the education clause in the 1816 Constitution reflects the recognition by early Indiana lawmakers of the value of education and its utility in educating the populace in a frontier state.²⁰⁴ The future of a free government, as well as the economic success of the new state, depended upon education of all children, rich and poor.²⁰⁵

Although the 1816 Constitution recognized the state's duty to provide for education, the Indiana General Assembly provided no corresponding state system for education.²⁰⁶ The early state populace was mainly concerned with making a living and had few resources to commit to education.²⁰⁷ With no statewide supervision, the early system of education was inefficient; schooling was sporadic, lacked uniformity, and did little to develop an educated citizenry.²⁰⁸

comprehensive, specific and "entitled Indiana to the distinction of being the first (of neighboring states) to recognize the duties of the State in the education of its citizens and to provide powers to achieve this end." *Id.* The constitutional provision calling for free education for all children was the expression of a pioneer people fifty years before schools were generally free in the East. R. BOONE, *supra* note 105, at 12-15. Section two of the education clause calling for a general system of education ascending in regular graduation from district schools to a state university was unique in constitutional literature. *Id.* at 15.

203. *Supra* note 201.

204. For discussion of the utility of an educated populace, see *supra* notes 98-100 and accompanying text.

205. Faith in the utility of education was expressed by Editor John B. Dillon of the Logansport *Canal Telegraph* who wrote in 1836: "... If our union is still to continue, to cheer the hopes and animate the efforts of the oppressed of every nation; if your fields are to be untrod by the hirelings of despotism; if long days of blessedness are to attend our country in her career of glory; if you would have the sun continue to shed his unclouded rays upon the face of freemen, then EDUCATE ALL THE CHILDREN OF THE LAND." Quoted in 2 R. BULEY, *supra* note 201, at 416.

On the frontier, an educated person enjoyed a distinct advantage, a fact not ignored by lawmakers. "If there be one feeling more powerful than another in the hearts of the millions of this land, even through its remotest forests, it is that the intellectual cultivation which circumstances may have denied them shall be secured to their children. They value, sometimes even beyond their worth, the literary advantages by aid of which the few commonly distance their competitors in the paths of emolument and honor". *Id.* at 329 (quoting Robert Dale Owen, speech in U.S. House of Representatives, April 22, 1846). For discussion of Robert Dale Owen's role in Indiana schools, see J. WALSH, *supra* note 159, at 141. *But see* R. BOONE, *supra* note 105, at 87 (not all Indiana lawmakers were enthusiastic about education, and some were actually hostile to the idea of free schools).

206. See R. BOONE, *supra* note 105, at 22-23.

207. Within 5 years of statehood, Indiana was in debt, trade was depressed, crops had been poor and taxes were delinquent. The state was in no position to support education. *Id.* at 23.

208. Literacy levels in the state actually went down between 1840 and 1850, a great source of embarrassment and concern for legislators. J. WALSH, *supra* note 159, at 141. "I often hear my fellow-citizens expressing their deep regret at the inefficient character of our common schools." R. BOONE, *supra* note 105, at 92 (quoting from the *Indiana State Journal*, 1846).

Educational opportunities were uneven and often lacking altogether.²⁰⁹

Lawmakers and early supporters of public education recognized the need to create an efficient system that would uniformly and adequately prepare all children for responsible citizenship.²¹⁰ Calls for a general state system of education stressed that the system must "guard especially against any distinction between the rich and the poor".²¹¹ Delegates to the 1850 constitutional convention, recognizing the inadequate state of education in Indiana,²¹² set out to create an efficient system that would bring the benefits of education to all children of the state.²¹³

209. After statehood in 1816, schooling depended on local efforts. As a result, the length of school terms and availability of textbooks differed, and arguments arose over accusations of dishonesty of the local trustees squandering limited funds. 2 R. BULEY, *supra* note 201, at 361-63.

210. "In the prosecution of your labors of Constitutional revision ... [t]here is no portion of constitutional revision more worthy of your careful consideration—none involving more vital interests—none more intimately connected with the highest welfare of the people ... than a constitutional guarantee that wise and efficient provision shall be made for the proper education of the present and future youth of Indiana." R. BOONE, *supra* note 105, at 131 (quoting from Fifth Annual Education Message of Caleb Mills, 1849). For role of Mills in Indiana education, see *Id.* at 93-112.

211. R. BULEY, *supra* note 201, at 362 (quoting 1821 instructions to committee to prepare bill for general state system of education).

212. "We have no system, no uniformity of action, no well directed general effort on the great subject of education." REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 1859 (1850 & photo. reprint 1935) [hereinafter DEBATES] (quoting Delegate Read). The sorry state of education in Indiana between 1816 and 1851 was pointed out by a number of the legislators during the state constitutional convention who referred to Indiana's high illiteracy rate. "In 1840, by the census then taken, this State, ... was clearly proven to be the most ignorant of all the free States, and far, very far behind many of the slave States.... If posterity does not look upon us with surprise and indignation, it will be because by our own neglect we have plunged them so deeply in ignorance, that they cannot appreciate the duty which belonged to us, and which we have not discharged." *Id.* at 1890-91 (quoting Delegate Bryant).

213. See DEBATES, *supra* note 212, at 1858, 1861, 1868, 1892. "We are, sir, laying broader our political foundations. We are giving the election of all the officers of government ... not to a select portion of the people - but directly to the whole people themselves. The education of every child in the State has become simply a political necessity. It is a necessary measure of defense and self-preservation. We *must*—yes, sir, I repeat it, we *must* have a better devised and more efficient system of general education." (Delegate Read); "The standard of education in these institutions, does not correspond with the spirit and improvements of the age ... Every gentlemen must be aware, that our common school system has not answered the purpose for which it was devised. The truth is, we have no uniform system ... If we wish to have a system that will be general, uniform and efficient, we must have an officer, whose special business it will be to direct, control and guide that system." (Delegate Morrison discussing the illiteracy rate in Indiana and calling for state superintendent of schools); The cause of common schools is "one of the strongest safeguards of human freedom; we should encourage it by every legitimate means in our possession." (Delegate Allen stressing role of education in the safety of free institutions and permanence and security of society). "[The State must provide a uniform school system] that all may reap the advantages in an equal degree." (Delegate Hawkins); For opposition to education clause, see R. BOONE, *supra* note 105, at 135.

The changes made in the Indiana Constitution of 1851 reflected those concerns. To remedy the wide disparities in educational opportunity throughout the state, the delegates added the words "general and uniform".²¹⁴ To further ensure uniformity, they established the common school fund and the position of state superintendent of schools.²¹⁵ To hasten the formation of a state education system, they excised the words "as soon as circumstances permit".²¹⁶

Although the 1851 Constitution mandated the General Assembly to provide for an educated citizenry with a uniform system of education, the General Assembly did not support local school districts with adequate funds.²¹⁷ An 1852 statute empowered local districts to levy local taxes in order to supplement the inadequate state revenue.²¹⁸ In 1854 however, in *Greencastle v. Black*, the Indiana Supreme Court struck down this 1852 statute as violative of the Indiana Constitution.²¹⁹ The *Greencastle* court was concerned that local taxation was a retreat from the constitutional commitment to a general and uniform system of education and a return to the pre-1851 fragmented and inefficient system.²²⁰

By focusing on the term "uniform", however, the Indiana Supreme Court in *Greencastle* ignored the larger purposes of the education clause.²²¹ By narrowly interpreting the constitutional mandate in terms of the isolated word "uniform" instead of the meaning of the clause in its entirety, the court limited revenues available for education and, in fact, defeated the goal of efficiently providing for an educated citizenry.²²²

214. For a discussion of the terms "general and uniform" see *infra* notes 232-39 and accompanying text.

215. See R. BOONE, *supra* note 105, at 138, 164-80.

216. Drafters of the 1851 Constitution kept only as much of the 1816 Constitution as applicable to the new system. See DEBATES, *supra* note 212, at 1858.

217. See C. KETTLEBOROUGH, *supra* note 159, at cl-cliii.

218. Section 130, c. 98, I.R.S., 1852. See R. BOONE, *supra* note 105, at 152-54. See also KETTLEBOROUGH, *supra* note 159, at c1.

219. 5 Ind. 557 (1854).

220. Historically, lack of uniformity had created problems of inefficiency, confusion and waste. The court was concerned with avoiding the mistakes of the past that had denied Indiana children equal means to education, thus the court strictly construed the uniformity requirement. *Greencastle*, 5 Ind. at 561, 563.

221. "[I]f the provisions of section 130 are to be regarded as constitutional, the uniformity of the common school system would be at once destroyed.... But the want of uniformity would not be the only evil resulting ... as the power of controlling schools would necessarily, to a great extent, pass from the state and the superintendent into the hands of the local authorities ... [T]hus all the evils of the old system which were intended to be avoided by the new constitution ... would be the inevitable result." *Id.* at 564.

222. *Greencastle* township had attempted to raise the tax to continue the school term after public funds had been exhausted. *Id.* at 558. The *Greencastle* holding prohibited the township from going beyond the minimum revenue provided by state funds. R. BOONE, *supra* note 105, at 156. As a result of the *Greencastle* decision, the school term in Indiana was shortened to two and a half

The public, however, immediately recognized the short-sightedness of the court. As the *Indianapolis Journal* noted in an 1858 editorial, the decision "prevents the passage of a proper and efficient school law, as it razes everything down to a foolish and ridiculous uniformity."²²³

The demands for an efficient system of education eventually outweighed *Greencastle's* narrow interpretation of the constitutional requirements of uniformity.²²⁴ In 1867, the General Assembly again passed a measure enabling local school districts to levy local taxes.²²⁵ This statute remained unchallenged²²⁶ until 1885 when the Indiana Supreme Court in *Robinson v. Schenck* upheld the revenue statute as constitutional and overruled the earlier *Greencastle* decision.²²⁷ Stressing the necessity of an efficient system of public education, the supreme court in *Robinson* established a more flexible interpretation of "uniform" that allowed local taxation.²²⁸

As seen through the history of the education clause, the primary purpose of the clause is to provide for an educated citizenry.²²⁹ The educational

months, many schools were closed and underpaid teachers left the profession. *Id.*

223. The editorial continued: Because of *Greencastle*, children were "growing up in ignorance." The only solution was to "make a bold and prompt move to wipe out the barbarous and ridiculous Constitution which fetters our legislation on this subject!" Quoted in KETTLEBOROUGH, *supra* note 159, at cli.

224. Over the next 12 years various attempts were made to amend the Indiana constitution to remove the restriction that prohibited local school districts from providing additional revenue to support local schools. However, fear that removing the words "general and uniform" from the constitution would allow a return disorder of pre-1851 prevented the passage of the amendment. See KETTLEBOROUGH, *supra* note 159, at cli-cliii.

225. See R. BOONE, *supra* note 105, at 233-35.

226. "When the General Assembly convened in 1869, the constitutionality of this act had not been tested, but Governor Baker informed the legislature that in every locality where the tax had been levied 'the people seem to have acquiesced in the law under which it was imposed as a constitutional exercise of the taxing power' and he thought that if this acquiescence should continue the schools would be tolerably well provided for." KETTLEBOROUGH, *supra* note 159, at cliii.

227. 102 Ind. 307, 1 N.E. 698 (1885). See R. BOONE, *supra* note 105, at 235-37.

228. "A system which grants to all the various subdivisions of the state equal and uniform rights and privileges, leaving only to the local authorities the right to govern the local affairs, is a general and uniform system.... The fact that there is a difference in the methods of local government does not prove that the system is not a general and uniform one.... Where there is no discrimination made in favor of one subdivision and against others, there is [no] want of uniformity." *Robinson*, 102 Ind. at 312-13, 1 N.E. at 701-02.

229. See *supra* notes 99, 204-05, 213 and accompanying text. This purpose is reiterated in Indiana case law. *State v. McLellan*, 138 Ind. 395, 409, 37 N.E. 799, 804 (1894) "[I]t is instruction and culture of the mind that form the great object to be attained, the better to fit and prepare the children of the state to discharge the duties and responsibilities of manhood and womanhood and citizenship of this great commonwealth." *School City of Terre Haute v. Harrison School Township*, 184 Ind. 742, 747, 112 N.E. 514, 516 (1916) ("The state in its sovereign capacity has a direct interest in the enlightenment and mental development of its citizens, to the end that free popular

system devised to meet this purpose must be uniform, providing equal educational opportunity to all Indiana children.²³⁰ The system must also be efficient; the state education system must effectively and adequately achieve the results of an educated citizenry.²³¹ The education mandate of the Indiana Constitution, therefore, is that the Indiana General Assembly must provide equal and adequate educational opportunity to all Indiana children. A challenge to Indiana's funding formula should be based squarely on this interpretation of the education clause.

2. Challenging Indiana's Funding Formula: A Proposal

An education clause challenge to Indiana's funding formula should take full advantage of the clause's potential to provide for equal and adequate educational opportunity. Despite the potential effectiveness of an education clause challenge based on the entirety of the clause, the phrase "general and uniform" has often been the focus of education clause challenges.²³² Such a focus presents problems.²³³ Indiana courts have determined that "general and uniform" does not mean that local public school systems must be identical²³⁴ and that reliance on local taxes to supplement state funds is a constitutional approach to school funding.²³⁵ As long as the funding system as a whole is uniformly applied, funding disparities among school districts do not result in an unconstitutional system.²³⁶ Even if the court uses the uniformity phrase to directly address

government may be preserved and may attain its highest efficiency.... The school children are incidentally benefited; but the primary purpose of the state ... is to develop and secure to the state a moral, intellectual, and enlightened citizenship." See *supra* note 98.

230. See *supra* notes 211-14 and accompanying text. Equal educational opportunity does not necessitate exact equality of funding. See *supra* note 19. Uniformity is not a goal in itself; uniformity is a means to an end. Only if all children are uniformly provided with educational opportunities can the goal of an educated citizenry be achieved. See *supra* note 213.

231. See *supra* notes 198-99 for discussion of efficiency. See also *Lafayette v. Jenners*, 10 Ind. 70, 76 (1857) (discussing need to maintain efficiency as well as uniformity of general education system); *Robinson v. Schenck*, 102 Ind. 307, 308, 1 N.E. 698, 699 (1885) ("The prime object sought is the creation of a system that shall be efficient and enduring."); *Clark v. Haworth*, 122 Ind. 462, 471, 23 N.E. 946, 949 (1890) (need to preserve usefulness and efficiency of system).

232. See *Jensen v. State*, *supra* note 147, at 2 ("The complaint alleges that the State, under Article 8, Section 1 of the Indiana Constitution, is responsible for 'maintaining a uniform system of free public elementary and secondary schools'"); Complaint, *supra* note 150, at 8 ("The plaintiff students and other Indiana public school children have a guaranteed constitutional right to a general and uniform system of education.").

233. The uniformity argument becomes a surrogate for an equal protection clause argument and suffers similar limitations. See *supra* notes 85-87, 176-81 and accompanying text.

234. See *Robinson v. Schenck*, 102 Ind. 307, 313, 1 N.E. 698, 702 (1885) ("The fact that there is a difference in the methods of local government does not prove that the system is not a general and uniform one.").

235. *Id.* at 310-11, 1 N.E. at 700.

236. *Id.* at 313, 1 N.E. at 701-02.

problems of unequal educational opportunity, the court may only require uniformity of bare minimal educational requirements.²³⁷

In order to avoid these limitations, the phrase "general and uniform" must be seen within the context of the entire education clause, as a restriction on the General Assembly's discretion²³⁸ as how to meet the goal of an educated citizenry.²³⁹ By focusing on the goal of an educated citizenry, an education clause challenge can give the court the constitutional basis on which to assess both the equality and the adequacy of educational opportunity in the state.²⁴⁰ This ability to address educational adequacy is a critical advantage, since inadequacy of educational opportunity may well be a more glaring problem than inequality.²⁴¹

A challenge to Indiana's funding formula based squarely on the entirety of the education clause would require the court to define Indiana's constitutional mandate for education²⁴² in terms of the over-riding purpose of the education clause, an educated citizenry.²⁴³ As this note has demonstrated, the court then must conclude that the education mandate of the Indiana Constitution is that the General Assembly provide for an educated citizenry with equal and adequate education for all Indiana children.²⁴⁴

The court then would be able to define standards to measure whether the General Assembly has satisfied this mandate.²⁴⁵ The court first would define what constitutes an educated citizenry.²⁴⁶ The court further would establish

237. See *supra* note 86. In early Indiana, equal education under the education clause referred only to equal lengths of school terms for all schools. An equality argument under the education clause must stress the ability of the constitution to change with the times. See *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989) ("We seek [the education clause's] meaning with the understanding that the Constitution was ratified to function as an organic document to govern society and institutions as they evolve through time").

238. See *Robinson*, 102 Ind. at 318, 1 N.E. at 705 ("There is this limitation on the legislative power: the system must be 'a general and uniform one,').

239. Uniformity is to be valued as long as it furthers the mandate of an educated citizenry. The primary goal of the education clause is to provide for an educated citizenry; everything else, including equal educational opportunity is a means to this end. See *supra* notes 229-31 and accompanying text.

240. See *supra* notes 229-31 and accompanying text. The court should have no problem with the connection between funding levels and educational equality or quality. See *supra* notes 46, 138-46 and accompanying text.

241. See *supra* note 140.

242. See *supra* notes 184-86 and accompanying text.

243. See *supra* note 229 and accompanying text. See also *supra* note 99 for a discussion of need for and requirements of an educated citizenry.

244. See *supra* notes 229-31 and accompanying text.

245. See *supra* note 93 and accompanying text.

246. See *supra* note 99, at 243.

standards to judge the means by which the General Assembly has attempted to satisfy the mandate.²⁴⁷ As this note has shown, the standards must include uniformity and efficiency; the education system must uniformly and efficiently prepare Indiana children for citizenship.²⁴⁸

Based on these standards, the court then would assess the current funding formula. Regardless of the specific standards the court might employ, the current Indiana funding formula is unlikely to survive a challenge under Indiana's education clause. Clearly, an educational system that results in student performance lagging behind the national average does not efficiently prepare its children for citizenship.²⁴⁹ A funding scheme that results in a wide differentiation of money spent per pupil, with the quality of school often depending on geographic accident, is not uniform.²⁵⁰

The court should strike down the current system as failing to provide equal and adequate educational opportunity, and direct the General Assembly to design a new funding formula that would recognize the state's duty to provide for an educated citizenry.²⁵¹ The constitutional standards established by the court

247. The standards set by the Court can range from the minimal standard set by the New Jersey court in *Robinson v. Cahill*, 62 N.J. 473, 519, 303 A.2d 273, 297, *supp. op.* 63 N.J. 196, 306 A.2d 65, *cert. denied, sub nom. Dickey v. Robinson*, 414 U.S. 976 (1973), and *on reh'g Robinson v. Cahill*, 69 N.J. 133, 351 A.2d 713, *cert. denied, sub nom. Klein v. Robinson*, 423 U.S. 913 (1975) (defining constitutional mandate as thorough and efficient system of schools and leaving content of constitutionally mandated educational opportunity up to state), to the more elaborate standards set by states such as Kentucky & West Virginia which defined specific elements of a constitutional school system. *See e.g., Rose v. Council for Better Educ., Inc.*, 1989 Ky. Lexis 55, 72-77; *Pauley v. Kelly*, 162 W. Va. 672, 688, 255 S.E.2d 859, 877 (1979). *See also supra* note 93.

248. *See supra* notes 229-31 and accompanying text.

249. *See supra* notes 140-46 and accompanying text.

250. *See supra* notes 130-39 and accompanying text.

251. A number of proposals exist for revising the state's funding formula. *See R. LEHNEN & C. JOHNSON, supra* note 35, at 82-94. *See also* Task Force, *supra* note 130.

The Indiana General Assembly will be faced with the problem of revising the funding formula to provide both equal and adequate educational opportunity as mandated by the Indiana Constitution. As this note has discussed, strict equality of funding may not translate into equal or adequate educational opportunity. *See supra* notes 19, 86-87 and accompanying text. A number of funding approaches are possible ranging from full state funding to a combination of state and local funding with equalization factors and revenue caps. For a discussion of different approaches to funding reform, *see Edgewood Indep. School Dist. v. Kirby*, Cause. No. 362, 516 (Dist. Ct., Sept. 24, 1990) (declaring Texas school funding system remains unconstitutional despite efforts of legislature to reform system after 1989 Texas Supreme Court decision. This opinion outlines various funding approaches and discusses shortcomings of such approaches in terms of equity and adequacy).

In Indiana, the Task Force on Financing Public Education has recommended to the State Superintendent of Education that the Indiana funding formula should provide a substantially higher minimum guaranteed amount per-pupil than currently guaranteed (from combined state and "equalized" local funds) and that local districts should be allowed to exceed that minimum amount

would provide guidelines for the General Assembly's subsequent efforts. The constitutional standards of uniformity and efficiency would require the state to fund public education at a level sufficient to provide adequate educational opportunities to all students.²⁵² The revenue distributed by the state would differ from district to district because of differences in local costs and the needs of different student populations, but the state revenue would be required to produce parity of educational opportunity. If students received an adequate level of educational opportunity from state funds, students would no longer be at the mercy of local economic conditions.²⁵³ All Indiana children would have equal opportunity to adequately prepare for their futures.

IV. CONCLUSION

Although local schools are often under fire for poor student performance and students unprepared to take their places as productive members of society, the responsibility for public education is a state responsibility. The local school district's ability to reduce class size, to hire more counselors, to provide remedial classes, or to purchase computers often depends on the state's funding scheme for public education. In Indiana, the inequalities and inadequacies of educational opportunity are a direct result of a restrictive funding scheme and an under-funded system of public education.

Other states' funding formulas have been successfully challenged under state constitution education clauses. In the last year alone, Montana, Kentucky, and Texas Supreme Courts have forced state legislatures to devise new funding

with local funds. Task Force, *supra* note 130, at 11. The political considerations of any particular funding scheme and the technical problems of measuring equality and adequacy are beyond the scope of this note.

252. A revised formula would not necessarily do away with all local taxes. Local districts could be allowed to raise additional revenue to provide for special programs and services, as long as the state adequately provides for student needs. The key restriction is that the system must be efficient. In *Robinson v. Schenck*, the court permitted the legislature to provide for schools through local taxation because such a method would promote an efficient system of education. *See supra* note 227-28 and accompanying text. "The prime object sought is the creation of a system that shall be efficient and enduring." *Robinson v. Schenck*, 102 Ind. 307, 308, 1 N.E. 698, 699 (1885). Local taxes should be used only as long as they further the purposes of an efficient system.

253. Altering the present system would not necessarily destroy local control. In fact, with increased local revenue, local control may well be enhanced. *See Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 398 (Tex. 1989) ("Some have argued that reform in school finance will eliminate local control, but this argument has no merit.... only if alternatives are indeed available can a community exercise the control of making choices.") *See supra* notes 60-61. Local control, often presented as a goal of the state's education system must be seen as yet another means to achieve an efficient system of education. For background on role of local control in Indiana, *See Clark v. Haworth*, 122 Ind. 462, 465, 23 N.E. 946, 947-48 (1890); *Robinson*, 102 Ind. at 309, 1 N.E. at 699-01.

schemes to better serve the needs of students. Indiana has the same opportunity to strike down the Indiana funding formula and to initiate meaningful school funding reform.

Indiana must take advantage of this opportunity to confront the full range of problems created by the current funding formula. By using the entirety of the education clause and not its isolated terms, the Indiana court can address both problems of unequal and inadequate state educational opportunity. By focusing on the purpose of the education clause to provide for an educated citizenry, the court can establish standards by which to judge the failures of the current system and to guide the future efforts of the Indiana General Assembly.

If the court interprets the Indiana Constitution as mandating equal and adequate educational opportunity, the efforts of the framers of the education clause will at last bear fruit. Indiana will have a uniform and efficient system of education that will prepare all children to take their places in society and will secure to the state the advantages of an educated citizenry.

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