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Breaking Through the Courtroom Door: Reexamining the Illinois Supreme Court’s Public Education Finance Cases

By Nicholas Infusino*

I. INTRODUCTION

“We cannot close our eyes to the perceptual and exceptional child; the mentally or physically handicapped or the gifted; the underprivileged; the oppressed. No, we have realized on our committee—and we hope that you will realize—that they, too, are human beings with the same rights as everyone else. We, the people, the state, society can no longer hide from the fact that thousands and thousands and thousands of youngsters in our community are not being developed to the fullest of their capacity.”

Illinois public schools have faced significant fiscal challenges for decades. Following the 2008 recession, however, these challenges have escalated into a full-blown crisis, exacerbated by unpaid state government debts and new levels of fiscal austerity. During the 2011-12 school year, just 32.5% of public school funding came from the state, a share lower than almost all other states in the U.S. This is despite the fact that in recent years Illinois has spent less on education, as a share of the state gross domestic product, than thirty-two other states.

* Loyola University Chicago School of Law, May 2013. Many thanks to my parents Jim and Gaby and siblings Katie and Alex for their constant love, encouragement, and humor. Thanks also to the Children’s Legal Rights Journal’s staff, who have been tremendously helpful during the editing process of this article.


2 See Bob Secter, Reliance on Local Money Drives School Funding Imbalances, CHI. TRIB. (Mar. 30, 2010), http://www.chicagotribune.com/news/local/ct-met-school-funding-20100330,0,5052098.story (noting that, due to legislative inertia and factional politics, “Illinois schools have lurched from financial crisis to financial crisis” without enacting any substantial funding reforms); see also JANE GALLOWAY BURESH, A FUNDAMENTAL GOAL: EDUCATION FOR THE PEOPLE OF ILLINOIS 74 (1975) (noting that at the time of the last Illinois constitutional convention in 1970, Illinois had worked “for decades” in an attempt to overcome inequalities in educational spending).


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Instead, Illinois school districts are primarily funded through local property tax revenues. Because property wealth varies significantly across the state, such a funding scheme produces great disparities in how much money school districts are able to spend on their students. To illustrate, Northbrook School District 28, located in the affluent Chicago suburb of Northbrook, was able to spend $11,332 on each of its elementary school students during the 2011-12 school year. Conversely, Calumet Public School District 132, serving blue-collar Calumet City, was able to spend just $5,007 per student in the same year. While many other states employ similar school finance systems, and also often face funding disparities between districts, Illinois’ heavy reliance on property tax-based funding produces especially profound economic inequality between school districts. In turn, this creates broad disparities in teaching quality, school infrastructure, and ultimately, the academic achievement of wealthy versus poor districts.

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8 See 2012 ANNUAL REPORT, supra note 4, at 2, 5.
9 See Secter, supra note 2 (“[T]he sharp divide between state and local resources means that schools in towns with pricier homes or big shopping centers, factories or thriving commercial centers simply have far more to spend than schools in communities with housing and job markets that are chronically wheezing.”). See generally BAKER ET AL., supra note 5, at 10-12 (analyzing disparities in education spending across the U.S.).
11 See BAKER ET AL., supra note 5, at 2, 16-17 (discussing common characteristics of education funding systems in all states, and comparing education funding disparities between high- and low-income student populations in all states); see also U.S. CENSUS BUREAU, PUBLIC EDUCATION FINANCE: 2009 1 (2011), available at http://www2.census.gov/govs/school/09/33pub.pdf (providing a detailed breakdown of revenue sources for all states in all fifty states).
12 See CTR. FOR TAX & BUDGET ACCOUNTABILITY, MONEY MATTERS: HOW THE ILLINOIS SCHOOL FUNDING SYSTEM Creates Significant Educational Funding Inequities That Impact Most Students in the State 5 (2008) (“The state’s relatively small contribution to school funding “Pushes the primary obligation for education funding down to local resources, primarily property taxes, creating great disparities between districts across Illinois, based on local property wealth”). A 2010 report examining funding inequities in public schools across the country found that Illinois has the third most regressive (i.e. providing more money to wealthier districts than poorer districts) public education finance system in the U.S. BAKER ET AL., supra note 5, at 16-18. This was measured by examining the distribution of state and local funding across schools districts relative to the percentage of impoverished students attending each district. Id. The report found that districts with lower levels of poverty received significantly more money per pupil than districts with high levels of poor students. Id.
In fact, education-funding issues are not new, nor have they gone unnoticed by Illinois lawmakers.\textsuperscript{15} Delegates to the 1970 Constitutional Convention (which produced Illinois’ current constitution) were well aware of the inequalities in the state’s school finance system and fought over potential constitutional remedies, but they ultimately failed to produce a solution.\textsuperscript{16} In 1992, a state constitutional amendment that would have largely eliminated Illinois’ property tax-based finance system was defeated in a referendum after heated public debate.\textsuperscript{17}

Following these failures, Illinois students in low-income school districts took their fight to the courts, first in Committee for Education Rights v. Edgar in 1996 and then Lewis E. v. Spagnolo in 1999.\textsuperscript{18} Despite successful legal challenges to property tax-based funding systems in several other states,\textsuperscript{19} the Illinois Supreme Court upheld the current funding system in both cases.\textsuperscript{20} Moreover, the court held that school funding was a topic exclusively for the Illinois state

\begin{itemize}
  \item Lewis E. v. Spagnolo, 710 N.E.2d 798, 817 (Ill. 1999) (Freeman, J., concurring in part and dissenting in part) (describing the conditions in poor East St. Louis schools, including exposed asbestos, overflowing sewage pipes, broken windows, unheated classrooms, etc.).
  \item Students in wealthier school districts routinely score higher on the Illinois Standards Achievement Test ("ISAT") and Prairie State Achievement Exam ("PSAE"), Illinois’ primary measure of student achievement for elementary and high school students, respectively. See Student Assessment—Illinois Standards Achievement Test (ISAT), ILL. STATE BOARD OF EDUC., http://www.isbe.state.il.us/assessment/isat.htm (last updated Oct. 2013) [hereinafter Student Assessment Illinois] (discussing the ISAT, the primary tool for measuring student achievement throughout grades three through eight); Student Assessment—Prairie State Achievement Examination (PSAE), ILL. STATE BOARD OF EDUC., http://www.isbe.state.il.us/assessment/psae.htm (last updated Oct. 2013) [hereinafter Student Assessment Prairie State] (discussing the PSAE, the primary measurement of student achievement for high school students); CTR. FOR TAX & BUDGET ACCOUNTABILITY, supra note 11, at 10, 16. In 2012, for example, 96% of students in wealthy Northbrook School District 28 met or exceeded state reading standards on the ISAT. ILLINOIS INTERACTIVE REPORT CARD, supra note 8. In comparison, 62% of students in Calumet Public School District 132 met or exceeded reading standards that same year. Id. Similarly, 81% of students in Lake Forest CHSD 115 met or exceeded reading standards on the 2012 PSAE, while just 29% of J. Sterling Morton High School District 201 students met or exceeded the goals. Id. Nationally, students in poorer districts also tend to perform worse academically than their peers in wealthier districts. See Timothy D. Lynch, Note, Education as a Fundamental Right: Challenging the Supreme Court’s Jurisprudence, 26 Hofstra L. Rev. 955, 960-64 (1998) (describing poor academic performance in various low-income areas in the U.S.).
  \item Buresh, supra note 2, at 72-74 (noting that at the 1970 Illinois Constitutional Convention, education funding was a major concern of the delegates tasked with rewriting Illinois’ Article X education clause); infra Part III-B (summarizing the failed effort in 1992 to amend Article X to increase funding equality in Illinois Public Schools).
  \item Buresh, supra note 2, at 74-79, 84-86. Buresh notes that in 1969 a school district with an assessed property value of $5,462 per pupil would only generate $210 per pupil if it levied a 4% property tax; the same tax levy assessed in a district with property values of $105,815 per pupil would generate $4,230. Id. Even if taxing at a significantly higher level, it would be virtually impossible for the property-poor district to fund its schools at a level comparable to the property-rich district. Id. at 73-74. As will be discussed later in this Article, the 1970 Constitutional Convention delegates settled on a re-worded education article that ultimately did little to change Illinois’ system of financing public schools. See infra Part IV-B (noting that the Illinois Supreme Court has held that much of the revised education clause—but not all, including the important phrase “high-quality”—was intended to be merely “horary,” and not legally binding on the state).
  \item Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1185-86 (Ill. 1996); Lewis E., 710 N.E.2d at 816-17.
  \item See, e.g., Serrano v. Priest, 487 P.2d 1241, 1244, 1258 (Cal. 1971) (finding that education is a fundamental right, and as such, applying strict scrutiny and finding that California’s education funding system violated both state and federal equal protection clauses); Sheff v. O'Neill, 678 A.2d 1267, 1270-71 (Conn. 1996) (finding that Connecticut’s education funding system violated the state constitution’s education clause because the funding system had failed to eliminate spending disparities between wealthy and poor districts); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 215-16 (Ky. 1989) (finding that Kentucky’s education funding system was unconstitutional under the state constitution’s education clause because it failed to provide an “efficient system of common schools”); Abbott v. Burke, 575 A.2d 359, 385 (N.J. 1990) (“[I]n order to provide a thorough and efficient education [under the state’s constitutional education clause], the State must assure that their educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts, and . . . . special disadvantages must be addressed.”).
\end{itemize}
legislature to decide, ostensibly foreclosing future litigation.\textsuperscript{21} With federal litigation largely precluded by the United States Supreme Court in \textit{San Antonio Independent School District v. Rodriguez},\textsuperscript{22} the \textit{Edgar} and \textit{Lewis E.} decisions left potential school funding litigants with few legal options.\textsuperscript{23}

This Article will examine the Illinois Supreme Court’s education finance jurisprudence, arguing that the court should strike down the current funding system as unconstitutional under the Illinois State Constitution. Part II examines the history of education finance litigation at the national level, discussing the United States Supreme Court’s landmark ruling in \textit{Rodriguez} and how it drove funding litigation to state supreme courts. Part III discusses Illinois’ education finance system and Article X of the Illinois State Constitution, and summarizes the Illinois Supreme Court’s rulings in \textit{Edgar} and \textit{Lewis E.} Part IV argues that (1) the court erred in finding education finance issues to be non-justiciable political questions in both cases; (2) Article X of the Illinois State Constitution should be read to guarantee some minimally adequate level of education quality; and (3) the current funding system does not rationally further the state’s preference for “local control” of public schools. Part V concludes by prescribing a course of action for future plaintiffs, courts, and state legislatures in challenging and ultimately reforming Illinois’ school finance system.

\section*{II. Background}

Despite several major plaintiffs’ victories in the past two decades, education-funding litigation remains a convoluted and politically volatile area of the law.\textsuperscript{24} In \textit{Rodriguez}, Justice Powell noted “[e]ducation, perhaps even more than welfare assistance, presents a myriad of intractable economic, social, and even philosophical problems.”\textsuperscript{25} The \textit{Rodriguez} opinion spans 133 pages and discusses the Equal Protection Clause, fundamental rights, federalism, and public education policy in the majority opinion alone.\textsuperscript{26} State supreme court cases contain similar legal sprawl, touching on issues including state-level separation of powers and the political question doctrine,\textsuperscript{27} state constitution education articles,\textsuperscript{28} federal and state equal protection clauses,\textsuperscript{29} and the Equal Protection Clause, fundamental rights, and public education policy in the majority opinion alone.

\begin{thebibliography}{99}
\bibitem{21} See \textit{Lewis E.}, 710 N.E.2d at 816 (Freeman, J., concurring in part and dissenting in part) (In \textit{Edgar}, the “court shut the courthouse door to claims alleging violations of section 1 of the education article of the Illinois Constitution,” and in \textit{Lewis E.}, “the majority nails that door shut”); \textit{Ligation: Illinois, NAT’L EDUC. ACCESS NETWORK}, \url{http://www.schoolfunding.info/states/il/lit_il.php3} (last updated Apr. 2010) (noting that subsequent cases have been dismissed for failure to state a justiciable claim).
\bibitem{22} \textit{San Antonio Indep. Sch. Dist. v. Rodriguez}, 411 U.S. 1 (1973). In \textit{Rodriguez}, students and parents in a poor San Antonio school district challenged the state’s funding system under the Equal Protection Clause of the Fourteenth Amendment. \textit{Id.} at 4-6. After finding that education is not a fundamental right guaranteed by the United States Constitution, the court then determined that education funding was a state matter best left to the Texas legislature. \textit{Id.} at 38-39, 54. See infra Part II-B for a summary of the U.S. Supreme Court’s ruling in \textit{Rodriguez} and its impact on school funding litigation.
\bibitem{23} See \textit{Lewis E.}, 710 N.E.2d at 816-17 (Freeman, J., concurring in part and dissenting in part) (discussing the impact of the \textit{Lewis E.} and \textit{Edgar} decisions on future education funding litigation). Recently, plaintiffs again attempted to challenge the school funding system, this time under a novel taxpayer discrimination argument, but their case was dismissed in short order for lack of standing. \textit{See Carr v. Koch}, 981 N.E.2d 326, 327, 330 (Ill. 2012); supra note 144 and accompanying text.
\bibitem{25} \textit{Rodriguez}, 411 U.S. at 42. Note, however, that Justice Powell then goes out of his way to explain that education policy makers are sharply divided over the best method for funding schools. \textit{Id.} While this is still true, it is a somewhat irrelevant point in school funding litigation. As this Article will demonstrate, most plaintiffs have not asked the court to formulate new funding systems, instead merely asking for declaratory judgment that a current system is unconstitutional. \textit{See infra Part IV-A} (noting that education funding litigants usually seek declaratory judgment, and arguing that ruling on education finance litigation would not force the Illinois Supreme Court to “legislate from the bench”). Thus, courts ruling on education funding cases should not be concerned with developing an alternative funding system.
\bibitem{27} The political question doctrine is a federal law principle that defines some issues as inherently political and thus inappropriate for courts to decide. \textit{See JOHN E. NOWAK & RONALD D. ROTUNDA, PRINCIPLES OF CONSTITUTIONAL LAW} 58 (4th ed. 2010) (“[C]ertain
uniformity of taxation, state school code statutes, and the policy preference for local control of schools. This Part will first briefly discuss Serrano v. Priest and other court cases that challenged state education funding systems before Rodriguez. After summarizing the Supreme Court’s ruling in Rodriguez, this Part will argue that the Court’s opinion clashes with (if not wholly contradicts) other education cases both before and after Rodriguez. Finally, this Part explains the lasting impact of Rodriguez on modern education funding litigation.

A. Serrano and the First Wave of Education Finance Cases

Although school funding systems have faced legal challenges since at least 1912, the California Supreme Court’s 1971 ruling in Serrano v. Priest is considered the first modern landmark in education finance litigation. In Serrano, the California Supreme Court found that education plays a vital role in a citizen’s ability to participate politically and economically in American life, and as such, must be a fundamental right. Consequently, the court reviewed the state’s funding scheme under the strict scrutiny standard of review, requiring the state to demonstrate that the funding system was necessary and narrowly tailored to serve a compelling state interest. Rejecting the state’s argument that the school funding system promoted local

matters are really political in nature and best resolved by the body politic rather than suitable for judicial review.”). Essentially, the doctrine works to preserve the separation of powers. See Christine M. O’Neill, Closing the Door on Positive Rights: State Court Use of the Political Question Doctrine to Deny Access to Educational Adequacy Claims, 42 COLUM. J.L. & SOC. PROBS. 545, 556-57 (2009) (“The political question doctrine is the judiciary's attempt to respect the structural boundaries between the three branches of federal government.”); see also Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1191-93 (Ill. 1996) (discussing the political question doctrine); O’Neill, supra Part IV-B (discussing and arguing against application of the federal political question doctrine in state education funding cases); supra Part IV-A (arguing against the Illinois Supreme Court’s use of the political question doctrine in Edgar and Lewis E.).

28 Edgar, 672 N.E.2d at 1183-93; Lewis E., 710 N.E.2d at 802-05; Robinson v. Cahill, 303 A.2d 273, 287-98 (N.J. 1973); see also infra Part IV-B (examining the Edgar court’s analysis of the Illinois State Constitution’s education clause).

29 Serrano v. Priest, 487 P.2d 1241, 1249-60 (Cal. 1971); Edgar, 672 N.E.2d at 1193-94.


31 Lewis E., 710 N.E.2d at 812-15.

32 Edgar, 672 N.E.2d at 1195-96; see also infra Part IV-C (analyzing the Edgar court’s invocation of local control in its majority opinion).


34 See id. (citing Serrano as the first modern education finance case). The Serrano plaintiffs, a group of students and parents served by Los Angeles County public schools, argued that the state funding system’s heavy reliance on local property taxes produced unconstitutional disparities in per-pupil funding. Serrano, 487 P.2d at 1244.

35 Serrano, 487 P.2d at 1255-60. Note that in Edgar, the Illinois Supreme Court rejected a similar argument made by the plaintiffs, and held that it could only find fundamental rights “at the heart of the relationship between the individual and a republican form of nationally integrated government.” Edgar, 672 N.E.2d at 1194-95.

36 Serrano, 487 P.2d at 1259-60. Briefly, federal courts review various government actions under three levels of judicial scrutiny depending on the type of right or class of citizens affected by the action (and, as is the case in Serrano, state courts typically adopt a substantially similar system of judicial review). See NOWAK & ROTUNDA, supra note 27, at 390-91 (summarizing the three levels of judicial review). Courts will apply strict scrutiny to government actions that discriminate against a suspect class of citizens (such as those based on race, national origin, or alienage) or affect a fundamental right (such as the right to free speech). Id. This means that the court will not defer to the decisions of the other branches of government and will instead independently determine whether the action is necessary and narrowly tailored to serve a compelling interest. Id. On the other end of the spectrum, government actions that do not affect a suspect class or fundamental right are generally reviewed under the “rational relationship” test. Id. Here, a court will not conduct any significant independent review of the legislation, and instead will defer to the government in determining whether the action is rationally related to a legitimate governmental interest. Id. Finally, more recent cases involving classifications based on sex or illegitimacy have invoked an “intermediate scrutiny” test that is less stringent than strict scrutiny, but also does not entirely defer to the state, in determining whether the challenged action bears a substantial relationship to an important governmental interest. Id.
control of schools,\textsuperscript{37} the court concluded that California’s funding system violated both state and federal equal protection clauses because it predicated a child’s education funding on the property wealth of his or her surrounding district.\textsuperscript{38}

The \textit{Serrano} decision was the first to invalidate a state’s school funding system and represents the “first wave” of education finance litigation.\textsuperscript{39} From roughly the late 1960s to the 1973 Supreme Court ruling in \textit{Rodriguez}, “first wave” plaintiffs in school funding cases relied on federal and state equal protection clauses to argue that all school districts should receive substantially equal funding per pupil.\textsuperscript{40} Litigation thus turned on whether state courts found wealth to be a suspect classification or education to be a fundamental right, which would result in application of strict scrutiny review and probable victory for plaintiffs.\textsuperscript{41}

\textbf{B. Rodriguez and the Removal of Education Funding Litigation from Federal Courts}

Just two years after \textit{Serrano}, however, the United States Supreme Court’s opinion in \textit{Rodriguez} dealt a serious blow to education finance reform by effectively removing school funding litigation from federal courts, and thus precluding any uniform, national invalidation of property tax-based funding systems.\textsuperscript{42} In 1971, parents and students in a poor San Antonio school district filed an equal protection complaint in federal district court, arguing that Texas’ funding system discriminated on the basis of wealth and denied plaintiffs their fundamental right to education.\textsuperscript{43} When \textit{Rodriguez} came before the United States Supreme Court two years later, it presented three challenging issues for the Court’s decision: whether wealth should be treated as a suspect class similar to race and thus trigger strict scrutiny, whether the Federal Constitution protected education as a fundamental right similar to speech or privacy, and whether federal courts had the authority to review state education policy.\textsuperscript{44}

\textsuperscript{37} “Local control” of schools—the idea that public schools are best run by local school boards and communities rather than the state—is a common policy preference throughout both state and federal school funding litigation. \textit{See infra} Part IV-C.

\textsuperscript{38} \textit{Serrano}, 487 P.2d at 1259-64. The state defendants’ primary argument was that the California school funding system facilitated local fiscal control of schools. \textit{Id}. at 1259. The California Supreme Court rejected this argument, noting that “such fiscal freewill is a cruel illusion” for poor districts because their lack of property wealth often made it virtually impossible to generate funds comparable to that of wealthy districts, regardless of their willingness to tax at higher levels. \textit{Id}. at 1259-60. The court’s critique of fiscal local control under property tax-based funding schemes would be echoed by Justice White’s dissent in \textit{Rodriguez}. \textit{See} San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 63-70 (1973) (White, J., dissenting) (noting that in poor districts, “no matter how desirous parents are of supporting their schools with greater revenues, it is impossible to do so through the use of the real estate property tax”).

\textsuperscript{39} When \textit{Rodriguez} came before the United States Supreme Court two years later, it presented three challenging issues for the Court’s decision: whether wealth should be treated as a suspect class similar to race and thus trigger strict scrutiny, whether the Federal Constitution protected education as a fundamental right similar to speech or privacy, and whether federal courts had the authority to review state education policy.\textsuperscript{44}

\textsuperscript{40} \textit{See} \textit{Brooker}, \textit{supra} note 39, at 185 (“Plaintiffs during the first wave of cases relied heavily on the Equal Protection Clause of the United States Constitution and asserted that all children within a state were entitled to have the same amount of money allocated and spent toward providing them a public education and/or were entitled to equal educational opportunities.”); \textit{see}, \textit{e.g.}, Milliken v. Green, 203 N.W.2d 457 (Mich. 1972).


\textsuperscript{42} \textit{See} \textit{Brooker}, \textit{supra} note 39, at 186 (noting that \textit{Rodriguez} “all but eliminated the ability to attack school systems based on the Federal Constitution”); \textit{Lynch}, \textit{supra} note 14, at 968 (noting that since \textit{Rodriguez}, plaintiffs have been “left with no other choice but to challenge” funding systems under state constitutional law).

\textsuperscript{43} \textit{Rodriguez}, 411 U.S. at 11-15 (1973). The district court initially delayed hearing of the case for two years while the Texas legislature investigated possible reforms. \textit{Id}. at 6 n.4. When the Texas legislature failed to act, the district court finally heard the case and ruled in favor of the plaintiffs. \textit{Id}. at 11-15. Following its ruling, the court stayed its decision for another two years but retained its right to fashion remedial actions in case the legislature failed to act. \textit{Id}. at 6 n.5.

\textsuperscript{44} \textit{See} \textit{id}. at 17-18 (noting the various “novel” and “complex” constitutional issues raised by the case). Before concluding its opinion, the Court re-emphasized the complexity of school funding issues in a “cautionary postscript” that warned such issues may be outside the ability or authority of the Court to adequately decide. \textit{Id}. at 56-59.
The Court first found that classifications based on wealth are not suspect. The plaintiffs failed to define a clear “class” of impoverished students, the Court found, because they presented insufficient criteria for determining who would fall into this suspect class. Moreover, the plaintiffs had not been wholly deprived of educational opportunity. They had merely received a relatively worse educational experience than students in wealthier districts. Finally, the Court concluded by noting that wealth classifications generally lack the “traditional indicia of suspectness” of racial classifications, solidifying the Court’s refusal to recognize the poor as a protected class.

The Court then turned to the issue of whether education is a fundamental right. Quoting Brown v. Board of Education, the Court acknowledged the importance of education in American society as well as the Court’s own unique treatment of education in its jurisprudence. Nevertheless, the Court emphasized that not all important rights are fundamental. Instead, fundamental rights must be found, explicitly or implicitly, within the Constitution itself. Simply put, education may be important to the exercise of constitutional rights, but because it is not promised by the Constitution itself, it is not a fundamental right.

By declining to recognize wealth as a suspect classification or education as a fundamental right, the Court determined it should apply a rational basis review to the Texas funding system. The Court found it lacked the expertise and jurisdiction to pass judgment on Texas’ school funding system. Moreover, invalidating the Texas funding system would violate the long-standing American tradition of locally controlled schools. Ultimately, reform might very well

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45 Id. at 28-29.
46 Id. at 20. The Court’s focus on the income level of individual persons or family units, however, seems misguided. The thrust of the plaintiffs’ argument was that they were discriminated against as residents of property-poor districts. Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280, 281-82 (W.D. Tex. 1971), rev’d, 411 U.S. 1 (1973). Regardless of variations in individual wealth amongst residents of a given district, the overall property-wealth of the district is quantifiable and easily comparable to that of other districts, and creates a clear member class of citizens negatively impacted by the state funding system. See infra Part IV-A (arguing that, within Illinois, making wealth comparisons between districts is easily facilitated by public financial data as well as the state’s own method of classifying districts within its funding system).
47 Rodriguez, 411 U.S. at 20-24 (finding that the plaintiffs’ lack of “personal resources has not occasioned an absolute deprivation” of education). The Court distinguished the plaintiffs’ case from other “wealth class” cases where it believed poor parties were being wholly deprived of some benefit or right. Id. In Williams v. Illinois, for example, the Court struck down criminal penalties that imprisoned indigents if they were unable to pay a fine. Williams v. Illinois, 399 U.S. 235, 236-38, 245 (1970). In Bullock v. Carter, the Court invalidated a filing-fee scheme for primary elections in Texas that required potential candidates to pay very large sums of money to get on the ballot, effectively precluding the poor from participation. Bullock v. Carter, 405 U.S. 134, 135-36, 149 (1972).
48 Rodriguez, 411 U.S. at 23.
49 Id. at 28-29 (“The system of alleged discrimination and the class it defines have none of the traditional indicia of suspect-class. The class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a worse educational experience than students in wealthier districts.”).
50 Id. at 35-36. Education, the plaintiffs argued, is necessary for the proper exercise of voting and free speech rights; as such, the right to education is implicitly protected by the Constitution.
51 Id. at 29-30. In Brown, the Court noted that “education is perhaps the most important function of state and local governments.” Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).
52 Rodriguez, 411 U.S. at 35 (“[T]he key to discovering whether education is ‘fundamental’ is not to be found in comparisons of the relative societal significance of education.”).
53 Id. In one of the most famous—and for education reformers, infamous—lines of the majority opinion, the Court emphasized that it could not guarantee citizens “the most effective speech or the most informed electoral choice.” Id. at 36. Note that the Edgar court largely adhered to the Supreme Court’s fundamental rights analysis in Rodriguez, emphasizing that even critically important rights may not be fundamental. Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1194-95 (Ill. 1996), infra Part III-C (summarizing Edgar and Lewis E.).
54 Rodriguez, 411 U.S. at 36.
55 See id. at 41-50 (applying rational basis review to the Texas funding system).
56 Id. at 44. Curiously, the majority nonetheless criticizes plaintiffs for not suggesting an alternative system of funding. Id. at 41 n.85 (“Those who urge that the present system be invalidated offer little guidance as to what type of school financing should replace it.”). Given the Court’s steadfast refusal to rule on state education issues, it is unclear what value such a proposal would have had.
57 Id. at 49. Local control essentially refers to the devolution of control of schools from state governments to local school boards. See Charles F. Faber, Is Local Control of Schools Still a Viable Option?, 14 Harv. J.L. & Pub. Pol'y 447, 447 (1991) (noting that “[i]n each of the responsibility for actually conducting educational programs has historically been delegated to local school districts,
have been needed, however, only the Texas state legislature had authority to make such decisions. The Supreme Court thus reversed the district court, ending the plaintiff’s fight.

1. The Supreme Court’s Inconsistent Treatment of Education as a Fundamental Right

The *Rodriguez* decision appears to clash with (if not wholly contradict) the Court’s opinions in education cases both before and after *Rodriguez*. In *Sweatt v. Painter* (1950), a pre-*Rodriguez* case, the Court held that Texas could not bar qualified African Americans from attending the University of Texas Law School even if it provided a separate, all-black alternative institution. Critically, the Court’s decision was heavily based on the fact that the alternative school was not comparable to the University of Texas in terms of educational quality, resources, and prestige. Although *Sweatt* involved a law school, and ultimately rested on the Equal Protection Clause, the Court’s willingness to evaluate the schools’ relative quality clashes with the *Rodriguez* Court’s refusal to judge Texas’ public school policy, and its apparent acceptance of public schools providing vastly different levels of educational quality. In *Brown v. Board of Education* (1954), also pre-*Rodriguez*, the Court stated that “education is perhaps the most important function of state and local governments . . . the very foundation of good citizenship,” thus elevating the status of education beyond that of a “typical” right.

Cases after *Rodriguez* also call into question the Court’s refusal to recognize education as a fundamental right. In *Ambach v. Norwick* (1979), the importance of public education in civic life was the determinative factor in finding that a state may deny resident-aliens teaching certification. The Court upheld the teaching certification restriction, it explained, because some state functions are so critical to democratic self-governance that it is permissible to exclude all those who had “not become part of the process of self-government.” Nevertheless, Justice

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61 *Sweatt*, 339 U.S. at 634-36.

62 *Id.* at 632-34 (comparing, unfavorably, the number of faculty members, size of law libraries, existence of moot court teams and law review, professional affiliations, etc. of both schools).

63 See *Rodriguez*, 411 U.S. at 84 (Marshall, J., dissenting) (arguing that in *Sweatt*, the Court “acknowledged that inequality in the educational facilities provided to students may be discriminatory state action as contemplated by the Equal Protection Clause”).

64 *Brown*, 347 U.S. at 493. *Brown*, of course, was also decided on the basis of equal protection of African American students, and it did not rule on whether education is a fundamental right. *Id.* Nevertheless, it clearly characterized education as something more than just “important” to American life. See Greg Rubio, Note, *Surviving Rodriguez: The Viability of Federal Equal Protection Claims by Underfunded Charter Schools*, 2008 U. Ill. L. Rev. 1643, 1667 (2008) (arguing that the “remarkably sweeping recognition of the importance of education” in *Brown* suggested, at least immediately after the ruling, that the Court was ready to recognize a fundamental right to education).


66 *Ambach*, 441 U.S. at 74-75. Two foreign nationals, both long-time residents of the U.S. and married to Americans, were denied certification by New York State because they had not attained citizenship. *Id.* at 71-72.

67 *Id.* at 74. The Court found that teaching in public schools “go[es] to the heart” of representative government because education fosters American values in children and prepares them to engage in civic life; thus, a state may have a legitimate interest in only employing U.S. citizens as teachers. *Id.* at 76. Under these circumstances, only rational relationship review should apply. *Id.* The Court’s reasoning in *Ambach* is difficult to reconcile with its rejection of the *Rodriguez* plaintiffs’ fundamental rights argument. Compare *Rodriguez*, 411 U.S. at 35 (“It is appellees' contention [which the Court rejected] that education is distinguishable from other services and benefits provided by the State because it bears a peculiarly close relationship to other rights and liberties accorded protection under the Constitution. . . . [T]hey insist that education is itself a fundamental personal right because it is essential to the
Powell—writing the majority opinion in both Ambach and Rodriguez—did not believe the case contradicted his previous reasoning. In Plyler v. Doe (1982), the Court invalidated a Texas law that withheld state funds from local school districts that educated illegal immigrant children. Once again, the Court seemed to ascribe a unique “importance” to education beyond that of many other functions of the state.

2. Rodriguez’s Impact on School Funding Litigation

Regardless of Rodriguez’s inconsistencies, the decision had a profound impact on future education funding cases. Although the California Supreme Court would affirm its Serrano decision in 1976 (in a second, follow-up opinion known as Serrano II) based on the state constitution’s equal protection clause, plaintiffs in post-Rodriguez cases shifted their focus to state constitution education clauses. In Robinson v. Cahill, decided just one month after Rodriguez, the New Jersey Supreme Court held that the state’s education funding system violated the New Jersey state constitution’s guarantee of a “thorough and efficient” system of public education found in the New Jersey state constitution’s education article. In time, state equal protection arguments largely ceded to education article complaints, and focused on education adequacy rather than absolute funding equality. Under this logic, plaintiffs argued that inequitable finance schemes denied certain students a minimum level of education quality. Plaintiffs proceeding under education article/adequacy claims fared considerably better than those making state equal protection arguments similar to Serrano.

Some legal scholars have noted that the shift from federal to state claims in education funding litigation echoes Supreme Court Justice William Brennan’s call for a new judicial effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote.”), with Ambach, 441 U.S. at 76 (“Public education . . . ‘fulfills a most fundamental obligation of government to its constituency.’ The importance of public schools in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests, long has been recognized by our decisions.”).

68 Plyler, 457 U.S. at 221-22, 229; see also NOWAK & ROTUNDA, supra note 27, at 467-68 (summarizing Plyler).
70 While noting that, pursuant to Rodriguez, education is not a fundamental right, the Court nonetheless explained that “neither is [education] merely some governmental ‘benefit’ indistinguishable from other forms of social welfare legislation . . . the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction.” Plyler, 457 U.S. at 221. Plyler largely rested on the premise that illegal immigrant children have not made the choice to illegally immigrate to the United States on their own, and should be distinguished from adult illegal immigrants (such as their parents). Id. at 219-20. The case is nonetheless difficult to explain in relation to the Court’s denial of education as a fundamental right. See NOWAK & ROTUNDA, supra note 27, at 594 (stating that the Court’s decision in Kadrmas v. Dickinson Public School, 487 U.S. 450 (1988), which reaffirmed that education is not a fundamental right, is “difficult to explain” in relation to Plyler); see also Rubio, supra note 64, at 1668 (suggesting that federal Equal Protection Clause claims regarding education rights should trigger “intermediate” scrutiny pursuant to Plyler).
71 See Broker, supra note 39, at 186 (noting that Rodriguez “all but eliminated the ability to attack school systems based on the federal Constitution”); O’Neill, supra note 27, at 545 (“Beginning with San Antonio Independent School District v. Rodriguez, plaintiffs concerned with educational equity have gradually lost access to the federal court system.”).
72 Serrano v. Priest (Serrano II), 557 P.2d 929, 959-59 (Cal. 1976); see also Broker, supra note 39, at 186 (discussing the impact of Rodriguez on the original Serrano decision).
73 See Broker, supra note 39, at 186 (noting that post-Rodriguez plaintiffs, often referred to as the “second wave” of school funding litigants, turned to state constitution equal protection clauses and education clauses in their arguments; Robinson v. Cahill, 303 A.2d 273, 287-98 (N.J. 1973) (resting its decision on a violation of the state’s education clause).
74 Robinson, 303 A.2d at 295.
75 See Broker, supra note 39, at 186-88 (discussing the shift in legal arguments following Rodriguez).
76 Id.; see, e.g., Rose v. Council for Better Educ., 790 S.W.2d 186, 191 (Ky. 1989).
77 NAT’L’ EDUC. ACCESS NETWORK, EDUCATION ADEQUACY LIABILITY DECISIONS SINCE 1989, SEPTEMBER 2011 (2011), http://schoolfunding.info/wp-content/uploads/2011/07/School-Funding-%E2%80%98Adequacy%E2%80%99-Decisions-by-Outcome_2011.pdf [hereinafter ADEQUACY LIABILITY DECISIONS] (noting that twenty-two of thirty-four state adequacy cases have resulted in plaintiff victories, and that cases were pending in nine other states); see also Broker, supra note 39, at 187-89 (noting that most cases arguing equal protection claims failed, whereas plaintiffs scored major victories under adequacy claims in Montana, Kentucky, and Texas).
federalism. As the Court took on a more conservative bent under Chief Justice Burger, Brennan argued that plaintiffs should turn to state courts for expanding protection of individual rights and liberties. Following Robinson, several state supreme courts answered Justice Brennan’s call and invalidated inequitable school funding systems under their state’s education clause. Yet when plaintiffs from some of Illinois’ most impoverished schools brought similar arguments before the Illinois Supreme Court, the court firmly rebuked Justice Brennan’s call.

III. Discussion

Before examining the Illinois Supreme Court’s primary education funding decisions, Committee for Education Rights v. Edgar and Lewis E. v. Spagnolo, it is necessary to briefly review the mechanics of Illinois’s school funding system as well as the education clause of the Illinois Constitution. Thus, this Part will first explain Illinois’ public education finance system, and illustrate how it results in funding disparities between property-poor (those communities with low property values) and property-wealthy (those with high property value) school districts. This Part will then review Article X of the Illinois State Constitution, which requires the state to establish a system of free public schools. Finally, this Part summarizes the Illinois Supreme Court’s rulings in Edgar and Lewis E., and discusses their impact on education funding litigation. A. Illinois’ Public School Finance System

Illinois’ school funding system assigns school districts to one of three funding groups for the purpose of determining how much general state aid (“GSA”) will be given to each district. Each year, the state first sets the foundation, or minimum level of funding per pupil for all public schools in Illinois. The state then calculates how much local revenue each district will theoretically be able to generate and apply towards achieving this foundation funding level.

This is done by multiplying the equalized assessed value of local property within a district by a standardized property tax rate, and then dividing this value by the school district’s average daily

78 William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 HARV. L. REV. 489, 491 (1977) (arguing that plaintiffs should seek out expanded civil rights under state constitutions, and describing this push as a “new judicial federalism”); see also Blanchard, supra note 33, at 237 (tying Justice Brennan’s call for a new judicial federalism to the shift in education funding cases to state courts).

79 See Brennan, supra note 78. Justice Brennan criticizes several of the Supreme Court’s civil liberties opinions issued under Chief Justice William Burger, including those affecting free speech; the rights of women, criminal defendants, and the poor; and tenured public employees. See id. at 495-96 (arguing that the Supreme Court in the 1970s had begun to “pull back” from its more progressive civil liberties jurisprudence in the previous decade). State courts and constitutions, Justice Brennan urged, are “font[s] of individual liberties” and should reach beyond the Supreme Court’s jurisprudence in protecting individual rights. Id. Criminal law often provided examples of state supreme court independence in constitutional matters. See Blanchard, supra note 33, at 238-39 (citing as examples of state supreme court independence Commonwealth v. Upton, 476 N.E.2d 548 (Mass. 1985), in which the Massachusetts Supreme Court rejected the U.S. Supreme Court’s Fourth Amendment analysis in Illinois v. Gates, 462 U.S. 213 (1983), and State v. Morris, 680 A.2d 90 (Vt. 1996), in which the Vermont Supreme Court expanded the expectation of privacy beyond the limits established by the U.S. Supreme Court in California v. Greenwood, 486 U.S. 35 (1988)).

80 See ADEQUACY LIABILITY DECISIONS, supra note 77 (noting that twenty-two of thirty-four state adequacy cases, which are generally argued based on state constitution education clauses, have resulted in plaintiff victories); see, e.g., Robinson v. Cahill, 303 A.2d 273, 295 (N.J. 1973) (resting its decision on a violation of the state’s education clause).


82 ILL. CONST. art. X, § 1.


84 105 ILL. COMP. STAT. ANN. 5/18-8.05; see GENERAL STATE AID, supra note 83. For the 2012-2013 school year, the foundation level of funding per pupil was $6,119. Id.; 2012 ANNUAL REPORT, supra note 4, at 2. Due to reductions in General State Aid in the Illinois State Fiscal Year 2013 budget, however, the effective amount of funding per pupil during this time was actually $5,734. See id.

85 See GENERAL STATE AID, supra note 83 (providing additional explanation of the school funding statute).
attendance.\textsuperscript{86} Districts that will generate less than 93\% of the foundation funding level based on this calculation are referred to as “foundation formula” districts.\textsuperscript{87} In most cases, the state will provide these districts with enough GSA to be able to fund at the foundation level for the school year.\textsuperscript{88} Districts that will generate 93\% to 175\% of the foundation funding level are referred to as “alternate formula” districts, and will receive GSA equaling between 5 and 7\% of the current year’s foundation funding level.\textsuperscript{89} Finally, districts that will generate more than 175\% of the foundation funding level receive a flat GSA grant of $218 per pupil.\textsuperscript{90} In 2011, approximately 73.1\% of Illinois’ public school children were served by property-poor foundation level districts, 21.9\% of students attended alternate formula districts, and just 5.0\% of students attended flat grant districts.\textsuperscript{91}

A few additional features of Illinois’ funding system are important to note. All districts are statutorily required to fund their schools at the annual foundation level.\textsuperscript{92} For foundation and some alternate formula districts, this means that they must, at a minimum, assess education property taxes at the levels used by the state to calculate their GSA allotment.\textsuperscript{93} Flat grant districts, however, may assess property taxes at a lower rate as long as they still achieve the foundation funding level.\textsuperscript{94} While all districts are free to tax at a level higher than these minimum percentages, the Illinois School Code limits maximum tax assessment levels for school districts.\textsuperscript{95} In many districts, it may thus be legally impossible for foundation formula districts to fund their schools at a level comparable to wealthier flat grant districts, even if politically willing to tax property owners at a very high level.\textsuperscript{96} Nevertheless, poorer districts frequently do tax at a significantly higher level than wealthier districts in an attempt to provide greater funding to their schools.\textsuperscript{97}

\textsuperscript{86} The rates are 2.3\% for districts consisting of elementary and middle schools only, 1.05\% for high school districts, and 3.0\% for unit districts containing elementary, middle, and high schools. 105 ILL. COMP. STAT. ANN. 5/18-8.05(D)(3); see GENERAL STATE AID, supra note 83 (providing additional information on property taxing rates for the various types of school districts).

\textsuperscript{87} 105 ILL. COMP. STAT. ANN. 5/18-8.05(E)(2). Note that revenue generated from a corporate personal property replacement tax is also added into this calculation. GENERAL STATE AID, supra note 83.

\textsuperscript{88} 105 ILL. COMP. STAT. ANN. 5/18-8.05(E)(2); see GENERAL STATE AID, supra note 83 (providing additional explanation of the funding statute).

\textsuperscript{89} 105 ILL. COMP. STAT. ANN. 5/18-8.05(E)(3); see GENERAL STATE AID, supra note 83 (providing additional explanation of the funding statute).

\textsuperscript{90} 105 ILL. COMP. STAT. ANN. 5/18-8.05(E)(4); see GENERAL STATE AID, supra note 83 (providing additional explanation of the funding statute).

\textsuperscript{91} GENERAL STATE AID, supra note 83.

\textsuperscript{92} 105 ILL. COMP. STAT. ANN. 5/18-8.05(B); see GENERAL STATE AID, supra note 83 (providing additional explanation of the funding statute).

\textsuperscript{93} 105 ILL. COMP. STAT. ANN. 5/18-8.05(E).

\textsuperscript{94} Id.; GENERAL STATE AID, supra note 83 (providing additional explanation of the funding statute). Although some flat grant districts do choose to tax at higher rates to maximize school funding, others can tax at rates lower than foundation or alternate formula districts and still generate more money to spend on students. For example, in 2012 Skokie School District 68 had an equalized assessed property value of $743,619 per pupil, a total school tax rate of $2 per $100, and spent $8,402 per pupil. ILLINOIS INTERACTIVE REPORT CARD, supra note 8. Conversely, Cicero School District 99 had an equalized assessed value of $78,372 per student, taxed at a rate of $2.79 per $100, but could only spend $5,368 per pupil. Id.

\textsuperscript{95} Id. 105 ILL. COMP. STAT. ANN. 5/18-2. Note that this provision does not apply to Chicago Public Schools. Id.

\textsuperscript{96} GENERAL STATE AID, supra note 83; see infra Part IV-C (arguing that because Illinois’ school funding system forces property-poor districts to tax within a statutorily prescribed range of tax rates, and because the system fails to yield sufficient funding for these districts, it limits true local control over school finance).

\textsuperscript{97} See Secter, supra note 2 (noting that poor districts frequently tax at a much higher rate than wealthy districts, and citing an example East St. Louis, which assesses property taxes six times higher than Rosemont, a relatively more prosperous suburb of Chicago). East. St. Louis has a median household income of $19,934, while Rosemont has a median household income of $39,196. Selected Economic Characteristics: 2007-2011 American Community Survey 5-Year Estimates, East. St. Louis, Illinois, U.S. CENSUS BUREAU, AM. FACTFINDER, http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11_5YR/DP03/1600000US1722255 (last visited Nov. 6, 2013); Selected Economic Characteristics: 2007-2011 American Community Survey 5-Year Estimates, Rosemont, Illinois, U.S. CENSUS BUREAU, AM. FACTFINDER, http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11_5YR/DP03/1600000US1765819 (last visited Nov. 6, 2013); see also Complaint, supra note 30 (comparing property tax rates in two foundation formula districts to the considerably lower tax rates in two flat grant districts). Illinois’ overall state tax system is considered one of the most regressive in the
B. The Education Clause of the Illinois Constitution

Unlike the Federal Constitution, state constitutions include articles explicitly providing for some form of a public school system. Illinois is no exception—Article X, Section 1 of the Illinois State Constitution provides for a state-created system of free public schools.

The education article was first added to Illinois’ constitution in 1870, and took its present form following revisions made at the 1970 Constitutional Convention. Illinois’ education article shares much of its language with other state education provisions, including phrases that have served as the basis for several plaintiff victories in education funding cases. A 1992 amendment referendum, however, would have reformed Illinois’ school funding system just four years before Edgar. Following a bitter debate in the Illinois General Assembly, a bi-partisan coalition of urban Democrats and downstate Republicans voted to add the referendum to the November ballot. The referendum proposed adding language to Article X that would have forced the state to provide the majority of education funding in Illinois, effectively prohibiting

The state shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

I.L.L. CONST. art. X, § 1.

See Gershon M. Ratner, A New Legal Duty for Urban Public Schools: Effective Education in Basic Schools, 63 TEX. L. REV. 777, 814-16 (1985) (categorizing state education articles into four groups depending on the “strength” of their wording). The weakest provisions merely provide for system of “free” schools; most education articles contain this language. Id. at 815. The next strongest provisions contain some characterization of quality of the education system, typically “thorough and efficient.” Id. This language is used in the education articles of New Jersey, Arkansas, Colorado, Florida, and many other states. Id. at 815 n.144. Still stronger are those that compel state legislatures to specifically provide for state education systems. Id. at 815-16. Finally, the strongest provisions include some language (such as “fundamental” or “paramount”) that makes education a top priority of state government. Id. at 816, 816 n.146. Washington, Maine, Michigan, and Illinois are some of the states in this final category. Id. at 816 n.146.

Several courts in other states have relied on the words “thorough and efficient,” or substantially similar language, to invalidate funding systems. See, e.g., Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); Abbott v. Burke, 575 A.2d 359 (N.J. 1990); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979). But see Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1191-94 (Ill. 1996) (discussing, unfavorably, cases in other states that have relied on this language to invalidate state funding systems).

The Illinois House of Representatives voted 71-44 to include the referendum, including 61 Democratic and 10 Republican “yea” votes, but not before a post-debate fist-fight between downstate and suburban Chicago representatives. Dellios & Pearson, supra note 103. The tenor of the debate surrounding the amendment vote is illustrative of the politics involved in school funding reform. While pushes for reform are traditionally associated with larger urban districts—the plaintiffs in Edgar included Chicago Public Schools as well as districts located in Elgin and Rockford; the plaintiffs in Lewis E. were from East St. Louis—downstate Republicans also strongly supported the referendum. Id. This is because rural areas generally have low property values as well as high transportation costs for students living far from schools. See CTR. FOR TAX & BUDGET ACCOUNTABILITY, supra note 11, at 13-14 (noting the “stark” disparity in funding between wealthier school districts in the northern part of Illinois and poorer downstate districts south of Interstate 80). Thus, rural schools often suffer from the same sort of chronic underfunding typical of large, urban schools. See generally id. (noting that most downstate school districts are foundation formula districts). As one might expect, opposition to funding reform usually comes from wealthy districts that fear that any changes in the financing scheme would result in higher taxes that ultimately benefit poor districts and not their own. Dellios & Pearson, supra note 103.
Illinois’ property tax-based system. The language would have also strengthened Article X’s language to clearly define education as a fundamental right receiving enhanced protection from the courts. Ultimately, the amendment was defeated at the polls, largely based on fears of increased taxes and decreased funding for wealthier districts.

C. The Major Illinois School Funding Cases: Edgar and Lewis E.

Around the time of the 1992 amendment referendum, a group of more than sixty school districts, students, and parents filed a suit in state court seeking declaratory judgment that Illinois’ school funding system was unconstitutional. The plaintiffs’ primary claims alleged that the school funding system violated the Illinois State Constitution’s equal protection clause and Article X because it failed to remedy the significant funding disparities between wealthy and poor districts.

When Committee for Education Rights v. Edgar came before the Illinois Supreme Court in 1996, the court’s first task was determining exactly what education rights, if any, were guaranteed by Article X. The plaintiffs argued that the disparities produced by the state’s funding system violated Article X’s guaranty of an “efficient” educational system, and that the system prevented children in poor districts from attaining a “high quality” education. Crucially, the court observed that the plaintiffs had made both equity and adequacy arguments.

While the former claim would require a construction of Article X to determine whether the word “efficient” means “equal,” the latter claim raised the issue of whether the court had the

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105 The amendment would have incorporated the following language into Article X, Section 1:
1. Education of all persons is a fundamental “right,” not just a “goal” of the state government.
2. It is the “paramount duty” of the State to:
   a) provide a thorough and efficient system of high quality public education, and;
   b) guarantee equality of educational opportunity as a fundamental right.
3. The State has the “preponderant financial responsibility” for financing public education.

106 The amendment would have incorporated the following language into Article X’s language to clearly define education as a fundamental right receiving enhanced protection from the courts.
107 Amendments and Conventions Proposed, supra note 17. Although there were 1,882,569 votes for the amendment, more than those voting against it, the number nonetheless fell short of the three-fifths majority vote needed to pass constitutional amendments in Illinois. See id.; ILL. CONST. art. XIV, § 2(b); see also Dellios & Pearson, supra note 103 (noting that leading up to the amendment vote, Illinois residents could expect to hear “frequent warnings about massive income-tax hikes,” that then-governor Jim Edgar warned the amendment could lead to a fifty percent increase in the state income tax, and that representatives from wealthier districts believed the state’s funding system already “unfairly gives poorer areas a disproportionate share of state funds”); Karwath & Christian, supra note 17 (noting that the amendment fell short due to opposition from voters in wealthy suburban counties outside of Chicago who were concerned that the amendment could lead to property tax increases).
108 Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1180 (Ill. 1996); Dellios & Pearson, supra note 103. A “declaratory judgment” is a binding adjudication of one or more party’s rights, “whether or not any consequential relief is or could be claimed.” See 735 ILL. COMP. STAT. ANN. 5/2-701 (West 2013).
109 Edgar, 672 N.E.2d at 1182-83. According to the plaintiffs, during the 1989-90 school year, the average tax base in the wealthiest 10% of districts was thirteen times larger than that of those in lowest 10%, allowing wealthy districts to spend substantially more on their students. Id. at 1182. One plaintiff district noted that it could not afford to clean up exposed asbestos, patch leaking roofs, or replace rotting football bleachers. Id. at 1197-98 (Freeman, J., dissenting).
110 The plaintiffs’ case had been dismissed by the circuit and appellate courts for failure to state a claim. Id. at 1182-83 (majority opinion).
111 By alleging that the state funding system was not “efficient,” the plaintiffs asserted that children in poor districts were receiving a comparatively worse education that those in wealthier districts; by alleging that students poor districts were not receiving a “high quality” education, however, the plaintiffs were asking the court to find their students’ education absolutely inadequate. Id.
112 Id. at 1183; see also supra Part II (contrasting the equity claims made in Serrano to the adequacy claims made in Robinson and other post-Rodriguez cases).
constitutional authority to adjudicate an adequacy claim at all.113 The plaintiffs also argued that the final line of Article X, Section 1, added at the 1970 Constitutional Convention, required the state to be the primary source of funding for public schools.114

The court first determined the meaning of “efficient” in Article X.115 Examining the 1970 Constitutional Convention record, the court found that the delegates did not intend for “efficient” to mean “equal,” and instead simply wanted the word to retain the limited meaning it had taken on since it was first used in Article VIII of the 1870 constitution.116 The court further found that opinions in other states addressing this issue, including many of the most significant plaintiff victories following Rodriguez, were inapposite to the case at hand or wrongly decided.117 Thus, Article X’s use of “efficiency” could not be read to guarantee equal educational funding.118

The court next turned to the final sentence in Article X, Section 1—“[t]he State has the primary responsibility for financing the system of public education.”119 The court noted that the line was added only after two alternative proposals—both of which explicitly delegated funding responsibilities to the state and limited local property tax funding—were voted down by the delegates.120 Moreover, the court noted that the delegate who proposed the language intended merely "to put the Convention on record" (in other words, to put the Convention on notice that a change needed to be made), and that the line was “only to express a goal or objective, and not to state a specific command.”121 As such, the sentence did not provide a legal basis to challenge the state’s funding system.122

Finally, the court analyzed the plaintiffs’ adequacy claim—that they were being denied a “high quality” education.123 The court noted that the 1870 education article had originally assigned responsibility for providing public education to the “General Assembly,” or state legislature.124 Even though the 1970 Convention delegates substituted “the state” for “General Assembly,” the court found that Article X retained the 1870 draft’s limited jurisdiction for courts.125 The court also applied the United States Supreme Court’s political question test,
developed in *Baker v. Carr*, to the adequacy issue. The court found that there was “a lack of judicially discoverable and manageable standards” for defining “high quality” and determining whether the plaintiffs had received an adequate education. The court further emphasized that a ruling on the issue would be anti-democratic because the justices were less politically accountable to the public than state representatives. Thus, the court found that claims of inadequate educational opportunity were essentially political questions best left to the General Assembly.

With the education clause issues settled, the court turned to the plaintiffs’ state equal protection argument, dismissing the claim based on the United States Supreme Court’s ruling in *Rodriguez*. Because wealth was not a suspect classification and because education was not a fundamental right, rational basis review would apply. As in *Rodriguez*, the court found that local control of public schools was a legitimate state interest effectively served by the state’s funding scheme.

The *Edgar* court’s ruling was a stunning defeat for education reformers. Not only had the court rendered Article X’s language largely toothless, but it also erected a barrier between future litigants and the court by finding school funding issues outside the purview of the judiciary. Three years later, a second school funding case affirmed and reinforced the court’s jurisprudence.

In 1999, children and parents in Illinois’ East St. Louis’ school district came before the Illinois Supreme Court seeking a declaration that the school funding system produced underfunded, dilapidated schools within their district, and thus violated Article X. Once again, the plaintiffs made an adequacy claim, as well as claims based on the state’s due process clause, Illinois School Code, and common law principles. The court examined the education clause claim first and reaffirmed its holding in *Edgar*, that it had no authority to judge the adequacy of

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126. *Id.* at 1191. In *Baker*, an equal protection case involving discriminatory political districting, the United States Supreme Court provided a six-factor test to determine when an issue was “political” and thus outside the gambit of the courts. *Id.*

127. *Id.* at 1191. Note, however, that Illinois Supreme Court justices are elected, and serve ten-year terms. ILL. CONST. art. VI, §§ 3, 10.

128. *Edgar*, 672 N.E.2d at 1191 (noting that to rule on the merits would be a violation of the separation of powers); see O’Neill, supra note 27 (discussing how a minority of state courts, including Illinois, have avoided full adjudication of adequacy claims based on the political question doctrine and deference for the separation of powers). See generally NOWAK & ROTUNDA, supra note 27, at 58-66 (providing a general overview of the United States Supreme Court’s political question jurisprudence).

129. *Edgar*, 672 N.E.2d at 1193-94; see supra Part II-B (summarizing the United States Supreme Court’s ruling in *Rodriguez*).


131. *Id.* at 1195-96.

132. This is despite the fact that some have read Illinois’ education clause as one of the strongest in the nation. See William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1659, 1667-69 (1989) (noting that Illinois’ education clause is among the strongest worded clauses of all state constitutions).

133. *See* Lewis E. v. Spagnolo, 710 N.E.2d 798, 816 (ILL. 1999) (Freeman, J., concurring in part and dissenting in part) (stating that in *Edgar* the “court shut the courthouse door to claims alleging violations of section 1 of the education article of the Illinois Constitution”); see also NOWAK & ROTUNDA, supra note 27 (“Unlike other restrictions on judicial review—doctrines such as case or controversy requirements, standing, ripeness and prematureness—all of which may be cured by different factual circumstances, a holding of nonjusticiability [premised on the political question doctrine] is absolute in its foreclosure of judicial scrutiny.”).

134. *Lewis E.*, 710 N.E.2d at 800.

135. *Id.* at 800-01.

136. *Id.* at 801-02.
the state’s public education system. The court then turned to the plaintiffs’ remaining claims and dismissed them in short order. Again citing to Rodriguez, the court dismissed the due process claim, reasoning that there was no fundamental right to education. The court then dismissed the school code claims for failure to point to a specific provision in the code that had been violated, and the common law claims failed due to the plaintiffs’ failure to prove actual harm.

In his dissent, Justice Charles E. Freeman disclaimed the precedent set by Edgar and Lewis. East St. Louis schools were in deplorable condition, exposing students to asbestos, overflowing sewage pipes, broken fire alarms, unheated classrooms, and fire-damaged school libraries. The court’s opinions in Edgar and Lewis, Justice Freeman believed, permanently precluded the court from ever taking on the gross inequalities in Illinois’ public schools, leaving the matter to languish under legislative inaction.

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138 Id. at 804 (“[Q]uestions relating to the quality of education are solely for the legislative branch to answer.” quoting Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1189 (Ill. 1996)). The plaintiffs argued that the Edgar opinion was not dispositive because the defendants in that case had sought a “high quality” education rather than a minimal level of education, however the court found the difference indistinguishable. Id. The plaintiffs also argued that the historical education clause “efficiency” exception, whereby the court has the limited authority to determine the fairness of newly drawn school district boundaries, should apply because East St. Louis students were being entirely deprived of educational opportunity (much like a student included in district boundaries that place his home school so far away from his residence that he cannot attend). Id. The court, however, simply did not agree that the students were being wholly deprived of education. Id. The boundary exception would only apply, the court speculated, in situations where a “district provides a school that consists of nothing more than a vacant building marked with the word ‘School.’” Id.

139 Id. at 805-16.

140 Id. at 805. The plaintiffs also made a due process argument that, because students in Illinois are legally required to attend schools, and because the school facilities in East St. Louis were in dangerous disrepair, the state was in effect forcibly subjecting them to a harmful environment. Id. at 805-11. The court rejected this theory as well, finding that compulsory education laws did not raise due process issues because the precedent cited by the plaintiffs—cases involving harmful prisons—were legally dissimilar. Id. at 805-09. Furthermore, despite the poor condition of many East St. Louis schools, the plaintiffs had failed to demonstrate any actual harm caused by the facilities. Id. at 808-11.

141 Id. at 813-16. The plaintiffs had based their common law claim on premises liability, alleging that the schools their children attended were physically dangerous due to their lack of maintenance. Id. At common law, negligence claims require plaintiffs to show actual harm or an invasion of some interest. See RESTATEMENT (SECOND) OF TORTS § 281 (1965). The court further held that a permanent injunction was inappropriate because the plaintiffs had failed to point to specific hazardous condition that could lead to irreparable injury. Lewis E., 710 N.E.2d at 815-16.

142 “In [Edgar], this court shut the courthouse door to claims alleging violations of section 1 of the education article of the Illinois Constitution. In this case, the majority nails that door shut. The majority holds that these plaintiffs may not not do not, or could not, but may not state a cause of action for a declaratory judgment based on a violation of the education article.”

143 Id. at 817. Justice Freeman quoted extensively from the plaintiffs’ complaint:

By any reasonable measure, the public schools of District 189 are neither safe nor adequate. Strangers wander in and out of junior high schools. Fire alarms malfunction, and firefighters find emergency exits chained shut as they rescue children from burning schools. Classrooms are sealed to protect students from asbestos and dangerous structural flaws. In dark corridors, light bulbs go unreplace and rain seeps through leaky roofs. In heavy rains, backed-up sewers flood school kitchens, boilers, and electrical systems, resulting in student evacuations and cancelled classes. Bathrooms are unsanitary and water fountains are dry or spew brown water. In winter, students sit through classes wearing heavy coats because broken windows and faulty boilers go unrepaired. They struggle to learn using meager instructional equipment and tattered, dated textbooks. School libraries are locked or destroyed by fire.

144 Id. This is not to say, however, that no other legal challenges have been attempted since Lewis E. In March 2010, the Chicago-based public policy organization Business and Professional People for the Public Interest (“BPI”), in conjunction with their pro bono partner Sidney Austin, filed a school funding suit against State Superintendent of Education Christopher Koch, Governor Quinn, and the Illinois State Board of Education. See Complaint, supra note 30, at 1-3. Working around Edgar and Lewis E.’s constraining precedent, the plaintiffs argued that the state’s school funding system effectively forced residents of property-poor school districts to pay property taxes at significantly higher rates than residents of property-rich districts, a violation of the state constitution. See id. Additionally, the suit alleged that various other elements of how the state now runs public schools, including increases in state-level performance requirements and standardized testing, have effectively ended “local control” of public schools. See id. Nevertheless, the suit was dismissed in short order by the Illinois Supreme Court in late 2012, ruling that because localities ultimately set local property

http://lawcommons.luc.edu/cljr/vol34/iss1/6
Evidence suggests Justice Freeman’s fears were well founded.145 While the Edgar majority’s minimalist reading of Article X was fairly accurate,146 the delegates to the 1970 Constitutional Convention nonetheless believed that Article X’s strong wording would compel the Illinois state legislature to pass significant funding reforms in order to remedy educational inequality.147 More than forty years later, the legislature has yet to act.148 In other states as well, legislative inaction has often prevented meaningful reform.149 Thus, it may be time to once again challenge Illinois’s school funding system in court.

IV. ANALYSIS

Since 1999, the Illinois state legislature has not reformed the state’s education funding system, and the state continues to fund schools at one of the lowest rates in the U.S.150 With Rodriguez preventing plaintiffs from pursuing federal claims against the Illinois state government, and Edgar and Lewis E. ostensibly preventing state claims, it would appear education reformers are left with few options.

As this Part will demonstrate, however, the Edgar and Lewis E. opinions leave open a few points of attack for future litigants. The Illinois Supreme Court’s reliance on the United States Supreme Court’s political question jurisprudence, which precludes courts from hearing certain inherently political issues, defers unnecessarily to federal law, and also contradicts the Illinois Supreme Court’s own political question precedent. Moreover, the Edgar court’s interpretation of Article X failed to define a key provision—whether the promise of a “high quality” education establishes some minimal level of educational inadequacy.151 Finally, the Illinois Supreme Court’s deference to local control is unnecessary and ignores the fact that the current funding system does not provide meaningful control for property-poor school districts.

A. The Illinois Supreme Court’s Misapplication of the Federal Political Question Doctrine in Edgar and Lewis E.

Before examining the Edgar and Lewis E. courts’ political question analysis, some background on the doctrine is necessary. The political question doctrine is a federal law principle that preserves the separation of powers by helping courts to determine when ruling on an issue...
would encroach on the authority of the executive or legislature. Because the United States Supreme Court has the ultimate authority to interpret the Federal Constitution, it also has the final authority to determine when an issue or responsibility has been delegated to a particular branch of the government. The Court outlined its current political question doctrine standard in 1962 in *Baker v. Carr*. Holding that mere political sensitivity did not make an issue a political question, the Court formulated a six-factor test to determine whether an issue was a political question and thus non-justiciable. If the issue involved any of the following six factors, it could not be reviewed by the court: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; (4) or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; (5) or an unusual need for unquestioning adherence to a political decision already made; (6) or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Nevertheless, even after *Baker*, application of the political question doctrine in the Court’s opinions has remained fairly limited.

In contrast, some state supreme courts have readily invoked the doctrine in the context of education finance cases. As many legal scholars have argued, however, there is nothing explicitly binding state courts to the Supreme Court’s political question precedent when ruling on state constitutional law. The political question doctrine is rooted in the Federal Constitution’s

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152 See *Baker v. Carr*, 369 U.S. 186, 210 (1962) (“The nonjusticiability of a political question is primarily a function of the separation of powers.”); see also *Nowak & Rotunda*, supra note 27, at 58-66 (providing a general overview of the United States Supreme Court’s political question jurisprudence); O’Neill, supra note 27, at 555-56 (“The political question doctrine is the judiciary’s attempt to respect the structural boundaries between the three branches of federal government.”).

153 Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). See generally *Nowak & Rotunda*, supra note 27, at 1-11 (summarizing the United States Supreme Court’s judicial review authority).

154 *Baker*, 369 U.S. at 210. Early in the Court’s history, the political question doctrine most often arose in cases involving the Guaranty Clause of Article IV, Section 4. See *O’Neill*, supra note 27, at 556; see, e.g., *Luther v. Borden*, 48 U.S. 1, 42-43 (1849). Generally, these cases involved a dispute over an elected office, a matter the Court believed it lacked authority to decide. In *Luther v. Borden*, plaintiffs alleged the Rhode Island government failed to satisfy the Constitution’s guaranty of a republican government. *Id.* The Court refused to decide the case, instead asserting that either the President or Congress must resolve the conflict. *Id.; see also O’Neill, supra note 27, at 556* (noting that “[v]ery early on, the Supreme Court used the doctrine to avoid political representation issues under the Guaranty Clause of the Constitution” and discussing *Luther v. Borden*).

155 *Baker*, 369 U.S. at 198-99. In *Baker*, the court was presented with the issue of whether voting districts that, due to population shifts, effectively diluted the voting power of a particular voting group violated the Equal Protection Clause. *Id.* at 187-88. The defendants argued that issues of political reapportionment involved political questions, and as such, the court lacked authority to decide the matter. *Id.* at 197-98.

156 *Id.* at 217 (“The doctrine of which we treat is one of ‘political questions,’ not one of ‘political cases.’ The courts cannot reject as ‘no law suit’ a bona fide controversy as to whether some action denominated ‘political’ exceeds constitutional authority.”).

157 *Id.*

158 *Id.; see also Nowak & Rotunda*, supra note 27, at 59-60 (summarizing *Baker’s* impact on political question jurisprudence).

159 See *Nowak & Rotunda*, supra note 27, at 61-66 (discussing the political question doctrine’s limited application to certain issues involving foreign affairs and war, constitutional amendments, impeachment, political gerrymandering, apportionment of congressional districts among states, and Origination Clause cases); Blanchard, supra note 33, at 272 (stating that Supreme Court commentators have observed a decrease in the use of the political question doctrine since the early 1960s); *O’Neill, supra note 27*, at 557-60 (noting that the doctrine has been limited in application to questions of political districting and foreign affairs, and then summarizing the few cases since *Baker* in which it has been at issue).

160 See, e.g., *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191 (Ill. 1996); Lewis E. v. *Spagnolo*, 710 N.E.2d 798, 802-03 (Ill. 1999); *Neb. Coal. for Educ. Equity & Adequacy v. Heineman*, 731 N.W.2d 164, 183 (Neb. 2007) (formally adopting the United States Supreme Court’s *Baker* test, finding that issues of education adequacy are political questions for the legislature to decide, and upholding the Nebraska state school funding system); City of Pawtucket v. *Sundlun*, 662 A.2d 40, 57-58 (R.I. 1995) (upholding Rhode Island’s funding system, and finding that the determination of what constitutes an adequate or equal education is a political question reserved for the state general assembly).

161 See *Brennan*, supra note 78, at 501 (“[S]tate courts that rest their decisions wholly or even partly on state law need not apply federal principles of standing and justiciability that deny litigants access to the courts.”); Blanchard, supra note 33, at 233 (“State court reliance on federal separation of powers and political question doctrine jurisprudence is problematic because these doctrines are not freely transferrable to state constitutional analysis.”); *Nowak & Rotunda*, supra note 27, at 11 (“The supreme court of a state is
separation of powers, and as such has no real applicability to state constitutional jurisprudence.\textsuperscript{162} Furthermore, unlike federal courts, which are courts of limited jurisdiction, state courts are courts of general jurisdiction, and they retain significant common law powers not afforded to the federal judiciary.\textsuperscript{163} As such, state courts are able to “make law” much more so than federal courts, resulting in a fundamentally different relationship between state government branches than that of their federal counterparts.\textsuperscript{164} As a policy matter, too, strict adherence to the political question doctrine is unnecessary.\textsuperscript{165} In many states (including Illinois), state supreme court justices are elected, making them politically accountable for their opinions.\textsuperscript{166} Moreover, state supreme court opinions are easier to overrule than United States Supreme Court opinions because state constitutions are more malleable.\textsuperscript{167}

Regardless of the Illinois Supreme Court’s justification for adopting federal political question jurisprudence,\textsuperscript{168} its application in Edgar and Lewis E. is also at odds with its own past political question cases.\textsuperscript{169} Cases involving political question issues prior to the education cases were few and far between, generally involved disputes over elections, and generally barred courts from ruling on any politically-tinged issue.\textsuperscript{170} In Donovan v. Holzman (1956), however, the court truly the highest court in terms of this body of law . . . [i]t is free to interpret state laws or the state constitution in any way that does not violate principles of federal law.”); Gardner, supra note 24, at 808-09 (“[I]t is certainly possible for a state constitution to contain a political question doctrine, and it is even possible for the state doctrine to be so similar to the federal version that precisely the same analysis could be used for both—possibly, but highly unlikely.”); O’Neill, supra note 27, at 578-79 (“It does not follow that the same barriers (political question doctrine) would apply to state court action.”).

\textsuperscript{162} See Blanchard, supra note 33 and accompanying text.

\textsuperscript{163} See Gardner, supra note 24, at 809 (“[V]irtually all state courts have significant common law powers that federal courts lack. The power to elaborate the common law is a power to make law.”); O’Neill, supra note 27, at 579 (noting state courts’ affirmative common law powers).

\textsuperscript{164} See Gardner, supra note 24, at 809; see also O’Neill, supra note 27, at 579 (noting that state courts have no case in controversy requirement, meaning that they may issue binding advisory opinions compelling state legislatures to formulate remedies); Blanchard, supra note 33, at 273 (noting that state courts are generally more involved in creating public policy than federal courts).

\textsuperscript{165} See Blanchard, supra note 33, at 273 (citing various reasons why greater authority for state supreme court justices would not threaten state separation of powers or democracy); Swenson, supra note 98, at 1152-53 (noting that many states have directly-elected justices).

\textsuperscript{166} Blanchard, supra note 33, at 273-74; see also Swenson, supra note 98, at 1152-53 (discussing various appointment systems for state supreme court justices).

\textsuperscript{167} State constitutions are re-written relatively often, and are generally easier to amend through state referendum. See Blanchard, supra note 33, at 273 (“[S]tate court opinions are more easily overruled by constitutional amendment.”). Article XIV of the Illinois State Constitution requires a referendum to be presented to voters every twenty years on whether a new constitutional convention should be convened. ILL. CONST. art. XIV, § 1.

\textsuperscript{168} It is worth noting that Article II, Section 1 of the Illinois State Constitution specifically provides for the separation of state powers, yet neither the Edgar nor Lewis E. opinion makes any mention of it, instead deferring to Baker v. Carr. See ILL. CONST. art. II, § 1; Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1191 (Ill. 1996); Lewis E. v. Spagnolo, 710 N.E.2d 798, 802-05 (Ill. 1999).

\textsuperscript{169} See O’Neill, supra note 27, at 562 (discussing generally the Court’s past political question cases and noting that “[e]ducational adequacy cases are the only cases in which the Illinois Supreme Court has invoked the political question doctrine to preclude judicial review”).

\textsuperscript{170} See People v. McWeeney, 102 N.E. 233, 238 (Ill. 1913); Daly v. Madison County, 38 N.E.2d 160, 167 (Ill. 1941); Donovan v. Holzman, 132 N.E.2d 501, 502, 506 (Ill. 1956); Kluk v. Lang, 531 N.E.2d 790, 791, 797 (Ill. 1988). In two early cases, People v. McWeeney (1913) and Daly v. Madison (1941), the court appeared to erect a clear barrier between the judiciary and any politically tinged issues. McWeeney involved a disputed injunctive order that would have barred one faction of the Democratic Committee of Cook County from attending an official party event. McWeeney, 102 N.E. at 234-35. Specifically, the court was reviewing the validity of the injunction because the rival party faction had been held in contempt of court for its violation. Id. In ruling that the injunction was impermissible, the court noted that the “courts cannot be drawn into political contests of any sort or description unless required by statute, and any injunction for the purpose of restraining or controlling acts of a political nature is void.” Id. at 238. The court maintained its strict prohibition on deciding political issues in Daly, a taxpayer suit that sought the enjoinment of the use of public funds to run an election. Daly, 38 N.E.2d at 162. The plaintiffs filed the suit because they believed the state’s failure to reapportion voting districts from 1901 to 1940 had diluted their voting strength. Id. Once again, the court found the issue to be political and thus outside of its authority. Id. at 164-65 (“A court of equity is prohibited from passing on any political question, and once it is determined that the controversy involves political and not civil or property rights, the court must refuse to exercise its jurisdiction. The power to hold an election is political. A court of equity has no power to restrain officers in the exercise of that power.”). Critically, both of these cases involved judicial action that directly impaired the democratic process. In McWeeney, the court ruled invalid a lower court’s injunction—thus, it was not determining whether a party’s claim was justiciable. McWeeney, 102 N.E. at 237-38. The lower court’s injunction was invalid because it directly impaired democratic party members from attending an official party event related to primary
opened the door for judicial review of some types of cases involving constitutional judgment.\footnote{171} Decided just a few years before \textit{Baker}, the \textit{Donovan} court drew roughly the same conclusion as the United States Supreme Court—that there is a difference between “political questions” and “political cases.”\footnote{172} The court believed that \textit{Donovan}, involving a disputed reapportionment plan, was firmly in the latter category, merely requiring it to judge whether the legislature’s reapportionment effort was constitutional, rather than take the quasi-legislative action of formulating its own plan.\footnote{173} Later, in \textit{Kluk v. Lang} (1988), the court formally adopted the \textit{Baker} test.\footnote{174} Since \textit{Kluk}, the Illinois Supreme Court has never dismissed a case under its political question doctrine—except for the education cases.\footnote{175}

As discussed above, the court’s adherence to the doctrine is questionable; however, even under the \textit{Baker} test the current court should be able to rule on education issues.\footnote{176} Contrary to the \textit{Edgar} court’s finding that it did not have the resources to judge educational adequacy, at the time there were several academic standards with which it could judge the relative educational equality of Illinois schools, including the Illinois Goal Assessment Program test, a state-level standardized academic assessment exam, national academic assessments such as the American College Testing (“ACT”) exam, and graduation, daily attendance, and drop-out rates.\footnote{177} Since \textit{Edgar} and \textit{Lewis E.}, the Illinois State Board of Education has also instituted two comprehensive

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\footnote{171}In \textit{Daly}, the court refused to rule on the case because it found it had no power to halt an election. \textit{Daly}, 38 N.E.2d at 163-64.
\footnote{172}The \textit{Donovan} plaintiff initiated a taxpayer suit seeking a declaratory judgment that reapportioned state senate and representative districts were constitutionally invalid. \textit{Id.} The plaintiff’s prayer for relief was key—rather than ask the court to halt elections (as in \textit{Daly}) or redraw districts themselves, he merely sought the court’s judgment on the constitutionality of the reapportionment. \textit{Id.}
\footnote{173}See \textit{id.} at 506 (citing \textit{Marbury v. Madison}, 5 U.S. (1 Cranch) 137 (1803)) (“The mere fact that political rights and questions are involved does not create immunity from judicial review.”); \textit{Baker v. Carr}, 369 U.S. 186, 217 (1962).
\footnote{174}The \textit{Donovan}, 132 N.E.2d at 506. As the court emphasized:
\footnote{175}Drawing this distinction was a matter of degree—there was no bright line between political questions and political cases—and could only be settled by examining the plaintiff’s complaint and the evidence in the record. \textit{Id.} The legislation would be given a presumption of constitutionality, however the court would still conduct some degree of independent judicial review. \textit{Id.} at 506-07. Although the court generally deferred to the legislative record, it did note that it had not been presented with “any other of the vast spectrum of factors that might militate against” laying out the districts as they had been drawn. \textit{Id.} at 506. Presumably, if presented with other forms of evidence besides the legislative record, the court would have taken this into consideration. \textit{Id.} Turning to the record, the court found nothing in the legislative record or in the contours of the districts themselves that suggested they had been drawn to favor specific populations or political groups. \textit{Id.} The apportionment scheme was upheld. \textit{Id.} at 507.
\footnote{176}Since the \textit{Edgar} court focused on the second prong of the \textit{Baker} standard, that “a lack of judicially discoverable and manageable standards for resolving” suggests an issue is a non-justiciable political question, and found it lacked standards for determining what constitutes a “high quality” education. \textit{Comm. for Educ. Rights v. Edgar}, 672 N.E.2d 1178, 1191 (Ill. 1996) (“The constitution provides no principled basis for a judicial definition of high quality. It would be a transparent conceit to suggest that whatever standards of quality courts might develop would actually be derived from the constitution in any meaningful sense.”).
state exams testing student achievement in core subject matters. The Illinois Standards Achievement Test (“ISAT”), administered in grades three through eight, tests students in math, reading, science, and writing. The Prairie State Achievement Exam (“PSAE”), taken each year by all eleventh grade students, is the high school equivalent to the ISAT. Scoring on these tests is weighed against statewide standards, allowing for comparison of one district to another, and results are readily accessible online. Furthermore, Illinois’ education funding system, which categorizes districts into “foundation,” “alternative,” and “flat grant” districts based on their local property wealth, provides for a convenient set of “district wealth” standards against which student performance may be compared.

A brief examination of the remaining Baker standards further suggests education finance litigation does not raise a political question. Without specific constitutional or statutory language to indicate otherwise, there is no reason to believe there is an “unusual need for unquestioning adherence to a political decision already made” or “the potentiality of embarrassment from multifarious pronouncements by various departments on one question.” Presumably, plaintiffs in future education litigation would again merely seek a declaration that the funding system is unconstitutional, fully allowing the state legislature to formulate a new system without judicial interference. Moreover, there is nothing in the text of Article X, Section 1 to suggest a need for exceptional judicial deference. The same basic reasoning also indicates the Illinois Supreme Court would not have to make an “initial policy determination of a kind clearly for non-judicial discretion.” Additionally, a judicial decision on the constitutionality of a piece of legislation would not show a “lack of respect due [to the] coordinate branches of government”—weighing the constitutionality of law is, after all, a primary function of the court. Finally, there is no “textually demonstrable constitutional commitment of the issue to a coordinate political


180 Prairie State Achievement Exam (PSAE), ILL. INTERACTIVE REPORT CARD, http://iirc.niu.edu/Tests.aspx?psae (last updated Oct. 25, 2013) [hereinafter PSAE], see also Student Assessment Prairie State, supra note 14. The PSAE evaluates students based on their ACT scores (all students in Illinois are required to take the ACT during the first day of the two-day PSAE), a science assessment developed by the Illinois State Board of Education, and additional reading and math exams developed by the ACT corporation. Id.

181 See ILLINOIS INTERACTIVE REPORT CARD, supra note 8 (providing an interactive internet application for users to view and compare test scores, district financial information, and many other key educational metrics); 2013 Illinois School Report Cards, CHICAGO TRIB., http://schools.chicagotribune.com/ (last visited Nov. 1, 2013).

182 See supra Part III-A (explaining Illinois’ school funding system).

183 Baker v. Carr, 369 U.S. 186, 217 (1962); see ILL. CONST. art. X, § 1 (note that there is no language that could reasonably be read to suggest that the Court must avoid education issues).

184 Indeed, recent litigation before the Illinois Supreme Court did seek declaratory judgment. See Complaint, supra note 30, at 15; Public Education—School Funding Litigation, BUS. & PROF. PEOPLE FOR THE PUB. INT., http://www.bpchipac.org/pe_litigation.php (last visited Oct. 26, 2013) [hereinafter Public Education—School Funding Litigation] (providing additional information about the suit). Given the Illinois Supreme Court’s extreme reluctance in Edgar to substantively critique or amend the state’s education funding system, it seems unlikely the court would be willing to do anything more than simply strike down the funding system as unconstitutional. See Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1192 (Ill. 1996) (“[W]e will not under the guise of constitutional interpretation, presume to lay down guidelines or ultimatums for [the legislature].” (internal quotation marks omitted)).

185 ILL. CONST. art. X, § 1.

186 Id. Like the Donovan court’s assessment of political districts, the court would be making a judgment of the constitutionality of the funding system in general (as a finance system predicated on local property wealth), and not an assessment of the specific mechanics of the scheme. See Donovan v. Holzman, 132 N.E.2d 501, 506 (Ill. 1956).

187 Baker, 369 U.S. at 217; see ILL. CONST. art. VI, § 4 (granting the Illinois Supreme Court final appellate jurisdiction over questions of law decided in lower courts).
department. The Illinois Supreme Court is thus fully capable of ruling on the constitutionality of the state’s education funding system, and should not dismiss future cases as nonjusticiable political questions.

B. Fundamental Rights and the Article X Education Clause Promise of a Minimally Adequate Education

Once a plaintiff surmounts the “political question hurdle” erected by Edgar and Lewis E., he will have to persuade the court that it should apply strict scrutiny review to the funding system because it infringes on a fundamental right promised by the Illinois state constitution. Otherwise, the court will apply a highly deferential rational basis review that grants the funding scheme a strong presumption of constitutionality. This Part will thus examine the Illinois Supreme Court’s refusal to find a fundamental right to education within the Illinois Constitution.

The plaintiffs in both Edgar and Lewis E. essentially made two distinct fundamental right arguments, one based on equal protection/due process principals, and one based on Article X, Section 1 of the Illinois State Constitution. In both cases, the Illinois Supreme Court rejected the plaintiffs’ equal protection/due process complaints by strictly adhering to the U.S. Supreme Court’s ruling in Rodriguez. Much like its application of the federal political question doctrine, the Illinois Supreme Court’s lockstep adherence to Rodriguez appears unfounded. State court constitutions and high courts are fundamentally different than their federal counterparts, unbound by the strict contours of the Federal Constitution. As such, state courts have considerably greater power to expand on personal rights and liberties than federal courts, and should not necessarily adhere to federal precedent. Furthermore, the presence of a dedicated educational article in the Illinois State Constitution at least suggests a stronger entitlement to education than does the Federal Constitution, which is wholly silent on the matter.

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188 Baker, 369 U.S. at 217. During its analysis of the 1970 Constitutional Convention record, the Edgar court found that the education article was meant to delegate exclusive responsibility for the education system to the state legislature. Edgar, 672 N.E.2d at 1190. This is despite the fact that delegates to the 1970 Constitutional Convention specifically replaced the phrase “General Assembly” with “the state” when it rewrote the constitution’s education article. Id. The majority opinion in Edgar glosses over this point, essentially stating that because education issues are a matter for the legislature only, the change in wording could not have expanded responsibility for public education to all three branches of the state government. Id. (“Surely, however, this provision does not alter the roles or expand the powers assigned to the different branches of government by the constitution. Courts may not legislate in the field of public education any more than they may legislate in any other area.”). The court’s circular logic does not provide a meaningful answer to the “textually demonstrable constitutional commitment” prong of the Baker standard, and seems to ignore contrary proof within the constitutional convention record. See id. at 1200-02 (Freeman, J., concurring in part and dissenting in part) (arguing that, based on the constitutional convention record, the 1970 delegates’ use of the phrase “the state” was a deliberate delegation of responsibility to all three branches of the Illinois state government.).

189 This Article will ignore arguments that the funding system discriminates against a suspect class (such as the poor or racial/ethnic minorities). Suspect class arguments have generally been unsuccessful in other states. See supra Part II (discussing the shift towards education clause “adequacy” claims following Rodriguez). Additionally, suspect class arguments did not factor significantly into either the Edgar or Lewis E. decisions. See supra Part III-C (summarizing the plaintiffs’ arguments in Edgar and Lewis E. as well as the court’s analysis).

190 See Edgar, 672 N.E.2d at 1180-96 (refusing to apply strict scrutiny to the court’s review of the Illinois education funding system, and in turn upholding it under rational basis review); see also supra Part III-C (summarizing the Edgar decision). Although, as will be shown in Part IV-C, plaintiffs may be able to make a strong case against the funding serving even a rational basis. See infra Part IV-C.

191 See infra Part IV-B (analyzing the 1970 Illinois Constitutional Convention record and what it suggests about the meaning of Article X).


193 Edgar, 672 N.E.2d at 1193-94; Lewis E., 710 N.E.2d at 805.

194 See supra Part IV-A (discussing differences in state and federal courts and why the federal legal doctrines should not necessarily be applied in state constitutional cases).

195 See Brennan, supra note 78 and accompanying text.

196 Id.

197 See Banchard, supra note 33, at 256 (“Ascribing ‘nonfundamental’ status to educational rights in spite of express education clauses in the state constitutions indicates reluctance on the part of courts to serve as protectors of political minority interests.”).
Finding clearly defined education rights within Article X of the Illinois Constitution, however, may be difficult. In *Edgar*, the plaintiff’s Article X claim made two separate arguments: 1) an “efficient” system of education required substantial equality in funding between districts; and 2) the article’s promise of a “high quality” education guaranteed some minimum level of quality.\(^{198}\) For the first time, the Illinois Supreme Court conducted a substantial interpretation of Article X, Section 1.\(^{199}\) The court’s subsequent reading appears to be largely—but not wholly—correct.\(^{200}\)

A 1975 report on the 1970 Convention Education Committee, which included post-convention interviews with many of the delegates, confirms much of the *Edgar* court’s analysis.\(^{201}\) The use of the word “efficient” in the 1870 education article had been read by Illinois courts to mean that school district boundaries had to be drawn so as not to exclude or severely inconvenience students.\(^{202}\) With little debate, the 1970 delegates agreed that the use of *efficient* in their revision would simply retain the legal precedent developed since 1870, and did not mean *equal funding*.\(^{203}\) More critically, the *Edgar* court correctly determined Article X’s final line, a promise that “the State has the primary responsibility for financing the system of public education,” is only a non-binding proclamation and does not require the majority of school funding to come from state funds (as oppose to local property tax revenue).\(^{204}\) The 1970 Convention rejected two different amendments to Article X that would have required the state to provide the majority of funding for public schools as well as limit total contributions to school funding from local property taxes.\(^{205}\) Subsequently, the Convention settled on Article X’s present language, explicitly proposed as a mere “hortatory” statement of intent.\(^{206}\)

Still, other elements of Article X remained undefined in the *Edgar* court’s analysis and may provide a guarantee of some minimal level of education.\(^{207}\) Most notably, the use of the phrase “high-quality,” dismissed by the *Edgar* and *Lewis E.* courts under their political question analysis, was never clearly defined during the 1970 Convention and only briefly debated.\(^{208}\)

\(^{198}\) *Edgar*, 672 N.E.2d at 1183. The *Lewis E.* plaintiffs, although attempting to distinguish their case from *Edgar*, essentially made the same argument regarding the use of “high quality” in the article—that it guaranteed some minimally adequate level of education. *Lewis E.*, 710 N.E.2d at 802.

\(^{199}\) *Edgar*, 672 N.E.2d at 1186-87.

\(^{200}\) Compare id. at 1185 (“The framers of the 1970 Constitution embraced this limited construction that the constitutional efficiency requirement authorized judicial review of school district boundaries.”), with *Buresh*, supra note 2, at 84 (explaining that the 1970 Convention education committee intended the promise of an “efficient” education system to retain the meaning originally assigned to it under the 1870 constitution, just as the *Edgar* court had read the provision).

\(^{201}\) See *Buresh*, supra note 2, at 84.

\(^{202}\) *Edgar*, 672 N.E.2d at 1185 (“Under the 1870 Constitution, this court consistently held that the question of the efficiency and thoroughness of the school system was one solely for the legislature to answer . . . However, under a limited exception to this principle it was held that pursuant to the ‘thorough and efficient’ requirement school district boundaries must be established so that the districts are compact and contiguous.”).

\(^{203}\) See *Buresh*, supra note 2, at 84 (stating that the 1970 Convention education committee believed that “efficient” would incorporate the meaning originally assigned in the 1870 article).

\(^{204}\) See *Edgar*, 672 N.E.2d at 1187 (describing Article X’s final line as a “purely hortatory statement of principle”).

\(^{205}\) See *Edgar*, supra note 2, at 84-86, 114-18 (summarizing the debate over Article X’s final sentence).

\(^{206}\) See id. After proposing the language eventually included in Article X, Delegate Dawn Netsch noted that “while [Article X’s final sentence] is not legally enforceable, I hope that it will function as a conscience to the General Assembly to assume a greater proportion of the financing of the public schools of the state.” Id. at 114.

\(^{207}\) See *Buresh*, supra note 2, at 126 (discussing the ultimate intent of the delegates in re-writing Article X); *infra* Part III-C (summarizing the *Edgar* opinion).

\(^{208}\) See RECORD OF PROCEEDINGS, supra note 1, at 767. Conversation regarding the meaning and intent of “high quality” was largely limited to the following:

MR. GARRISON: Mr. President, I would like to direct attention to line 6 of section 1, where the term, “high-quality public educational institutions and services,” is used.

It is my understanding that the word “quality” is—in relation to education—is a much debated concept and that there have been commissions which have given a great deal of study to it.
Although the delegates appear to suggest the legislature should ultimately define the meaning of “high quality,” delegate Kamin’s statement during the debate at least implies that “high quality” is supposed to mean something more than adequate.209 If a plaintiff can successfully persuade the court to abandon its application of the political question doctrine, it would remove entirely the Edgar court’s justification for not finding in “high quality” some guaranteed level of education.210

Additionally, statements made by delegate Kamin after the 1970 Convention shed additional light on how the education committee understood the impact of the new Article X, as well as the ultimate goal the delegates pursued in the process:

If the Illinois school financing system is further challenged in the courts, the new equal protection clause in the Illinois Bill of Rights, together with the “efficient system” language of the Educational Article, should compel a Serrano-like result . . . Hopefully, such a case will not be necessary. If the legislature and the new State Board of Education will take the school financing language for what it is—the statement of a pressing problem and the urgent prayer for a fair solution—then they will act to equalize educational opportunity and the tax burdens of educational financing without further judicial intervention.211

As some have suggested, the delegates’ intent and the full meaning of Article X cannot be clearly discerned from the Convention’s record.212 The Edgar court was correct in concluding that Article X makes no guarantee of equal education funding districts, nor does it compel the state to shift to a more centralized funding system.213 Still, the court’s failure to sufficiently

Did the committee come to any definite definition or conclusion as to what would constitute quality services with respect to education?

MR. FOGAL: No, we—the word “quality,” I suppose, means different things to different people. We had in mind the highest, the most excellent educational system possible; leave this up to the determination of the legislature and your local districts, and let the citizens keep pushing for higher-quality education. We didn’t attempt to define all of the ramifications of high quality.

MR. PATCH: But there was strong deliberation on the fact that if you just left it at quality, it could be low quality, medium quality; we wanted the highest form of quality that can be obtained by any system.

MR. GARRISON: Would it be possible to have a system higher and the high quality that you provide for—for example, a superior education?

MR. PATCH: Well, I don’t know—it might be, but I wouldn’t knock it.

And then later:

MR. KAMIN: I would also like to, if I could, address myself to Mr. Garrison. The use of the word “high quality” is a play on the use of the word “good” which is in the present article [the 1870 educational article]. The committee felt that there was not any more specific a definition perhaps for “high quality” than there was for “good,” but at least “good” is a lower term; “high quality” is a term which is going in the direction in which we want to go.

Id. 209

210 See supra Part III-C (summarizing the Court’s justification for not finding “high quality” to guaranty some minimum level of educational quality).

211 Malcolm S. Kamin, The School Finance Language of the Education Article: The Chimerical Mandate, 6 J. MARSHALL J. PRAC. & PROC. 331, 345 (1973); see Buresh, supra note 2, at 126.

212 See Wilson & Wilson, supra note 148 (“The transcripts of the 1970 Illinois Constitutional Convention, however, reveal neither an intent to require fiscal neutrality nor a desire to dismiss equality of educational funding altogether. Instead, the convention’s debates on education were full of confusing turns and contradictory aims: The delegates generally more equality of educational opportunities, but they generally rejected any specific measure which could achieve it.”).

213 See supra Part III-C (summarizing the Edgar court’s analysis of Article X).
consider the meaning of “high quality” leaves open the possibility of adequacy claims.214 Given these ambiguities, future challenges to Illinois education funding system should continue to make adequacy claims based on Article X.215

C. The Illinois Supreme Court Should Not Defer to “Local Control” of Public Schools

The final impediment to education finance reform is the public policy preference for “local control,” the idea that communities, parents, and local school boards should have maximum say in the operations of schools.216 In Rodriguez, the U.S. Supreme Court, after determining that rational basis review was most appropriate for judging Texas’ funding system, found local control to be a legitimate state interest rationally served by the financing scheme.217 Similarly, the Illinois Supreme Court in Edgar deferred to the concept of local control after refusing to find a suspect class or fundamental right to education harmed by Illinois’ funding scheme.218 The court’s deference is misguided. There is nothing constitutionally binding the court to the idea of local control, and the very idea of local control is becoming increasingly irrelevant as state and national changes impact the fundamental operation of public education in Illinois.

Despite strong judicial deference to local control, there is nothing in either the United States Constitution or Illinois State Constitution immunizing the concept from the reach of the judiciary.219 Local control is primarily manifested in Illinois through the existence of local school boards, entities entirely defined by statute.220 Illinois’ local school boards have broad authority under the Illinois School Code to hire and fire teachers, manage school curriculum, and contract, however, the scope of their powers (and limitations) is enumerated by the state.221 Given that local control is simply a policy choice established by statute, and that state courts often take on a greater role in setting public policy, the Illinois Supreme Court’s deference to this concept is questionable.222

Moreover, it is hard to argue that school districts and local school boards actually have meaningful control over school funding.223 As Justice White’s dissent in Rodriguez forcefully illustrates, property tax-based funding systems are quite unresponsive to the will of the locality.224 Like all districts, property-poor districts are free to tax at a higher rate than the statutorily prescribed minimum; however, they may only be able to generate a fraction of what wealthier districts can raise, even at tax rates several times that of wealthy districts.225 Moreover, even if

214 See supra Part III-C.
215 See infra Part V (proposing that future education finance litigants may be able to successfully challenge the state’s education funding system).
216 See Blanchard, supra note 33, at 279 (providing a general overview of the local control concept); Faber, supra note 57 (describing local control of schools as a devolution of management control from the state to local school boards).
217 San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 44, 49 (1973); see also supra Part II (summarizing the Rodriguez opinion).
218 Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1193, 1195-96 (Ill. 1996); see also supra Part III-C (summarizing the Edgar opinion).
219 See U.S. CONST.; ILL. CONST.
220 105 ILL. COMP. STAT. ANN. 5/10-1 to 10-22.19 (West 2013); see Faber, supra note 57 (“Legally, these local school districts are agents of the state, created in accordance with state law for the purpose of implementing the state's responsibility.”).
221 105 ILL. COMP. STAT. ANN. 5/10-1 to 10-22.19.
222 See Blanchard, supra note 33, at 273 (stating that, because state courts can issue binding advisory opinions, they are more involved in setting public policy than federal courts bound by case in controversy requirements).
223 See id. at 281 (arguing that property tax-based school funding systems do not provide local control of schools for poor districts).
224 See generally Eric P. Christofferson, Note, Rodriguez Reexamined: The Misonomer of “Local Control” and a Constitutional Case for Equitable Public School Funding, 90 GEO. L.J. 2553, 2575-76 (2002) (arguing against the use of local control to justify maintaining property tax-based funding systems).
225 San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 63-70 (1973) (White, J., dissenting) (explaining in detail how plaintiff’s school district, despite its willingness to tax at a higher rate to achieve greater school funding, is circumstantially and statutorily prevented from actually achieving school funding levels anywhere close to wealthier neighboring districts).
226 To illustrate using two of the districts referenced in the introduction to this Article, in 2012 Northbrook School District 28 had an equalized assessed property (“EAV”) value of $977,894 per student, and taxed at a rate $1.89 per $100 EAV. ILLINOIS INTERACTIVE
property poor districts have the political will and popular support to tax at any rate necessary to match wealthier districts, Illinois sets a maximum rate at which districts may tax.\textsuperscript{226} Wealthy school districts are then free to set rates much lower than poor districts and still generate much greater revenues. This greater revenue subsequently allows wealthy districts to gain more experienced teachers, classroom technology, smaller class sizes, and newer school facilities.\textsuperscript{227} Moreover, the Illinois School Code permits the State Board of Education to assume temporary fiscal control over financially-challenged districts, further eroding the notion that current laws provide any meaningful financial autonomy, and thus local control, to school districts.\textsuperscript{228} 

Local control, of course, also refers to other areas of educational planning, including setting curriculums, staffing schools, and managing school facilities.\textsuperscript{229} Here too, more recent changes in education policy have significantly reduced the amount of local control districts are able to exert over day-to-day operations.\textsuperscript{230} As part of the state’s application for funding under the U.S. Department of Education’s Race to the Top program,\textsuperscript{231} the Illinois state legislature passed the Performance Evaluation Reform Act (“PERA”) in 2010, increasing state control over how teachers are evaluated, tenured, and dismissed.\textsuperscript{232} Under PERA, school districts reviewing teacher performance must incorporate the use of data on student growth, based on state guidelines, as a significant factor in rating teaching performance.\textsuperscript{233} In June 2011, Governor Pat Quinn signed into law Public Act 97-8 (commonly referred as “Senate Bill 7”), expanding the use...
of student test scores by tying results more closely with teacher tenure and dismissal procedures. Under Senate Bill 7, seniority—the length of time a teacher has taught at a given school district—is now equally weighed against all other factors (such as teacher evaluations and other merit-based factors) when districts make employment decisions.

The state has taken control over other areas of local education policy. Districts with schools that fail to meet Adequate Yearly Progress benchmarks under No Child Left Behind must formulate school improvement plans subject to approval by the Illinois State Board of Education, and may also be monitored and assessed by the State Board. The Board also requires all school children to meet certain annual curriculum goals, and districts to administer statewide standardized tests. All Illinois public schools are obligated to provide special education services pursuant to state and federal standards under the Individuals with Disabilities Education Act, the primary piece of federal legislation addressing education for disabled students. Finally, the push for charter schools in some of the state’s poorest neighborhoods has ceded local control not to the state, but to private nonprofit and for-profit organizations. Local control is thus no longer a relevant, legitimate basis for Illinois courts to avoid striking down the current education funding system, and should be attacked by future plaintiffs.

V. PROPOSAL

Forty-three years after 1970 Illinois Constitutional Convention, the Illinois state legislature has failed to answer Article X’s “urgent prayer for a fair solution” to education


235 2011 Ill. Legis. Serv. P.A. 97-8 (S.B. 7) (West). Senate Bill Seven requires districts to group teachers into various categories based on their most recent performance evaluation. Id. In the event of reductions in force, districts must dismiss teachers based on these categories starting with the lowest rated teachers. Id.; see also HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN LLP, supra note 234 (summarizing changes made in Senate Bill Seven). None of this is to say that performance-based evaluations are poor education policy; rather, these laws merely illustrate that the traditional concept of local control has significantly diminished in the current push for educational reforms.

236 See Complaint, supra note 30; see also Public Education—School Funding Litigation, supra note 184 (providing additional information about the suit).


238 105 ILL. COMP. STAT. ANN. 5/2-3.64; see also supra Part IV-A (discussing the implementation of the ISAT and PSAE standardized tests in Illinois schools).

239 105 ILL. COMP. STAT. ANN. 5/14-1.01. Under the Individuals with Disabilities Education Act, schools have an affirmative duty to identify children requiring special education services, develop individualized education plans designed to meet the unique needs of each special education student, and conduct regular monitoring and evaluation of student performance. See ILL. ADMIN. CODE tit. 23, § 226.50 (2013) (“A free appropriate public education (“FAPE”) as defined at 34 CFR 300.17, must be made available by school districts to children with disabilities in accordance with 34 CFR 300.101 through 300.103.”); Id. § 226.100 (“Each school district shall be responsible for actively seeking out and identifying all children . . . within the district . . . who may be eligible for special education and related services.”); 34 C.F.R. § 300.131 (2013) (“Each [Local Education Agency] must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district . . .”). See generally Building the Legacy: IDEA 2004, U.S. DEPARTMENT OF EDUC., http://idea.ed.gov/explore/home (last visited Sept. 16, 2013) (providing information on IDEA); Individuals with Disabilities Education Act Amendments of 1997 (IDEA), ILL. STATE BOARD OF EDUC., http://www.isbe.net/spec-ed/html/idea.htm (last visited Sept. 16, 2013) (providing information of IDEA’s implementation in Illinois public schools).

240 See generally Catalyst In Brief: Chicago’s Charter Schools, CATALYST CHIL (Community Renewal Soc’y), Feb. 2010, available at http://www.catalyst-chicago.org/assets/assets/extra/InBrief-Charters-Feb10.pdf (providing an explanation of charter schools). Chicago International Charter Schools, for example, utilizes a mix of non-profit and for-profit educational management organizations to oversee its thirteen Chicago campuses. Id. Although charter schools in Illinois are subject to periodic state review, they are exempt from many of the reporting requirements public schools must follow. Id.
funding inequality. Instead, the state’s public schools have faced perpetual funding crises and chronic disparities in educational spending between districts. Sweeping local remedies have had little success in improving educational equality, and popular national reform policies—particularly the push for charter schools—have had mixed results. Further, recent state budget deficits have only further strained public schools.

Even so, true public education finance reform in Illinois remains elusive due to its political sensitivity. The quality of local schools plays a fundamental role in how Americans select communities to live in and is intimately related to housing prices. Moreover, there has long been a political divide between urban, suburban, and rural state representatives, each of

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241 See Buresh, supra note 2, at 126 (noting that Article X was intended by the 1970 Convention delegates to be an “urgent prayer” to reform the state’s school funding system); Secter, supra note 2 (noting the failure of the Illinois legislature to pass meaningful funding reforms); Wilson & Wilson, supra note 148 (noting that the 1970 Convention delegates’ plea for funding reform has gone unanswered); supra Part III-B (discussing the failed effort to amend Article X in 1992).

242 See Secter, supra note 2 (stating that Illinois schools have “lurched” from one funding crisis to the next); Malone & Long, supra note 3 (discussing cuts to education funding in the current state budget, as well as outstanding debts owed to school districts).

243 See supra Part III-A (explaining how the current public education funding system produces large disparities in per-pupil spending in different districts).

244 Approximately 2.3 million American school children attend about 6,000 charter schools across the country during the 2012-13 school year, a figure that has increased by 80% since 2009. CTR. FOR RESEARCH ON EDUC. OUTCOMES, STAN. U., NATIONAL CHARTER SCHOOL STUDY 2013 I (2013) [hereinafter NATIONAL CHARTER SCHOOL STUDY 2013], available at https://credo.stanford.edu/documents/NCSS%202013%20Final%20Draft.pdf. The efficacy of charter schools as compared to traditional public schools remains inconclusive. See Stephanie Banchero, Daley School Plan Fails to Make Grade, CHIC. TRIB. (Jan. 17, 2010), http://articles.chicagotribune.com/2010-01-17/news/201001160276_1_charter-schools-chicago-reform-urban-education (discussing the failure of Renaissance 2010, former Chicago Mayor Richard Daley’s signature education reform initiative, to improve academic performance and test scores in Chicago Public Schools). In a 2009 study of 2,403 charter schools in fifteen states and the District of Columbia, researchers found that only 17% of charter schools outperformed their local public school alternative in math achievement goals, while 46% performed about the same as their counterpart public school, and 37% performed worse than their counterpart school. CTR. FOR RESEARCH ON EDUC. OUTCOMES, STAN. U., MULTIPLE CHOICE: CHARTER SCHOOL PERFORMANCE IN 16 STATES (Jan. 2009) [hereinafter MULTIPLE CHOICE], available at http://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf. Although the Center for Research on Education Outcomes found improvements in charter performance in a follow-up study published in 2013, the Center nonetheless noted “charter school quality is uneven across the states and across schools.” See NATIONAL CHARTER SCHOOL STUDY 2013, supra, at 3. The follow-up study found charters outperformed traditional public schools in 16 of 27 states studied with regard to reading learning gains, but only 12 of 27 states with regard to math gains. Id. at 52.

245 See Malone & Long, supra note 3 (discussing cuts to education funding in a recent state budget); Garcia & Pearson, supra note 3 (further discussing levels of education spending in the state).
whom serve very different constituencies and school districts with very different economic needs.\textsuperscript{248}

Since the United States Supreme Court’s decision in \textit{Rodriguez}, the path to education finance reform has run not through state legislatures, but rather through state supreme courts.\textsuperscript{249} In twenty-seven states, challenges to property tax-based financing systems have been successful, and new cases continue to be litigated.\textsuperscript{250} The Illinois Supreme Court’s rulings in \textit{Edgar} and \textit{Lewis E.}, however, firmly placed the court within a small minority that have refused to hear education litigation due to the court’s belief that such questions are political and thus not justiciable.\textsuperscript{251} Despite the barrier to future litigation ostensibly erected by these cases, plaintiffs should continue to challenge the state’s unjust funding system and the court’s questionable education funding jurisprudence.

This Part will first examine how increasing education funding can help improve student performance. Next, it will discuss the importance of building statewide political consensus before future plaintiffs initiate litigation. This Part will then argue that the Illinois Supreme Court should hear future litigation cases on the merits, and should find a guarantee of a minimally adequate education level in the Illinois state constitution’s education article. Finally, this Part will urge the Illinois state legislature to recognize that a truly effective education funding system requires consideration of each district’s individual needs rather than a system that simply equalizes funding for districts across the board.

\textit{A. Increasing Education Funding Improves Academic Performance in Public Schools}

Before discussing the path forward for future litigants, it is worth examining whether increased education funding does, in fact, improve educational performance.\textsuperscript{252} Perhaps surprisingly, researchers have only recently attempted to analyze the relationship between education spending and student achievement.\textsuperscript{253} Moreover, studies examining this relationship are inherently difficult to design and often suffer from a lack of useful data.\textsuperscript{254} Even so, studies published in the last fifteen years suggest that increasing education funding can have a

\textsuperscript{248} See Secter, supra note 2 (noting Illinois voters’ and representatives’ unwillingness to increase funding for districts other than their own); supra note 104 and accompanying text (discussing the political divide between urban, suburban, and rural state representatives over the proposed 1992 amendment to Article X of the Illinois State Constitution).

\textsuperscript{249} See generally Brooker, supra note 39 (summarizing state-level education funding reform litigation post-\textit{Rodriguez}); NAT’L EDUC. ACCESS NETWORK, http://schoolfunding.info/ (last visited Sept. 16, 2013) (providing information on school funding litigation across the country).

\textsuperscript{250} See NAT’L EDUC. ACCESS NETWORK, supra note 249 (summarizing litigation results across the United States).

\textsuperscript{251} See O’Neill, supra note 27, at 560-61 (noting that seven states, including Illinois, have dismissed education funding cases based on the state’s political question doctrine). For examples of education funding cases in other states that have also refused to decide cases on the merits because due to nonjusticiability, see Nebraska Coalition for Education Equity & Adequacy v. Heineman, 731 N.W.2d 164, 182-83 (Neb. 2007) and City of Pawtucket v. Sundlun, 662 A.2d 40, 57-59 (R.I. 1995).

\textsuperscript{252} In \textit{Rodriguez}, the United States Supreme Court questioned whether reforming school funding would actually benefit children in poor districts. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 56-59 (1973) (“The complexity of these problems is demonstrated by the lack of consensus with respect to whether it may be said with any assurance that the poor, the racial minorities, or the children in over-burdened core-city school districts would be benefited by abrogation of traditional modes of financing education.”).

\textsuperscript{253} See Dennis J. Condron & Vincent J. Roseigno, Disparities Within: Unequal Spending and Achievement in an Urban School District, 76 SOC. EDUCATION 18, 32 (2003) (“The analysis of the link between spending and achievement at the school level is in its infancy.”); David Card & A. Abigail Payne, School Finance Reform, the Distribution of School Spending, and the Distribution of Student Test Scores, 83 J. PUB. ECON. 49, 68 (2002) (noting that at the time of their study, there was “relatively little direct evidence linking school finance reforms to student outcomes” and that “research on the generic effects of school spending is controversial”).

\textsuperscript{254} Student performance may be influenced by a number of variables, and education funding disparities may manifest themselves in different ways at different schools, including differences in teacher education, quality of facilities and instructional material, and the talent of district administrators. See Condron & Roseigno, supra note 253, at 21. Many studies to date have focused on district-level measures of education spending and student performance, yet spending between schools within the same district is itself often unequal. See id. at 20 (noting that variations in spending between schools within the same district can make studies examining school funding and student academic performance unreliable). Moreover, the availability of school-level spending and academic achievement data varies from state to state, making large-scale studies difficult. See id.
meaningful, tangible impact on student performance. One 2002 study examining the impact of school funding litigation found that, in twelve states where judicial invalidation of the education funding system resulted in an increase in funding for poorer districts, Scholastic Aptitude Test (“SAT”) test scores increased by about five percent. A 2003 study examining the impact of funding differences between elementary schools within the same district found that schools that spent more money per pupil generally had more highly educated teachers and better-maintained facilities. Consequently, students at schools that spent more per pupil outperformed students at poorer schools within the district on state academic assessment tests. The study’s authors found that a $1,000 increase in educational spending correlated to a 6 to 10% increase in the number of students at a school passing the state assessment tests.

In Illinois schools, a 2008 study also suggested that increasing student funding corresponds to improved test scores. Notably, the analysis first looked at data only from districts with less than 8% of students below the poverty line. This was done to help control for external valuables that often impact poorer students, such as lack of parental support or reinforcement of education in the household. An analysis of student performance on the ISAT versus per-pupil instruction spending suggested performance improved with each additional $1,000-2,200 spent per-pupil. A similar analysis was also conducted using data from schools with 27 to 32% of their student population in poverty, and found a similar correlation between spending and performance.

A comparison of per-pupil expenditure in Cook County school districts versus performance on various standardized tests also seems to suggest a general correlation. The following charts contain spending and testing data from all elementary and high school districts in Cook County (note that the data does not include Chicago Public Schools and other unit districts). For high school students, there appears to be a fairly strong relationship between spending and performance on both the PSAE and ACT. For elementary school students there does appear to be a relationship, however the correlation appears to be weaker than for high school students. Data were obtained from the Illinois Interactive Report Card.

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255 See Myron Orfield, The Region and Taxation: School Finance, Cities, and the Hope for Regional Reform, 55 BUFF. L. REV. 91, 114 (2007) (citing various studies of reform effects as evidence that funding reform can improve academic achievement); Condron & Roscigno, supra note 253, at 20-21; Card & Payne, supra note 253, at 79-80; Susanna Loeb & Marianne E. Page, Examining the Link Between Teacher Wages and Student Outcomes: The Importance of Alternative Labor Market Opportunities and Non-Pecuniary Variation, 82 REV. ECON. & STAT. 393, 403, 406 (2000) (examining the impact of higher teacher salaries on student performance).

256 Card & Payne, supra note 253, at 80 (finding an increase in SAT scores following education funding reforms).

257 Condron & Roscigno, supra note 253, at 29. The study compared eighty-nine public elementary schools in Ohio’s Columbus Public School District. Id. at 23. Despite operating within the same district, total per-student spending ranged from $3,045 to $8,165 amongst the elementary schools. Id. at 20. The authors attributed this variation to several factors, including political pressure on elected school board members to satisfy wealthier residents of the district, variations in grant money to rich and poor schools, selection biases in distributing local and state funds, etc. See id. at 21.

258 Id. at 30.

259 Id.

260 See CTR. FOR TAX & BUDGET ACCOUNTABILITY, supra note 11, at 11 (“The big question remaining, however, is whether increased investment in instruction generates better academic performance. . . . [T]he answer appears to be a resounding yes.”).

261 Id.

262 Id. at 12.

263 Id. at 11.

264 Id. at 12.

265 See ILLINOIS INTERACTIVE REPORT CARD, supra note 8. A spreadsheet containing the data used to create these charts is on file with the author.
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Increased educational spending can also benefit students beyond mere standardized test scores. A 2012 report by the Brookings Institution found that having a high-performing teacher (measured in terms of a teacher’s impact on her students’ test scores) for just one school year can increase a student’s net lifetime earnings by $6,400, increase the likelihood a student attends college by 1.7%, and reduce the likelihood of teen pregnancy by 1.7%. As noted earlier in this Article, wealthier districts are much more likely to employ teachers with advanced degrees, and may generally be more attractive to more experienced and talented educators. Similarly, a 2000 study found that increasing teacher salaries by 10% could ultimately decrease student dropout rates by 3-6%.

B. New Plaintiffs in Education Funding Cases Must Build State-wide Consensus and Political Support

The inherent political sensitivity of school funding issues will require future plaintiffs to build political consensus around funding reform before their cases reach the courts. The Kentucky plaintiffs in Rose v. Council for Better Education, generally considered to be the first major adequacy claim plaintiff victory before a state supreme court, consciously built public awareness and support for funding reform before the case was tried. This included convening education town hall events across the state, meeting with various civic organizations, issuing numerous reports, and building support among the state’s business community. Publicity efforts focused on funding issues facing all schools in the state, and purposefully avoided characterizing reform as a redistribution or equalization of school funding wealth. This approach was crucial in minimizing opposition to the litigation from wealthier districts in the state.

267 See supra text accompanying note 12 (providing data showing that Illinois schools in wealthier districts often have several times more teachers with advanced degrees than schools in poorer districts).
268 See Condron & Roscigno, supra note 253, at 22 (noting that “most highly credentialed teachers . . . are concentrated in high [socio-economic status], white schools with, arguably, higher per-pupil expenditures” and that “[s]uch schools may be more attractive to teachers because of real or perceived differences in quality or more tangible classroom resources that are tied to instructional expenditures (e.g. computers, books, and the availability of teacher’s aids”).
269 Loeb & Page, supra note 255, at 403.
270 See supra text accompanying note 104 (discussing the political volatility of school funding issues in Illinois); Orfield, supra note 255, at 120-25 (discussing the importance of building political consensus in school funding cases).
273 See Orfield, supra note 255, at 122 (referring to this strategy as the “anti-Robin Hood” approach). A common concern amongst opponents of education funding reform is that it would substantially reduce funding for the schools that are performing well, because these schools tend to be in wealthier neighborhoods. See Buresh, supra note 2, at 102 (noting that a minority of the 1970 education committee feared that reforming the funding system would negatively impact schools already achieving high-level academic performance); Secter, supra note 2 (noting that Illinois residents have generally disfavored increasing funding for districts outside of their own).
274 See Orfield, supra note 255, at 122 (noting that the “anti-Robin Hood” approach made education funding reform palatable to all districts).
Similarly, building comparable political consensus in Illinois is important. State supreme court justices may be more influenced by current political trends than their federal counterparts. Unlike federal judges, state supreme court justices in many states, including Illinois, are popularly-elected and do not serve life terms (in Illinois, they serve ten year terms). State supreme courts also generally play a greater role in setting public policy than federal courts. Furthermore, both Edgar and Lewis E. featured a limited number of district plaintiffs; increasing popular support may aid in including a larger, more diverse body of district plaintiffs in future litigation, thereby increasing the political pressure on the court to hear the case on the merits.

Should a future challenge prove successful, building political consensus may also encourage state lawmakers to work quickly towards a reformed funding system. In Edgar and Lewis E., as well as Rose in Kentucky, plaintiffs have merely sought a declaration that the current funding system is unconstitutional. Following the court’s ruling, the onus for fashioning a new funding system shifts to the state legislature, without an explicit framework for a new funding system. As past cases demonstrate, state legislatures are often slow to act on education finance reform. Public demand for reforms in school funding may thus act as a spur to legislative inertia and partisan gridlock.

There is evidence to suggest that a broad base of political support for funding reform could be built in Illinois. The vast majority of Illinois public schools are either “foundational” or “alternative” grant schools, meaning that most schools should have some interest in receiving greater funding from the state. Moreover, the failed attempt at reforming Article X of the Illinois State Constitution in 1992 received bi-partisan support from urban Democrats and rural

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275 See Swenson, supra note 98, at 1152-54 (finding that elected supreme court justices were somewhat more likely to strike-down school funding systems). It should be noted, however, that Swenson’s article found that, because even appointed justices often face retention elections, the relationship between the method of judicial appointment in a state supreme court and the justices’ likelihood of striking-down a state finance system is not entirely clear. Id.

276 U.S. CONST. art. II, § 2, cl. 2 (granting the President the power to appoint “judges of the Supreme Court, and all other Officers of the United States,” which includes judges in lower federal courts); U.S. CONST. art. III, § 1 (granting federal judges lifetime tenure); ILL. CONST. art. VI, § 10, 12(a); see also GA. CONST., art. VI, § 7, ¶ 1 (providing for the election of Georgia state supreme court judges); MINN. CONST., art. VI, § 7 (providing for the election of Minnesota state supreme court judges); TEX. CONST., art. V, § 2(c) (providing for the election of Texas state supreme court judges); WASH. CONST., art. IV, § 3 (providing for the election of Washington state supreme court judges); WIS. CONST., art. VII, § 4 (providing for the election of Wisconsin state supreme court judges).

277 See supra note 164 and accompanying text.

278 The Edgar suit was brought by roughly thirty-seven districts (and additional individuals), and in Lewis E. the local district was a defendant. Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1180 (Ill. 1996); Lewis E. v. Spagnolo, 710 N.E.2d 798, 800 (Ill. 1999). In contrast, the body of plaintiffs in Rose initially included a coalition of sixty-six districts, and was later joined by districts from five additional counties. Rose v. Council for Better Educ., 790 S.W.2d 186, 190 (Ky. 1989).

279 See Orfield, supra note 255, at 120-25 (noting the positive influence Rose and its surrounding reform advocacy efforts had on Kentucky’s legislature).

280 See Edgar, 672 N.E.2d at 1180; Lewis E., 710 N.E.2d at 801-02; Rose, 790 S.W.2d at 190.

281 See, e.g., Litigation—Kentucky, supra note 271 (noting that the Kentucky legislature was ultimately responsible for fashioning school funding reforms with minimal guidance from the Kentucky Supreme Court).

282 See supra Part III-C (noting that legislative reform following judicial invalidation of a school funding system can often take several years).

283 See generally Hunter, supra note 272, at 499-516 (discussing reform in Kentucky following Rose); Orfield, supra note 255, at 120-25 (arguing that advocacy efforts helped spur the Kentucky state legislature to enact meaningful reform following Rose).

284 See supra Part III-B (noting that there was bipartisan support for the failed 1992 amendment to Article X); CTR. FOR TAX & BUDGET ACCOUNTABILITY, supra note 11 (discussing how both urban and downstate school districts have a strong interest in education funding reform, suggesting that both Chicago-area Democrats and downstate Republicans should be able to reach consensus on the issue).

285 In 2011, approximately 73.1% of Illinois’ public school children were served by foundation level districts, 21.9% of students attended alternate formula districts, and just 5.0% of students attended flat grant districts. GENERAL STATE AID, supra note 83; see also CTR. FOR TAX & BUDGET ACCOUNTABILITY, supra note 11, at 6 (providing a similar breakdown of how many students attend each type of district).
Republic legislators. These instances of past statewide support for reform suggest that future challenges to current funding system can once again be built.

**C. The Illinois Supreme Court Should Hear Future Funding Litigation on the Merits, and Should Find a State Constitutional Guarantee of a Minimally Adequate Education**

Provided that future plaintiffs seek a declaratory judgment that the current Illinois school funding system is unconstitutional, the Illinois Supreme Court should not continue to dismiss such claims as non-justiciable political questions. Even if the court applies the federal *Baker* standards for determining when an issue is political—a choice that is itself questionable—education finance litigation is well within the ambit of the judiciary. The advent of state and nationwide academic standards and increased standardized testing, as well as the structure of Illinois’ school funding itself, provides easily comparable statistics with which the court can judge the fundamental constitutionality of the funding system. Moreover, there is nothing in the court’s past political question jurisprudence to suggest that it is prohibited from ruling on politically sensitive issues so long as it is not, in effect, legislating from the bench. Simply put, education finance cases require the court to do nothing more than its basic function—to judge the constitutionality of the law.

Once past the “political question hurdle” established by *Edgar* and *Lewis E.*, the court should reexamine Article X of the Illinois State Constitution and find that it guarantees some minimal level of educational quality. Although the *Edgar* court appeared to be correct in its determination that Article X does not create a mandate for centralized state funding of the public education system, it largely failed to address other salient elements of the clause. Most notably, the court’s refusal to clearly define the meaning of “high-quality,” and instead dismissing it under their aforementioned political question analysis, leaves open the potential that Article X does in fact guarantee a minimally adequate education for Illinois students. Records from the 1970 Illinois Constitutional Convention suggest that the use of “high-quality” was meant to promise something more than the “good” education promised in the constitution’s original education article. Moreover, comments from delegates following the convention, while not legally binding, further suggest that they did intend for Article X to catalyze education-funding reform.

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286 See supra Part III-B; see also CTR. FOR TAX & BUDGET ACCOUNTABILITY, supra note 11, at 6-7 (discussing generally how the state funding system negatively impacts both urban and downstate schools).

287 See supra Part IV-A (arguing that the *Edgar* and *Lewis E.* courts erred in their use of the federal political question doctrine to find education funding issues nonjusticiable).

288 See supra Part IV-A (arguing that past Illinois Supreme Court precedent in political question cases should allow the court to rule on education funding cases so long as it does not actively fashion a new funding scheme on its own).

289 See supra Part IV-A (arguing that the Illinois Supreme Court has had readily-available standards with which it can judge educational quality since at least *Edgar*, and that recent changes in standardized testing have only made such comparisons easier to make).

290 See supra Part IV-A (arguing that the most recent Illinois political question cases allow the court to rule on issues that are politically sensitive).

291 More recent school funding litigation has pressed the court only for a declaration of unconstitutionality, and has specifically acknowledged that the court should not formulate its own funding reform measures. See Complaint, supra note 30, at 15; BUS. & PROF’L PEOPLE FOR THE PUB. INTEREST, FREQUENTLY ASKED QUESTIONS REGARDING THE BP/SIDLEY SCHOOL FUNDING LAWSUIT 1 (Mar. 24, 2010), available at http://www.bpichicago.org/documents/FREQUENTLYASKEDQUESTIONS.3.24TOUSE.pdf. Moreover, state supreme courts in other states have similarly emphasized the role of the legislature in reforming funding schemes. See Orfield, supra note 255, at 117 (noting that the Kentucky Supreme Court emphasized in *Rose v. Council for Better Education* that reform is solely the legislature’s duty).

292 See supra Part IV-B (arguing that the *Edgar* court failed to adequately determine the meaning of “high-quality” in Article X).

293 See supra Part IV-B (arguing that the use of “high-quality” in the 1970 Convention draft of Article X was intended by the delegates to increase the minimum level of education adequacy promised by the Illinois State Constitution); RECORD OF PROCEEDINGS, supra note 1, at 767 (providing a transcript of debate regarding the inclusion of “high-quality”).

294 See supra Part IV-B; RECORD OF PROCEEDINGS, supra note 1, at 767.

295 See supra Part IV-B (quoting Delegate Malcolm Kamin as stating his belief that the new Article X would lead to meaningful education finance reform in Illinois).
Lastly, the court should not avoid ruling on future funding cases out of deference for the concept of "local control." The current education funding system provides meaningful choice only to the wealthiest districts, while poorer districts are politically and economically precluded from affecting real funding changes at the local level. Local control has also ceded to state oversight in many other areas, including curriculum planning, personnel decision making, and the education of disabled students. Ultimately, local control is a policy preference, not a statutory or constitutional mandate. The Illinois Supreme Court should not constrain its full authority in the face of what may well be an antiquated policy choice for public schools.

D. The Illinois State Legislature Must Understand that Schools Should Not Be Funded Equally

While an examination of alternative school funding systems is beyond the scope of this Article, it is worth noting that achieving complete equality in school funding may both be impossible and unwise. Education funding schemes that redirect money away from wealthy, academically successful school districts to poorer districts would prove highly unpopular. Furthermore, schools that are able to spend more on their students tend to perform better, and it does not make sense to pull resources away from well-functioning districts. Beyond politics, however, lies the fact that poor districts in both urban and rural areas may in fact require a greater level of funding than suburban schools to properly address issues unique to their student populations. Poorer school districts often serve students requiring more complex services, including English as a Second Language instruction, services for students with learning disabilities and/or psychiatric disorders, long-distance busing in rural areas, etc. Effective education funding reform in Illinois must therefore account for the unique needs of school districts across the state.

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296 See supra Part IV-C (arguing that, as a mere policy preference, there are no constitutional or prudential reasons why the Illinois Supreme Court must defer to the concept of local).
297 See supra Part IV-C (arguing that only wealthy districts have the financial resources to experiment with their curriculum, hire more highly-educated and talented teachers, etc., whereas poor districts are forced to tax between statutorily-specified minimum and maximum rates and generally lack sufficient financial resources to affect change in their schools).
298 See supra Part IV-C (discussing the various testing and labor laws that have centralized control of Illinois schools in the state over the past several years).
299 See supra Part IV-C (arguing that the Illinois Supreme Court is empowered to rule on the constitutionality of laws such as the current funding system, and should not defer to a traditional policy preference).
300 During the 1970 Illinois Constitutional Convention, two different drafts of Article X that would have substantially equalized per-pupil funding in all schools were roundly rejected. See Bureshi, supra note 2, at 84-86, 114-18 (summarizing the debate over Article X Section 1’s final sentence). Furthermore, the amount of money a school requires to adequately fund its students’ education is dependent on the needs and circumstances of its student body, including the prevalence of learning disabilities and other health issues. See Baker et al., supra note 5, at 7 (arguing that schools require different funding levels based on demographic differences in the student body).
301 Take, as an example, the bitter debate over the 1992 Article X amendment proposal, which led to a fistfight between downstate and suburban Chicago state representatives. See supra note 104 and accompanying text; see also Bureshi, supra note 2, at 102 (noting that a minority of delegates to the 1970 Constitutional Convention feared education funding reform would redirect funds from wealthy districts to poor districts, at the expense of students in wealthier districts).
302 See supra Part V (discussing the impact of increased per-pupil expenditures and academic performance).
303 See Baker et al., supra note 5, at 7 (“Student poverty — especially concentrated student poverty — is the most critical variable affecting funding levels. Student and school poverty correlates with, and is a proxy for, a multitude of factors that impact upon the costs of providing equal education opportunity — most notably, gaps in educational achievement, school district racial composition, English language proficiency, and student mobility. State finance systems should deliver greater levels of funding to higher-poverty versus lower-poverty settings, while controlling for differences in other cost factors.”).
304 The funding reforms devised by the Kentucky legislature following the Rose decision might serve as a model. Briefly, Kentucky’s revised funding system created base-level grants for school districts that factor in the number of poor, disabled, and special education students present in a district. See Lawrence D. Citrus et al., Ky. Dept. of Educ., Assessing the Equity of Kentucky’s SEEK Formula: A Ten-Year Analysis 3-5 (2001), available at http://education.ky.gov/districts/SEEK/Pages/Taxes.aspx (summarizing the structure and impact of Kentucky’s education funding reforms). On top of these base grants, the Kentucky system provides districts with several optional, property tax-based methods for supplementing revenues, and further provides additional state aid to proper-poor districts. See Id.; Orfield, supra note 255, at 119 (noting that Kentucky doubled its state aid to public schools following the Rose decision, significantly increasing total funding to poor school districts and essentially eliminating the link between local property wealth and per-pupil expenditures).
VI. CONCLUSION

Since the United States Supreme Court’s landmark decision in *Rodriguez*, plaintiffs have taken on inequitable public education finance systems in state courts. While many cases have been successful and resulted in significant reforms in some states, the Illinois Supreme Court effectively closed the courthouse door on funding litigation. Nevertheless, the court’s decisions in *Edgar* and *Lewis E.* are not impenetrable. The court’s refusal to judge these cases on the merits rests on questionable application of the federal political question doctrine, neglecting to consider the unique nature of state supreme courts as well as the Illinois Supreme Court’s own political question jurisprudence. Moreover, the court’s reading of the 1970 Constitutional Convention record regarding the drafting of Article X only goes halfway, failing to properly consider whether it mandates a minimum level of educational quality for Illinois students. Finally, the court shackled its own judicial authority by deferring to the concept of “local control,” a mere policy preference rather than a constitutional or even statutory dictate.

Future challenges to the Illinois education funding system may very well prove successful on these points, but it will require a comprehensive effort to build the political will necessary for enacting true education reform. Future plaintiffs should not be deterred by the magnitude of such an endeavor. Political consensus for reform has existed in the past, and it can be built again today. As school budgets continue to be cut, as school buildings continue to crumble, and as Illinois’ students continue to fall behind their peers across the nation, it will become increasingly clear that the state can longer turn its back on one of its most pressing problems.

305 See *supra* Part V-B (discussing the importance of building political consensus around funding reform before commencing litigation, and the existence of past political consensus in Illinois).

306 Illinois has some of the largest “performance gaps”—differences in academic performance between specific demographic groups—in the nation. In 2011, there was a 33% difference in the number of non-low-income 4th graders and low-income 4th graders who could read proficiently, the 5th greatest disparity in the nation. *Advance Ill.*, THE STATE WE’RE IN: A REPORT CARD ON PUBLIC EDUCATION IN ILLINOIS 7 (2012), available at http://www.advanceillinois.org/filebin/swi_2012/Adv_Ill_Report_Card-Nov12.pdf. There was a 27% difference in the number of white and Latino 4th graders who read proficiently—the 11th worst in the nation—and a 33% gap between white and black 4th grade readers—the 5th worst in the nation. *Id.* A comparison of Illinois 8th graders’ math proficiency found similar disparities between these demographic groups, with Illinois ranking in the bottom 20 of states in all three comparison categories. *Id.* Illinois also ranked 34th in the nation in high school graduation rates, 41st in worst (greatest) K-12 student suspension rate, 41st in the minimum number of K-12 instruction hours per year, and 40th in the number of high school graduates attending college. *Id.* at 21-22, 24.