Dividing the Pie More Evenly: Post-\textit{Rodriguez} Judicial and Legislative Alternatives to School Financing in Illinois

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Judicial and Legislative Alternatives to
School Financing in Illinois

The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of various States, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this Court’s action today is not to be viewed as placing its judicial imprimatur on the status quo . . . . But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.¹

With these words, a raging court battle that had focused on equality of educational financing came to an end. The Supreme Court’s five to four decision in San Antonio Independent School District v. Rodriguez² has deterred³ judicial challenges to various public school financ-

¹. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 58-59 (1973). The Court gave several additional reasons for imposing the traditional limitations on its function. There was a lack of consensus over whether the poor, the racial minorities or the children in overburdened core-city school districts would be helped or harmed by the dismantling of the present school financing schemes. Also, there was some evidence that any attempts to achieve equality in expenditures would lead to higher taxation and lower educational expenditures in urban areas. Furthermore, there was a question of whether increased spending would bring about a corresponding increase in the level of education.


³. In Mitchell v. W.T. Grant Company, 416 U.S. 600 (1974), the Supreme Court distinguished its prior decision in Fuentes v. Shevin, 407 U.S. 67 (1972) in a six to three decision. The Court held that state laws which permitted a state court to authorize seizure of goods, without prior notice to debtor-in-possession or opportunity for hearing, upon ex parte application of creditor who asserts in a sworn affidavit delinquency in payment and belief that debtor would “encumber, alienate or otherwise dispose of” goods during pendency of judicial proceedings did not violate the fourteenth amendment’s due process clause. In a dissenting opinion, Justice Stewart criticized the opinion of the Court. He said that the case was “constitutionally indistinguishable from Fuentes v. Shevin.” 416 U.S. at 634. The effect of the Court’s decision was not to distinguish the case from Fuentes but to reverse its earlier decision. Justice Stewart said that the only perceivable change that could account for the decision was a change in the Court’s membership, rather than a change based on constitutional principles. If Justice Stewart’s analysis is correct, it is conceivable that a future change in the Court’s composition may also result in a reversal of Rodriguez, thus allowing a resumption of challenges to school financing schemes under the equal protection clause of the Constitution.
Illinois School Financing

Challenges had been launched in the courts against financing schemes that were heavily dependent upon the local property tax for producing school revenues. Numerous plaintiffs had argued that it was inequitable to raise the bulk of a school district’s budget through local taxation where there existed wide wealth disparities among school districts. The plaintiffs claimed that funding education through local taxation was especially inequitable to residents with the least property wealth since those residents were also the poorest in terms of income and could not afford the costs of an education equivalent to that provided in the more wealthy districts.

Two years have passed since the Supreme Court handed down its opinion in the Rodriguez case. With this passage of time, it is now appropriate to reexamine the school finance reform movement and to discuss alternative judicial and legislative solutions. It must be stated at the outset that this article takes the position that the most equitable school financing scheme is one that provides equal educational opportunity to children. Though there is no precise definition of equal educational opportunity, the concept involves the basic notion that all children should be treated equally in some defined fashion. One result of equal educational opportunity is the curtailing of the rights of an individual school district to spend as it chooses. However, arguments have been made that school financing schemes could be reformed without restricting the rights of a school district to provide for the level of education its residents desire.

Those who advocate equal educational opportunity seek to reform educational financing schemes that are heavily dependent upon local property wealth. One state using this type of financing scheme is Illinois. To place the problems and solutions of educational financing into sharp focus, this article will examine financing of education in Illinois. But, clearly, the discussions and conclusions stated herein have applica-

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bility to all states whose school systems depend upon local wealth for
financing.

Prior to the Supreme Court's decision in Rodriguez, one of the fre-
quently used approaches to reforming school financing schemes was
through the courts. Even after Rodriguez there are still some avenues
of judicial attack open, but the focus is now on legislative change. In
discussing the financing of education, three areas will be considered.
First, an overview of school financing systems will be presented. Sec-
ond, a brief summary of the past judicial challenges and current at-
ttempts at judicial reform in the state courts will be examined. Finally,
the various legislative reforms pertaining to alternative ways to raise
and distribute educational funds will be discussed.

PART I: HOW SCHOOLS ARE FINANCED

The Property Tax

In Illinois, local taxes produce 54 percent of the revenues for the
public school system.5 The state government provides about 40 per-
cent of the school revenues through state aid programs. The remain-
ing 6 percent of the revenues is contributed by the federal govern-
ment.6

Local revenue for education is produced by the property tax which
is the product of the assessed valuation of property in the district mul-
tiplied by the rate at which the community is willing to tax itself. As
a result of dependence upon local wealth for school funding, there are
great disparities among districts in the amount of money available for
education. Two districts with different property wealth may choose to
tax at the same rate, but the poorer district will raise less money than

5. NATIONAL EDUCATION ASSOCIATION, RANKINGS OF THE STATES, 1974, at 49
(1973). In 18 other states, local taxes produce an even greater percentage of the reve-
nues for the public schools.

6. OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE, LOCAL AND
FEDERAL PUBLIC SCHOOL FINANCING FOR ILLINOIS, 1973-74, at 4 (1973) [hereinafter
cited as PUBLIC SCHOOL FINANCING]. In 1973, Congress passed the State and Local
Fiscal Assistance Act. 31 U.S.C. 1221 et seq. Popularly known as the revenue sharing
bill, this Act provides unrestricted federal aid to the states. In the first 18 months of
the program's existence, Illinois received about $116 million. In the next 12 months,
during fiscal 1974, the state received $110 million. The estimate for fiscal year 1975
is about the same. In 1974, $110 million had been given to aid education. However,
in a telephone interview on July 2, 1974, the Illinois Director of Finance and Claims
in the Office of the Superintendent of Public Instruction, stated that availability of the
federal revenue sharing money does not result in an increase in the educational budget
by $110 million. With federal revenue sharing money allocated to education, money
that would have been used in this area is now diverted to other state activities. The
educational share of the state budget has continued to be about 20 percent, as it was
before revenue sharing came into existence.
the richer one. Some critics of present school financing schemes argue that a poorer district which taxes as heavily as a richer one should receive the same revenues without regard to actual district wealth. These critics have urged that the amount of money available to finance education should not be a function of the wealth of an individual district but rather of the wealth of the state as a whole.

During the past decade, school districts have faced acute financial strains. Expenditures for public education rose at an annual rate of 10 percent while the average annual increase in the market value of real property was about 4.6 percent. In Illinois, from 1949 to 1970, the average annual increase of the value of real property was 7.7 percent. But, in over half of these 22 years, the increase was less than 3.5 percent. The slow growth in the tax base has been compounded by the growing reluctance of voters to approve increases in the school tax rate. Another reason that the property tax is failing to produce adequate revenue for educational purposes is the increase in demand placed upon the tax to fund non-educational services, e.g. police, sanitation.

The property tax has several important advantages. Unquestionably, the property tax produces a great deal of revenue. In Illinois, the tax accounts for 43 percent of all state and local taxes. In addition to the large amounts of money this tax produces, its stability is highly desirable. The stability of the tax results from the fact that it is not closely linked to short term economic fluctuations, while other taxes, such as sales and income, will vary greatly as the economy shifts. The infrequent reassessment of property also contributes to the stability of the property tax.

7. See pp. 128-30 infra for a discussion of an alternative distribution scheme, termed “district power equalizing,” which provides funds without regard to local district wealth.
10. ILL. BUREAU OF THE BUDGET, STRENGTHS AND WEAKNESSES OF THE LOCAL PROPERTY TAX 4-8 (1972) [hereinafter cited as PROPERTY TAX].
11. In a telephone interview with Richard Carlson, Assistant Director of the Bureau of the Budget for Education of Illinois, on September 5, 1974, Carlson stated that last year over 80 percent of the budgets submitted to the voters in Illinois were rejected. Several reasons have been offered by educators for the rejection of the budgets. One reason advanced is that voters are discontented with higher taxes and the defeat of the school budget is a way to manifest distaste for higher taxes. Another reason for the rejection of the budget is the belief among voters that increases in expenditures would be eaten up by teachers' salaries without any corresponding increase in the quality of education.
12. PROPERTY TAX, supra note 10, at 3.
13. Id. at 8.
Despite both its adequacy and stability, the property tax has been the subject of widespread criticism. The primary problem has been the regressive nature of the tax.\textsuperscript{14} In 1967, in Illinois, property taxes constituted 6 percent of the income of those taxpayers earning under $2,000. As income rose, the property tax as a percentage of income decreased until it reached 2.1 percent for those taxpayers who earned $15,000 and over.\textsuperscript{15} The tax has been criticized because it is inelastic\textsuperscript{16} and inefficient to administer. While stability is generally an advantage, the slow growth of the tax results in its falling behind other taxes as a revenue producer during periods of economic growth. In comparison, the property tax produces revenues at a slower rate than either sales or income taxes under these conditions.\textsuperscript{17} The property tax is difficult to administer because of the subjectivity inherent in assessment. Despite objective criteria, the value of any piece of property is what the assessor believes it to be. This subjectivity means that the assessment ratios on different types of property vary widely among and within assessment districts.\textsuperscript{18}

**Tax Effort and Revenue**

There are two factors which determine whether a district is consid-

\textsuperscript{14} A regressive tax is one where persons with lower incomes pay a higher percentage of income in taxes than those with higher incomes. Taxes may also be progressive or proportional. A progressive tax requires persons with higher incomes to pay a higher percentage of their incomes in taxes than those with less income. A proportional tax requires everyone to pay the same percentage of their income in taxes.

\textsuperscript{15} OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, FINAL REPORT OF THE SUPERINTENDENT'S ADVISORY COMMITTEE ON SCHOOL FINANCE 96 (1973) [hereinafter cited as FINAL REPORT].

\textsuperscript{16} PROPERTY TAX, supra note 10, at 19. The measure economists use to judge the responsiveness of a tax in producing revenue as the amount of income grows on a national scale is the "coefficient of elasticity." The coefficient of elasticity of a tax is obtained by computing between two years, the percentage increase in revenues of a tax, the percentage increase in income (often in terms of the gross national product) and then dividing the former by the latter. For example, if between two years, revenues from a tax increased 4 percent while personal income increased 5 percent, the coefficient of elasticity of this tax would be $0.04/0.05 = 0.8$. For this tax, a 1 percent increase in personal income would generate an .8 percent increase in revenues. Where the coefficient of elasticity is less than one, the tax is said to be inelastic; greater than one, elastic and one, unitary elasticity. The following is a table of taxes with their elasticity ranges:

<table>
<thead>
<tr>
<th>Tax</th>
<th>Elasticity Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Income</td>
<td>1.5 - 1.80</td>
</tr>
<tr>
<td>General Sales</td>
<td>0.9 - 1.05</td>
</tr>
<tr>
<td>Property</td>
<td>0.7 - 1.10</td>
</tr>
</tbody>
</table>

\textsuperscript{17} Id. See ILL. BUREAU OF THE BUDGET, ALTERNATIVE REVENUE SOURCES FOR FINANCING ELEMENTARY AND SECONDARY EDUCATION IN ILLINOIS 6 (1972) [hereinafter cited as REVENUE SOURCES].

\textsuperscript{18} GOVERNOR'S COMMISSION ON SCHOOLS, A NEW DESIGN: FINANCING FOR EFFECTIVE EDUCATION IN ILLINOIS 43-45 (1972) [hereinafter cited as NEW DESIGN]. In Cook County, the assessed values of property vary widely. The median assessment for a residential home was 22 percent of market value; for a modern apartment, 27 percent; for an old style combination store and apartment building, 42 percent; and for vacant land, 13 percent.
Illinois School Financing

...erened rich or poor in the area of school finance: (1) overall wealth of the school district, and (2) the number of students residing in the district. Thus, district wealth is always measured in terms of property wealth per pupil. With respect to the first factor, there are wide disparities in property wealth among school districts. In Illinois, in 1972, assessed valuations per pupil for elementary districts ranged from $5,388 to $403,024; for secondary districts, $23,945 to $246,980; for unit districts, $3,544 to $101,908. The wide disparities in assessed valuation per pupil among districts enable the wealthier ones to raise revenue more easily than the others. A tax rate of $1 per $100 of assessed valuation, in the wealthiest elementary district in Illinois, produces almost 75 times the revenue per pupil as the same tax rate in the poorest district. In secondary districts, the ratio is 10:1 and in unit districts, 28:1. But the second factor, the number of pupils within a school district, is equally significant in explaining wealth disparities among districts. A community may have a large amount of wealth behind each pupil because a large industrial concern is located in the district, and there are only a few school age children. Other districts may consist of primarily residential property with many school age children.

Though wealth per pupil is important in determining the amount of money available to finance education, the local tax rate also plays an important role. There is as great a variation in tax rates as there is in local wealth. In 1970-71, in Illinois, rates for unit districts ranged from $.80 to $3.09; for elementary districts, from $.36 to $2.68; and for secondary districts, from $.67 to $2.33. Yet, the situation is not ameliorated by a greater tax effort on the part of poorer districts. Even when the poor districts tax themselves at much greater rates, these districts usually cannot raise as much money as the richer districts. In part, poorer districts cannot tax above certain maximums.

<table>
<thead>
<tr>
<th>School District</th>
<th>Rich Total Tax Rate</th>
<th>Rich Assessed Valuation Per Pupil</th>
<th>Rich Operating Expenditures Per Pupil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rosemont S.D. 78</td>
<td>1.556</td>
<td>$128,879</td>
<td>$1342.03</td>
</tr>
<tr>
<td>Rhodes S.D. 84-5</td>
<td>1.450</td>
<td>$103,417</td>
<td>$1099.40</td>
</tr>
</tbody>
</table>

---

19. Id. at 30. The public schools in Illinois are organized to provide instruction in either the elementary or secondary grades or both. School districts offering education in kindergarten through eighth grade are elementary districts; those offering education in grades 9 through 12 are secondary districts. Districts which educate their children in grades K-12 are unit districts.
20. Id.
21. Id.
23. See Governor's Commission on Schools, Opportunities for Excellence 109-81 (1973) (hereinafter cited as Opportunities for Excellence). Six representative elementary districts in Cook County, Illinois illustrate that, generally, poorer school districts tax at a higher rate but produce less money per pupil.
tion, poor districts simply could not tax at the confiscatory rates necessary to provide the resources that the richer districts can raise.\textsuperscript{25}

\textit{State Contribution to School Revenues}

\textit{(a) Flat Grant}

State governments became involved with educational financing in the earliest phases of the common school movement.\textsuperscript{26} The earliest and simplest form of state aid was the flat grant which consisted of an absolute number of dollars distributed to a school district on a per pupil basis.\textsuperscript{27} In Illinois, for 1974, each school district was guaranteed $48 per pupil.\textsuperscript{28}

The flat grant program inadequately compensates for the disparities in wealth among school districts. To provide a sufficient level of education, the local district must raise the bulk of the funds needed.\textsuperscript{29} Under this program, poorer districts are disadvantaged since they must tax at a higher rate than wealthy districts in order to raise the additional money.\textsuperscript{30}

<table>
<thead>
<tr>
<th>School District</th>
<th>Flat Grant per Pupil</th>
<th>Without Referendum</th>
<th>With Referendum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skokie Fairview S.D. 72</td>
<td>$119,402</td>
<td>$1351.37</td>
<td></td>
</tr>
<tr>
<td>Poor Maywood S.D. 89</td>
<td>$27,361</td>
<td>$903.15</td>
<td></td>
</tr>
<tr>
<td>Palos C.C.S.D. 118</td>
<td>$25,705</td>
<td>$945.26</td>
<td></td>
</tr>
<tr>
<td>Kirby S.D. 140</td>
<td>$9,529</td>
<td>$627.37</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{24} PUBLIC SCHOOL FINANCING, supra note 6, at 22. The school districts are required to obtain voter approval to tax above certain rates.

\textsuperscript{25} NEW DESIGN, supra note 18, at 30.

\textsuperscript{26} OPPORTUNITIES FOR EXCELLENCE, supra note 23, at 1.


\textsuperscript{28} ILL. REV. STAT. ch. 122, § 18-8 (1973).

\textsuperscript{29} PRIVATE WEALTH, supra note 8, at 55.

\textsuperscript{30} Id. at 56. For example, under the flat grant system of State A, $55 is given per child. Two districts, the wealthy one with a total valuation of $1000 and the poor one with a total valuation of $100, decide to spend $100 per child. Each will have to raise $45 locally. The poor district would have to tax at 45 percent of its total assets. The rich can tax at 4.5 percent of its assets to raise that amount. If the poor district taxes at the 4.5 percent rate, it would have only $59.50 to spend while the rich district, taxing at the same rate, would have $100. It can be seen that the flat grant has no
(b) Foundation Program

In the early 1900's, legislatures began to realize that certain school districts had an abundance of money to spend on education while other districts could barely afford to support any type of educational program. It was clear that the flat grant per pupil was not providing adequate funding for all school districts.

In 1927, in Illinois, a state equalization or foundation program of school aid was inaugurated. The program operated on the premise that each student should be guaranteed some basic, or adequate, level of education. This program assured each district a certain level of spending. Each district had the option of taxing at higher rates if it chose to spend more money on education. The first foundation guarantee was $34 per pupil. By the 1975-76 school year, the guarantee could reach $1260 per pupil.

There are three basic elements in any foundation plan. First, there is the aid per unit which is usually calculated in terms of pupils in average daily attendance. The program usually adds a weighting factor to account for the particularized costs of certain types of pupils, e.g., the physically handicapped. Second, the local district must tax itself at a certain level to qualify for the program. This tax level is commonly called the qualifying rate. Third, the state must adopt some reasonable means of raising money, e.g., a state income tax.

impact on the relative ability of the poor district to raise money. A decision to raise $45 still takes the same sacrifice as though the flat grant never existed.

31. NEW DESIGN, supra note 18, at 29.
32. See pp. 133-34 infra.
33. ILL. OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, SUPERINTENDENT'S ADVISORY COMMITTEE ON SCHOOL FINANCE, OCCASIONAL PAPER NO. 3, at 22-23 (1972). When the state provides financial aid, it is on the basis of students in average daily attendance. The district receives so many dollars per pupil. To compensate for the higher costs of educating certain pupils, a weighting factor is assigned to these pupils. For example:

<table>
<thead>
<tr>
<th>Student</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary</td>
<td>2.000</td>
</tr>
<tr>
<td>Special Ed. for Handicapped</td>
<td>2.100</td>
</tr>
<tr>
<td>Remedial and Compensatory</td>
<td>2.120</td>
</tr>
<tr>
<td>High School</td>
<td>3.000</td>
</tr>
</tbody>
</table>

34. PRIVATE WEALTH, supra note 8, at 66-68. In Illinois, the simplified expression of this formula is:

\[
G = \left( 520 - QR \times \frac{AV}{WADA} \right)
\]

\(G\) = State aid
\(520\) = Foundation guarantee
\(QR\) = Qualifying rate
\(AV\) = Assessed valuation
\(WADA\) = Weighted students in average daily attendance

FINAL REPORT, supra note 15, at 7.
Once a district taxes at the qualifying rate, the amount raised by that district will be supplemented by the state to provide the difference between what is raised and what is guaranteed. If a 1 percent tax raises $400 per pupil, and the foundation level is $500, the state will give $100 per pupil to that district. To preserve local incentive to spend for the level of education desired, the district can tax at more than the minimum rate.\textsuperscript{35}

It is this part of the plan—the guarantee of local incentive—which critics contend is the fundamental flaw in the foundation formula and prevents it from guaranteeing equal educational opportunity.\textsuperscript{36} The formula does not produce equal funding at various tax rates. The state will only pay the foundation guarantee. A poor district which taxes at a very heavy rate will not be rewarded for its extra taxation. Because the state will not give additional funds above the amount of aid produced at the qualifying rate, a property-rich district can produce more money for every dollar it taxes above the minimum rate than a poor district can raise by taxing at that same rate. Consequently, for every dollar of taxes above the minimum rate, the disparity in educational funds between a rich and poor district increases.\textsuperscript{37} Despite the intentions of the legislature, the foundation program does not decrease wealth disparities.\textsuperscript{38}

\textit{(c) Combined Program—Flat and Foundation Aid}

Typically, the foundation program operates in combination with a flat grant plan. In some states, the flat grant portion dominates, while

\begin{itemize}
\item \textsuperscript{35} Private Wealth, supra note 8, at 64.
\item \textsuperscript{36} Id. at 65. There are other reasons why the foundation plans have not been particularly successful. First, state aid, which is equalization aid, accounts for less than 50 percent of the total educational expenditures in 33 of the 50 states. In Illinois, the state supplied 42 percent of the costs in 1974. Second, most states give a flat grant to every child. By giving such aid regardless of a district’s fiscal capacity, the wealth disparity between districts is maintained. Third, the formulas do not really consider the fiscal needs of a district. It is a district’s income level which plays the vital role in the ability of a district to tax itself. Finally, there are two factors to consider under an equalization formula: the qualifying rate and the foundation level. The qualifying rate is often increased at the same rate as the foundation guarantee. The failure to raise the tax rate has diverted money to rich districts. Yet, it is as common to find that both factors have been kept low despite the rise in educational costs. Office of the Superintendent of Public Instruction, Superintendent’s Advisory Committee on School Finance, Occasional Paper No. 1, at 7 (1972) [hereinafter cited as Occasional Paper No. 1].
\item \textsuperscript{37} Private Wealth, supra note 8, at 65.
\item \textsuperscript{38} Final Report, supra note 15, at 4. Though there is no single accepted method of measuring the equalizing effect of aid formulas, one descriptive statistic that has been widely accepted is the Gini Coefficient. An analysis over a six year period, from 1965-71, showed that the equalization programs in Illinois have had only a limited effect in reducing wealth disparities. Changes in the present aid formula are needed if there is ever to be a significant reduction in the wealth disparity between districts.
\end{itemize}
in others, the opposite is true. Besides these two funding schemes, states have adopted percentage equalization plans, guaranteed valuation and full state funding to finance school systems.  

One common flat grant/foundation plan which has been used in Illinois subtracts the flat grant per pupil from the total aid the district is entitled to receive per pupil. Assume the state guarantee is $400 per pupil and two districts tax at the required qualifying rate. This tax produces $300 per pupil for the rich district and $100 for the poor district. In this instance, the poor district receives the following:

\[ \$100 \text{ (flat grant)} + (\$500 \text{ (foundation)} - [(\$100) \text{ locally produced}] + (\$100) \text{ (flat grant)}) = \$400 \text{ (state aid)}. \]

The rich district receives:

\[ \$100 + (\$500 - [\$300 + \$100]) = \$200. \]

Both districts have a total of $400 to spend per pupil. But, under this formula, for every dollar the poor district receives in flat grand aid, it must give up a dollar of foundation aid. Without the flat grant portion, the poor district would still have received $300 in state aid through the foundation program.

In the above example, it was assumed that both districts taxed at the minimum qualifying rate and produced less than the state guarantee. Both districts had the same amount of money to spend per pupil, although the amount of state aid varied. A completely different result takes place when the rich district produces more dollars than the state guarantee at the minimum qualifying rate. For example, if the rich district produced the $400 foundation guarantee when it taxed at the required rate, it would not be entitled to any state equalization aid. However, it would still be entitled to the $100 flat grant per pupil. The rich district now would have a total of $500 per pupil. The poor district would have only $400 per pupil. The extra money is due solely to the flat grant. The poor district loses money under this plan, since for every dollar it receives through the flat grant, it loses one dollar from the foundation guarantee. The poor district will only receive the foundation guarantee. The rich district will receive the flat grant, even if not entitled to foundation money. Therefore, the rich district is guaranteed more money under the combined flat grant/foundation type program than under a foundation program without the flat grant. Under this combined plan, since some aid always goes to the wealthier

40. See PRIVATE WEALTH, supra note 8, at 126-48.
41. Id. at 110-11.
districts, the effect is not a reduction, but actually an increase in the disparity in wealth among districts. The combined plan is in fact a subsidy for the rich. 42 The underlying premise of the foundation program is to use the minimum qualifying rate to bring about equalization in funds despite wealth disparity. The combined program does not even achieve this basic goal. 43

Summary of Part I

On the local level, school revenue is raised through the property tax. This tax is a highly productive and stable means of generating revenue. But it has been criticized for being regressive, inelastic, and expensive to administer. The tax is also burdensome to the taxpayer, since the rates must be sufficient to adequately fund educational as well as non-educational services. There are two factors to consider in discussing the property tax: the assessed valuation of property and the tax rate. Because of the vast differences in assessed valuation per pupil among school districts, property-poor districts must tax at a much higher rate to raise money on a comparable scale with the property-rich districts. Yet, even high tax rates still leave these districts far behind the richer ones in terms of money available for education. The inequality of resources is ameliorated to some extent by the state. The two most common funding schemes have been the flat grant and foundation type of programs. However, neither has compensated successfully for the disparities in local wealth.

42. Id. at 111-12.
43. Id. at 70-71. There is one further problem involving the foundation formula which must be discussed. In deciding how to fairly divide the annual legislative appropriation to education so that state dollars will have an equalizing effect, a key school district must be selected. It has already been explained that to participate in the foundation program a district must tax at a qualifying rate. Certain districts have such a high assessed valuation per pupil that when these districts tax at the qualifying rate they will raise so much money that they will not be entitled to receive money under the foundation program. The key district is that district in the state where the residents tax themselves at the qualifying rate, and the amount raised is exactly the amount of money that they would be entitled to under the foundation program.

If the legislature selects a key district with an assessed valuation that is only of average wealth, the financing plan can never be equalizing. For taxation by the richer districts, even at the minimum rate, will produce more funds than the poor districts could receive under the foundation formula. This happens because the state only adds funds to equal the amount of the foundation level. A decision to tax above that rate may produce more money for the poor district. But the state will not give it added help because it has chosen to make a greater tax effort.

If the legislature selects a key district which is richer than the richest district in the state (this, of course, is only a hypothetical district created for purposes of the formula) poorer districts will also be hurt. Then, if every district chooses to tax at the minimum rate, all will be entitled to state aid. No single district produces the foundation guarantee at the minimum tax rate. As a result, the state pays money to those districts which really do not need it instead of using the money to further compensate the poorer districts. This money has a non-equalizing effect.

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PART II: JUDICIAL CHALLENGES TO SCHOOL FINANCING SCHEMES

The wealth disparity problem is an old one. In the early 1900's, legislatures enacted laws to correct the differences in wealth among districts. However, by the mid-sixties, it became clear that legislative solutions were not working because pupils and parents began to sue in federal and state courts challenging the constitutionality of school financing schemes.

The first challenge to the system was brought in Illinois in 1968. The California Supreme Court rocked the nation when it decided Serrano v. Priest. The state supreme court declared the school financing programs unconstitutional under both the federal and state constitutions. This case was the highwater mark of school finance litigation. Finally, in 1973, the United States Supreme Court ended further challenges to school finance litigation brought under the equal protection clause of the fourteenth amendment. In San Antonio Independent School District v. Rodriguez, the Supreme Court rejected the plaintiffs' arguments that they had been discriminated against on the basis of property wealth, that education was a fundamental interest, and that the State of Texas was required to show a compelling state interest to justify the continuation of a school financing scheme that was based heavily on local property wealth.

With respect to the claim that the Texas financing scheme discriminated on the basis of wealth, the Court stated that the plaintiffs had failed to produce any evidence to demonstrate that they were a disadvantaged class "susceptible of identification in traditional terms" of

44. McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), aff'd per curiam, 394 U.S. 322 (1969). A number of students filed suit claiming that various state statutes pertaining to the financing of public schools violated the Constitution since the statutes permitted wide variations in the expenditures per student from district to district. Acknowledging that inequality existed, the court said that before a statute would be declared unconstitutional under an equal protection attack, the plaintiffs must show that the classification rests on grounds that are wholly irrelevant to a valid state purpose. Tested by this standard, the court found that the statutes were designed to allow localities to determine the amount of education they wanted to provide. This decision to allow such local decision-making was a valid state purpose, especially, since the legislature had provided a minimum level of education through the foundation program.

45. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

46. A class action was brought by students against certain state and county officials responsible for the financing of public schools. The plaintiffs claimed that the financing plans failed to meet the equal protection requirements of the federal and state constitutions. Finding both a suspect classification in terms of wealth discrimination and the impingement of a fundamental interest, failure to provide a sufficient level of education, the court decided that the compelling state interest test was applicable to determine whether or not the California financing scheme was unconstitutional under both the federal and state constitutions. This decision was based on the assumption that the plaintiffs had proved their allegations at the trial court level.

47. 411 U.S. 1 (1973).
wealth discrimination.\(^{48}\) In rejecting the plaintiffs' contention that education was a fundamental interest, the Court stated that it had failed to find any explicit or implicit right to education guaranteed in the Constitution. Further, the Court refused to pick out a particular activity such as education and characterize it as fundamental.\(^{49}\) From the conclusions the Court had reached about wealth discrimination and education's characterization as a fundamental interest, it was clear that the state did not have to show a compelling state interest to justify the continuation of its school financing scheme. The state was only required to meet the traditional standard of review when a statute was challenged on the basis of an equal protection claim. The Court found that the scheme bore some rational relationship to a legitimate state purpose.\(^{50}\)

A challenge to a state financing scheme similar to the one upheld in *Rodriguez* is foreclosed under the Fourteenth Amendment's equal protection clause. However, the Supreme Court's decision does not preclude all legal challenges to financing schemes because suits can be filed under state law.

**State Equal Protection Clauses**

In the *Serrano*\(^{51}\) opinion, the California Supreme Court based its decision, in part, on the state constitution. The court concluded that the financing scheme would be unconstitutional on state equal protection grounds where a fundamental interest was involved, if the state could not show any compelling state interest for the financing scheme. These were the grounds that were rejected in *Rodriguez*. However, unlike the Federal Constitution, the California constitution specifically places the responsibility for education on the state. As Justice Powell pointed out in *Rodriguez*, it was the failure of the Constitution to explicitly refer to education that was fatal to the plaintiffs' contention that education was a fundamental interest.\(^{52}\) Because of the reference to education, and because the state equal protection clause requires a

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\(^{48}\) *Id.* at 25-28.

\(^{49}\) *Id.* at 31.


\(^{51}\) 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

\(^{52}\) 411 U.S. at 35.
demonstration of a compelling state interest when a fundamental interest is involved, the state supreme court found the financing scheme unconstitutional without resort to the Federal Constitution. Other states could follow this reasoning if their constitutions place the responsibility for education on the state, and contain equal protection clauses requiring the demonstration of a compelling state interest when a fundamental interest is involved.\textsuperscript{53} It appears that the Illinois Supreme Court has not yet considered the concept of fundamental interest with respect to the state's equal protection clause.\textsuperscript{54} An argument can be made that a suit brought under this equal protection clause might prove successful. Further, there is a specific reference to the state's responsibility for providing public school education in the Illinois constitution.\textsuperscript{55}

"Thorough and Efficient" Type Clauses

Another type of challenge, also based on the educational provisions of a state constitution, has proven successful. In *Robinson v. Cahill*,\textsuperscript{56} the New Jersey Supreme Court held that the statutes providing for public school funding were unconstitutional.\textsuperscript{57} In a narrowly worded opin-


\textsuperscript{54} ILL. CONST. art. 1, § 2 provides: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

\textsuperscript{55} ILL. CONST. art. 10, § 1 provides:

\begin{quote}
A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

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 other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.
\end{quote}


\textsuperscript{57} Id. at 493, 303 A.2d at 283. The trial court had found that pupils were discriminated against on the basis of local district property wealth and taxpayers suffered because of unequal tax burden. The lower court's finding that the equal protection clause of the Federal Constitution had been violated was reversed on the basis of the *Rodriguez* decision. The state supreme court rejected the holding that the state equal protection clause of the New Jersey constitution had been violated. The taxpayer's aspect of the suit was also reversed.

The supreme court feared that a finding that the state equal protection clause had been violated would have dire results for the entire structure of local government. Education is financed in the same manner as many other services. The court said that since all services are financed by the local tax base, there will always be a difference of expenditures between residents of different districts. If this constituted classification according to wealth and was constitutionally suspect then the political structure of local government would be fundamentally changed.

In considering whether education was a fundamental value, the court stated it would be difficult to say only education deserves equal protection. Simply because the state chose to provide the service does not make it fundamental.

Conceding that education might be fundamental and wealth a suspect classification, the court found that the state's purpose of giving local districts a voice in public education was a compelling interest.
ion, the court held that the financing scheme violated the state constitutional provision which required the maintenance of a "thorough and efficient system of free public schools." In examining the New Jersey system of school finance, which was largely based on local property taxation, the court concluded that "on its face the statutory scheme has no apparent relation to the mandate for equal education opportunity" because of the discrepancies in dollars spent per pupil.

Though no suit has been brought on this ground in Illinois, this method of attack might prove successful, if the Illinois Supreme Court accepted the reasoning of Robinson. Article 10 of the Illinois constitution requires the state to "provide for an efficient system of high quality public educational institutions and services." This clause can be reasonably interpreted in the same way that the New Jersey Supreme Court interpreted the "thorough and efficient" clause of the educational provision of the New Jersey state constitution.

"Primary Responsibility" Type Clause

The educational provisions of the Illinois constitution provided the basis for another challenge to a school financing scheme. In Blase v. State, a suit for a declaratory judgment was brought under these provisions. The plaintiffs contended that the clause, "the State has the primary responsibility for financing the system of public education," meant that the state must provide at least 50 percent of the funds necessary to finance the public schools. The defendants, officials of the Illinois school system and the State of Illinois, responded that the clause was simply a goal and did not have binding force. The trial court dismissed the complaint which then was appealed directly to the Illinois Supreme Court.

In his brief on appeal, one of the plaintiffs argued that the constitutional history demonstrated that the plaintiffs' interpretation of the educational provisions was the correct one. The plaintiff excerpted parts

Cf. Hawkins v. Town of Shaw, Miss., 437 F.2d 1286 (5th Cir. 1971), aff'd en banc, 461 F.2d 1171 (5th Cir. 1972). The court of appeals held that to provide a particular municipal service to one part of the town but not to the other was a denial of equal protection.

58. 62 N.J. at 513, 303 A.2d at 294.
59. Id. at 516, 303 A.2d at 296.
60. ILL. CONSTR. art. 10, § 1.
62. ILL. CONSTR. art. 10, § 1.
63. 55 Ill. 2d at 96, 302 N.E.2d at 47.
64. Id.
65. ILL. REV. STAT. ch. 110A, § 302(b) (1973). After a notice of appeal is filed with an appellate court, the supreme court may order a direct appeal if the public interest requires prompt adjudication.
66. Brief for Appellant at 10-32. The plaintiff raised several other issues: that the
of the constitutional debates to show that the clause was not simply a goal but was meant to have binding effect. In speaking against the adoption of this provision, one of the constitutional convention delegates said:

Now, this may be a hortatory statement and may not but I know what it says and primary to me means first, and if the State has the primary responsibility they will be responsible for paying over half the costs.67

Since the central issue was the intent of the constitutional convention delegates, the thrust of the state’s brief went to whether the state was required to pay over half the costs of financing the school system. The state argued that it was the “express intent and conscious decision”68 of the delegates to adopt hortatory language which was not legally binding. The statement of the chief sponsor of the clause was quoted in the state’s brief:

I concede that the language I have put down is, in the Convention’s usual fashion, hortatory. I do not believe that it states a legally enforceable duty on the part of the state through the General Assembly or otherwise. I do not intend that it states a legally enforceable duty.69

After determining that the question was justiciable and finding that one of the plaintiffs, the Cook County Superintendent of Schools, had no authority to sue his superior, the Illinois Supreme Court turned to the merits. In affirming the dismissal of the complaint, the court stated:

In view of the history of the proposal and the repeated explanation of its principle sponsor, it cannot be said that the sentence in question was intended to impose a specific obligation on the General Assembly. Rather its purpose was to state a commitment, a purpose, a goal.70

Based on the court’s statement, it would seem that any further challenge brought under this provision of the Illinois constitution would be fruitless.

67. Id. at 28.
68. Brief for Appellee at 10. In another part of its brief, the state refers to the plaintiff’s argument that the state must provide 50 percent of the funds for education. According to this contention, it could be argued that once the state supplies this percentage of funds it would be relieved of any further financial responsibility. However, a “modern financing scheme may in fact entail almost 100% state revenues.” Id. at 17.
69. Id. at 11.
70. 55 Ill. 2d at 100, 302 N.E.2d at 49.
Summary of Part II

Though judicial challenge is now precluded on the federal level, attacks can be based upon various provisions of state constitutions. Three possible alternatives have been discussed. First, a state equal protection challenge can be attempted. Second, a system may be declared unconstitutional for failing to be “thorough and efficient.” Third, though this challenge has previously failed, a state may have to change its funding scheme if its constitution requires the state to assume the primary responsibility for financing education.

PART III: LEGISLATIVE REFORM AFTER RODRIGUEZ

Whether or not a judicial challenge will succeed may not be as important today as it was five years ago. Legislatures across the country are starting to overhaul educational financing schemes. Nevertheless, reform will not come easily to many states. Most proposals call for an increase in funding at a time when many state governments are retrenching financially. Further, there will be difficulty in building the broad based coalitions that will be needed to enact the necessary legislation. Crucial allies would be those school districts of average wealth, but such districts have little to gain from substantive reform unless the overall level of spending is substantially increased. Furthermore, in any conflict between rich and poor school districts in the legislature, it is not likely that the districts of average wealth would side with the poor. Any additional state funding will go to the poorer districts; thus, the districts of average wealth will not benefit financially by this political alliance.71

In the final part of this article, various types of legislative reforms which have been suggested for adoption in Illinois will be examined. The focus will be on a discussion of alternative approaches to distributing revenue. Finally, the new revenue distribution scheme in Illinois will be analyzed. Any revenue distribution scheme which requires the expenditure of funds beyond the current levels of funding will necessitate the adoption of additional taxes to raise this money. However, it is not within the scope of this article to discuss alternative revenue raising schemes.72

71. Coons, Financing Public Schools after Rodriguez, SATURDAY REVIEW, October 9, 1973, at 45 [hereinafter cited as Coons].

Historically, there have been three solutions to the disparity of wealth among school districts. First, school districts have been reorganized and consolidated to create districts more equal to one another in terms of taxable wealth. Second, various equalization formulas have been devised. These formulas attempt to distribute state aid inversely to local wealth. A third means to achieve equity has been full state funding. Two recent solutions to reduce interdistrict wealth disparity are categorical aid and the voucher plan. This article will not discuss all of these distribution formulas. The main justification for limiting discussion to the equalization formulas and full state funding is that these are the most widely-debated solutions. In addition, school district reorganization poses difficult problems regarding discontinuous and gerrymandered districts; categorical aid is a small percentage of state aid; and the voucher system touches on the separation of church and state.

**Full State Funding**

The idea of full state funding has been discussed for many years, but it was not given serious consideration as a means to solve the equity problem until 1968. Since that time, the concept has gained many adherents. Full state funding requires the state to assume responsi-

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73. Opportunities for Excellence, supra note 23, at 17. In 1945-46, the number of school districts in Illinois was 11,000. By 1972, the number of districts had been reduced to 1,092.

74. In specific areas, the state generally provides categorical aid. This program attempts to ensure the availability of certain special programs which cost more than the regular educational programs. In Illinois, categorical assistance includes, in part, aid for public transportation, driver education, continuing education, gifted pupils and vocational education. The present structure of categorical assistance contributes to the already existing wealth disparity between rich and poor districts. The programs generally ignore ability to pay and distribute aid on a flat grant basis. New Design, supra note 18, at 36.

75. In its most basic terms, the voucher system works in the following way. The state provides each parent a credit or voucher. That voucher can be used at the school of the parent’s choice. Since parents can spend their educational credits in almost any way they please, schools will be forced to compete for students. The assumption is made that schools being forced to compete in the marketplace of free enterprise will raise the quality of education so they will not lose students. It was developed, in part, as a response to the fiscal crisis confronting parochial schools. If all parents were entitled to spend vouchers where they choose, this might alleviate the parochial school crisis. For a more thorough discussion of the voucher concept, see generally Coons, Sugarman, Family Choice in Education: A Model State System For Vouchers, 59 Cal. L. Rev. 321 (1971); Note, Education Vouchers: The Fruit Of The Lemon Tree, 24 Stan. L. Rev. 687 (1972); Note, Voucher Systems Of Public Education After Nyquist And Sloan: Can A Constitutional System Be Devised?, 72 Mich. L. Rev. 895 (1974).

76. Final Report, supra note 15, at 68. The concept is generally attributed to James B. Conant who proposed full state funding in a speech before the Education Commission of the States.

77. For example, support for full state funding has come from the President's Commission on School Finance, the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education, the Advisory Commission on Inter-
bility for the collection and distribution of revenues.

Under a plan proposed for Illinois,\textsuperscript{78} the level of state support in all districts would be adjusted to equal the amount which the district in the 80th percentile in terms of school expenditures now spends. The district in the 80th percentile spends four-fifths of what the richest district in the state spends on education. No district would be precluded from spending more than this amount. The program, costing $3.4 billion, would be implemented over a period of 3 years. Each year, $212 million would have to be raised above the current level of spending in Illinois. To finance this increase the plan recommends that the property tax be set at a uniform rate of $3.32 per $100 of assessed valuation. Though this rate would increase taxes for many property owners, the committee which drew up the plan believes that it is justified on the ground that the tax rate would be frozen. Additional money would be raised through other, more elastic and less regressive taxes.\textsuperscript{79}

There are several obstacles that would have to be overcome before a full state funding plan could be implemented. The primary obstacle would be the fear of the assumed loss of local control. School districts would lose control over fiscal policy, but proponents of full state funding contend that these districts will retain extensive control over all other aspects of policy-making.\textsuperscript{80} In addition to this obstacle, there would be the need to raise taxes or devise new ones to cover the vastly increased costs.\textsuperscript{81}

\textit{District Power Equalizing}

A second distribution alternative that would remove local wealth as a variant in determining the amount of money available to a school district has been termed district power equalization.\textsuperscript{82} The concept is relatively simple. A district would receive state aid on the basis of the

\begin{footnotesize}
\begin{enumerate}
\item Governmental Relations, and more recently, the Superintendent's Advisory Committee on School Finance for Illinois.
\item A subcommittee of the Superintendent's Advisory Committee on School Finance devised this particular plan. \textit{Final Report, supra} note 15, at 67-75.
\item \textit{Id.} at 72-75. The subcommittee proposed a second full state funding proposal. The primary difference between the two plans was that the second would redistrict the state into 100 school districts or less.
\item \textit{Id.} at 74. Under full state funding, local communities would still have control over 13 of 14 areas that are associated with the running of schools. Only in the area of spending would the communities lose their control.
\item \textit{Occasional Paper No. 1, supra} note 36, at 37.
\item \textit{Private Wealth, supra} note 8, at 162-244. The concept of district power equalization was devised by three University of California at Berkeley law professors. This concept was derived from a proposal put forth by Charles S. Benson which was termed percentage equalization.
\end{enumerate}
\end{footnotesize}
rate at which the community taxes itself. Since the state would provide a table of tax rates and the corresponding amount of money produced at a given rate, a district could easily determine the rate necessary to produce a certain amount of revenue. For example, a district may choose to tax at $2.00 per $100 of assessed valuation, producing $400 per pupil. At this tax rate, the state guarantees $500 so the district will be given $100 per pupil in aid. The failure of the district to raise $500 through local taxation does not have any bearing in this financing scheme. Equally important, a wealthy district which produces more than the state guarantee must turn over this additional amount to the state. This money will be used to fund poorer districts.

In theory, district power equalizing produces the same amount of revenue for all districts which tax at an equivalent rate. This distribution alternative has the advantage of preserving local control over spending. In some versions of district power equalizing, leeway would be given to school districts allowing them to tax at a certain percentage above the maximum rate.

This financing scheme has been criticized on a number of grounds. In preserving the element of local control, the concept of equalizing wealth disparities among districts might be sacrificed. The amount of money available per pupil will depend upon the rate at which residents of the school district are willing to tax themselves. This alternative has the potential of eliminating disparities as to local wealth, but it is also possible that vast differences in funding among school districts will be perpetuated.

In addition to its failure to guarantee equal educational opportunity, district power equalizing is subject to other criticisms. First, the alternative tax might help increase social and geographic segregation as the different social classes move to those areas with more advantageous tax rates. Second, urban districts will have a difficult time taking advantage of this plan. The competing interests of non-educational services which also draw upon the local taxes tend to keep the tax rate for education down. Third, the incentive formula might stimulate local

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83. OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, SUPERINTENDENT’S ADVISORY COMMITTEE ON SCHOOL FINANCE, OCCASIONAL PAPER NO. 2, at 57 (1972) [hereinafter cited as OCCASIONAL PAPER No. 2].
85. Id. at 39.
86. Colman, Financing Schools and Other Public Services, 4 URBAN LAWYER 623, 636 (1972).
87. Campbell and Shalala, Resource Literature on Educational Revenues and Expenditures, THEORY INTO PRACTICE, April, 1972, at 75. Any educational plan must take
property taxation, thus counteracting current attempts to remove that
tax as a major source of funding. Fourth, a tax effort plan would en-
courage districts to spend more on education to the detriment of other
non-educational services. Finally, the equalizing scheme might en-
courage small districts to stay in operation while professional educators
have sought to encourage small districts to consolidate with larger
ones. However, it seems that removing local wealth as the variant
which determines the amount of money a district can spend on educa-
tion outweighs these disadvantages. This conclusion is reached be-
cause a plan which removes local wealth as a variant is more likely to
achieve equal educational opportunity than a plan that retains the local
wealth feature. This conclusion is predicated on the assumption that
the most important aspect of a revenue distributing scheme is the re-
moval of local wealth as a factor. Further, it is assumed that commu-
nities will want to provide a better, and thus more expensive, educa-
tion for the children if the money can be raised without imposing a
financially crippling tax burden.

Modification of the Current Aid Formula

The foundation program, which is the current aid formula for about
32 states, has been subjected to numerous criticisms. But some educa-
tors have contended that with minor modifications this formula could
solve the wealth disparity problem. By increasing the foundation
level and the qualifying tax rates, more money would be allocated to
poor districts and less to rich ones. One type of modification has
been recommended for use in Illinois. The proposal would increase
the foundation level to $1,050 per pupil from the current level of $520;
the qualifying rates would be increased and flat grants would be elimi-
nated. The proposed changes would be implemented over a 3 year

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89. FINAL REPORT, supra note 15, at 7.
90. Id. at 7.
91. A subcommittee of the Superintendent's Advisory Committee on School Finance
devised this particular plan. Id. at 7-19.
92. Id. at 7. Elementary and secondary districts must presently tax at $0.84 per
$100 of assessed valuation unless the district has under 100 pupils, in which case it must
tax at $0.90. Unit districts currently tax at $1.08 per $100 of assessed valuation. The
recommended increases would be $1.70 for elementary and secondary districts; unit dis-
tricts must tax at $3.00 to qualify for foundation aid. Id. at 7.
period. The total increase is estimated at $345 million, which, unlike other equalizing schemes or full state funding, could probably be financed out of the normal growth in state revenues under the present tax structure.\(^3\)

The formula guarantees $1,050 per pupil to those districts which tax at the qualifying rate. This provides funds for a basic level of education. Any district could spend at a higher rate than the minimum rate giving that district more money to spend.\(^4\) The primary criticism is that local wealth still plays a key role under this formula. The assumption made is that the formula guarantee is sufficiently high that districts would not want to tax at a higher rate to produce more revenue. It is likely that some districts will always want to spend more. Without any limitations on tax rates, wealthier districts will be able to generate more revenue, and consequently spend more per pupil, than poorer districts which cannot afford to tax at higher rates. The advantage of having a maximum tax rate is that as the cost of education increases, wealthier school districts would seek increased overall spending from the legislature, benefiting all districts, and not simply raise their own tax rates. Therefore, it is only with a maximum tax rate that the goal of equal educational opportunity can be achieved. Without a maximum rate, local wealth will continue to determine how much districts can spend for education.

**Resource Equalizer**

Another distribution alternative, the resource equalizer, like district power equalizing, will give state aid on the basis of the local tax rate. The resource equalizer, as its name aptly indicates, attempts to equalize the wealth of districts by guaranteeing to a district a certain amount of assessed valuation per student, if that district taxes itself at a certain rate.\(^5\)

In a plan recommended for Illinois,\(^6\) a resource equalizer formula

\(^3\) *Id.* at 7-9.  
\(^4\) *Id.* at 10.  
\(^5\) *Occasional Paper No. 2, supra note 83,* at 4.  
\(^6\) A simple mathematical expression of the resource equalizer formula is:  
\[ G = TR(PW) \{V_g - V_l\} \]  
\[ G \] Grant  
\[ TR \] Tax Rate  
\[ PW \] Pupils in attendance times a weighting factor to compensate for educating more costly students  
\[ V_g \] Guaranteed valuation per pupil  
\[ V_l \] Local assessed valuation

A subcommittee of the Superintendent's Advisory Committee on School Finance devised this particular plan. *Final Report, supra note 15,* at 49-57.
has been devised which consists of three constants: the guaranteed valuation, the tax rate, and the weighting factors given to compensate for the added cost of educating certain types of pupils. The plan recommends that the state contribute funds which would guarantee a certain amount of assessed valuation per pupil in every district even if the actual valuation per pupil was less. For unit districts, the guarantee would be $42,000; for elementary districts, $64,615; and for high school districts, $120,000.\textsuperscript{97} These figures were chosen because the resource equalizer will increase the money many districts will receive, but not beyond what the state could afford.\textsuperscript{98} However, since these figures are the maximum guaranteed valuation for each pupil, to receive these amounts districts must tax at $3.00 per $100 of assessed valuation.\textsuperscript{99} The third constant involved in the resource equalizer is the utilization of various weighting factors. Educators consider a weighting factor for compensatory education to be one of the more important factors.\textsuperscript{100}

The proposed resource equalizer has several advantages over the current state financing scheme. To some extent it will remove the individual wealth of the district as the determining factor for the amount to be spent on education. With the increase in guarantee and the freezing of the tax rate, the state will assume a greater percentage of the burden of financing education. The resource equalizer will not provide as much money to districts as full state funding, but local residents retain control over fiscal policy, which would not be found under full state funding. The proponents of the resource equalizer acknowledged that full state funding would reduce wealth disparities among districts more quickly, but have chosen the slower route of the resource equalizer because of the difficulty in convincing districts to abandon decision-making over school expenditures.\textsuperscript{101}

The resource equalizer suffers from many of the same criticisms that have been leveled against the district power equalizing formula. Principally, the residents of a district may choose to tax at less than the maximum rate. Only at the maximum rate is a district guaranteed as much assessed valuation as any other district. As a result, the children of this district will receive less aid. So long as decision-making is preserved at the local level, the expenditures for schools depend upon the value that residents place on education.

\textsuperscript{97} Id. at 53.
\textsuperscript{98} Occasional Paper No. 2, supra note 83, at 4.
\textsuperscript{99} Id.
\textsuperscript{100} Id. at 5.
\textsuperscript{101} Id. at 6.
A New Direction for Illinois—The Resource Equalizer

In 1973, the Illinois General Assembly revamped the school financing scheme for the state. It chose to adopt the resource equalizer as an alternative to the foundation type program, though districts were given the option of receiving state aid under the resource equalizer or the revised foundation formula. The claim for state aid by the districts would be made under the formula that provides more assistance.

Fully funded, the resource equalizer guarantees $1260 per pupil to each district that chooses to tax at the maximum rate. Since the cost to the state will be much higher than under the old formula, the financing scheme will be phased in over a 4 year period. For that reason, districts can only receive one-fourth of any increase in state aid that they would be entitled to in the first year. In each succeeding year, districts will receive another fourth of their entitlement until the program is fully funded.

During the legislative debate in the Illinois Senate, Senator Glass described what the formula would do:

I think that name very adequately and aptly describes the new formula because it says to school districts you can have the same resources as all the other districts in the State . . . it does require local districts to tax themselves higher in order to get more State aid . . . [but] it is a principle based on local effort and if districts tax themselves at the same rates as their neighbors locally they will have the same amount of tax dollars available for their children in their public schools as in other districts.

The resource equalizer has been in effect for approximately 2 school years. In theory, the formula is designed to aid those property-poor districts which have a low assessed value per pupil. It is still too early
to judge whether or not the plan is accomplishing its goal as effectively as possible. However, in the opinion of some experts, the resource equalizer is beginning to reduce interdistrict wealth disparities.\(^{107}\)

And, in the opinions of the author of the formula, a state senator, a state representative who was the chief sponsor in the House of Representatives, and officials from the Office of the Superintendent of Public Instruction and the Illinois Bureau of the Budget, the resource equalizer is a desirable alternative to the foundation program.

Professor Ben Hubbard,\(^{108}\) the author of the resource equalizer, State Representative Gene Hoffman,\(^{109}\) and Richard Carlson,\(^{110}\) Assistant Director of the Bureau of the Budget for Education, generally agreed that districts would choose the resource equalizer rather than the foundation formula over the next few years because it provides more money than the foundation program.\(^{111}\) This will be especially true as the guaranteed valuation increases. However, Robert Pyle, Assistant Director of the Finance and Claims Section of the Office of the Superintendent of Public Instruction (OSPI), said many districts were already too wealthy or had too low a tax rate to utilize the resource equalizer formula. These districts would continue to benefit from the foundation program.\(^ {112}\) Assistant Budget Director Carlson stated that by 1977 less than 20 percent of the districts would benefit from the foundation formula.\(^ {113}\)

Though it is generally believed that the resource equalizer is a better formula than the present financing scheme, there clearly are weaknesses with the new funding mechanism. Assistant Director Carlson from the Bureau of the Budget said the resource equalizer actually aids the wealthiest school districts in the suburban Chicago area, particularly the wealthy high school districts, despite legislative intentions to aid property-poor districts.\(^ {114}\) This occurs because these districts already

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108. Telephone interview with Professor Ben Hubbard of Illinois State University, Normal, Illinois, September 4, 1974 [hereinafter cited as Hubbard Interview].
111. Hubbard Interview, supra note 108, Hoffman Interview, supra note 109 and Carlson Interview, supra note 110.
113. Carlson Letter, supra note 104.
114. Carlson Interview, supra note 110.
tax close to the maximum rate so they will be assured the guaranteed maximum valuation per pupil. On the other hand, many downstate districts have low tax rates which they cannot afford to raise, so these districts will not be able to take advantage of the maximum guarantees.

Professor Ben Hubbard from Illinois State University noted several weaknesses in the formula. School boards are allowed to set tax rates without the requirement of voter approval up to a certain limit. But for elementary and unit districts that limit is less than the tax rate required to receive the maximum guarantee. This places the decision in the hands of the voters as to whether or not to take full advantage of the new formula.

Hubbard said "[from] an educational standpoint that's a weakness." Because the voters have the power to prevent the board from imposing the maximum tax rates, unit districts are at a disadvantage in comparison with elementary districts. Under the resource equalizer, unit and elementary districts are guaranteed comparable amounts of assessed valuation per pupil only at the maximum tax rate. If the voters of a unit district refuse to impose the maximum tax rate, then that district does not receive the maximum benefits under the resource equalizer. However, in an elementary district, even if the voters choose not to impose the maximum tax rate, the school board can set higher tax rates than school boards of the unit districts. This gives the elementary districts a financial advantage over the unit districts.

Hubbard also criticized the assessment practices throughout the state. If a district can assess itself at a low market value, it will benefit from the formula in comparison to a district which assesses itself at a level which is closer to true market value. Representative Hoffman said that the biggest problem with the resource equalizer is the lack of an equitable formula for determining assessed valuation. As an example of the problem, Hoffman cited the fact that Johnson County assesses its property at 7 percent of market value while Du Page County assesses its property at 49 percent of market value. Though the example paints a bleak picture, there is not as much difference between counties as Hoffman indicated. According to Assistant Budget Director Carlson, the state applies a multiplier to assessment rates to bring counties into rough parity. Carlson said the multiplier reduces the differences among counties to a range of 30 to 50 percent of market value.

115. Hubbard Interview, supra note 108.
percentages of market value.\textsuperscript{117}

Mr. Pyle, from OSPI, said that the formula allows districts too much leeway to effectively remove expenditure disparities.\textsuperscript{118} Under the resource equalizer, those districts that currently spend more than the $1260 guarantee will not be required to limit expenditures to the guaranteed amount. Pyle said that the formula might reduce the expenditure disparity ratio from 5:1 between the richest and poorest districts to 4:1, but the gap will never be completely closed.

Professor Hubbard defended the local leeway provisions.\textsuperscript{119} In his opinion, only 10 percent of the districts will spend more than $1260 per pupil. In time, the poorer districts will be equalized with the richer ones, which is fairer than curtailing the wealthier districts' funds. However, Professor Hubbard stated that the purpose of the resource equalizer was not "intended to make sure that everyone spent the same amount of money."\textsuperscript{120} The formula was designed to equalize among districts when districts taxed equally. The Illinois General Assembly rejected the concept of equal expenditures among districts. According to Hubbard, an analysis of the data for the first year's operation of the resource equalizer shows an increase in equalization among districts. When the tax rates of districts throughout the state are considered, the resource equalizer is achieving equalization of educational opportunity.\textsuperscript{121}

Though there are weaknesses to the resource equalizer, the state is apparently committed to this new formula in the foreseeable future. Assistant Budget Director for Education Carlson said that the formula is going to be very costly to the state.\textsuperscript{122} Major modifications will not be able to be made easily because of this cost. Furthermore, Carlson said it would be politically impossible to write an entirely new formula that would actually hurt the rich school districts because of their influence in the legislature.

Senator Bradley Glass,\textsuperscript{123} of Northfield, Illinois, said that problems with any new formula must be expected. He foresees refinement of the old approach rather than the adoption of a completely new approach. However, he also anticipates annual changes in the formula. One

\textsuperscript{117} Carlson Letter, \textit{supra} note 104.
\textsuperscript{118} Pyle Interview, \textit{supra} note 112.
\textsuperscript{119} Hubbard Interview, \textit{supra} note 108.
\textsuperscript{120} Hubbard Letter, \textit{supra} note 107.
\textsuperscript{121} Id.
\textsuperscript{122} Carlson Interview, \textit{supra} note 110.
\textsuperscript{123} Telephone interview with Senator Bradley Glass of Northfield, Illinois, August 23, 1974.
change he would like to see made is the removal of the provision which limits districts in the amount of taxes they can raise by local referendum.

CONCLUSIONS

This article has presented the many problems associated with school financing schemes. However, there are ways to make the system more equitable. The judiciary has been in the forefront of change. Courts have declared school financing schemes unconstitutional on the basis of state equal protection grounds and provisions in state constitutions which require the maintenance of a “thorough and efficient” school system. But judicial action alone will not be sufficient to reform school financing. Only when the legislative and executive branches become committed to reform will wealth disparities among districts be eliminated.

There are four widely discussed plans which would distribute revenue more equitably: full state funding, modification of the foundation program, district power equalizing and the resource equalizer. The plan most often discussed is probably full state funding. Under this plan, the state would assume all the costs of distributing revenue. It appears that only full state funding can eliminate wealth disparity. However, adoption of this alternative will prove costly, and full state funding may mean that less money is available for non-educational services. Another plan would modify the present foundation formula, which is the prevalent revenue distribution scheme among the states. The problem with this financing plan is that no matter how high the state guarantee is set, some districts will always choose to spend more. This additional money will be raised through local taxation so there will always be wealth differences between districts under this plan. Two of the alternatives depend upon the local tax effort made by a school district. The first, district power equalizing, will guarantee a certain amount of assessed valuation for each pupil of a district so long as it taxes itself at a given rate. In many ways, both formulas are similar and for that reason both have many of the same disadvantages. The primary objectionable feature is that, unlike full state funding, there is the possibility that wealth disparity among districts might not be eliminated. The amount of money to which a district is entitled depends upon the tax rate which residents wish to adopt. If the tax rate is set low, there will be wide differences in interdistrict funding.

Illinois has chosen to adopt the resource equalizer as an alternative to its foundation program, though districts have the option to use either...
of the two programs to receive school aid. The resource equalizer, once it is fully funded by the legislature, will provide $1260 per pupil. The foundation program, prior to the most recent revisions, guaranteed about $520 per pupil. The foundation formula could have been so designed to provide $1260 per pupil without the need to devise a new formula. However, Professor Ben Hubbard, the author of the resource equalizer, said it would have been impossible to sell the legislature on increasing the state aid from the $520 level to the $1260 level, since, in the past, additional funding was added in small increments.\footnote{124} To convince the legislature to drastically increase state funding, it was necessary to change the formula radically, since the legislature would only adopt a vastly increased funded formula on the assumption that the resource equalizer would have significant advantages over the foundation scheme.

Though many states are revamping their school financing schemes, most educators are realizing that any of the formulas can be designed to provide a considerable amount of state aid to poor school districts. It is the design and subsequent manipulation of the formula that is the key and not the particular formula adopted. The problem with most equalization formulas, particularly the foundation plan, is that the implementation of the formula failed to conform with the original design as a consequence of compromises by the legislative and executive branches.\footnote{125} Unfortunately, any of the formulas can be compromised to the point where they no longer can effectively solve the wealth disparity problem.\footnote{126}

Certainly the problem is complex and there is no easy solution. But alternatives do exist to the present system which is generally conceded to be inequitable. Whether or not the wealth disparity problem will be solved in an equitable fashion now depends upon the state legislatures, the state judiciaries, and the people.

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\footnote{124} Hubbard Interview, \textit{supra} note 108.
\footnote{125} \textit{Occasional Paper No. 1}, \textit{supra} note 36, at 41.
\footnote{126} For example, the resource equalizer has been hailed as the means to remove wealth disparity. As the guaranteed valuation is set higher, more funds will be directed to the poorer districts of a state. But, if the legislature chooses to set a low guaranteed valuation, then the resource equalizer will not be doing all it can to remove wealth disparities. Or, under the district power equalizing formula, a legislative decision to allow the local district to spend without any limitation will mean that local wealth still determines who can provide what level of education. \textit{Occasional Paper No. 2}, \textit{supra} note 83, at 2.