The Power of Small Schools: Achieving Equal Educational Opportunity through Academic Success and Democratic Citizenship

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TABLE OF CONTENTS

I. Introduction ........................................... 51

II. History of School Finance Litigation ................... 56
   A. Democratic Foundations of School Finance Litigation ........................................ 56
   B. The First Wave of Litigation ....................... 58
   C. The Second Wave of Litigation ..................... 59
   D. Third Wave of Litigation .......................... 62

III. Judicial Efforts to Remedy Inadequacy and Inequity ... 67
   A. Deferential Approach .............................. 68
   B. Active Approach ................................... 70
   C. Specific Remedial Strategies and the Role of Educational Research ......................... 72

IV. A Missing Ingredient: Small Schools .................... 74
   A. Research Findings on Small Schools ............... 75
   B. The Relevance of Small School Research to School Finance Litigation .................. 81

V. The Educational Harm of Overlooking the Value of Small Schools: Consolidation and Busing .............. 85

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This article owes its impetus to the educators and researchers who tirelessly work to identify the most effective methods to educate our children and the reformers who bring them into reality.
I. INTRODUCTION

We are at a defining moment in determining the future of American public education as we attempt to sort out the inconsistencies between what we want it to be and where it currently stands. The deep-rooted importance of public education in American social and political thought and the corresponding legal ideal of equal educational opportunity ring soundly among most citizens. These same citizens also know that our nation’s public schools have yet to achieve the promise of these ideas, which forces upon us the daunting task of making improvements. Many, however, are reluctant to pursue new strategies or invest additional public funds without first getting assurances that funding and specific reform strategies will work to improve education, but none would venture to minimize the importance of education. Thus, we are faced with an inherent tension between forsaking our educational obligations and exploring new strategies for change. Given the seriousness and history of our obligation, it is clear that forsaking our commitment to public education is not an option, and pursuing change is indispensable. In furtherance of change, this article presents an often overlooked, yet highly effective, strategy: educating students in smaller schools.

The importance of education in our society spans from the ideas of our founding fathers to the legislative and legal efforts of today. The Supreme Court in Brown v. Board of Education\(^1\) eloquently expressed the substance and motivation behind this historical commitment, writing:

> [E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.\(^2\)

\(^1\) 347 U.S. 483 (1954).
\(^2\) Id. at 493; see also Plyler v. Doe, 457 U.S. 202, 221 (1982) (underscoring the importance of education and recognizing public schools as a vital civic institution for
The Court went on to address the racial inequalities and disparities in educational opportunity, finding that they were simply inconsistent with our principles of education and equality. Although chided for its failure to mandate immediate remedies, the Court's decision could not be be read to ignore the need for change. It touched off what would eventually become a concerted attempt to make our educational ideals a reality through widespread efforts to desegregate the nation's schools. The hope that advocates gained from court intervention to end racial segregation in schools also helped prompt a wave of legal and political efforts to reform the way public schools are funded. These efforts to realize the promise of our educational principles expanded to include both racial equality and economic fairness. In fact, today economic fairness dominates the landscape of progressive educational agendas.

Since the early 1970's, all but a handful of states have experienced litigation brought by advocates seeking reforms in the way that schools are funded. At the core of these efforts are constitutional challenges to state school finance systems. In virtually every instance, states bear the primary responsibility for educating children under provisions in their constitutions. The state, however, normally delegates this responsibility to local communities that carry out and deliver education through school districts. In most states, local school districts are required to pay for a substantial part of the cost of education. To do so, they rely on local property taxes. Reliance on local property taxes to pay for education often fuels inequities in funding because local property values and wealth vary dramatically among school districts. Thus, the ability of local communities to raise revenue for education also varies significantly. In the end, these disparities in funding for education frequently have resulted in a denial of equal educational opportunity for many students, as some schools are unable to raise minimally adequate revenues.

Initially, plaintiffs challenged funding inequities in the federal courts relying on the federal equal protection clause. These efforts to preserving our democratic system of government and providing the basic tools for students to lead economically productive lives).

achieve "equity" in funding ultimately failed, however, with the Supreme Court ruling in *San Antonio Independent School District v. Rodriguez* that the federal constitution does not include a fundamental right to education or equality in education. In the wake of *Rodriguez*, advocates embarked on a second course for school finance reform, turning to a new and untested forum to resolve equity claims: state courts. Relying on state equal protection and education clauses, plaintiffs won early victories in New Jersey and California, spurring advocates in other states to challenge school finance systems. Beginning in the late 1980's, plaintiffs pursued a third wave of litigation premised on a theory of "educational adequacy." Unlike equity claims that primarily seek an equal level of resources for each student, adequacy claims seek the amount of resources needed in order to meet prescribed standards or achieve desired outcomes for students.

Whether the focus has been on the concept of equity, adequacy, or both, winning in court often has proved to be the simplest task for plaintiffs. More difficult, and thus far elusive, has been developing and implementing strategies that consistently remedy inequity or inadequacy and insure equal educational opportunity. For decades, courts and legislatures have been struggling to fashion effective remedies and solutions in equity and adequacy cases. Their success, however, has frequently been ambiguous, causing litigation and legislative policy to drag on for years. In states like Ohio and New

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10. Examples of these desired outcomes are higher test scores, higher graduation rates, or better earnings and life outcomes. For a discussion of the attempt to achieve these outcomes, see Robert Berne & Leanna Stiefel, *Concepts of School Finance Equity: 1970 to the Present*, in *EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES* 11-13 (Helen F. Ladd et al. eds. 1999).
Jersey, litigation begun years ago has been followed by a series of court orders and legislative remedies.\textsuperscript{12}

The purpose of this article is not to criticize the efforts of legislatures and courts or the remedies they have chosen. Many remedies, such as smaller classes and better-paid teachers, are steps in the right direction. Rather, the purpose of this article is to emphasize an additional important educational strategy that research shows is essential in remediating inequity and inadequacy among the students who are most in need. A growing body of educational research shows that smaller schools offer a number of educational benefits, especially higher levels of academic achievement for poor and minority students, who most often are the intended beneficiaries of education reform.\textsuperscript{13}

Either because research developments have been relatively recent, or the legislative and judicial focus has been on more traditional remedies, courts and legislatures have generally overlooked and failed to use the remedy of small schools. In fact, some states have encouraged consolidation of small schools, a remedy that is counterproductive to the sustainability of smaller schools.\textsuperscript{14}

If we are serious about offering our children equal educational opportunities, decision makers must evaluate current strategies and be willing to broaden them when necessary. Current remedial strategies


\textsuperscript{13}This article does not use a standard definition of a “small school,” nor does it recommend an optimal size for a school. See infra note 115.

\textsuperscript{14}For instance, in Oklahoma, schools that did not score at appropriate levels on statewide tests were subject to involuntary consolidation by the Oklahoma Department of Education. Mark S. Grossman, Oklahoma School Finance Litigation: Shifting from Equity to Adequacy, 28 U. Mich. J.L. Reform 521, 537 (1995). In the period just preceding finance litigation in Oklahoma, the legislature began encouraging consolidation and after the litigation the legislature began mandating consolidation for some schools, with attorneys in the litigation noting a sudden increase in its occurrence. Id. at 544. Likewise, the remedial financing scheme in West Virginia also resulted in accelerating the closing of smaller schools and encouraging their consolidation into larger ones. For a further discussion of the West Virginia experience, see infra notes 168-173.
are, in large part, aimed at individual students and teachers. This article focuses on broader institutional issues and argues that states should protect current small schools and implement new ones in conjunction with other remedies. The crucial role that smaller schools play in improving education cannot be overstated because they represent a structural remedy through which all other individualized remedies can more effectively flow. The research findings buttress this assertion, showing that the size of the institution is as important as classrooms, teachers, and tutors because small schools can intrinsically shape the effectuation of all other remedies.

This article begins by reviewing the democratic foundations of education and the history of school finance litigation. Then, it explains the framework by which courts and legislatures resolve these cases and implement appropriate remedies, particularly discussing the role research and expert testimony play in influencing remedies. Third, this article recounts the research findings on small schools, interpreting them in relation to the ongoing reform efforts in courts and legislatures. In Part VI, this article explores the role small schools play in fostering democratic education, a significant factor in several prominent cases. Last, this article reaches conclusions about the ultimate efficacy of small schools and makes suggestions for decision makers about how to include small schools in reform efforts.


17. In their favoritism toward “whole school reform,” courts such as the New Jersey Supreme Court appear to implicitly realize the need for institutional change. See Abbott by Abbott v. Burke, 710 A.2d 450, 496-98 (N.J. 1998); infra notes 112 and 113 and accompanying text.

18. See infra Part II.
19. See infra Part III.
20. See infra Part IV, V.
21. See infra Parts VII, VIII.
II. HISTORY OF SCHOOL FINANCE LITIGATION

A. Democratic Foundations of School Finance Litigation

Before discussing the history of school finance litigation, it is helpful to first understand why this litigation is important and, consequently, necessary. At a very fundamental level, reform is needed because our country's democratic history and assertions of fairness and equality are inconsistent with the huge gaps between the haves and have-nots and between the educated and uneducated. Equal educational opportunity is a fundamental American ideal that extends back in time to leaders like Thomas Jefferson who underscored the importance of education to a new and emerging nation.22 Picking up on Jeffersonian ideas of education, the state has historically seen value in educating the public so as to prepare it for participation in democratic and civic life. Without a hint of embellishment, one can say that a fundamental purpose of public education in a democratic society is sustaining the democracy's vitality. As Jefferson wrote, "Education is the most certain and most legitimate engine of government. Educate and inform the whole mass of the people, enable them to see it is in their interest to preserve peace and order, and they will preserve it ... They are the only sure reliance for the preservation of our liberty."23

Education holds such lofty esteem in our democracy because the existence of an adequate and equitable educational system, in large part, makes self-government possible.24 As an outpouring of this realization, "no theme was so universally articulated during the early decades of the Republic as the need of a self-governing people for universal education."25 Without adequate public education, our system of democracy would strain to obtain the appearance of fairness that gives the system its legitimacy.

In its theoretical form, democracy affords all citizens the right to participate equally in the molding and functioning of government.26 This equal participation hinges upon individuals having the knowledge and skills to understand, influence, and make informed decisions

22. In his correspondence with John Adams, Jefferson discussed the need for government to scale back the discriminatory barriers to fair and equal opportunity, namely wealth and privilege. In this sense, equal educational opportunity was critical. Deborah A. Verstegen & Robert C. Knoeppel, Equal Education Under the Law: School Finance Reform and the Courts, 14 J.L. & Pol. 555, 555 (1998).
about the process. Many citizens, however, do not have the requisite knowledge and skills, and this is often through no fault of their own. Rather, economic inequalities often prevent them from obtaining an adequate education, which is incumbent upon a democratic government to provide if it intends to maintain its legitimacy.

A denial of equal education—based on poverty, geography, or other disadvantages—that infringes on one’s ability to participate in the democratic process bears no significant difference from requiring voters to own property, pay poll taxes, or making the ability to defend oneself against criminal charges dependent on wealth. The Supreme Court has found all of these practices unconstitutional and required states to provide these rights at no cost “because it is necessary to protect the integrity of the judicial [and democratic] process.” The same reasoning and principles follow in respect to requiring the state to give children a meaningful education: it is necessary to protect the integrity of the democratic system. Without an adequate and equitable education, citizens simply cannot be full participants or effectively exercise their rights in democracy.

During the last thirty-five years, school finance litigation has attempted to bridge the gaps in our education system to insure equal educational opportunity and, consequently, fundamental fairness in our democracy. Since Brown v. Board of Education, the notion that students deserve an equal educational opportunity has been a driving motivation for both courts and advocates. In the post-Brown era, this deeply held ideal led a number of civil rights and education advocates to extend their push for equal educational opportunity beyond race and into economics through school finance litigation. Taking root in their agendas was the basic assumption that money spent on education makes a difference in the quality and type of education students

27. Id. at 504-05.
28. Id. at 506; see also Harper v. Va. Bd. of Elections, 383 U.S. 663 (1966) (invalidating a poll tax); Gideon v. Wainright, 372 U.S. 335 (1963) (holding that indigent defendants in criminal prosecutions have a right to counsel); Griffin v. Illinois, 351 U.S. 12 (1956) (finding that in criminal trials, the state “can no more discriminate on account of poverty than on account of religion, race, or color”).
29. Foley, supra note 26, at 513. The most poignant example that illustrates the inherent inconsistency and illegitimacy of denying children a quality education is the Supreme Court’s steadfast willingness to strike down any laws that made one’s ability to defend oneself in criminal proceedings dependent on wealth. As the Supreme Court wrote in Gideon v. Wainright, the right to counsel is fundamental to giving criminal defendants a fair trial and “this noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.” 372 U.S. 335, 344 (1963). Quite simply, laymen cannot protect their own rights, and quite likely would be convicted of crimes of which they are innocent if they did not have the advice of legal counsel. Id. at 345.
receive and whether they enjoy equal educational opportunity. Thus, beginning in the late 1960's, parents, students, and taxpayers took to the courts in an effort to reform the way that states fund public education. To date, this impetus has resulted in school finance litigation being brought in almost every state in the country.

B. The First Wave of Litigation

A number of scholars have divided the era of school finance litigation into three waves, although the lines of demarcation between the three waves are not always clear or consistent. The first wave of litigation involved a series of court challenges in state and federal courts. The predominate legal theory in this early litigation was that inequities in funding among school districts, caused by variations in local property wealth, violated the equal protection clause of the federal constitution. At the heart of this first wave of litigation was a search for "equity." The traditional notion of equity dictates that schools should receive an equal amount of funding for each student, unless there is a rational and legitimate reason to do otherwise. This form of equity, often referred to as "horizontal equity," is premised on the belief that all students are equivalent and, therefore, every student should be treated the same.

30. William S. Koski & Henry M. Levin, Twenty-Five Years after Rodriguez: What Have We Learned, 102 TCHR. C. REC. 480, 483 (June 2002) ("[T]here is a tacit assumption that differences in educational expenditures make a difference in what happens to students...[because] differences in expenditures translate into differences in educational opportunities and outcomes. Higher salaries attract better teachers; smaller classes provide opportunities for greater student engagement and teacher attention; more counselors and psychologists afford additional guidance.").

31. Dayton, supra note 6, at 82 NEB. L. REV. 99, 100 (examining the court decisions in a number of these states); Paul A. Minorini & Stephen D. Sugarman, School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future, in Equity and Adequacy in Education Finance: Issues and Perspectives 42-46 (Helen F. Ladd et al. eds., 1999) (finding that at the time 43 states had experienced education reform litigation).


33. The concept of "horizontal equity" should be distinguished from the concept of "vertical equity." For a further discussion, see infra notes 45-47 and accompanying text. See also Berne & Stiefel, supra note 10, at 18-21 (noting that horizontal equity specifies that equally situated children should be treated equally, while vertical equity specifies that differently situated children should be treated differently).
One of the earliest and most important equity cases was *Serrano v. Priest (Serrano I)*, in which the California Supreme Court held that education is a fundamental right and that a public school financing system that relies heavily on property taxes to fund education violates the Fourteenth Amendment because it discriminates against the poor. The plaintiffs’ victory in Serrano, however, was cut short by the Supreme Court’s ruling in *Rodriguez*. In *Rodriguez*, the Court held that the United States Constitution does not encompass a fundamental right to education and does not prohibit states from providing different educational services to children in poor school districts as compared to children in wealthy districts. Moreover, the Court concluded that equal protection principles do not require the state to ensure absolute equality in expenditures for education.

C. The Second Wave of Litigation

Although *Rodriguez* effectively closed the door to further litigation designed to reform school finance systems in the federal courts, it ironically set off a second wave of litigation in state courts. In the state cases, the primary focus remained on obtaining equal resources for each child, but the legal claims were based largely on untested state equal protection and education clauses. To further increase the unpredictability of this strategy, the state courts handling these cases had little or no experience with school finance issues. Nevertheless, applied the “rational basis” test to the Texas school finance system in *Rodriguez*. The court had little difficulty in finding a rational basis for the state’s funding inequities, pointing to the state’s interest in promoting local control of schools. For a discussion of *Rodriguez*, see Koski & Levin, *supra* note 30; Minorini & Sugarman, *supra* note 31, at 35-41.

Despite the longstanding reluctance to pursue school finance claims in federal court because of *Rodriguez’s* holding, plaintiffs have recently returned to federal court with legal theories that combine school finance claims with claims based on race discrimination. See, e.g., Robinson v. Kansas, 295 F.3d 1183 (10th Cir. 2002).


State courts were largely untested in early school finance litigation because state judges were viewed as being more politically vulnerable than federal judges and, therefore, less likely to issue unpopular rulings. Moreover, state judges often were considered to be more deferential to the other branches of government.
theless, advocates gained momentum in their return to the California Supreme Court to address the impact of Rodriguez on the prior Serrano ruling. Despite the fact that Rodriguez overruled much of the court's holding in Serrano I, the California Supreme Court revisited the issue in Serrano II and held that even if an inequitable education system does not violate the United States Constitution, it violates the state equal protection clause. With California lending credence to recognition of state education rights, courts in Arkansas, Connecticut, Washington, and Wyoming shortly thereafter found a fundamental right to education in their state constitutions, thereby furthering advocates' ability to promote equitable financing of public schools.

Still significantly relying on equal protection and traditional notions of equity, this second wave of litigation did not present a drastically new theory of education litigation. Yet, this second wave did begin to broaden the concept of equity. Some argued that state equal protection and education clauses also include a substantive component requiring states to offer all students a "meaningful" education. Consistent with the Jeffersonian notion of education, this concept requires states to provide an equal opportunity for each student, regardless of their place of residence, socioeconomic status, or disability, to receive an education that will prepare each student to participate actively in society. This concept of equity, which a number of scholars refer to as "vertical equity," recognizes that some students have greater learning needs than others and, therefore, may need greater

Lastly, some plaintiffs shied away from state courts because they were considered to be part of the problem during the early years of the civil rights movement. Paul A. Minorini & Stephen D. Sugarman, Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm, in Equity and Adequacy in Education Finance: Issues and Perspectives 175, 183 (Helen F. Ladd et al. eds., 1999).

41. Predating Serrano II was an equally important New Jersey case, Robinson v. Cahill 303 A.2d 273, 295 (N.J. 1973), which held that the state school finance system relied too heavily on property taxes and thus violated the state's education clause. Robinson and the Serrano litigation are generally credited with launching the second wave of school finance litigation. See, e.g., Verstegen & Knoeppel, supra note 22, at 557 (stating Serrano and Robinson "signaled the onset of the second wave of school finance litigation, spanning the 1970s and early 1980s").


44. See, e.g., Underwood, supra note 32, at 513 (noting that the focus of education should be on students receiving an education that would prepare them to participate actively in society).

educational resources than other students depending on their unique circumstances or need.46

With the focus placed on the individual student, these equity claims raised new issues about how educational resources should be distributed, particularly in light of the fact that most poor children, with higher levels of educational need, were clustered in property poor school districts located in rural areas and inner cities. Moreover, the notion of “vertical equity” served as the basis for new arguments seeking supplemental resources for disabled children with special needs, non-English speaking students, and “at-risk” children needing compensatory education services.47

Although the concept of equity was expanding, plaintiffs in this second wave of litigation achieved mixed success in the courts.48 As a practical matter, addressing the unique needs of individual students, while also attempting to equalize spending among districts, proved to be a challenging task because of the already existing wide disparities in spending that result from varying tax bases.49 In addition, even if equalization of funding could be accomplished, some commentators asserted that this alone would not equalize educational opportunities, which was the ultimate purpose of most litigation.50 Equally frustrat-

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47. See, e.g., Flores v. Arizona, 48 F. Supp. 2d 937 (D. Ariz. 1999) (alleging that the state was failing to adequately fund classes for English language learners); Opinion of the Justices, 624 So. 2d 107, 114 (Ala. 1993) (concluding that disabled students have claims under the Alabama constitution); Abbott ex. rel. Abbott v. Burke, 748 A.2d 82 (N.J. 2000) (finding that the state must address the needs of at risk students).
50. Peter Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 VAND. L. REV. 101, 147 (1995); Liz Kramer, Achieving Equitable Education Through the Courts: A Comparative Analysis of Three States, 31 J.L. & EDUC. 1, 3 (2001) (stating that although increased and equalized funding would help several students, much more structural reforms need to be made). Kramer writes, “[m]ost experts agree that money is not the only solution for the education crisis plaguing the nation, but it is disingenuous to argue that money is not efficacious in producing results and then argue that some districts should be permitted to spend multiple times what other districts spend.” Id. at 11-12; see also Michael A. Rebell, Education Adequacy, Democracy, and the Courts, in Achieving High Standards for All: Conference Summary (Timothy Ready et al. eds., 2002); Zibelman, supra note 11, at 530 (arguing that financial equity alone does not create equal opportunities). West Virginia, for instance, saw a new funding system that was supposed to result in a more equitable distribution of funds among students. However, the results of this new system may not have actually improved the education of the students on whose behalf the litigation was originally brought. Research suggests that these students are now struggling to receive an adequate education because they are being bused long distances over rough terrain and taught in large and unfamiliar schools. See generally Beth
ing progress was the fact that public opposition arose to this equity based shifting of funds in some states. Disappointingly, in those states that moved toward equity, the average amount spent per students often was lower than in states that retained unequal funding systems. Despite these problems, a number of plaintiffs have continued to pursue claims based on equity and a number of recent successful court decisions underscore the fact that “equity” is a still a feasible and potent legal theory. Nevertheless, facing the practical difficulty of equalizing funding and realizing the possible limitations of traditional equity litigation in state courts, some plaintiffs shifted towards a third strategy.

D. Third Wave of Litigation

The impetus for a third wave of school finance litigation stems, in part, from the 1983 publication of A Nation at Risk by the Na-

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52. See Molly McUsic, The Law's Role in Distribution of Education: The Promises and Pitfalls of School Finance Litigation, in Law and School Reform: Six Strategies for Promoting Educational Equity 88, 114 (Jay P. Heubert ed., 1999). A review of recent economic findings show that education finances are not a zero sum game and that the amount of educational expenditures in states that have faced financing reform has increased rather than decreased. Kramer, supra note 50, at 7-8 (citing Sheila A. Murray et al., Education-Finance Reform and the Distribution of Education Resources, 88 Am. Econ. Rev. 791, 807 (1998)). Yet while wide disparities still exist, Kramer concludes that these disparities are more a characteristic of the differences between states than a characteristic of the wealth disparities within a state. Id. at 8.

53. For example, in Vermont, equity litigation has proved to be a viable strategy. Relatively recently, in Brigham v. State, 692 A.2d 384 (Vt. 1997), the Vermont Supreme Court approached the problem similarly to Serrano. The court stated: While we recognize that equal dollar resources do not necessarily translate equally in effect, there is no reasonable doubt that substantial funding differences significantly affect opportunities to learn. To be sure, some school districts may manage their money better than others, and circumstances extraneous to the educational system may substantially affect a child’s performance. Money is clearly not the only variable affecting educational opportunity, but it is one that government can effectively equalize. Id. at 390. Equity litigation has also garnered successful results recently in Arkansas and Tennessee. See, e.g., Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472 (Ark. 2002); Tenn. Small Sch. Sys. v. McWherter, 91 S.W.3d 232 (Tenn. 2002).
tional Commission on Excellence in Education. This report, as well as similar subsequent reports, warned of a "rising tide of mediocrity" in American education. Further fueling the suggestion that the country was suffering a national "crisis in education" were statistics indicating that America's children were falling behind their counterparts in other industrialized nations. In 1989, a National Education Summit was called to address the problems in America's schools. The discussion surrounding this series of events spawned the "standards-based reform" movement, which focused on states setting high academic standards in core subject areas. The revelation that large numbers of minority and poor students were falling behind their classmates, as measured by standardized tests and other measures of educational success, has also encouraged the shift to standards based reform. Still perpetuating the sense that education is in crisis, some political leaders and supporters of standards based reform have more

56. See, e.g., Bitensky, supra note 10, at 555-62 (discussing the nature and scope of the "national" crisis in education); Chris F. Edley, Jr., Lawyers and Education Reform, 28 Harv. J. on Legis. 293, 293-94 (discussing the debate about whether our education is in crisis); Kramer, supra note 50, at 3.
57. See, e.g., Hudson, supra note 55 (discussing reports and statistics that even our best students are falling behind other nations in science and math); Nat'l Comm'n on Excellence in Educ., supra note 54; Mollison, supra note 55 (recounting an educational analyst's evaluation of United States education in comparison with other countries). It is worth noting, however, that the "crisis" may not have been a "crisis" after all. Gerald Bracey finds that the report had overstated the shortcomings in education and suppressed reports that revealed this. Bracey, April Foolishness, A Nation at Risk at 20, 84 Phi Delta Kappan 616, 616-21 (2002). Nevertheless, the effect on the public and educational policy was significant and lasting.
58. In September 1989, President George Bush met with the nation's governors, including then Governor Bill Clinton, in the first National Education Summit. In the wake of the summit, six National Education Goals (later expanded to eight by Congress) became the basis for the Goals 2000 program. These goals led to an effort by states to set standards defining what every student should know and be able to do in a number of subject areas and grades. Joetta L. Sack, The End of an Education Presidency, Educ. Wk., Jan. 17, 2001.
recently made claims that children are moving through our educational systems without the ability to read, write, spell, or add.60

Claims of such shortcomings seem ironic in light of the fact that every state's constitution includes an education clause that entitles students to some basic level of education.61 State constitutions term it in various ways—"efficient," "thorough," or "sound basic education"—but the basic theme is that state law obligates the state to provide children with an education that prepares them for later challenges in life, whether it be college, trade school, work, or the obligations of citizenship. Seizing on this constitutional language, plaintiffs began weaving elements of standards-based reform into their legal claims.

The outpouring of this marriage was a new round of educational reform litigation primarily based on the notion of "educational ade-


61. See, e.g., Shofstall v. Hollins, 515 P.2d 590, 592 (Ariz. 1973) (finding education to be a fundamental right under the state constitution); Serrano v. Priest, 557 P.2d 929, 951 (Cal. 1977) (finding education is a fundamental interest), modified, 569 P.2d 1303 (Cal. 1977); Horton v. Meskill, 376 A.2d 359, 373 (Conn. 1977) (holding education is a fundamental right); Lewis E. v. Spagnolo, 679 N.E.2d 831, 835 (Ill. App. Ct. 1997) (finding the Illinois constitution provides for an adequate education); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989) (finding the right to an adequate education is fundamental); Skee v. State, 505 N.W.2d 299, 313 (Minn. 1993) (holding that education is a fundamental right); Claremont Sch. Dist. v. Governor, 703 A.2d 1353, 1359 (N.H. 1997) (holding that a constitutionally adequate public education is a fundamental right); Leandro v. State, 498 S.E.2d 249, 254 (N.C. 1997) (finding the right to an education is guaranteed by the state constitution); Bismarck Pub. Sch. Dist. No. 1 v. State, 511 N.W.2d 247, 256 (N.D. 1994) (finding education a fundamental right); Tenn. Small Sch. Sys. v. McWherter, 851 S.W.2d 139, 151 (Tenn. 1993) (finding the state constitution guarantees the right to free public education); Scott v. Commonwealth, 443 S.E.2d 134, 142 (Va. 1994) (holding education is a fundamental right); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 92 (Wash. 1978) (en banc) (finding a right to be provided an education); Pauley v. Kelly, 255 S.E.2d 859, 878 (W. Va. 1979) (holding education is a fundamental constitutional right); Buse v. Smith, 247 N.W.2d 141, 155 (Wisc. 1976) (establishing that "the right to equal opportunity for education is a fundamental right"); Washakie County Sch. Dist. No. 1 v. Herschler, 606 P.2d 310, 333 (Wyo. 1980) (finding education is a matter of fundamental interest). See also Randal S. Jeffrey, Equal Protection in State Courts: The New Economic Equality Rights, 17 Law & Inq. 239, 270 (1999) (finding that fifteen states had found that education was a fundamental right under their state constitution); Avidan Y. Cover, Note, Is "Adequacy" a More "Political Question" than "Equality?: The Effect of Standards-Based Education on Judicial Standards for Education Finance, 11 Cornell J.L. & Pub. Pol'y 403, 409 (2000) (stating every state constitution has an education clause allowing for the argument that education is a fundamental right).
Adequacy cases are premised on the theory that the state has a duty, grounded in either a state constitution or statute, to supply students with an education that allows them to meet certain standards. Once plaintiffs establish these particular educational rights, they can assert that students are not obtaining this education. Then, plaintiffs may prove it by demonstrating that students are failing to meet standards as measured by results on standardized tests or other indicators of educational success.

Courts faced with this litigation must begin by determining what type of education a state constitution or statute requires the state to give students. The earliest cases merely fleshed out an adequate education in broad terms, such as an education that equips students to be citizens or participants in the job market. These vague definitions proved largely unsuccessful in creating substantive improvements in educational systems because the definition was not explicit enough to establish a standard by which to measure whether the state was providing it. However, in 1989 in Rose v. Council for Better Education, the Kentucky Supreme Court turned the tide in these cases by delving deep into the meaning of an adequate education. The court held that a constitutionally adequate or "efficient" education included the following skills:

- sufficient oral and written skills sufficient to enable students to function in... civilization; sufficient knowledge of economic, social and political systems to enable the student to make informed decisions; sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her... nation; self-knowledge of mental and physical wellness; art and culture appreciation; and preparation for higher learning in either academics or a vocation.

Since the seminal decision in Rose, several other states have followed Kentucky's lead and prescriptively established what is meant by similar language in their own constitutions. These courts, in ef-

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63. Kramer, supra note 50, at 6-7.
66. Rebell, supra note 50, at 233.
67. 790 S.W.2d 186 (Ky. 1989).
68. Id. at 212.
fect, have engaged in their own standards based reform. Some courts established standards directly fashioned after those in *Rose*, while others more recently have begun looking at state academic standards as a point of departure in determining the meaning of a constitutional education. Rather than setting their own standards, these courts are holding state legislatures to their own word by incorporating statutory or regulatory standards into the constitutional meaning of an adequate education. Regardless of where courts are finding these standards, plaintiffs are now moving forward with measured success in adequacy litigation. Starting with *Rose*, 17 of 18 plaintiff victories in state education litigation between 1989 and 1999 “involved substantial or partial adequacy considerations.”

While theories of adequacy have received the most attention in recent years, it is important to acknowledge that equity has remained a viable legal theory in a number of courts. In light of the continuing concerns over equity, school finance reform appears to be moving in a new and more comprehensive direction in which school funding systems will be judged according to their ability to meet both equity and adequacy principles. The Arkansas Supreme Court’s most recent decision in the state’s education finance litigation may be indicative of this new approach. Striking down the education finance system, the court

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70. See, e.g., Idaho Sch. for Equal Educ. Opportunity v. Evans, 850 P.2d 724 (Idaho 1993) (incorporating state educational standards into the meaning of constitutional adequacy); Abbott by Abbott v. Burke, 693 A.2d 417, 427 (N.J. 1997) (upholding standards that had been adopted by the legislature); Campaign for Fiscal Equity v. State, 719 N.Y.S.2d 475, 484 (N.Y. Sup. Ct. 2001) (finding that several of the Board of Regents’ learning standards fell within the “constitutional requirements for a sound basic education”); Hoke County Bd. of Educ. v. State, No. 95-CVS-1158, 2000 WL 1639686, at *30 (N.C. Super. Ct. Oct. 12, 2000) (evaluating state standards in regard to their ability to offer students a sound basic education); Edgewood Indep. Sch. Dist. v. Kirby, 917 S.W.2d 717, 730 (Tex. 1995) (concluding the state standards system was consistent with constitutional adequacy). See also Rebell, supra note 50, at 230 (writing that “new state standards provided the courts with practical tools for developing judicially manageable approaches for implementing effective remedies”).

71. For an example of how a court used statutes to develop the constitutional meaning of education, see Leandro v. State, 488 S.E.2d at 255 (finding that the North Carolina Constitution guarantees every child in the state an opportunity to a “sound basic education” as defined by competencies in four areas).

72. Rebell, supra note 50, at 230.

73. See supra note 53 (noting recent successful equity-based litigation in *Brigham v. State*, 692 A.2d 384 (Vt. 1997); *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472 (Ark. 2002); *Tenn. Small Sch. Sys. v. McWherter*, 91 S.W.3d 232 (Tenn. 2002)). Equity litigation continues because “although there may be less school finance inequity today than there was 30 years ago, a substantial degree remains.” Minorini & Sugarman, supra note 31, at 65 (citing U.S. GENERAL ACCOUNTING OFFICE, SCHOOL FINANCE: STATE EFFORTS TO REDUCE FUNDING GAPS BETWEEN POOR AND WEALTHY DISTRICTS (Feb. 1997) and presenting data supporting the conclusion that inequities in education funding continue to exist in many states).
wrote, "deficiencies in certain public schools in certain school districts can sustain a finding of inadequacy but also, when compared to other schools in other districts, a finding of inequality."  

Decisions like that of the Arkansas Supreme Court recognize that adequacy, standing alone and without a corresponding and equal commitment to equity, can lead to a denial of educational opportunities for some children. As long as states continue to rely on local communities to pay for significant portions of the cost of education, wealthy communities will be able to up the "education ante" and offer their children better teachers, better facilities, more technology, and a more enriched curriculum. Although schools may be required to provide students with "minimally adequate" educational opportunities, unless courts continue to pay attention to principles of "equity," the result could be an exacerbation of a two-tiered education system—one for the "haves" and one for the "have nots." Such a system is inherently problematic because it may not only cause some students to flee to better schools, but it would make it impossible to sustain an adequate education system over the long term. Notwithstanding this inherent tension, in the end, litigation that seeks to level up resources for children from poor districts under traditional principles of equity, and litigation that recognizes that some students require greater resources, both share a common goal of insuring equal educational opportunity for all children so they may succeed. If the focus remains solidly on achieving equal educational opportunity, the real challenge facing courts and state legislatures is to identify and implement remedies that will achieve this deeply embedded goal of American education.

III. JUDICIAL EFFORTS TO REMEDY INADEQUACY AND INEQUITY

Regardless of whether equity, adequacy, or both are at stake, after finding students are not receiving a constitutionally mandated eduea-
tion, courts are faced with difficult choices about which branch of government should shape a remedy and how. As arbiters of their state constitutions, courts are generally comfortable with their authority and power to decide whether a particular educational scheme comports with the constitution. However, they are not as comfortable with their authority to order specific education policy changes because most state constitutions vest the responsibility for providing education in the legislature. Quite simply, courts possess neither the "power of the sword," nor the "power of the purse." Thus, courts increasingly run the risk of raising serious separation of powers issues when they become more active in shaping and directing education reforms. Due to the inherent tension between courts' power to determine the constitutionality of education finance systems and legislatures' power to remedy them, courts vary greatly in how they proceed once they find a violation of state constitutional law.

A. Deferential Approach

Although courts vary in their responses, they have two basic options. First, a court can attempt to scale back its involvement in the remedial phase of the litigation by reiterating the basics of a constitutionally required education system, outlining in vague and general terms what would be part of a constitutional scheme. Then, the court can conclude by deferring to the legislature to develop a remedy consistent with the court's decision. By doing so, courts avoid getting into the particulars of what type of financing scheme is most effective or what type of educational programs best promote student learning. Under this approach, policy decisions primarily are the legislature's responsibility, with the caveat being that the court will indirectly play a role in shaping the remedy by later reviewing the legislature's remedy and deciding whether to exercise its power to strike it down, and order lawmakers to try again.

The litigation surrounding education finance in Ohio illustrates a court following this deferential approach. The Supreme Court of Ohio

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77. See, e.g., DeRolph v. State, 728 N.E.2d 993, 1002-03 (Ohio 2000).
78. See, e.g., id. at 1003.
79. Koski & Levin, supra note 30, at 496.
80. The Supreme Court of Alabama in Ex Parte James, 836 So. 2d 813 (Ala. 2002), provides an excellent case on point. After having initially remanded the case to the trial court for a remedy plan, the court vacated its prior remand, holding that the issue of school financing was non-justiciable.
81. While the primary responsibility for crafting a remedy generally falls on the shoulders of the state legislature because it has the power to appropriate funds, state governors may also be involved in the remedy stage of litigation because of the role they play in the education system and their power to veto legislation and appropriations adopted by the legislature. Koski & Levin, supra note 30, at 496-97.
THE POWER OF SMALL SCHOOLS

has delivered several opinions in response to claims of inadequate and inequitable funding by the state. In its first decision, DeRolph v. Ohio,82 the court found that reviewing the constitutionality of the state's current educational system was within its authority,83 and held that the public school financing system was unconstitutional.84 In reaching its decision, the court examined the meaning of the state constitution's mandate for the general assembly to create a "thorough and efficient system of common schools."85 After fleshing out the meaning of this mandate, the court measured the state's public education system against it, finding it inadequate.86 But, the court did not venture to tell the General Assembly how it should remedy the problem, writing "we do not instruct the General Assembly as to the specifics of the legislation it should enact."87 Instead, the Ohio Supreme Court and lower courts have monitored the General Assembly's efforts, each time deciding whether the General Assembly's most recent efforts were sufficient to meet the standard of supplying a "thorough and efficient" public education.88 In addition to Ohio, a number of other states have approached the remedial phase of litigation similarly.89

82. 677 N.E.2d 733 (Ohio 1997).
83. Id. at 737. The court squarely confronted the issue of separation of powers in its decision, writing:
   we dismiss as unfounded any suggestion that the problems presented by this case should be left for the General Assembly to resolve. This case involves questions of public or great general interest over which this court has jurisdiction. Under the long-standing doctrine of judicial review, it is our sworn duty to determine whether the General Assembly has enacted legislation that is constitutional.

84. Id. at 747.
85. OHIO CONST. art. VI § 2.
86. DeRolph, 677 N.E.2d at 745-47 (finding the school system was “contrary” to constitutional requirements, “failing,” and “neither thorough or efficient”).
87. Id. at 747.
88. See, e.g., DeRolph v. State, 780 N.E.2d 600 (Ohio 2002); DeRolph v. State, 754 N.E.2d 1184 (Ohio 2001); DeRolph v. State, 728 N.E.2d 993 (Ohio 2000); DeRolph v. State, 712 N.E.2d 125 (Ohio Ct. Com. Pl. 1999). In one instance, the Ohio Supreme Court deviated from its deferential approach by directing the legislature to adopt specific adjustments to the formula used to distribute state education aid. See DeRolph, 754 N.E.2d at 1200-01. The court subsequently agreed to reconsider this order. DeRolph v. State, 758 N.E.2d 1113 (2001). In further litigation, the Ohio court has continued to grapple with the question of the appropriate judicial role in enforcing state constitutional rights involving education. See, e.g., DeRolph v. State, 780 N.E. 2d 529 (Ohio 2002); State ex rel. State v. Lewis, 789 N.E. 2d 195 (Ohio 2003).
89. See, e.g., Roosevelt Elementary Sch. Dist. No. 66 v. Bishop, 877 P.2d 806 (Ariz. 1994); Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 511 (Ark. 2002) (“Clearly, the public schools of this state cannot operate under this constitutional cloud. Were we not to stay our mandate in this case, every dollar spent on public education in Arkansas would be constitutionally suspect”); Rose v. Council for
Once a court backs away from shaping a remedy and directs a legislature to develop one, the legislature often relies on government agencies or legislative commissions to formulate specific educational policies and practices that will comply with the court’s decision. Under these circumstances, educational researchers and school finance experts are often hired and weigh heavily on the remedial schemes that legislatures ultimately enact.90

It is also important to note that states do not always wait for litigation to expose problems. Legislatures sometimes begin considering and implementing remedies and reforms of their own volition, or in response to either real or perceived threats of litigation. In most states, the legislature is aware of the possibility of school finance litigation. Thus, many states have seen their school finance systems reformed in an effort to head off a protracted and expensive court fight.91

B. Active Approach

The second option is for a court to play an active role in shaping all or part of a remedy for a constitutional violation.92 Courts that choose this option then must face issues of educational policy, curriculum, research, and financing. When this occurs, educational experts and


90. The opinion in DeRolph v. State, 712 N.E.2d 125 (Ohio Ct. Com. Pl. 1999) reveals the extent to which such resources are utilized in formulating the remedies in these cases. The court recites the findings and testimony of several expert witnesses, gives detailed background on scores of witnesses, and discusses the amount of testimony that has been offered in the case and relied on by the legislature in making changes to its educational system. Id. at 127-39, 143-52. The Governor of Ohio also moved to bring the expertise of educational researchers to bear on the state’s educational problems. He requested a study by a group of experts to evaluate the strengths and weaknesses of the current educational scheme. DeRolph v. State, 728 N.E.2d 993, 1001 (Ohio 2000). The Supreme Court referred to this study several times in reaching its own conclusions. See, e.g., id. at 1019.

91. For example, the Maryland legislature adopted a series of sweeping school finance reforms totaling $1.3 billion partly out of concern that the state would be sued. Joetta L. Sack, Maryland Schools Get Big Hike In Funding, EDUC. WK., Apr. 17, 2002.

92. See, e.g., Abbott v. Burke, 710 A.2d 450, 458-61 (N.J. 1998); Campbell County Sch. Dist. v. State, 907 P.2d 1238 (Wyo. 1995). Courts, of course, can also limit the degree to which they detail a remedy, leaving several issues for the legislature to decide and maintaining the above discussed fine balance of powers between the branches of government.
the results of educational research again become central to a court's decision.93

The Supreme Court of Wyoming's resolution of education finance challenges in *Campbell County School District v. Wyoming*94 reflects this second, more active approach that courts are more reluctant to take. After the legislature failed to implement a remedy to the court's satisfaction, the Supreme Court delved into educational pedagogy, examining specific strategies that were fundamental in remediating educational deficiencies. Mirroring legislative attempts in other states, the court here also focused on the reports and testimony of educational experts in fashioning a remedy.95 The court reviewed, at length, the research and testimony on educational strategies that relate to class size, school size, services for at-risk children, and the individual attention that students receive.96 Instead of deferring to the legislature, the court actively engaged in determining which pedagogical strategies and funding practices to implement as a remedy.97 As Wyoming's experience suggests, the role of experts becomes paramount for courts that broach the issue of specific remedies because, as one commentator argues, a court cannot effectively remedy school finance constitutional violations unless it takes "judicial notice of successful advances in educational reform" and pedagogy.98

Thus, whether a court takes the deferential approach used in Ohio, the more active approach employed in Wyoming, or the legislature enacts reform on its own, the trend has been to follow the lead of the

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94. 907 P.2d 1238 (Wyo. 1995).

95. For example, after the Wyoming Supreme Court declared the state school finance system unconstitutional, experts were hired by the legislature to help produce a remedy. Relying on suggestions from professional educators in the state, this "professional judgment" approach first identified the components and instructional strategies needed to provide students with an adequate education. Once the components of the system were identified, a complex formula was used to determine the cost of these components and build them into a new school finance system that would satisfy the requirements of the constitution. Among the strategies identified was "smaller schools." James W. Guthrie & Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements*, in *EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES* 209, 232-51 (Helen F. Ladd et al. eds., 1999).

96. Id. at 252-54.

97. For further examples of prescriptive rulings by the courts, see Abbott v. Burke, 710 A.2d 450, 458-59 (N.J. 1998); Pauley v. Bailey, 324 S.E.2d 128 (W. Va. 1984).

98. Dyson, supra note 93, at 121-23.
educational research in implementing remedies that will make a school finance system constitutional.

C. Specific Remedial Strategies and the Role of Educational Research

As courts and legislatures remedy deficiencies in their school finance systems in order to improve educational opportunities and outcomes, their decisions frequently focus on improving specific components of the education system. For example, remedial efforts may seek to improve teacher quality, enrich curriculum content, provide schools with up-to-date technology, or enhance pedagogical strategies that are likely to improve student learning and outcomes, particularly for students who face the greatest educational challenges. Relying on education research, a number of courts and legislatures have supported specific education strategies that have been shown to impact student learning, including professional development for teachers,\textsuperscript{99} student-tutoring programs,\textsuperscript{100} preschool services,\textsuperscript{101} and reducing class size.\textsuperscript{102}

Reducing class size represents a good example of how policymakers and courts have incorporated a research-based education strategy into their thinking and decisions. Studies published since the mid-1980's demonstrate that student achievement, especially for students living in poverty, improves if students are educated in small classes of thirteen to seventeen students during grades K-3.\textsuperscript{103} More specifically, this research concludes that when classes are smaller, teacher morale increases, teachers spend more time on active teaching, classrooms have fewer disruptions, students are more actively engaged in learning, fewer students are required to repeat a grade, and college attend-


\textsuperscript{100} See, e.g., Campaign for Fiscal Equity v. State, 719 N.Y.S.2d 475 (N.Y. Sup. Ct. 2001) (focusing on providing resources for students with extraordinary needs and expanding programs for at-risk students); Campbell County Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995) (requiring provisions for at-risk, special problem, and talented students).


\textsuperscript{103} The most prominent study was the Tennessee STAR Project. Tenn. Dep't of Educ., Student/Teacher Achievement Ratio, Tennessee's K-3 Class Size Study (1999), available at http://www.heroes-inc.org/star.htm.
ance rates increase, again, especially for poor students. Rellying on this educational research, a number of courts and legislatures have incorporated the concept of smaller classes into their decisions regarding school funding and policy. At least 21 states have adopted policy initiatives to reduce class size. Likewise, a number of courts considering school finance challenges have suggested that reducing class size was an important strategy to remedy unconstitutional educational deficiencies.

New Jersey, in particular, provides a prime example of how courts look to education research as they craft specific remedies. After years of wrangling with the state legislature over how to remedy continuing constitutional violations, the New Jersey Supreme Court directed state officials to structure their remedy around the “Success for All” program developed by researchers at John Hopkins University. This program is designed to offer educational services to children in their early years by reducing class size, providing tutors, offering pre-school, funding teacher professional development, and updating classroom technology. In essence, the New Jersey Supreme Court allowed leading educational research to direct the standard for what type of remedies would be appropriate for its failing system.

It is also important to note that regardless of the specific remedies a state chooses, the state generally has a clear goal in mind of insuring equal educational opportunities that will lead to greater learning and educational success for students. Thus, a number of remedies have been implemented in conjunction with establishing “adequate” curriculum standards that identify the knowledge and skills that students need to be successful in the work force, society, and later education. Smaller classes, tutoring programs, professional development, and other remedies are not ends in themselves. Rather, courts and legislatures see them as the means by which to increase children’s ability to

105. ERIC CLEARINGHOUSE ON EDUCATIONAL MANAGEMENT, CLASS-SIZE-REDUCTION INITIATIVES, BY STATE (2000).
106. See supra notes 103-04.
107. For a further discussion of the “Success for All” program, see Robert Slavin et al., Success for All: A Summary of Research, 1 J. FOR THE EDUC. OF STUDENTS PLACED AT RISK 41 (1996).
109. Rebell, supra note 50. Over the past two decades, educational reports have cautioned that our public education was in a state of crisis. Id. Standards-based education has been the response to both this crisis and litigation claiming students are receiving inadequate education. Since Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989), courts have increasingly looked toward establishing rigorous academic standards as the answer to inadequacy claims. Rebell, supra note 50.
learn and master the core curriculum that is necessary for success in later education, work, and society.

IV. A MISSING INGREDIENT: SMALL SCHOOLS

The ultimate objective in shaping remedies is to identify and implement those strategies that are best suited to improvement of educational outcomes for the students on whose behalf legal claims are brought. As the above discussion shows, educational research has been critically important in this process. Thus, most judicial and legislative remedies reflect the results of education research and are among those described in the previous section. However, over the past three decades of education reform, one very important strategy has been largely ignored or overlooked: smaller schools.110 Recent educational research has shown that smaller schools, like smaller classes, are one of the more important components of a high quality education program that can effectively lead to improved educational outcomes.111

110. This article does not use a standard definition to describe a “small school.” See supra note 13 and infra note 115. As the research noted infra suggests, the smaller a school is, the greater the educational benefits offered to students.

THE POWER OF SMALL SCHOOLS

While other research-based strategies such as professional development for teachers, smaller classes, and early childhood education are very important, the results of research concerning small schools should broaden the discussion of possible remedies for courts and legislatures as they shape educational reform. Smaller schools have added value because they are a strategy through which other remedies flow and, therefore, play a significant role in determining the effectiveness of other remedies. Quite simply, as research on small schools suggests, institutional changes in schools must be made in order to achieve meaningful remedies. Small schools represent that institutional change. Furthermore, the current research on small schools is extremely relevant to poor, minority, and rural children, who are most often the groups of students on whose behalf school finance cases are litigated.

A. Research Findings on Small Schools

Although there is no consensus among researchers about the exact optimum size for a small school, a wide body of education research...
has confirmed what many parents and educators have known for years: smaller schools represent a sound educational strategy that offers a number of educational benefits to students. Most important, educational researchers have found that student achievement, especially among students from poor communities, is positively impacted when students are educated in smaller schools.116 These conclusions

tary schools, 200 students for middle schools and 300 students for high schools); Cotton, supra note 111. Other researchers have reached different conclusions about optimum school size. See, e.g., Davant Williams, The Dimensions of Education: Recent Research on School Size, ERIC Doc. No. 347006 (1990) ("Research indicates that an effective size for an elementary school is in the range of 300-400 students and that 400-800 is appropriate for a secondary school."); see also Mathew Andrews et al., Revisiting Economies of Size in American Education: Are We Any Closer to a Consensus?, 21 Econ. of Educ. Rev. 245 (2002); Cotton, supra note 111 (concurring in Williams' conclusions). Although some researchers have attempted to define the optimum size for a school, the research noted infra suggests that the smaller a school is, the greater the educational advantages offered to students.

have been confirmed in several studies. Independent reports from Arkansas, Alaska, Ohio, Georgia, Montana, Texas, and West Virginia all found that smaller schools help poor students and students from low-income communities narrow the academic achievement gap between them and students from wealthier communities.

School size works in close conjunction with poverty and achievement levels. Research shows that "as schools become larger, the negative effect of poverty on student achievement increases." Or, stated conversely, the higher the level of poverty in a community, the more important it is to have smaller schools and school districts because they result in higher achievement for these students. Smaller schools are also likely to provide minority students with significant educational benefits. African-American, Hispanic, and Native American students tend to live in communities with high rates of poverty. Research about smaller schools suggests that when these students attend smaller schools their performance on standardized tests is likely to be higher than similar students attending larger schools. Regrettably, minority students often attend schools that are too large to promote optimum student achievement.


117. In a study of Texas, the results showed that smaller schools would likely produce higher scores and larger schools would produce lower scores. BICKEL, TEXAS REPLICATION, supra note 111 (finding these results to occur in between 26 and 57 percent of schools, depending on grade level); HOWLEY, REPORT FOR OHIO, supra note 111 (finding Ohio produced the same results in 41 to 90 percent of the schools, depending on grade level). A study of Ohio revealed that at the ninth grade level, 90 percent of the schools in the state were too large to maximize their students' achievement. Id. Georgia showed similar results in 36 to 68 percent of its schools. BICKEL, GEORGIA REPLICATION, supra note 111. More specifically, the results showed that in low socio-economic communities student scores decreased on 27 out of 29 test measures when school size increased. Id. The results in Montana were not as clear, with a statistical significance only occurring in the fourth grade. HOWLEY, REPORT FOR MONTANA, supra note 111, at 5. This may be because such a large percentage of the schools there are already small. Id. The studies produce clear results, however, when poverty is taken into account. "In Georgia, Ohio, and Texas, smaller schools reduce the negative effect of poverty on average student achievement in every grade tested. In Montana, smaller schools significantly cut poverty's power over achievement in two of the three grades tested." Strange, supra note 16, at 12 (citations to the above named studies omitted). The correlation between poverty and low achievement was as much as ten times as high in large schools. Id.

118. Gary Huang & Craig B. Howley, Mitigating Disadvantage: Effects of Small-Scale Schooling on Student Achievement in Alaska, 9 J. RES. IN RURAL EDUC. 137 (1993); BICKEL, GEORGIA REPLICATION, supra note 111; BICKEL, TEXAS REPLICATION, supra note 111; HOWLEY, REPORT FOR MONTANA, supra note 111; HOWLEY, REPORT FOR OHIO, supra note 111; HOWLEY & BICKEL, supra note 111.

119. RURAL SCHOOL AND COMMUNITY TRUST POLICY PROGRAM, supra note 111.

120. Id. (discussing a relationship between race and school size based on studies done in Georgia, Montana, Ohio, and Texas on small schools).
In addition to their positive impact on student achievement, researchers have concluded that smaller schools offer a broad array of other benefits, many of which help account for the improvement in achievement. First, small schools promote the most basic and important aspect of school that must be achieved if students are going to learn anything: they have to be at school. Statistics show that students in smaller schools have higher attendance rates and lower rates of students dropping out.121 Thus, irrespective of any other factor, small schools are necessarily in a better position to deliver education to their students.

Second, small schools go to the heart of delivering an effective education once their students enter the schoolhouse door. As with any type of endeavor that requires effort, participants' attitudes are a huge factor in what they get out of the endeavor, and in this respect, research shows small schools offer a number of advantages over larger schools. In short, student attitudes towards education are enhanced in smaller schools.122 Parents also contribute to their children's attitudes by showing their own interest in the school. In small schools, parental involvement, a key ingredient for academic success, greatly increases.123

121. Cotton, supra note 111 (finding that nine of ten studies reveal a positive correlation between reduced dropouts and small schools).


123. Burke, supra note 116; Cotton, supra note 111 (citing B.M. Berlin & R.C. Cienkus, The Ultimate Educational Issue?, 21 Educ. & Urb. Soc'y 228 (1989); Walberg, supra note 16 (writing that parents "are more likely to know" their children's principals and teachers and stay abreast of their academic achievement and school activities); Nasus Raze, Instructional Implications for Small Schools: A Review of the Literature, ERIC Doc. No. 272347 (1985)). However, those teachers and students who have had consolidation into larger schools visited upon them state that "parents get left out because they quit coming to PTA and they lose interest in the school because it's too far away and they feel powerless." Spence, supra note 50, at 9. Whereas, these same parents and teachers previously "worked well together." Id.
Third, with the improved attitude and involvement of both students and parents, extraneous problems that inhibit teachers' ability to teach and reach students subside. Statistics show that students in smaller schools have fewer disciplinary problems and display less negative social behavior, such as drug abuse, gang activity, vandalism, and violence.124 Furthermore, in light of the increasing occurrences of these problems across the nation and their extreme seriousness, small schools' ability to combat these problems is, standing alone, a compelling justification for protecting and promoting small schools. In short, "smaller schools are safer schools."125

Fourth, small schools create a "community setting" that invites students to become part of the school, rather than feeling isolated or excluded, as is often the case in larger schools. Research shows that in small schools, students form better relationships with their teachers,126 their interpersonal relationships with other students are stronger, and they tend to have lower feelings of alienation from the school.127 Students in small schools also become more involved in

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124. McCluskey, supra note 111 (citing the National Longitudinal Study of Adolescent Health); Bailey, supra note 111 at 1 (finding drug problems are "significantly more likely in big schools," and relying on the Department of Education's report, VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996-97, to find that when compared with small schools, big schools have 825 percent more violent crime, 270 percent more vandalism, 378 percent more theft and larceny, 394 percent more fights, 3200 percent more robberies and 1000 percent more problems with weapons); Cotton, supra note 111 (citing Stockard & Mayberry, supra note 16; D.L. Duke & C. Perry, Can Alternative Schools Succeed Where Benjamin Spock, Spiro Agnew, and B. F. Skinner Have Failed?, 13 ADOLESCENCE 375 (1978); Gregory, supra note 116; Kershaw & Blank, supra note 116, Rutter, supra note 122; Burke, supra note 116; D.C. Gottfredson, John Hopkins Univ., SCHOOL SIZE AND SCHOOL DISORDER, ERIC Doc. No. 261456 (1985)). Cotton again notes that there is an even more positive effect for minority and low-SES students. Cotton, supra note 111. United States Department of Education statistics reveal that these problems are often three to eight times more prevalent in big schools. U.S. DEP'T OF EDUC., VIOLENCE AND DISCIPLINE PROBLEMS IN U.S. PUBLIC SCHOOLS: 1996-97 (1998).


126. McCluskey, supra note 111 (The article quotes Dr. Robert Blum as stating that "what matters is the environment that a student enters when he walks through the classroom door . . . . In smaller schools, students, teachers, and school administrators all have more personal relationships with each other. They know who you are. This is important to keep kids engaged and part of school."); Cotton, supra note 111.

127. Bailey, supra note 111, at 2; Cotton, supra note 111. Jon Bailey focused on this issue specifically after the Columbine shootings. He does not assert that a large school was the primary reason for the incident, but he does show that many of the attitudes, perceptions, and problems that we hypothesized as being the contributing factors to the shooting are much less prevalent in small schools. Id. For a further discussion of the interaction between higher extracurricular participation and decreased feelings of alienation, see R. Barker & P. Gump, Big School, Small School: High School Size and Student Behavior (1964).
school activities. Unlike large schools, higher percentages of students in small schools participate in a greater number of activities. Out of basic necessity, greater proportions of the student body are needed to assemble athletic teams, bands, chess clubs, and theater casts. However, participation in small schools goes beyond basic necessity. Researchers find that students in smaller schools derive greater satisfaction from their participation. The fact that larger schools offer a wider variety of extracurricular activities, and yet a huge proportion of the student body does not avail themselves of them, only furthers the argument that there is something special about small schools that makes students want to participate. As one education researcher notes, "in small schools there were few students who did not participate in anything."

Fifth, one of the primary arguments advanced in support of larger schools has proved illusory. Advocates of large schools argue that they can offer students wider course offerings that will better prepare them for college, with the suggestion also being that small schools are not offering students the necessary education. However, current research challenges this assumption, concluding that the potentially wider curriculum offerings of larger schools often prove to be an irrelevant factor because "small schools are able to offer a strong core curriculum and, except in extremely small schools, a comparable level of academically advanced courses."

Moreover, the arguments of large school

128. COTTON, supra note 111 (citing STOCKARD & MAYBERRY, supra note 16; G. Cavelti, Restructuring Large High Schools to Personalize Learning for All, 11 ERS SPECTRUM 17 (1993); C.M. Foster & I. Martinez, The Effects of School Enrollment Size in the Middle and Junior High School on Teacher and Student Attitude and Student Self-Concept, 3 RES. IN RURAL EDUC. 57 (1985); Fowler, supra note 116; Fowler & Walberg, supra note 111; M. Grabe, School Size and the Importance of School Activities, 16 ADOLESCENCE 21 (1981); A. Holland & T. Andre, The Relationship of Self-Esteem to Selected Personal and Environmental Resources of Adolescents, 29 ADOLESCENCE 345 (1994); Kershaw & Blank, supra note 116; R.B. Pittman & P. Haughwout, Influence of High School Size on Dropout Rate, 9 EDUC. EVALUATION & POL'Y ANALYSIS 337 (1987); Robert G. Rogers, Is Bigger Better? Fact or Fad Concerning School District Organization, 5/4 ERS SPECTRUM 36 (1987); Phil Schoggen & Maxine Schoggen, Student Voluntary Participation and High School Size, 81 J. EDUC. RES. 288 (1988); Smith & DeYoung, supra note 16; Walberg, supra note 16; BURKE, supra note 116).

129. Bailey, supra note 111 (stating twenty three research studies and four national studies found that extracurricular participation was higher and more varied in small schools); Moriarty, supra note 111; RICHARD R. VALENCIA, SCHOOL CLOSURES AND POLICY ISSUES, ERIC Doc. No. 323040 (1984) (finding that small schools need all their students for the schools' enterprises).

130. COTTON, supra note 111.

131. Schoggen & Schoggen, supra note 128, at 292.


133. McCluskey, supra note 111 (quoting Andrew Rotherham, director of the 21st Century Schools Project at the Progressive Policy Institute). Schools with as few
proponents become even less persuasive as schools broaden their use of new technology. The use of distance learning programs can now inexpensively and easily provide a potentially limitless offering of supplemental and advanced courses to students in smaller or remote settings.  

Last, researchers have recently compared the efficacy of smaller classes to that of smaller schools. As noted above, both strategies clearly offer educational advantages and benefits. But some researchers have concluded that school size is arguably more important than class size. Comparing results on standardized tests, such as the Scholastic Assessment Test (SAT) and the American College Test (ACT), as well as rates of graduation, researchers have concluded that positive student outcomes may be due more to smaller schools than smaller classes.

B. The Relevance of Small School Research to School Finance Litigation

The importance of research on the educational advantages of small schools is heightened by its relevance to the central constitutional issues often presented in school finance litigation. As a baseline, courts frequently look to see whether state education systems are, in fact, resulting in high levels of achievement, measured in large part by students’ performance on standardized tests and other forms of assessment. They are also increasingly judging the constitutionality of state school finance systems by focusing on the academic outcomes for disadvantaged children. The above research on small schools goes to the heart of these issues.

As noted above, studies have shown students in smaller schools receiving the type of high quality education and opportunities in core subjects that courts have deemed important in several cases. For example, in Nebraska in 1998-99, nearly 70 percent of the schools the state recognized for excellence in college acceptance test scores “were small, rural schools.” Moreover, the above research shows that smaller schools have an effect on student achievement levels and on the achievement gaps between certain demographic groups of stu-

as 100 students can offer core courses comparable to schools with 1,200 students. Cotton, supra note 113, at 1. Even if larger schools are able to offer additional substantive courses, only a small number of students actually take such classes. Id. at 16.

137. Cotton, supra note 111.
students, both of which have been central issues in some cases in determining whether students are obtaining an adequate education.\textsuperscript{139}

By focusing on these issues, courts, as well as policy makers, recognize that children do not come to school from equal social or economic backgrounds, and these differences have an effect on their education.\textsuperscript{140} A wide body of education research confirms that poverty has a direct negative correlation with student achievement,\textsuperscript{141} and that a wide and persistent gap in educational achievement exists between students of different racial and ethnic backgrounds.\textsuperscript{142} These problems are a driving force behind many school finance lawsuits. A survey of the plaintiffs in school finance cases reveals that the plaintiffs were poor and at-risk students in New Jersey,\textsuperscript{143} poor and rural students in West Virginia,\textsuperscript{144} at-risk and rural in North Carolina,\textsuperscript{145} poorer school districts in Wyoming,\textsuperscript{146} and a similar list goes on.\textsuperscript{147} At least in these states, the courts’ conclusions have been that poor, minority, or rural children have not received a high quality education.\textsuperscript{148} Consequently, states must seek remedies that improve educational outcomes for these specific students. In light of the positive correlation between small schools and the academic achievement of disadvantaged students, courts that were aware of the benefits of small schools would likely find them to be an attractive strategy for

\textsuperscript{139} See, e.g., Sheff v. O’Neill, 678 A.2d 1267, 1274 (Conn. 1996) (discussing the relevance of the achievement gap to the state’s delivery of a constitutional education); Abbott by Abbott v. Burke, 693 A.2d 417, 434 (N.J. 1997) (concluding that closing the achievement gaps between races and delivering additional resources to this end should be the state’s priority); Hoke County Bd. Of Educ. v. State, No. 95-CVS-1158, 2000 WL 1639686, at *68 (N.C. Super. Ct. Oct. 12, 2000) (recognizing the state’s problem with a persistent achievement gap).

\textsuperscript{140} For example, the new federal No Child Left Behind Act requires states and schools to improve the achievement of minority students or risk losing federal financial support for education. 20 U.S.C. § 6301 (1999); see also Kati Haycock, \textit{ Closing the Achievement Gap,} 58 EDUC. LEADERSHIP 6-11 (2001) (describing West Virginia’s funding scheme for facilities and how a smaller schools must merge to create an economy of scale large enough to qualify for facility funds).


\textsuperscript{142} Christopher Jencks & Meredith Phillips, \textit{The Black-White Test Score Gap} (1998).

\textsuperscript{143} Abbott v. Burke, 710 A.2d 450, 455 (N.J. 1998).

\textsuperscript{144} Pauley v. Kelly, 255 S.E.2d 859, 861, 888 (W. Va. 1979).


\textsuperscript{146} State v. Campbell Sch. Dist., 9 P.3d 518, 528 (Wyo. 2001).

\textsuperscript{147} Although more wealthy districts have intervened or fought back with their own litigation, these cases have always been brought on behalf of marginalized students, whether they be termed at-risk, rural, poor, minority, or residing in a poor district.

\textsuperscript{148} Rebell, supra note 50, at 230 (stating that the reliance on claims of denial of an adequate education has helped lead to plaintiff victories in 17 of 18 cases since 1989).
remedying constitutional violations. Likewise, those courts that examine adequacy and equity through the lens of outcomes such as dropout and graduation rates, 149 and societal and civic participation, 150 would find that small schools excel in these areas as well.

Although their decisions only touched a narrow portion of a wide body of research, the two courts that have broached the efficacy of small schools have found them to be compelling. 151 The supreme courts in Wyoming and New Jersey recognized the significance of small schools in reviewing the constitutionality of their state school finance systems. In Campbell v. State, 152 the Wyoming Supreme Court reviewed a constitutional challenge to arcane provisions in the state's school finance scheme that tended to favor smaller school districts over larger districts. The court ultimately struck down the system. Nevertheless, despite ruling in favor of the larger districts, the court made it clear that it did not see the creation of larger schools as an appropriate solution. 153 In the court's view, the remedy is not to dismantle small rural schools because they unfairly advantage rural children. Rather, the state's school finance and education system

149. Bailey, supra note 111, at 1-2; Cotton, supra note 111.
150. Cotton, supra note 111.
151. It is ironic that other courts have not addressed the size of school facilities because a recurring legal claim in school finance cases is that inadequate school facilities are not conducive to learning. Many of these constitutional challenges have been led by rural and low wealth school systems whose schools often have deplorable conditions and stand in stark contrast to school buildings in many suburban and more affluent communities. Implicit in these decisions is the recognition that there is a correlation between school facilities and academic achievement. Indeed, there is educational research showing such a link. Some researchers have also suggested that school facilities may have a stronger effect on student performance than the combined influences of family background, socioeconomic status, school attendance, and behavior. See Roosevelt v. Bishop, 877 P.2d 806, 815 n.7 (Ariz. 1994); Rose v. Council for Better Educ., 790 S.W.2d 186, 198 (Ky. 1989); Abbott v. Burke, 693 A.2d 417, 437 (N.J. 1997) ("The condition of school facilities always has been of constitutional import. Deteriorating physical facilities relate to the state's educational obligation, and we continually have noted that adequate physical facilities are an essential component of that constitutional mandate."); DeRolph v. State, 677 N.E.2d 733, 747 (Ohio 1997) ("A thorough and efficient system of common schools includes facilities in good repair."); Pauley v. Kelly, 255 S.E.2d 859, 877 (W. Va. 1979); T.C. Chan, Environmental Impact on Student Learning, ERIC Doc. No. 406722 (1996); Morgan Lewis, Presentation to Council of Educational Facility Planners International: Where Children Learn: Facilities Conditions and Student Test Performance in Milwaukee Public Schools, at http://www.cefpi.org/pdf/issue12.pdf (Dec. 2000) (suggesting that school facilities may have a more powerful effect on student learning than other factors); Mark Schneider, Do School Facilities Affect Academic Outcome?, at http://www.edfacilities.org/pubs/outcomes.pdf (2002) (concluding that there is a strong link between school facilities and the performance of teachers and students).
152. 907 P.2d 1238, 1278-79 (Wyo. 1995).
153. Id. at 1278.
should incorporate the benefits of small schools into the educational experience of all children in the state. The court went on to note:

Today’s educators recognize a proper education requires . . . small schools. An equal opportunity for a proper education necessarily contemplates the playing field will be leveled so each child has an equal chance for educational success. Our children’s readiness to learn is impacted by social ills, learning deficiencies and a system itself which forces them into large classes or large schools.

Resisting the impulse to abandon the distinct needs of smaller rural schools, the court wrote that it is the responsibility of the legislature to provide students with the proper educational package and that “each Wyoming student is entitled to [it] whether she lives in [‘large’] Laramie or in [‘small’] Sundance.”

The issue of small schools also came up in New Jersey’s attempt to fashion a remedy in the state’s longstanding school finance litigation. The New Jersey Supreme Court recognized that “alternative schools,” which are targeted at helping students who are at risk of academic failure, offer some students the education program necessary for academic success. The court noted such schools with approval primarily because of their size, observing:

Alternative schools generally are small educational programs (usually 200-300 students) created for students who have difficulty with the more impersonal environment of the typical large high school. Many alternative schools cater to students who have a combination of learning, behavior, and family problems and need a supportive learning environment. The small size helps alternative schools provide a more “personalized” educational environment. Teachers in alternative schools tend to teach as well as work with students on their non-education problems. Alternative schools usually have their own physical sites, different and away from the high schools from which they receive the bulk of their enrollment. Research shows that alternative schools produce considerable success.

With the exception of New Jersey and Wyoming, courts have not taken account of the benefits of small schools. But with a developing trend in research showing that small schools are beneficial for poor and minority children, and statistics revealing that these students are most often concentrated in larger schools, courts and legislatures

154. Id. at 1278-79; Strange, supra note 16, at 14 (noting that the court’s ruling effectively required Wyoming legislators to provide equal and adequate educational opportunities for children where they live).

155. Campbell, 907 P.2d at 1278.

156. Id. at 1279.


158. Robert W. Jewell, School and School District Size Relationships: Costs, Results, Minorities, and Private School Enrollments, 21 EDUC. & URB. SOC’Y 140, 150 (1989) (finding that lower economic status and racial minority students are generally concentrated in areas that have large school districts and schools); Strange, supra note 16, at 12 (stating that “minority children are often enrolled in schools that are too big to achieve top performance in the community,” and citing specific instances of this phenomena in Georgia and Texas).
should follow the example set by the courts in these two states and begin incorporating small school strategies into their remedies.

Recent developments in Kentucky provide an excellent example of how education research findings about the benefits of smaller schools may be incorporated into efforts to improve education. Despite years of school finance reform in Kentucky following the decision in *Rose*, the adequacy of Kentucky's school finance system has continued to be a contentious issue. To address these concerns, the state employed education experts to advise Kentucky policy makers on the best remedies for inadequacies in the state education finance system. These experts used a process that identified education strategies and programs that "State-of-the-Art" education research shows to improve student learning. Using this "State-of-the-Art" approach, the experts recommended that Kentucky policymakers adopt and fund policies supporting smaller schools because reliable education research demonstrates that such schools are highly effective in boosting student achievement.159

Another simple yet important policy option for supporting smaller schools is to preserve and promote existing small schools, especially schools located in rural communities. Rural schools often face formidable challenges including remoteness, declining student enrolments, a declining tax base, difficulty in recruiting, retaining and paying teachers, and a lack of access to technology. Recognizing the educational benefits of smaller schools and the unique funding challenges faced by many existing small and rural schools, a number of states have established special supplemental funding categories that provide rural and small schools with extra resources in order to offer students equal educational opportunities.160 While these efforts are laudable, they, nevertheless, often fall short of providing schools with the resources they need to address the higher costs associated with educating students in rural and remote areas.161

V. THE EDUCATIONAL HARM OF OVERLOOKING THE VALUE OF SMALL SCHOOLS: CONSOLIDATION AND BUSING

When decision-makers overlook the value of smaller schools, they implicitly sanction existing larger schools that tend to concentrate and

amplify the negative effects that poverty has on education. They also open the door to school consolidation, especially in rural communities. In an effort to comply with other mandates and remedies, the result of some school finance litigation has been for policy makers to force or strongly encourage the consolidation of small schools as a means of cutting costs. In these states, the effect on students has often been devastating.

The seriousness of widespread school consolidation cannot be overstated. "Since 1940, the number of public schools in the U.S. has declined by 69 percent despite a 70 percent increase in population." The result has been the average school size growing by a factor of five. Furthermore, these statistics are not accidental, with the "consistent public policy" being to merge and consolidate small schools. Although the intentions were to improve education for these children or give them an "equal" education, this has rarely been the outcome.

Events in West Virginia provide a graphic example of how a plain-tiff's victory in court can lead to wide-scale school consolidation that does little to improve education. After the West Virginia Supreme Court rendered its decision mandating that the state change its financing scheme to improve equity and school facilities, the state's response was a financing system and a series of policies that left most

162. See, e.g., DRAZEN, supra note 141.
164. See, e.g., Pendleton v. Marockie, 507 S.E.2d 673 (W. Va. 1998). In Pendleton, a group of high school students and their parents sought to stop the closure and consolidation of their high school arguing that state policies that led to the closure of their school impossibly focused on only one factor—"economies of scale" size requirements—while ignoring the educational harm that would be caused by students attending larger, consolidated schools. Id. at 676. While allowing the closing of the school to proceed, the court assumed there were a number of disadvantages of larger schools as found by the trial court but, nevertheless, concluded the state had compelling state interests supporting its policy—saving money, enhanced curriculum offerings, safe facilities, and balancing state and local needs. Id. at 681. Despite dismissing the plaintiff's lawsuit, the court left open the possibility that courts might prevent school closings in the future if plaintiffs could establish policies that are "feasible, more narrowly tailored and less restrictive alternatives" to consolidation. Id. at 682.
166. McCluskey, supra note 111.
schools with no choice other than to consolidate. The state's chosen method to address deficiencies with its ailing school facilities was to implement a school facilities construction program based on "economies of scale," with the theory being the increased cost efficiency would free additional resources that could be delivered to students without actually appropriating additional funds. In its system for allotting new construction funds, the commission created by the West Virginia legislature to administer the state's school facilities program adopted policies with built-in biases toward proposals for large schools. These policies effectively prevented small schools from qualifying for additional state funding, thus furthering the tide of consolidation. While these large schools were built on promises of educational improvements for students, the actual results have been longer bus rides for students, lower academic achievement, and no appreciable cost savings. These negative effects are ironic in light of the fact that the litigation was brought to improve the education of students living in poorer communities. One commentator sadly writes of West Virginia, "students who attend smaller high schools, students who are generally poorer and more rural, must lose their schools and be bused long distances to the larger school so that affluent children can have a few academic advantages."

As West Virginia's experience shows, the assumption that bigger schools and "economies of scale" can save money through consolidation and allow for other educational investments is proving false. After consolidation, the reality has been that the new larger schools have usually been unable to show any significant savings and, at times,

168. Pendleton, 507 S.E.2d at 676 (discussing how consolidation was a result of the Supreme Court's earlier decisions); see also Dierdre Purdy, An Economic, Thorough, & Efficient School System & The West Virginia School Building Authority "Economy of Scale Numbers," 99 W. VA. L. REV. 175, 188 (1996) (pointing out that under state reforms to improve school facilities only thirty-four percent of existing schools in West Virginia were eligible for school facilities funds without consolidating with other schools).


170. Id.

171. Id. at 195-96, 202.

172. Id.

173. Id. at 199.


175. James S. Streifel, The Financial Effects of Consolidation, 7 J. RES. IN RURAL EDUC. 13 (1991) (examining 19 district consolidations in 10 different states and finding that out of 6 expenditure categories, only administration costs produced significant savings); James M. Kearney, The Advantages of Small Rural Schools: Final Report to the Idaho Rural School Association, ERIC Doc. No. 373394 (1994) (emphasizing that community involvement and close interpersonal relations among teachers, parents, students, and administrators may offset...
have proven to be more expensive because of increases in discipline, drop-outs, and absenteeism.\textsuperscript{176} When measured by the cost per graduate, small schools can be cheaper because they have been shown to graduate a higher percentage of their students.\textsuperscript{177} If decision-makers' narrow concern is with how much the state spends on each student in the system, then the current scheme may, at best, provide marginal savings; but if their concern is with graduating students and achieving better educational outcomes, then smaller schools cannot be sacrificed too quickly.\textsuperscript{178} Moreover, research has shown that economies of scale sometimes associated with larger schools are offset once the school's student population increases to a certain level. Once schools

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\item 176. Strange, supra note 16, at 4 (citing studies that show the extra cost of busing alone offsets any possible efficiency gains of consolidation); Bailey, supra note 111, at 1-2 (arguing that the push for larger schools is a short-sighted budgetary concern that fails to recognize small schools have less problems and have a "significantly greater ability to graduate students"). Bailey also points out that large schools have other economic costs because closing rural schools lowers the property value, retail sales, labor supply, and business activities in their respective communities. Bailey, supra note 111, at 3.
\item 177. Cotton, supra note 113, at 17; Moriarty, supra note 111, at H9 ("If you look at cost per student, a large school is more cost-effective. But if you look at cost per graduate—or cost per success, if your goal is to teach kids and not just keep them somewhere—the costs are quite similar." (quoting Fran Rothstein's review of the U.S. Department of Education's research on school size)); see also Lashway, supra note 165; Raywid, supra note 111.
\item 178. As Craig Howley shows, the research that spurred consolidation is based on lowered cost and increased educational inputs, not on actual expectations of improved student achievement. Craig Howley, Synthesis of the Effects of School and District Size: What Research Says About Achievement in Small Schools and Districts, 4 J. Rural & Small Schools 2 (1989). Marty Strange argues that small schools may be more expensive in the narrow sense of per pupil costs, but they are the effective means of narrowing achievement gaps between the affluent and poor. Strange, supra note 16, at 12. Quite simply, "[i]f a state's policy goal is improving student achievement as measured by standardized tests and narrowing the achievement gap between children from the most affluent communities, then states should consider adopting policies favoring small schools, especially in the least affluent communities." Spence, supra note 50, at 8.
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reach this point, there is a corresponding increase in administrative costs and student discipline problems that can actually increase the cost per pupil as the school becomes larger.\textsuperscript{179}

Outside of economic issues, decision-makers must be cognizant of the heavy toll that consolidation exacts on children. In addition to the obvious loss of educational advantages, consolidated students often suffer a second and equally powerful educational disadvantage: long bus rides to school. The busing experience, especially for rural children, is now pervasive. In most rural school districts, a large percentage of the student population is bused, and in many districts, bus rides can last an hour or more each way.\textsuperscript{180} The time spent on rural school buses takes time away from the education process and can lead to lower academic performance, not to mention the time lost for homework, family, and play. This type of busing, as distinguished from busing to desegregate schools in pursuit of legitimate social and educational objectives, only serves to create new forms of unequal educational opportunity.

Continuing down the current path of consolidation poses serious risks to our children and inhibits our ability to remedy the situation of those currently suffering from educational deficiencies. Quite simply, the massive consolidation of rural schools that has occurred during the past twenty years runs counter to what we now know about the value of small schools. In the face of a widening body of research showing the positive benefits of small schools and in light of the harm caused by long bus rides, state decision makers may be inflicting "education harm" on students in the name of fiscal efficiency when they encourage or force consolidation.\textsuperscript{181} Moreover, school finance battles are increasingly incorporating broader concepts of equity that not only

\textsuperscript{179} COTTON, supra note 113, at 17.

\textsuperscript{180} Strange, supra note 16, at 7. This was seen as a particular problem in West Virginia. The state issued guidelines that suggested time limits for bus rides: one hour for elementary students, one and a half hours for middle school students, and two hours for high school students. However, a study of four rural counties revealed that more than half of the children were riding the buses for time periods in excess of the guidelines. \textit{Id.} at 8. School days for these children were extremely long, with bus rides consuming significant portions. \textit{Id.} Other problems such as rides over rough terrain, lack of emergency training for drivers, and combined busing of elementary and secondary students also prevailed. \textit{Id.} at 7-8. Furthermore, the amount of funds spent on this transportation is ten percent of that spent on instruction in some districts. \textit{Id.} at 4. Similar problems were also revealed in analyses of Georgia, New Mexico, Pennsylvania, and Washington. \textit{Id.} at 6.

\textsuperscript{181} For an excellent investigative newspaper series examining how school consolidation has played out in West Virginia, see Eric Eyre & Scott Finn, \textit{Closing Costs, School Consolidation in West Virginia}, \textit{WEST VIRGINIA GAZETTE-MAIL}, Aug. 25, 2002 (noting that in the aftermath of massive school consolidation, the result had been more administrators, few savings, the elimination of advanced courses, and long bus rides for students).
encompass the notion that students should be treated equally, but also recognize that students are entitled to an education that responds to their unique educational circumstances and needs. Under this broad concept of equity, rural students should receive educational services in a school close to their home and have protection from the harms of consolidation and busing.\textsuperscript{182}

Since litigation and policy agendas are directed at providing students with educational opportunities that result in improved educational results and outcomes, decision-makers would be wise to train their thoughts on the cost effectiveness of smaller schools, and avoid the unintended byproduct of encouraging and maintaining large institutions that are detrimental to student success.\textsuperscript{183} Smaller schools, by their very size and flexibility, are a realization of the "one size does not fit all" principle. By scaling down the size of a school, the school becomes more capable of shaping the types of individualized programs that are necessary for each student to gain an adequate education. Because they are not forced to deal with huge administrative issues or educate masses of students, they are more attune to the needs of individual students.\textsuperscript{184} Most important, it is easier for them to make the institutional, classroom, tutor, or teacher changes that are necessary to meet these needs. Quite simply, in smaller schools, "the learning needs of the students, not the organizational needs of the school, drive school operations."\textsuperscript{185} Consolidation policies greatly miss the reality and import of this point.

VI. A DEMOCRATIC IMPERATIVE AND THE ROLE OF SMALL SCHOOLS

Earlier, this article pointed out that school finance reform efforts are anchored in fundamental American ideals that view education as the linchpin of our democracy.\textsuperscript{186} Thus, it is important to discuss

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  \item \textsuperscript{182} Strange, supra note 16, at 12-15.
  \item \textsuperscript{183} After consolidation, these unintended byproducts became a serious problem in West Virginia. After extensive research in West Virginia, Craig Howley concluded, "the evidence suggest . . . that increasing school size may produce effects that are the opposite of those that the policymakers claim they intended in closing small schools." SPENCE, supra note 50, at 1. Although Howley presented the research to key state officials, they did not heed its warning, leading him to conclude that consolidation "actually had little to do with education and much more to do with high-level public administration generally." \textit{Id.} at 1. "They ignore the research and instead continue with the campaign that these schools are inadequate and inefficient." \textit{Id.}
  \item \textsuperscript{184} COTTON, supra note 111.
  \item \textsuperscript{185} COTTON, supra note 111 (citing Berlin & Cienkus, supra note 123; RUTTER, supra note 122).
  \item \textsuperscript{186} In fact, teaching democracy is so central to our traditions that educators and policymakers are struggling with each other to determine how it will be taught and fostered in schools. Joel Westheimer and Joseph Kahne, \textit{Educating the
that, in addition to the many academic benefits small schools offer, research also suggests small schools may play a crucial role in furthering a democratic form of education. Not only does this have obvious importance for our society, but it should also strike a compellingly poignant chord with courts. For as one legal observer asserts, a receptivity to a "democratic imperative" has been at work in prodding courts to entertain the claims of educational inadequacy or inequality.\textsuperscript{187} In light of the democratic traditions discussed earlier, courts have interpreted constitutional education clauses as embodying these democratic notions. Some courts have explicitly tied their constitutional definitions of an adequate education to our democratic traditions. For example, courts consistently include language such as "the preservation of democracy,"\textsuperscript{188} "prepar[ing] citizens for their role as participants . . . in today's marketplace of ideas,"\textsuperscript{189} and "civic participants capable of voting and serving on a jury"\textsuperscript{190} in their discussions of the purposes of education. More pointedly, New York's highest court opened its most recent education finance decision by writing, "We begin with a unanimous recognition of the importance of education in our democracy."\textsuperscript{191}

In light of this receptivity to a democratic imperative, it is important to define what a democratic education means and what role small schools can play in effectuating it. As discussed throughout this article, several states have struggled to determine what offering an adequate education entails. Some scholars and researchers would argue that an adequate education also includes fostering democratic virtues, and that the troubling decline in our citizens' political participation is related to our failures in offering students an adequate education.\textsuperscript{192}

\textsuperscript{187} Rebell finds "there is widespread agreement that an adequate system of education is one that 'ensures that a child is equipped to participate in political affairs.'" Rebell, supra note 50, at 239 (quoting Deborah A. Verstegen & Terry Whitney, From Courthouses to Schoolhouses: Emerging Judicial Theories of Adequacy and Equity, 11 Educ. Pol'y 330, 331 (1997)).

\textsuperscript{188} Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tex. 1989).

\textsuperscript{189} Claremont Sch. Dist. v. Governor, 635 A.2d 1375, 1381 (N.H. 1993).

\textsuperscript{190} Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661, 666 (N.Y. 1995).

\textsuperscript{191} Campaign for Fiscal Equity v. State of New York, 191 2003 N.Y. LEXIS 1678, at *1-2 (N.Y. June 26, 2003). In this most recent decision, the court focused extensively on the role of education in our democracy. Interpreting and restating the standard of educational that the constitution requires, the court discussed for several pages the skills necessary to be an active civic participant in today's culture, including voting, employment, and jury service. Id. at *9-16.

Some even more specifically argue that the decline in political participation is a result of the bureaucratic and hierarchical structure of schools.\(^{193}\) They point out that traditional methods of teaching citizenship and democracy are proving inadequate in providing citizens with the tools and initiative to be responsible contributors to our democracy.\(^{194}\)

If we are to seal our political fractures, however, we must begin with democracy in our schools. Public education is the one institution and experience that almost all Americans have in common and that shapes their connections to community, government, and each other.\(^{195}\) Public education serves as a gateway into society, with high school acting as "democracy's finishing school."\(^{196}\) Thus, schools are at the center of our society's ability to shape a responsible citizenry.\(^{197}\) We are misguided if we think of education merely as a matter of curriculum, courses, and grades; it is the fundamental experience by which we show our children "what it is to be part of a democratic community."\(^{198}\) Or as New York's highest court wrote, "a sound basic education conveys not merely [literacy, calculating, and verbal] skills, but skills fashioned to meet a practical goal: meaningful civic participation in contemporary society."\(^{199}\)

The research presented above on small schools and the more targeted research on democratic education that follows suggests that small schools, in addition to improving basic education, may be one of the most valuable tools in turning the tide of the growing political disaffection among our citizens. Small, personalized schools that foster

\(^{193}\) Kira, supra note 192, at 1 (citing John Dewey, Democracy and Education: An Introduction to the Philosophy of Education 360 (1916); Deborah Meier, The Power of Their Ideas: Lessons for America from a Small School in Harlem (1995); Ralph Mosher et al., Preparing for Citizenship: Teaching Youth to Live Democratically (1994)).


\(^{196}\) Id.

\(^{197}\) Statistics also show that the public concurs in believing that the most important goal of public schools is "to prepare students to be responsible citizens." Stanley M. Elam et al., 28th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Toward the Public Schools, 78 Phi Delta Kappan 55 (1996).

\(^{198}\) Wood, supra note 195, at 38.

democratic approaches can help reverse the current trend.\textsuperscript{200} Although we would be over-optimistic to think that schools alone can “carry the weight of all the demands of democratic citizenship,”\textsuperscript{201} a reinvigorated public education that incorporates small schools is crucial to the survival of our democracy.\textsuperscript{202} Indeed, one writer observes that “small schools come as close to being a panacea for American educational ills as we’re likely to get.”\textsuperscript{203}

Despite the importance of small schools to democracy, decision-makers have failed to adequately take into account small schools and the role they play in our democracy. They rarely question the large shape and structure of school, and instead take perspectives that blame the teachers or students,\textsuperscript{204} suggesting that they are not working hard enough and merely asking them to do more of the same things they have always done.\textsuperscript{205} Such reforms, however, are destined to fail because they do not change the culture of the school.\textsuperscript{206} One researcher argues that to effectuate meaningful change, “we must rethink the entire culture of high school in our attempt to make it a place where young people can develop the habits of heart and mind that are required of citizens in a democracy.”\textsuperscript{207} To do this, we must begin by eliminating those facets of the educational experience that turn schools into “institutions,” and instead create places of learning that can be called “communities.”\textsuperscript{208} As the research on student behavior and academic performance in small schools reveals, the basic structure of a school has an immense impact on the school’s climate and, consequently, the way students react or do not react to it.\textsuperscript{209} Thus, it seems self-evident that the structure of larger schools, which comprise a significant portion of our schools, prevents them from mak-

\textsuperscript{200} See generally Wood, supra note 195, at xviii-xxiii, 107-119 (describing the role that democratic education plays in developing a functioning democracy and the role community and smallness play in fostering democratic education).

\textsuperscript{201} Wood, supra note 24, at 82.

\textsuperscript{202} Id. at 118-19 (speaking of the need for community oriented schools that incorporate democratic principles, Wood writes “they are crucial if we are to take seriously the charge that schools become places where informed, involved, compassionate, and democratic citizens are nurtured”).

\textsuperscript{203} Deborah Meier, The Big Benefits of Smallness, 54 EDUC. LEADERSHIP 1 (1996).

\textsuperscript{204} Wood, supra note 195, at 39, 44.

\textsuperscript{205} Id. at 44; Bracey, supra note 57, at 617 (discussing how A NATION AT RISK called for nothing new).

\textsuperscript{206} Wood, supra note 195, at 39 (finding that these reforms avoid the “hard work of restructuring schools”).

\textsuperscript{207} Id. at 11.

\textsuperscript{208} See generally id. at 12-14, 51-56 (finding that we should transform schools into “learning communities”; Wood, supra note 24, at 117; George H. Wood, Teaching for Democracy, in JUSTICE, IDEOLOGY, AND EDUCATION: AN INTRODUCTION TO THE SOCIAL FOUNDATIONS OF EDUCATION 380 (Edward Stevens, Jr. et al. eds., 2002); Kira, supra note 192, at 9-15.

\textsuperscript{209} See supra notes 118-195 and accompanying text.
ing the necessary connections with students.\textsuperscript{210} In short, large schools serve institutional needs rather than our children's educational needs, which should be our foremost concern.\textsuperscript{211}

The corollary to the institutional culture, and the path toward creating democratic education, is a community-centered culture, which small schools necessarily foster. John Dewey, one of our nation's earliest and most influential educational leaders, wrote in \textit{Democracy and Education} that a school itself should become "a form of social life, a miniature community."\textsuperscript{212} Creating a community and giving "proper attention to all individuals within the school" serves a democratic purpose because this community gives students an "experience . . . that demonstrates what it means to be a compassionate, involved citizen."\textsuperscript{213} These students leave school with the feeling of "having been part of something."\textsuperscript{214}

Creating this community requires schools to foster an open and comfortable environment that invites students to form interpersonal relationships with each other and their teachers. As many scholars and researchers point out, however, large schools simply cannot do this, and smaller schools inherently do.\textsuperscript{215} Smaller schools foster relationships based on trust and respect,\textsuperscript{216} and as a study on democratic education found, the most important ingredient in building democratic educational communities is mutual trust and respect.\textsuperscript{217} After schools establish this, almost every other positive aspect of the functioning of the schools' community will flow naturally.\textsuperscript{218}

Yet, teachers only build trust by having the time and opportunity to show their students that they are concerned about more than just their grades; rather, they are also concerned with them as individu-

\textsuperscript{210} Wood, \textit{supra} note 195, at 52-53, 55-56.
\textsuperscript{211} Id. at 53.
\textsuperscript{212} Dewey, \textit{supra} note 193, at 360 (1916).
\textsuperscript{213} Wood, \textit{supra} note 208, at 381.
\textsuperscript{214} Wood, \textit{supra} note 24, at 118.
\textsuperscript{215} See, e.g., Wood, \textit{supra} note 195, at 53-58, 65-66 (finding that schools must get smaller to give students the appropriate experience and a better chance at success); Wood, \textit{supra} note 24, at 239-40 ("At the secondary level, grades seven through twelve, the need to reduce school size is even greater. Large, impersonal mega-schools cannot engender the sense of community and commitment for all students that we have seen in our sample schools. Further, genuine educational change in these settings is next to impossible . . . " (internal parenthetical omitted)); Foley, \textit{supra} note 26, at 529-30, 533-36 (discussing the importance of small classrooms and schools to democratic education); Kira, \textit{supra} note 192, at 18-20 (finding that large schools were depersonalized and small schools offered the necessary supportive environment).
\textsuperscript{216} See \textit{infra} notes 219-222 and accompanying text.
\textsuperscript{217} Kira, \textit{supra} note 192, at 20.
\textsuperscript{218} As Deborah Meier writes, "smallness is a prerequisite for" democratic education. Meier, \textit{supra} note 203.
An effective way of achieving this has been for teachers to create a "tighter safety net" around the children, and "step in quicker to prevent them from falling."

Consequently, a trust relationship can begin to grow, and with it, students' self-esteem and confidence also grow, allowing them to become more active members of the "community." Big schools are simply not capable of doing this.

Scholars also argue that active participation in school is central to democratic education, and that a sense of community plays an important role in encouraging students to engage in this participation. Democracy, as conceptualized by Jefferson and the scholars above, entails a citizenry that participates in and controls its own government. Again, small schools are at the center of achieving this democratic principle. Small schools foster active participation in the school community that will carry them into the larger political community. In fact, the lessons learned in the school community “make community in the larger sense possible,” because students learn how the larger democratic community operates by “doing” in their small school community.

Furthermore, “when students are treated as active agents of change in ‘school as a small society’ rather than passive objects in ‘school as a bureaucracy,’ they will develop a sense of social efficacy to be carried on in their life.” These principles also relate closely to the earlier research on small schools that overwhelmingly shows more students participate in extracurricular, sport, and civic activities in smaller schools. This increased participation in

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220. Id. at 9.
221. Id. at 15-17.
223. The institution of the school also plays a crucial role in the functioning of democracy in small towns and communities. Countless examples of schools serving as a democratic center can be found in little towns across the country. Carla Fontaine’s research evaluates the collective experience of many of these communities. She lauds these small community schools as “the pillars of democracy in our society,” finding that they provide “hands-on experience with the democratic process.” Carla Fontaine, Democracy, Schools, and Communities, in TOWARD PLACE AND COMMUNITY 23 (Vito Perrone ed., 1998). More specifically, they have been the “invaluable laboratories of democracy in which rural Americans learned the importance of their vote, how to make laws, and how to govern themselves.” WAYNE E. FULLER, THE OLD COUNTRY SCHOOL 45 (1982). Through them, citizens tackled some of the political issues that were most crucial to them: property taxes, bond referendums, and the development of their children. Id. Fontaine also points out the recent trend of school consolidation and how it discourages and strips power from local democracy. Fontaine, supra, at 29. She concludes by arguing that the protection of rural schools is linked to the reaffirmation of our democratic principles. Id. at 32.
224. Wood, supra note 24, at 119.
225. Wood, supra note 205, at 382-83.
226. Kira, supra note 192, at 1 (quoting CHARLES E. BIDWELL, The School as a Formal Organization, in HANDBOOK OF ORGANIZATIONS (James G. March ed. 1965)).
small schools suggests an important link exists between the environment of small schools and the type of environment that we must foster in schools to offer students a democratic education.\textsuperscript{227}

In sum, small size and a commitment to intimacy are crucial in developing a community and trust oriented school, and fostering democratic participation. Although some larger schools may be able to approximate these traits, they are the exceptions to the rule.\textsuperscript{228} Our traditional schools are generally hierarchical and impersonal, inhibiting the necessary individualized attention.\textsuperscript{229} In contrast, small schools foster community trust and participation. Both the research on democratic education and the benefits of small schools confirm this. The only real remaining issue is the ultimate relevance and importance of this research. If we take the value of education to our democracy seriously, the relevance seems obvious. Not only would small schools be part of our duty in supplying a basic adequate education, but they would also be incumbent in fulfilling our founding and continuing democratic principles.

\section*{VII. IMPLICATIONS AND RECOMMENDATIONS FOR COURTS AND EDUCATION DECISION MAKERS}

As this article has shown, providing students with access to smaller schools is a sound educational strategy. Small schools have been shown by researchers to positively impact student achievement, dropout rates, graduation rates, parental involvement, and a host of other indicators of educational success. Furthermore, poor results in

\begin{itemize}
\item \textsuperscript{227} Wood explicitly posits a relationship between small schools and democracy. In addressing how best to implement an adequate education that serves the needs of our democracy, he points to the small school environment as the key, finding that the inherent flexibility in small schools and their ability respond to needed changes makes them essential. \textit{Wood, supra} note 24, at 239-40. Conversely, even small adjustments and changes can be impossible in big schools according to Wood. \textit{Id.} at 240. Reviewing the schools he evaluated in his research, he found that all the good schools that work “started by making [themselves] smaller.” \textit{Id.} at 239-40. He also states that when the all-important community aspect of a school began to break down, it was often a result of the size of the school. \textit{Id.} at 107-08. Thus, if we are to effect positive educational and democratic change in our schools, we must admit that “our high schools are simply too big” and impersonal, and make our first step that of controlling “the structure and size” of the school. \textit{Wood, supra} note 196, at 56-57, 64 (stating the “first step in building high school communities where these close ties can be developed, nurtured, and sustained is in rethinking the size of our schools”). Reinforcing small school researchers, Wood also found that the school begins to lose touch with its students as it surpasses a size of 400. \textit{Id.} at 68. Deborah Meier echoes his conclusion, writing that to encourage democratic education high schools should be structured and limited to a size more like elementary schools. \textit{Meier, supra} note 193, at 47-57 (1995). She envisions a similar size of about 400 students. \textit{Id.} at 37, 107-18.
\item \textsuperscript{228} Kira, \textit{supra} note 192, at 18.
\item \textsuperscript{229} \textit{Id.} at 1, 18.
\end{itemize}
these areas are often the evidence that courts use to conclude that states are failing to offer adequate or equitable educational opportunities. Parents are also aware that smaller schools can protect their children from these potential harms. Consequently, parents who can afford to do so, often place their children in private schools, at least in part, because those schools are small and offer students more individual attention and better educational opportunities. Yet, the point of school finance litigation—equal educational opportunity—should not hinge on the ability to afford it. Rather, state constitutions make it the state's obligation to provide it through free public education.

Promoting small schools may require higher levels of state aid, particularly in rural areas of a state. Nevertheless, providing greater aid to students in some communities is justified under principles of equity that recognize equal educational opportunity may require greater resources for some students depending on their unique needs and circumstances. Decision makers cannot sacrifice the state's educational obligations to the pressures of financial demands. As the above research has shown, small schools are at the center of state's ability to offer equal educational opportunities, and constitutional requirements should not bow to political or economic concerns.

The weight of the above research suggests the following recommendations for courts and policy makers. When seeking to remedy constitutional violations or developing strategies to improve student learning, state policymakers should consider smaller schools among the most effective strategies that can lead to academic success. More specifically, state policymakers should develop, fund, and maintain state finance systems that: (a) protect small schools from consolidation; (b) encourage smaller schools in the construction of new facilities; and (c) promote downsizing existing large schools and large school districts. Furthermore, in implementing any finance system or strategy, state and local policymakers should be cognizant of the unintentional byproducts of their choices. They should be careful to avoid policies that encourage or require the consolidation of smaller schools into larger schools. Good intentions may motivate the initial considerations, but when such policies lead to consolidation and the related busing of rural children, they result in educational harm to students and may cost more in the long term. As an alternative to consolidation and busing, policymakers should consider cost-effective options such as providing supplemental funding to preserve existing small schools and investing in distance learning technologies.

Courts that evaluate legislative remedial strategies and educational programs during ongoing finance litigation should also be aware of how states may be either improving or undermining educational opportunities through the size of schools. Most important, when courts take a more active role in developing remedies, small
schools should be among the educational strategies considered. Whether taking an active or inactive role in the remedial stage, however, courts should not sanction or approve remedies that are likely to result in the consolidation of smaller schools or the building of larger schools.

To meet the needs of policymakers and courts which are increasingly faced with the daunting task of shaping effective remedies, educational researchers should continue to conduct research on the educational efficacy of smaller schools. When called upon to assist in crafting remedies, expert researchers and school finance consultants should insure that the key decision makers are made fully aware of the research showing the substantial benefits of small schools. Last, if necessary, policymakers should also create study commissions and fund research to further address the efficacy of small schools and how they might be best integrated into an individual state's education system.

VIII. CONCLUSION

As the longstanding and continuing waves of education finance litigation show, we have not relinquished the pursuit of giving our children the best education possible. Only a steadfast commitment to the core idea of equal educational opportunity and its importance to our democracy could have stayed us in this course. The devil, however, has been in the detail. Decision makers have experimented with numerous different strategies. Some strategies have moved education in the right direction and others have unintentionally harmed our children. Through it all, the efficacy of small schools has somehow slipped through the cracks. Yet, while states pursued other strategies, research revealing the efficacy of small schools has been continually mounting. Now, the results of the research have reached such a compelling point that it is nearly impossible to ignore them. The research shows that small schools produce results that go to the core of constitutional education issues. Thus, we must now seize on the power of small schools to achieve equal educational opportunities by improving academic outcomes, moving closer to realizing the democratic purpose of education.