Rural Children, Rural Schools, and Public School Funding Litigation: A Real Problem in Search of a Real Solution

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John Dayton*

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Many rural area children suffer from poverty, hunger, and educational deprivation that would likely shock most Americans. However, according to a 2002 Rural Policy Research Institute report: “When most people think of poverty in the United States, they think of ‘big cities’... It is also, however, a rural problem - and a large one at that. Indeed, while 11.3 percent of Americans and 10.8 percent of urban Americans live in poverty, 13.4 percent of rural Americans live in poverty.”¹ The authors of the 2002 report also found that:

- Of all counties with poverty rates above the national average, 1,610 are nonmetro, outnumbering metro almost 5 to 1.
- Of the 500 poorest counties, 459 are nonmetro, outnumbering metro 11 to 1.
- Of the lowest per capita income counties, 481 are nonmetro, outnumbering metro 25 to 1.²

The report concluded that: “These figures, coupled with the fact that 13.4 percent of rural Americans compared with 10.8 percent of urban Americans live in poverty, show that poverty is not only a rural problem, it is disproportionately a rural problem.”³

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2. Id.
3. Id.
An October 2002 report from the *U.S. Census Bureau* confirmed that rural areas continue to be among the poorest in the nation.\(^4\) Although rural poverty is a national problem, it continues to be most extreme in the South, with rural minorities, women, and children being the most disadvantaged.\(^5\) According to a 1997 report from the *U.S. Department of Agriculture*:

"The poverty rate for rural children was 23.0 percent. For rural Black children, who face the combined economic disadvantages of rurality, minority status, and childhood, the poverty rate was 48.2 percent. The majority of rural poor children (59.1 percent) lived in single-parent families, most (53.2 percent) in female-headed families."\(^6\)

In addition to the economic realities that compound these disadvantages, there are often inadequate local resources to fund education in rural areas. Given inadequate funding, rural schools are severely limited in the quality and quantity of educational opportunities they can offer their children. Disadvantaged children attending poor schools are unlikely to achieve their full potential, creating a formula for future disadvantage and poverty in rural communities.

In attempting to obtain additional state funding to support adequate educational opportunities for rural area children, poorer rural schools and their advocates generally find themselves fighting an uphill battle in the legislature. For a variety of reasons, rural area children and schools receive less legislative attention than metropolitan area schools, although the problems of rural poverty are just as serious.\(^7\) These reasons include the geographic isolation of rural areas and their often marginal representation in the political process.\(^8\) Because rural schools lack the political influence of wealthier metropolitan area schools, rural schools are frequently placed at a disadvantage by state funding systems created through the legislative process. Consequently, they often fail to obtain adequate funding for their schools.

Political reality dictates that those with financial and political power tend to fare much better in the struggles that define the legislative process. Despite the lofty ideals enshrined in constitutional provi-
sions concerning education, public school funding systems are based on funding formulas that result from the legislative process. In the legislative process, lofty ideals are often sacrificed to the realities of self interests, as legislators struggle to gain advantage for themselves and their constituents. Not surprisingly, the resulting legislation tends to reflect the hard political realities of the state. The interests of those with political power are advanced through legislation, often at the expense of those without political power. Because the advocates for rural children and schools generally lack both the financial and political power to rival the influence of the more affluent suburban regions, rural schools are often put at a disadvantage by school funding legislation. Lacking the political power to achieve relief through the legislative process, rural school advocates have turned to litigation to obtain remedies. This article reviews litigation brought by advocates for rural schools since Serrano v. Priest, examines judicial responses to this litigation, and concludes with a discussion of the current and future status of funding litigation concerning rural schools.

I. FUNDING LITIGATION CONCERNING RURAL SCHOOLS

In 1971, the Supreme Court of California issued an opinion in Serrano v. Priest that is commonly regarded as the beginning of the modern era in school funding litigation. In Serrano, the court held

9. See, e.g., Ga. Const. art. VIII, § 1 ("The provision of an adequate education for the citizens shall be the primary obligation of the State of Georgia."). But see, McDaniel v. Thomas, 285 S.E.2d 156, 168 (Ga. 1981) ("In terms of equalization the [Georgia public school funding system] is a poor one. However, the system does bear some rational relationship to legitimate state purposes and is therefore not violative of state equal protection."). For a table of all 50 states’ education articles, see David C. Thompson et al., Fiscal Leadership for Schools 282-286 (1994).
11. Id.
that the ultimate responsibility of funding schools rested with the state, and that by establishing a state funding system that resulted in substantial inequities the state violated equal protection guarantees. Following Serrano, advocates for rural children and rural schools throughout the United States filed suits challenging state funding systems that placed rural schools at a comparative disadvantage. Both federal and state courts have reviewed school funding cases brought by rural school plaintiffs and others, and many judicial opinions have recognized the disadvantaged circumstances of rural schools.

In the 1973 decision San Antonio Independent School District v. Rodriguez, the United States Supreme Court recognized the disparities in taxable wealth created by industrialization and the growth of urban areas. The Court found that:

Until recent times, Texas was a predominantly rural state and its population and property wealth were spread relatively evenly across the State. Sizable differences in the value of assessable property between local school districts became increasingly evident as the State became more industrialized and as rural-to-urban population shifts became more pronounced. The location of commercial and industrial property began to play a significant role in determining the amount of tax resources available to each school district. These
growing disparities in population and taxable property between districts were responsible in part for increasingly notable differences in levels of local expenditure for education.\footnote{15}

Although finding that: “The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax,” the Court declined to declare the Texas system of public school funding unconstitutional.\footnote{16} But as Justice Marshall recognized in his dissenting opinion, “nothing in the Court’s decision today should inhibit further review of state educational funding schemes under state constitutional provisions.” Since \textit{Rodriguez}, finance systems in every state have been impacted to some degree by funding equity litigation. In most states, the highest court in most states has issued at least one decision on this issue.

In 1979, West Virginia’s highest court, in \textit{Pauley v. Kelly}, recognized historical inequities in educational funding for rural schools.\footnote{17} In \textit{Pauley}, the court declared that education is a fundamental right in West Virginia, and that under the state’s equal protection clause, strict scrutiny should be applied to state actions which impinge upon this right.\footnote{18} In a review of the history of education in West Virginia the court noted that the state had a long history of inequities in educational funding, and that: “From time to time rural units protested against this situation, but they were helpless. More than anything else perhaps these inequalities retarded educational progress in a large part of the state.”\footnote{19}

Similarly, the Supreme Court of Georgia recognized historical funding inequities for rural schools in its 1981 decision in \textit{McDaniel v. Thomas}.\footnote{20} In a review of the history of public education in Georgia, the court noted the historical:

\begin{quote}
[T]endency of cities and towns to secure charters from the legislature and to withdraw from the county system ... chartered towns drew money from the educational department of the state ... All charters were different, and each sought some special advantage at the expense of the country districts. The rural districts were left with the least valuable part of the property from which to derive revenue. Thousands of citizens moved to the city, and the deserted farms increased the cost of food and living expenses until city dwellers were hurt as well as their rural neighbors.\footnote{21}
\end{quote}

In an attempt to remedy educational funding inequities “[e]ducators focused their efforts on shifting the tax burden from the local to the state level ‘in order to equalize, more nearly, opportunities for rural

\begin{footnotes}
\footnote{15} Id. at 7-8.
\footnote{16} Id. at 58.
\footnote{17} 255 S.E.2d 859 (W. Va. 1979).
\footnote{18} Id. at 878.
\footnote{19} Id. at 886.
\footnote{20} 285 S.E.2d 156 (Ga. 1981).
\footnote{21} Id. at 172.
\end{footnotes}
children." However, a bill giving “rural and small-town schools a larger proportion” of educational funds was vetoed by the governor. In *McDaniel*, the Supreme Court of Georgia recognized the continuation of significant funding disparities related to property wealth. The court acknowledged the educational harm inflicted by funding inequities, and quoted the testimony of a poorer rural county school superintendent, stating that funding inequities have “a devastating impact on our children—educationally, psychologically and otherwise.” Although highly critical of funding disparities and their impact, the court concluded “it is clear that a great deal more can be done and needs to be done to equalize educational opportunities in this state. For the present, however, the solutions must come from our lawmakers.”

West Virginia’s highest court acknowledged the harm of funding inequities to rural schools again in 1984 with *Pauley v. Bailey* (*Pauley II*). In *Pauley II* the plaintiffs appealed to the West Virginia high court for a directive compelling the state to implement a Master Plan for Public Education developed in accordance with the court’s order in *Pauley I*, and to otherwise perform its constitutional and statutory duties related to public education. The court cited trial court findings which state that the West Virginia funding system “favors counties that are property-wealthy and, in some circumstances, punishes counties that are sparse in population and property-poor” and remanded the case for implementation of the ordered plan.

In 1989 the Supreme Court of Kentucky, in *Rose v. Council for Better Education*, declared its entire system of public school funding unconstitutional, holding that the state had failed to provide an efficient system of common schools throughout the state. To bolster its conclusion regarding the significance of common schools, the court quoted a constitutional delegate’s statement that: “Common schools make patriots and men who are willing to stand upon a common land. The boys of the humble mountain home stand equally high with those from the mansions of the city. There are no distinctions in the common schools, but all stand upon one level.” Although the court declared

22. *Id.* at 174.
23. *Id.*
24. *Id.* at 160 (noting disparities ranging from $138,115 to $17,537 in assessed valuation per pupil, and per pupil spending disparities ranging from $1,682 to $777).
25. *Id.* at 161.
26. *Id.* at 168.
28. *Id.* at 133.
29. *Id.* at 131.
31. 790 S.W.2d 186, 206 (Ky. 1989).
the state's funding system unconstitutional, Justice Vance objected to the court's allowing the continuation of local tax levies because of their unequalizing effect, and also referred to Kentucky's constitutional debates, noting that:

The primary thrust of the debate went to the equality of educational opportunity; that a system of common schools throughout the state should provide alike for the sons of the poor and the sons of the rich; and provide alike for the children who reside in rural areas as well as for those who reside in centers of population. There was much concern that if education in the common schools throughout the state were not made a constitutional responsibility of the Commonwealth, it would simply become or remain a local matter, and the children of the wealthy and those who reside in the cities would be afforded greater educational opportunity than the children of the poor and those who reside in rural areas.\(^{[32]}\)

Although the United States Supreme Court had declined to declare the Texas public school funding system unconstitutional in *San Antonio Independent School District v. Rodriguez*,\(^{[33]}\) in the 1989 case, *Edgewood Independent School District v. Kirby*,\(^{[34]}\) the Supreme Court of Texas declared the state's system of public school funding unconstitutional under the education article of the Texas Constitution. Similar to the Supreme Court of Kentucky's ruling in *Rose*, the Supreme Court of Texas found that because of funding inequities the state failed to provide the constitutionally required efficient educational system. Referring to an earlier ruling concerning rural aid funding in *Mumme v. Marrs*,\(^{[35]}\) the court noted that "we stated that rural aid appropriations 'have a real relationship to the subject of equalizing educational opportunities in the state, and tend to make our system more efficient.'"\(^{[36]}\)

In 1993, the Supreme Court of Alabama issued an advisory opinion requiring the state to comply with a trial court decision declaring the state's school funding system unconstitutional.\(^{[37]}\) The Alabama Coalition for Equity, comprised of 24 rural county school systems and one small city school system, convinced the trial court that funding inequities denied equitable and adequate educational opportunities to their students.\(^{[38]}\) An expert witness testified that "in his extensive studies of schools he had never before seen conditions as inadequate as those prevailing among some of Alabama's poorest schools" including "deplorable restroom facilities . . . holes in the floor" and elementary

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32. *Id.* at 221 (Vance, J. dissenting).
35. 40 S.W.2d 31 (Tex. 1931).
38. *Id.* at 111 n.1.
children "playing on imaginary playground equipment." The court stated that:

[T]he current school funding formula is inequitable to students in rural areas because it fails to reflect the costs related to low population density to the detriment of the affected students. Transportation costs and other non-instructional expenses represent a disproportionate share of per pupil expenditures in rural counties. In addition, rural students are disadvantaged because they generally live in areas without large shopping centers and are thus unable to generate substantial sales tax revenues for support of their schools; the state funding formula does nothing to equalize sales tax revenues available to local systems. Moreover, property in rural counties is assessed and taxed at extremely low rates.

The court also noted that: "Shortages of working school buses and long bus routes in some school systems lead to rides for children that are more than 100 miles and five hours long in some rural areas."

In 1993, Tennessee's Supreme Court addressed a case that directly confronted the financial conflict between rural and metropolitan area schools. In Tennessee Small School Systems v. McWherter (Small Schools I) a coalition of small school districts, superintendents, school board members, parents, and students alleged that Tennessee's system of school funding placed their schools at a disadvantage and violated equal protection and education provisions of the state constitution. Nine urban and suburban school districts joined the state to defend the funding system. As the court recognized, "the larger, more affluent systems do not want the funding scheme which favors their systems disturbed . . . . They express grave concern that the result will be 'a redistribution of education funds away from the central cities and the growing suburbs.'"

The court found that per-classroom spending varied from $49,167 to $110,727, and per-pupil expenditures ranged from $1,823 to $3,669 mostly because of the state's reliance on local revenues, and that: "School districts with more sales and with higher property values and commercial development have more funds to educate their children." The court concluded that:

The wide disparity is related to differences in fiscal capacity and not necessarily from inadequate local effort. 'Most school districts in the state—even non-urban—cannot reasonably raise sufficient revenues from local sources to provide even the average amount of total funds for education per pupil state-wide.'

39. Id. at 121.
40. Id. at 124.
41. Id. at 136.
42. 851 S.W.2d 139 (Tenn. 1993).
43. Id. at 141-42.
44. Id. at 143.
45. Id.
Regarding the impact of funding disparities in the state, the court noted that:

Under the current funding system, schools in plaintiffs' districts offer far less to students than schools in wealthier districts. Specifically, the evidence shows that students in plaintiffs' schools are not afforded substantially equal access to adequate laboratory facilities, computers, current and new textbooks, adequate buildings, advanced placement courses, varied curricula, advanced foreign language courses, music and art courses, drama and television courses. Plaintiffs' districts also fail in their efforts to retain teachers, fund needed administrators, and provide sufficient physical education and other programs. The evidence indicates a direct correlation between dollars expended and the quality of education a student receives. 46

Regarding the origin of these educational inequalities the court found that:

The record also shows that over the years, the distribution of sales tax and property tax revenues has become more concentrated as economic activity has moved from small local communities to larger regional retail centers. Purchases previously made by residents of rural school districts locally, are now made in the more urban counties, and the sales tax on those purchases is collected in the wealthier counties. With the construction of large retail centers in the urban counties, property tax revenues, though much less significant than sales tax revenues, also are concentrated in those same communities rather than distributed more evenly throughout the entire state. Because all revenues from the property tax and the local option sales tax are received by the county or city where collected, the result is the progressive exacerbation of the inequity inherent in a funding scheme based on place of collection rather than need. 47

The court further noted the continued spiral of poverty resulting from inadequate educational funding, and the difficulty that poorer rural areas had in attracting desirable businesses and construction that could improve their local tax base. 48 In view of the disparities created by the state's system of funding, the court held that the challenged finance system violated the state constitution's guarantee of equal protection. The court also concluded that: "The constitution contemplates that the power granted to the General Assembly will be exercised to accomplish the mandated result, a public school system that provides substantially equal educational opportunities to the school children of Tennessee." 49

In 1996, the Supreme Court of Illinois, in Committee for Educational Rights v. Edgar, affirmed a dismissal of plaintiffs' constitutional challenge to the school funding system. 50 Concerning rural schools historically, the court noted that schools in the "larger and more wealthy counties...were well graded and the course of instruction of a high order, while in the thinly settled and poorer counties..."
the course of instruction prescribed was of a lower order."51 The court acknowledged disparities in the state's public school funding system, but regarding the plaintiffs' current suit concluded that "the process of reform must be undertaken in a legislative forum rather than in the courts."52 The court did not address the difficulties rural schools will likely face in trying to achieve reform through political, rather than judicial means given the limited population and wealth of rural areas in comparison to the more populous, wealthy, and consequently more politically influential metropolitan areas.

In 1997, city and borough school districts in Alaska, in Matanuska-Susitna v. State, alleged that the school funding system put them at a disadvantage to rural Regional Educational Attendance Area (REAA) school districts.53 Alaska's system of public schools provides for city districts, borough districts, and REAA districts. Cities have an established tax base, and "borough organization generally occurs when a tax base develops or is discovered in the area which is adequate to support local government and to yield, in addition, greater services than are otherwise provided by the State."54 Lands that lie outside of the boundaries of organized boroughs constitute a single unorganized borough, which is divided into REAA districts. Funding opportunities in REAA districts are limited by "the tax-exempt status of certain Native-owned lands, the widespread lack of ownership records, and the fact that property ownership is often poorly defined in these areas."55

Although plaintiff city and borough districts claimed inequities due to alleged disparities in local contribution requirements and state aid, the court concluded that: "No evidence indicates that altering the amount a district contributes to basic need will alter the overall amount of funding available. As noted by the State, '[t]he funding level remains constant regardless of the source of the revenue.'"56 The court further noted that, under the Alaska Constitution, "REAA's are constitutionally unable to tax"57 and stated that:

Given the differences in constitutional status between REAAs and borough and city districts, we hold that the legislative decision to exempt REAAs from the local contribution requirement . . . was substantially related to the legislature's goal of ensuring an equitable level of education opportunity across the state.58

The court concluded that "plaintiffs also have failed to present any evidence suggesting that there actually is an overall disparity in state

51. Id. at 1189.
52. Id. at 1196.
54. Id. at 400 n.13.
55. Id.
56. Id. at 397.
57. Id. at 399 (citing ALASKA CONST. art. X, § 2).
58. Id. at 400.
aid" and noted that "Nathaniel H. Cole, a consultant in education finance and management, affied that, in his professional opinion, spending per student among districts in Alaska 'is as equitable as [in] any state's program I have examined' except Hawaii's.60

In another 1997 ruling, Ohio's Supreme Court declared the state's system of public school funding unconstitutional in DeRolph v. State (DeRolph I).61 Although the court did not expressly address the problems of rural schools, rural area school districts were prominent among the plaintiffs challenging the state's funding system. In reviewing the state's system of funding, the court noted that: "The 'formula amount' has no real relation to what it actually costs to educate a pupil."62 The state formula provides for equalization factors called "cost-of-doing-business" factors, but rates of adjustment "apply equally to all districts within the county without regard to the actual cost of operations within the individual school districts."63 Further, the court noted that: "The cost-of-doing-business factor assumes that costs are lower in rural districts than in urban districts"64 a questionable assumption given the additional costs faced by many rural districts.65 The court determined that the state's funding system did not "meet the needs of districts that are poor in real property value" as are many of the state's rural districts.66 The court noted the deplorable condition of many schools in rural counties, including: unsafe buildings with serious structural; heating, plumbing, sanitation, and asbestos problems; limited curricula; class sizes exceeding state law; insufficient availability of student textbooks leading to a lottery system for textbook allocation, and; inadequate supplies "forcing schools to ration such necessities as paper, chalk, art supplies, paper clips, and even toilet paper."67 The court concluded that:

59. Id. at 397.
60. Id. at 397 n.8.
61. 677 N.E.2d 733 (Ohio 1997).
62. Id. at 738.
63. Id.
64. Id.
65. See Bernal L. Green & Mary Jo Schneider, Threats to Funding for Rural Schools, 15 J. EDUC. FIN. 302, 303 (1990) ("Rural areas face a greater challenge than urban places in adequately financing education. Equivalent educations are more expensive to provide in rural areas, but on the average, metro counties outpace nonmetro counties in per-pupil expenditures.").
67. Id. at 744; see also Id. at 743 (identifying health and safety risks in many rural county schools, and noting that in Belmont County "three hundred students were hospitalized because carbon monoxide leaked out of heaters and furnaces;" in Wayne County a school "had floors so thin that a teacher's foot went through the floor while she was walking across the classroom;" in Athens County a school "is sliding down a hill;" and noting that schools in Perry County had leaking roofs, falling ceilings, sewage systems leaking raw sewage, and arsenic in the drinking water).
Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment. In addition to deteriorating buildings and related conditions, it is clear from the record that many of the school districts throughout the state cannot provide the basic resources necessary to educate our youth.  

Also in 1997, the Supreme Court of North Carolina, in *Leandro v. State*, reviewed a funding equity dispute involving both poorer rural schools and relatively large wealthy urban schools. Poorer rural schools filed the original suit, alleging that the state's reliance on local property taxes resulted in inadequate and unequal education in their schools, despite higher local tax rates. They alleged that school facilities in poorer rural districts were inadequate, and that poorer rural schools could not afford the smaller class sizes, high quality teachers, books, media centers, and technology available in larger, wealthier districts.

After the poorer rural schools filed their suit, relatively large and wealthy urban schools filed a motion to intervene. Larger and wealthier urban schools alleged that the state's system of funding "does not sufficiently take into consideration the burdens faced by their urban school districts which must educate a large number of students with extraordinary educational needs" including "a large number of students who require special education services, special English instruction, and academically gifted programs." They complained that "deficiencies in physical facilities and educational materials are particularly significant in their systems because most of the growth in North Carolina's student population is taking place in urban areas." They alleged that:

[B]ecause urban counties have high levels of poverty, homelessness, crime, unmet health care needs, and unemployment which drain their fiscal resources, they cannot allocate as large a portion of their local tax revenues to public education as can the more rural poor districts.

They urged the court to conclude that "the state's singling out of certain poor rural districts to receive supplemental state funds, while failing to recognize comparable if not greater needs in the urban school districts, is arbitrary and capricious in violation of the North Carolina Constitution and state law." Although the court did not issue a final decision on the merits of the parties' claims, the court held that the state constitution did not require equal expenditures, but did guarantee students the right to a

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68. Id. at 744.
69. 488 S.E.2d 249 (N.C. 1997).
70. Id. at 252.
71. Id.
72. Id. at 253.
73. Id.
74. Id.
"sound basic education." The court remanded the case to the trial court for further proceedings, commenting that the school districts' claims must be "supported by substantial evidence" before they may be granted any relief. The court observed that: "Ironically, if plain- tiff-interveners' [large wealthy urban districts] argument should prevail, they would be entitled to an unequally large per-pupil allocation of state school funds for their relatively wealthy urban districts."

That same year, in Claremont School District v. Governor (Claremont II), students and taxpayers from "property poor" school districts in New Hampshire, including rural area schools, requested a declaratory judgment that the state system of public school finance violated the New Hampshire Constitution. The Supreme Court of New Hampshire held that the state funding system was unconstitutional, and concluded that:

In mandating that knowledge and learning be "generally diffused" and that the "opportunities and advantages of education" be spread through the various parts of the State ... the framers of the New Hampshire Constitution could not have intended the current funding system with its wide disparities. This is likely the very reason that the people assigned the duty to support the schools to the State and not to the towns ... There is nothing fair or just about taxing a home or other real estate in one town at four times the rate that similar property is taxed in another town to fulfill the same purpose of meeting the State's educational duty. Compelling taxpayers from property-poor districts to pay higher tax rates and thereby contribute disproportionate sums to fund education is unreasonable. Children who live in poor and rich districts have the same right to a constitutionally adequate public education. Regardless of whether existing State educational standards meet the test for constitutional adequacy, the record demonstrates that a number of plaintiff communities are unable to meet existing standards despite assessing disproportionate and unreasonable taxes ... To the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.

In 1999, the Supreme Court of South Carolina's opinion in Abbeville County School District v. State held that rural area plaintiffs had stated a valid cause of action under the education clause of the South Carolina Constitution, and remanded the case for further proceedings. In Abbeville, the plaintiffs were 40 less wealthy school districts from rural areas, and their students and taxpayers. They

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75. Id. at 255. The "sound basic education" described by the court is similar to the educational programs described in Rose v. Council for Better Education, 790 S.W.2d 186, 212 (Ky. 1989) and Pauley v. Kelly, 255 S.E.2d 859, 877 (W. Va. 1979).
76. Id. at 259.
77. Id. at 257.
78. 703 A.2d 1353 (N.H. 1997).
79. Id. at 1357.
81. Id.
alleged that South Carolina's public school funding system violated the state constitution's education clause and the equal protection clauses of the state and federal constitutions. In rejecting the plaintiffs' equal protection arguments, the Supreme Court of South Carolina noted that: "Unlike similar suits brought in other states, appellants do not seek 'equal' state funding since they already receive more than wealthier districts, but instead allege that the funding results in an inadequate education."  

The trial court had also dismissed the plaintiffs' education article claims. However, the Supreme Court of South Carolina stated that:  

We will not accept this invitation to circumvent our duty to interpret and declare the meaning of this clause .... We hold today that the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education .... We define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire: 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills .... We recognize that we are not experts in education, and we do not intend to dictate the programs utilized in our public schools. Instead, we have defined, within deliberately broad parameters, the outlines of the constitution's requirements of a minimally adequate education. Finally, we emphasize that the constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the legislative branch of government. We do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the courts of this State to become super-legislatures or super-school boards.  

In 2000, *DeRolph v. State (DeRolph II)* involved plaintiffs from primarily rural area schools attempting to enforce compliance with the court's decision in their favor in *DeRolph I*. In *DeRolph II*, the Supreme Court of Ohio noted that the court was "called upon to consider the same basic constitutional question that was before us in *DeRolph I*—Can the revised system be characterized as thorough and efficient pursuant to Section 2, Article VI of the Ohio Constitution?"  

Concerning the state's progress toward compliance with *DeRolph I*, the court concluded that:  

We acknowledge the effort that has been made, and that a good faith attempt to comply with the constitutional requirements has been mounted, but even more is required. The process must continue. The most glaring weakness in the state's attempts to put in place a thorough and efficient system of education is the failure to specifically address the over reliance on local property taxes. If this problem is not rectified, it will be virtually impossible for the

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82. Id. at 538.  
83. Id. at 540-541.  
84. 728 N.E.2d 993 (Ohio 2000).  
85. Id.
revised school-funding system to be characterized as thorough and efficient.

Finally the Governor and the General Assembly have recognized that education can no longer be funded as a residual in the state budget.86

In 2001, however, in DeRolph v. State (DeRolph III), the Supreme Court of Ohio made what was to many observers a surprising change of direction. The court held that the State's funding system would be constitutional if implemented in accordance with the court's current order; that the state may require joint state-local financial support, and that some use of local property taxes to fund public education was constitutional.87 The court further stated that: "Drawing upon our own instincts and the wisdom of Thomas Jefferson, we have reached the point where, while continuing to hold our previously expressed opinions, the greater good requires us to recognize the necessity of sacrificing our opinions sometimes to the opinions of others for the sake of harmony."88 The court also determined that:

86. Id. at 1020.
88. Id. at 1189-1190, citing 16 Papers of Thomas Jefferson 598 (Boyd Ed. 1961) (letter to Francis Eppes, July 4, 1790).
89. Id. at 1190.
90. Id.
hand in hand with the legislative branch of government when it quotes Thomas Jefferson as support for its decision to impose a compromise in this case for “the greater good.” Jefferson was a wise man, but he was certainly not discussing the function of a supreme court when he wrote of “sacrificing our opinions sometimes to the opinions of others for the sake of harmony.” The oath of a Supreme Court justice is to “administer justice without respect to persons . . . .” Nowhere in that oath is there any recognition of an overriding necessity of harmonious decisions for the sake of getting along with the other branches of government or of creating a “consensus” among the members of the court. The role of the Supreme Court is to act independently from the other two branches of government in determining whether the laws as enacted by the General Assembly pass constitutional muster. We are not members of the legislature, where compromise is the order of the day and backroom deals are taken for granted. Rather, we have taken a sacred oath to support and uphold the Constitution to the best of our ability and understanding.\footnote{91} Further, Justice Resnick concluded that:

It has been said, “If we refuse to fight for the dignity of truth, we substitute expedience for justice . . . .” The majority places entirely too much importance on political expedience and not nearly enough on justice. Because the majority refuses to recognize that the state's plan we review at this time is clearly insufficient to comply with the requirements of our Constitution, even with additional adjustments ordered by this court, I vigorously dissent.\footnote{92} Justice Sweeney, in dissent, added that:

Apparently, in Ohio the battle is over. At the end of the day, can we truly say that we have been victorious? . . . Can we say that the children in poor, rural, or urban areas have been given the same opportunities as their peers who happen to be blessed with the good fortune of living in a wealthy district with a high property tax base? . . . The hallmark of a thorough and efficient form of public education is that it works as well for the least advantaged as it does for the most advantaged. The funding system advocated by the majority sadly misses the mark.\footnote{93} In Claremont School District v. Governor (Claremont III), a 2002 case affecting funding in rural schools throughout the state, the Supreme Court of New Hampshire was asked to determine whether: 1) the state's obligation to provide a constitutionally adequate education required the State to provide standards of accountability; and 2) to what extent statutory exemptions for financial hardship excused compliance with minimum educational standards established by the state.\footnote{94} In a 3-2 decision, the court held that “accountability is an essential component of the State's duty and that the existing statutory scheme has deficiencies that are inconsistent with the State's duty to provide a constitutionally adequate education.”\footnote{95} Concerning the issue of accountability as an element of the state's constitutional duty, the court stated that:

\footnote{91}{Id. at 1216-1217 (Resnick, J., dissenting).}  
\footnote{92}{Id. at 1241 (Resnick, J., dissenting).}  
\footnote{93}{Id. at 1244 (Sweeney, J., dissenting).}  
\footnote{94}{794 A.2d 744 (N.H. 2002).}  
\footnote{95}{Id. at 745.}
While it may be permissible to excuse noncompliance under emergency conditions, the statute permits the board of education to also approve a school that does not meet the minimum standards based solely on the “financial condition of the school district.” Excused noncompliance with the minimum standards for financial reasons alone directly conflicts with the constitutional command that the State must guarantee sufficient funding to ensure that school districts can provide a constitutionally adequate education. As we have repeatedly held, it is the State’s duty to guarantee the funding necessary to provide a constitutionally adequate education to every educable child in the public schools in the State. The responsibility for ensuring the provision of an adequate public education and an adequate level of resources for all students in New Hampshire lies with the State. While local governments may be required, in part, to support public schools, it is the responsibility of the State to take such steps as may be required in each instance to devise a plan and sources of funds sufficient to meet the constitutional mandate. There is no accountability when the rules on their face tolerate noncompliance with the duty to provide a constitutionally adequate education. While the State may delegate this duty, it must do so in a manner that does not abdicate the constitutional duty it owes to the people. The State’s duty cannot be relieved by the constraints of a school district’s tax base or other financial condition. The State may not take the position that the minimum standards form an essential component of the delivery of a constitutionally adequate education and yet allow for the financial constraints of a school or school district to excuse compliance with those very standards. We hold, therefore, that to the extent the minimum standards for school approval excuse compliance solely based on financial conditions, it is facially insufficient because it is in clear conflict with the State’s duty to provide a constitutionally adequate education.  

In 2002, in a decision that surprised and dismayed many rural funding reform advocates, the Supreme Court of Alabama put an end to ongoing litigation involving plaintiffs from largely rural schools, many of which served a predominately African-American population. In a 6-1 opinion in *Ex parte James*, the Supreme Court of Alabama vacated the trial court’s judgment in favor of the plaintiffs, and the remedial order requiring the legislature to formulate a new constitutional system of school funding, holding that the issue was non-justiciable. The court noted the “serious difficulties implicated by judicial involvement in the administrative details of school funding” and stated that:  

Our conclusion that the time has come to return the Funding Equity Case *in toto* to its proper forum seems a proper and inevitable end, foreshadowed not only by the obvious impracticalities of judicial oversight, but also by the Court’s own actions in *Ex parte James*. While the plurality in *Ex parte James* opined that, in the abstract, the judiciary had the authority to implement a remedy, it did not attempt this task (which may have proven illustrative, because its concrete, rather than abstract, form would have proven its legislative nature) and instead admitted that “the legislature... bears the ‘primary responsibility’ for devising a constitutionally valid public school system.”

96. *Id.* at 744-755.  
97. 836 So. 2d 813 (Ala. 2002).  
98. *Id.* at 817.
Accordingly, the opinion vacated the trial court's remedy plan and directed the Legislature to formulate a constitutional education system within one year . . . . Almost a year later, on rehearing, a majority of the Court modified that opinion to allow the Legislature an undefined and open-ended "reasonable time" within which to formulate such an education system, and the case was remanded to the trial court which would retain jurisdiction. Continuing the descent from the abstract to the concrete, we now recognize that any specific remedy that the judiciary could impose would, in order to be effective, necessarily involve a usurpation of that power entrusted exclusively by the authorities discussed above—primarily by our duty under Art. 3, § 43 of the Alabama Constitution of 1901—we complete our judicially prudent retreat from this province of the legislative branch in order that we may remain obedient to the command of the people of the State of Alabama that we "never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."99

Chief Justice Moore concurred in the result, and stated:

This Court has never had to deal with a case as unusual as this one, and it is unusual in several ways . . . . While this case was pending in the trial court, the then governor was convicted of a felony, that, in turn, produced the unusual occurrence that several of the plaintiffs realigned themselves as defendants, so that there appeared to be adverse parties and a case and controversy . . . . In reality there was no case or controversy and there were no adverse parties . . . . Nor did the trial court allow any other interested parties to intervene in the case. While the case was pending before the trial court, the trial judge campaigned for a position on the Alabama Supreme Court as the Judge for Education Reform. In his campaign literature he stated that he was a tough judge because he had ruled Alabama's education system unconstitutional, ordered the Legislature back to work, and told the governor and the Legislature to fix the problem. Those public statements ultimately forced his removal from the case while it remained pending. However, before his removal, the trial judge declared his orders final and then continued to order hearings and different forms of relief, in contradiction to the supposed finality of his own order. Using racism as a basis, the trial court declared all of the education portion of Amendment 111 . . . unconstitutional, but preserved a portion of the original [§ 256]. He divided the case into two parts—a Liability Phase and a Remedy Phase—a faulty distinction. Then, using one word found in § 256—"liberal"—the trial judge renovated and reformed the entire education system to the tune of an estimated $1 billion and instituted a scheme of continuing supervision by his court of every aspect and agency of the entire Alabama education system, including the Alabama Legislature, the Governor, and the State Board of Education. The orders issued to promulgate this plan would necessarily require an increase in taxation, amounting to taxation without representation, and would create a right to public education which was expressly prohibited by Amendment 111. The trial judge proceeded to set up this program even though the Legislature was not properly a party to the action. He went to great lengths to micromanage the State's school system, to the point of requiring that adequate toilet paper be provided to each student. A trial court in a proper case may hold an act of the Alabama Legislature unconstitutional, but to enter an order that would require the Legislature to pass legislation and spend money on an education project of the trial judge's own making is unprecedented in the history of this State. By its wholesale striking of Amendment 111, the trial court appears to have attempted to create a new right to public education, disregarding the expressed wishes of the

99. Id. at 819.
people as set forth in Amendment 111.... Even if the trial court had jurisdic-
tion-and I conclude that it did not-we should not ignore an abuse of power by
the judicial branch that represents an attempt to change our constitution....
The trial court made legislative and executive, instead of judicial, decisions.
While some states have been willing to allow their courts to make extensive
and endless forays into supervising education in the name of necessity, parti-
cularly in this type of litigation,.... Alabama must not make such a fundamen-
tal error. Any change to our constitution must be effected only by the lawfully
established amendment process. Under our constitution, the power over edu-
cation belongs to the Legislature, not the courts. An attempt to usurp that
power by the judicial branch is a fundamental breach of the separation-of-
powers doctrine and an improper subject of the court's jurisdiction.... The
judges of this State were not elected to formulate policy for education or to
spearhead education reform. Judges are elected to ensure that justice is ad-
ministered in accordance with fundamental principles of law.... The desire
or need for action in a particular area of public policy cannot justify a court's
intruding itself into the field of legislation in order to reach a desired result,
whether that result concerns education, health care, taxation, or any other
area of public interest.... For the trial judge to have campaigned for a
position on the Alabama Supreme Court by claiming that he told the governor
and the Legislature what to do is not only unethical, but such orders to the
governor and the Legislature are also a clear usurpation of the powers of coe-
qual branches of government and a violation of our Constitution.100

In a dissenting opinion, Justice Johnstone objected to the court's
current review of the equity funding cases and stated that:

I respectfully dissent from the decision of this Court purporting to dismiss this
case. We lack appellate jurisdiction to review these cases, to enter any order
affecting these cases, and to express any rationale for any such order. This
court issued its last certificates of judgment in these cases.... on January 6,
1998.... Our appellate jurisdiction, construed at its greatest limit of durabil-
ity, expired either at the end of 120 days following the January 6, 1998, date
.... or at the end of the then existing term of the court.... Both deadlines for
our appellate jurisdiction expired without any application in any form for fur-
ther appellate review. Indeed, even after the expiration of these deadlines, no
party has sought appellate review in any form.... The entirely unsolicited
nature of the instant purported review of these equity funding cases exacer-
bates our lack of appellate jurisdiction. We do not want to become like the
Iranian judges who roam the streets of Tehran ordering a whipping here and
a jailing there. On the other hand, if this tardy and unsolicited purported
review does prevail, I suppose the consolation will be that some old cases
which I think or shall think grossly unfair will once again be subject to
review.101

(McWherter III) asked the court to determine "whether the State's cur-
rent method of funding salaries for teachers.... equalizes teachers' salaries ‘according to the BEP formula' or whether it fails to do so and
violates equal protection by denying students in rural area schools substan-
tially equal educational opportunities."102 The court con-

100. Id at 842-876 (Moore, J. concurring) (citations omitted).
101. Id. at 877-878 (Johnstone, J. dissenting).
102. Tenn. Small Sch. Sys. v. McWherter (Small Schools III), No. M2001-01957-SC-
R3-CV, slip op. at *1 (Tenn. Oct. 8, 2002).
cluded that there was no rational basis for failing to equalize teachers salaries. In reaching this conclusion, the court reviewed the extended history of this case, noting that:

In 1988, a group of rural school districts, superintendents, board of education members, students, and parents filed suit claiming that Tennessee's education funding system violated article XI, section 12 of the Tennessee Constitution because the funding system denied public school students the right to an equal education due to a disparity in resources between rural and urban counties. The State, along with several school systems located in urban and suburban counties across the state who were allowed to intervene, opposed the plaintiffs' suit on the ground that the funding scheme enacted by the legislature was not reviewable by the courts. In sum, the defendants argued that article XI, section 12, of the state constitution provided no qualitative standards for measuring the quality of education or the sufficiency of funding and that such matters were left to the exclusive province of the legislative and executive branches. On appeal, this Court agreed with the trial court's findings that there were impermissible disparities in the educational opportunities available to public school students, as evidenced by significant differences in teacher qualifications, student performance, and basic educational programs and facilities. We noted, for example, that many schools in the rural districts had decaying physical plants, inadequate heating, showers that did not work, buckling floors, leaking roofs, inadequate science laboratories, and outdated textbooks and libraries. Furthermore, the evidence showed that some of the school districts were unable to offer advanced placement courses, more than one foreign language, or the state-mandated art and music classes, drama instruction, and athletic programs. We also agreed with the trial court that the gross disparities in educational opportunities available to public school students were caused by the State's then-existing funding scheme, the Tennessee Foundation Program ("TFP"), which included only a "token amount" of state funds for the equalization of school systems and, significantly, was unrelated to the costs of providing programs and services by the local schools. Indeed, state funding under the TFP was based primarily on average daily attendance of students, while local funding depended heavily on local sales tax collections and discretionary funding by local governments. We therefore concluded that the state funding scheme violated equal protection principles.

Concerning disparities in teacher salaries between rural and urban area schools, the court concluded that:

The record supports the plaintiffs' argument that for the most part, the same disparities in teachers' salaries that existed when Small Schools II was decided still exist today. For example, in 1995, the City of Alcoa paid teachers an average of $40,672, while Jackson County paid teachers an average of $23,934, a difference of $16,738. In 1997, Oak Ridge paid its teachers an average of $42,268, while in Monroe County the figure was $28,025, a disparity of $14,243. In 1998-1999, the disparity between Oak Ridge and Monroe County grew to $14,554. Thus, wide disparities still exist, and it takes little imagination to see how such disparities can lead to experienced and more educated teachers leaving the poorer school districts to teach in wealthier ones where they receive higher salaries. The interveners [urban and suburban school districts] cite a survey of teachers suggesting that [only] 21% of teachers moving to another district to teach did so primarily because of salary considerations. However, the same study reveals that 61.7% of those surveyed cited

103. Id. at *3-4.
salary as the reason they preferred working in their current school system over their former one, and 53.3% said that salary influenced their decision to migrate from one system to another . . . . In the end, the rural districts continue to suffer the same type of constitutional inequities that were present fourteen years ago when this litigation began.\textsuperscript{104}

II. DISCUSSION

As the above cases indicate, rural schools are commonly among the plaintiffs in school funding cases. Funding litigation, including litigation involving rural schools, continues to evolve. This section discusses current and emerging issues concerning funding litigation and rural schools, including the general judicial shift from focusing on equity to adequacy, the emergence of accountability as a constitutional requirement, and an examination of some recent funding cases and their potential impact on rural schools.

A. From Equity to Adequacy

Since \textit{Serrano}, one of the more significant developments in the evolution of funding litigation has been the emerging focus on constitutional adequacy in the provision of public education.\textsuperscript{105} In contrast to earlier \textit{Serrano}-type cases, many more recent judicial opinions have focused on the provision of an adequate education.\textsuperscript{106} The goal appears to be assuring access to the educational resources necessary to provide an adequate education for every child regardless of per-pupil expenditures, while still permitting local discretion to exceed the minimums of educational adequacy.

But the “adequacy cases” lack the clear judicially manageable standard of fiscal neutrality in \textit{Serrano} and the equity cases, leading judges into the murkier waters of defining an “adequate” education, possibly contributing to judicial reluctance to continue to support remedial efforts for rural schools in cases like \textit{DeRolph} in Ohio, and \textit{James} in Alabama. In navigating the murky waters of defining adequacy, judges must attempt to steer clear of either extreme judicial activism, in which judges exceed their legitimate competence and authority, and extreme judicial deference, in which judges fail to perform their constitutional duties. In the broad spectrum, between extreme judicial activism and extreme judicial deference, there are at least

\textsuperscript{104} Id. at 12, n.17.
three possible judicial approaches for ordering legislative reform to achieve educational adequacy: substantive standards, procedural standards, and qualified judicial deference.

Some courts have issued judicial opinions expressly outlining minimally substantive standards for an adequate education under their state's constitution. For example, in *Rose v. Council for Better Education*, the Supreme Court of Kentucky declared that the Kentucky Constitution required as a minimum that each student's educational program must provide:

1) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
2) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
3) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
4) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
5) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
6) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
7) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

By explicitly outlining minimal constitutional requirements for an adequate education, courts are establishing substantive standards that could help to guide legislators in enacting reforms to assure that every student receives the educational resources required by the state constitution, while still allowing for local supplements that exceed minimal constitutional adequacy. However, judicial opinions establishing substantive educational standards raise serious questions concerning judicial competence, authority, and separation of powers issues. Dissenting opinions in these cases often raise difficult questions about the qualifications of judges to make education policy decisions, judicial authority to require the legislature to adopt the policy preferences of judges, and whether opinions mandating substantive education standards usurp legislative and administrative powers in violation of the separation of powers doctrine.

Other courts have declined to issue explicit substantive standards, but instead appeared to be requiring a procedural process in which the general assembly must: 1) consider what constitutes an adequate edu-

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107. *See* Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979) (defining a thorough and efficient education and including in its "legally recognized elements of this definition" the development of every child's capacity related to: 1) literacy; 2) mathematics; 3) government; 4) environmental and self-knowledge; 5) academic and work-training; 6) recreation; 7) creative arts, and; 8) socialization skills).
108. 790 S.W.2d 186, 212 (Ky. 1989).
cation under their constitution; and 2) design a funding system to assure that resources are available to fund this adequate education for all children. For example, in *Campbell County School District v. State* the Supreme Court of Wyoming declared the state funding system unconstitutional, and ordered a remedy stating that "the legislature must first design the best educational system by identifying the 'proper' educational package each Wyoming student is entitled to have" and second the "cost of that educational package must then be determined and the legislature must then take the necessary action to fund that package."\(^{109}\)

While this approach has the virtue of avoiding direct substantive mandates to the legislature concerning education policy, there is little guidance for the legislature concerning what the court would deem a constitutionally adequate education. Further, there is no assurance that the legislature will not determine that the status quo is "adequate" thereby forcing the court in the future to either establish a contrary substantive mandate or to broadly defer to legislative authority concerning what constitutes an "adequate" education.

Other courts, highly concerned about judicial competence, authority, and separation of powers issues, have merely declared funding systems unconstitutional, broadly deferred to legislative authority in defining a constitutionally adequate education, and provided no explicit guidance concerning what legislators must do to produce a funding system that would survive future judicial scrutiny. However, it can be argued that this judicial ambiguity in mandating reform, and the resulting legislative trial-and-error process, could contribute to protracted litigation as the general assembly must "guess" at what the court will consider a constitutionally adequate response to the court's decision.

Heated debate continues concerning the proper limits of judicial authority in establishing constitutional standards for an adequate education. For litigants attempting to evaluate the likely judicial response in their state, current judges' published opinions addressing judicial competence, authority, and separation of powers are very likely good indicators of whether the judges in their state would support or oppose an activist role for the court in future school funding litigation. Judicial opinions in funding litigation cases since *Serrano* cover the spectrum from extreme judicial activism to extreme judicial deference, with activist courts much more likely to aggressively support plaintiffs' reform efforts.

All 50 states' constitutions and legal precedents respect the doctrine of separation of powers, and recognize that there are limits to

\(^{109}\) 907 P.2d 1238, 1279 (Wyo. 1995).
judicial competence and authority. There is common recognition that the doctrine of separation of powers clearly prohibits judges from exercising legislative or administrative powers. Further, because most judges have no special expertise in education, and were not elected by the people to make educational policy decisions, their opinions lack legitimacy when they exceed the realm of judicial competence and authority. However, debate continues concerning whether judicial declarations expressly outlining an adequate education exceed judicial authority, or whether failure to set clear judicial standards in ordering a remedy constitutes judicial negligence and an abdication of judicial duty.

B. Accountability as a Constitutional Requirement

Law and finance scholars have documented the long-term judicial trend from equity to adequacy in funding litigation, but a recent decision by the Supreme Court of New Hampshire in *Claremont School District v. Governor* (*Claremont III*) appears to take a relatively new direction in funding litigation by focusing more directly on accountability as a constitutional requirement of an adequate education. In *Claremont I*, the Supreme Court of New Hampshire held that the state constitution “imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding.” In *Claremont II* the court held that a state funded constitutionally adequate education was a fundamental right, any property tax levied to fund education is a state tax and the taxing district is the entire state, and disproportionate local school taxes were an unreasonable and unconstitutional means of funding schools. In *Claremont III*, the Supreme Court of New Hampshire was asked to determine whether: 1) the state’s obligation to provide a constitutionally adequate education required the state to provide standards of accountability; and 2) to what extent statutory exemptions for financial hardship excused compliance with minimum educational standards established by the


112. 794 A.2d 744 (N.H. 2002).


114. 703 A.2d 1353 (N.H. 1997).
state. In a 3-2 decision, the court held that “accountability is an essential component of the State's duty and that the existing statutory scheme has deficiencies that are inconsistent with the State's duty to provide a constitutionally adequate education.”

In Claremont III, the state characterized the court's prior holdings as requiring the state to: 1) define an adequate education; 2) calculate the costs; 3) provide funding with constitutional taxes; and 4) ensure the delivery of an adequate education through adequate accountability measures. The court noted that the Senate had passed a bill described as “an Act establishing a comprehensive statewide accountability system concerning an adequate education.” The court further noted that: “In this legislation, specific test scores were established as performance goals that students had to meet. The State, however, was not required to assist schools or school districts where students did not meet these goals.” The Senate Bill was vetoed by the Governor, because the legislation contained no provisions to require accountability, with the Governor quoting President George W. Bush's statement that “without consequences for failure, there is no pressure to succeed.”

Concerning accountability, the court stated that:

Accountability is more than merely creating a system to deliver an adequate education. Claremont I did not simply hold that the State should deliver a constitutionally adequate education, but in fact held that it is the State's duty under the New Hampshire Constitution to do so . . . . Accountability means that the State must provide a definition of a constitutionally adequate education, the definition must have standards, and the standards must be subject to meaningful application so that it is possible to determine whether, in delegating its obligation to provide a constitutionally adequate education, the State has fulfilled its duty . . . . This view is shared by other jurisdictions. In Massachusetts, for example, in response to McDuffy . . . the legislature promulgated a system of accountability whereby the state board of education was given authority to establish specific performance standards and a program of remediation when students' test scores fall below a certain level . . . . In Ohio [DeRolph], the state supreme court stated that “accountability is an important component of the educational system” . . . . In Tennessee [McWherter], the state supreme court said that “the essentials of the governance provisions of the [Basic Education Program] are mandatory performance standards; local management within established principles; performance audits that objectively measure results; . . . and final responsibility upon the State officials for an effective educational system throughout the State” . . . . It is thus widely accepted that establishing standards of accountability is part of the State's duty to provide a constitutionally adequate education.

115. 794 A.2d 744 (N.H. 2002).
116. Id. at 745.
117. 794 A.2d 744, 749 (N.H. 2002).
118. Id.
119. Id.
120. Id. at 750.
121. Id. at 751-752.
The court stated that: “The system the State currently has in place appears to use both standards based on what school districts provide (input-based standards) and results that school districts achieve (output-based standards).”\textsuperscript{122} However, the court noted that: “The plaintiffs argue that despite these programs, ‘the State has failed to meet its obligation to promulgate standards because the standards in place are voluntary, unconstitutional, and do not set any specific levels of performance that schools or school districts must meet.’”\textsuperscript{123} The state responded that it “dictates certain school approval standards that schools and school districts must meet” and that the education individual schools provide is measured against these standards for approval.\textsuperscript{124}

However, the court noted that the applicable statute provides that: “The state board of education shall have the power to approve for a reasonable period of time a high school that does not fully meet the requirements . . . if in its judgment the financial condition of the school district or other circumstances warrant delay in full compliance.”\textsuperscript{125} The court further noted that the administrative regulations define a financial or emergency condition that could justify excusal from compliance to include: “1) Reduction in local tax base; 2) Closing of a major industry; 3) Sudden influx of school-age population; 4) Emergency beyond the control of the school district, such as fire or natural disaster; or 5) Other financial or emergency condition not listed above.” The court stated that:

> On their face [the statute and regulation] permit a school district to provide less than an adequate education as measured by these minimum standards when the local tax base cannot supply sufficient funds to meet the standards. The statute and the rule also permit noncompliance with the standards under emergency conditions, such as a fire or natural disaster. While it may be permissible to excuse noncompliance under emergency conditions, the statute permits the board of education to also approve a school that does not meet the minimum standards based solely on the “financial condition of the school district” . . . . Excused noncompliance with the minimum standards for financial reasons alone directly conflicts with the constitutional command that the State must guarantee sufficient funding to ensure that school districts can provide a constitutionally adequate education. As we have repeatedly held, it is the State’s duty to guarantee the funding necessary to provide a constitutionally adequate education to every educable child in the public schools in the State . . . . The responsibility for ensuring the provision of an adequate public education and an adequate level of resources for all students in New Hampshire lies with the State. While local governments may be required, in part, to support public schools, it is the responsibility of the State to take such steps as may be required in each instance effectively to devise a plan and sources of funds sufficient to meet the constitutional mandate . . . . There is no accountability when the rules on their face tolerate noncompliance with the duty to

\textsuperscript{122} Id. at 753.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Id. at 754.
provide a constitutionally adequate education. While the State may delegate this duty . . . it must do so in a manner that does not abdicate the constitutional duty it owes to the people . . . . The State's duty cannot be relieved by the constraints of a school district's tax base or other financial condition . . . . [T]he State may not take the position that the minimum standards form an essential component of the delivery of a constitutionally adequate education and yet allow for the financial constraints of a school or school district to excuse compliance with those very standards. We hold, therefore, that to the extent the minimum standards for school approval excuse compliance solely based on financial conditions, it is facially insufficient because it is in clear conflict with the State's duty to provide a constitutionally adequate education.126

Although the applicable statute provided for state-wide assessments, the court noted that under the statute “no school district is required to respond to the assessment results; rather ‘each school district in New Hampshire is encouraged to develop a local education improvement and assessment plan’ . . . neither the school district nor the department of education is required to do anything . . . . The department of education is available to assist. Nothing more is required.”127 The court stated that: “The purpose of meaningful accountability is to ensure that those entrusted with the duty of delivering a constitutionally adequate education are fulfilling that duty . . . . The State has not provided a sufficient mechanism to require that school districts actually achieve this goal.”128 The court concluded that: “We hold that because of deficiencies in the system as set out in this opinion, the State has not met its constitutional obligation to develop a system to ensure the delivery of a constitutionally adequate education.”129

The court’s decision in Claremont III directly focused on accountability as an essential component of an adequate education, and resulted in a victory for the plaintiffs. Rural plaintiffs in other states are certain to read the court’s opinion in Claremont III, and will likely consider arguing for similar accountability based remedies in compliance litigation in their states. Accordingly, it is likely that accountability measures will receive greater attention in future litigation concerning whether states are meeting their constitutional obligations to provide an adequate education for all of the state’s children.

C. Recent Rural School Funding Litigation

The two most recent decisions concerning rural school funding litigation are from Alabama and Tennessee and resulted in very different outcomes for rural school advocates. In Ex parte James,130 the Supreme Court of Alabama largely foreclosed the possibility of future

126. Id. at 754-755.
127. Id. at 757-758 (citation omitted).
128. Id. at 758.
129. Id.
130. 836 So. 2d 813 (Ala. 2002).
funding equity litigation in Alabama, holding that such issues were “non-justiciable” and that “the time has come to return the Funding Equity Case in toto to its proper forum,” the legislative realm.\(^\text{131}\) In contrast, in an October 8, 2002 opinion in *Tennessee Small School Systems v. McWherter (Small Schools I)* the Supreme Court of Tennessee ruled in favor of rural school plaintiffs who asserted that ongoing disparities in resources between rural and urban schools violated the Tennessee Constitution.\(^\text{132}\)

Any explanation of the differences in results in judicial decisions on school funding cases may amount to little more than speculation. Nonetheless, some possible factors may include differences between the states in constitutional language, judicial precedents, economic status, or state politics. While judges often discuss the first two issues in their opinions, they are clearly reluctant to confess to being influenced by the latter two factors. Nonetheless, a credible argument can be made that these factors may sometimes play a significant role in judicial opinions regarding school funding reform.

Concerning the possible effect of a state’s current economic status on the willingness of judges to aggressively pursue funding reform, several courts have expressly held that state fiscal difficulties do not excuse failure to comply with constitutional mandates to support education. For example, in declaring the entire public education system of Kentucky unconstitutional and requiring a complete revision, the Supreme Court of Kentucky stated that: “The taxpayers of this state must pay for the system, no matter how large, even to the point of being unexpectedly large or even onerous.”\(^\text{133}\) The Supreme Court of Texas held that “the legislature must establish priorities according to constitutional mandates; equalizing educational opportunity cannot be relegated to an ‘if funds are left over’ basis.”\(^\text{134}\) The Supreme Court of Montana concurred, stating that “fiscal difficulties in no way justify perpetuating inequities.”\(^\text{135}\) While no court has ever stated that they would allow economic difficulties to affect their decision in a funding case, La Morte and Williams suggested that:

> [E]conomic recessions, can act to thwart plaintiffs’ hopes since the unavailability of revenue makes change more difficult and bolsters defendants’ contention that workable solutions do not exist. When the fiscal condition of state governments is relatively healthy, equity may well enjoy popularity: state revenue is available for a “leveling up” process, which is clearly a more palatable task for both courts and legislatures than requiring a “leveling down.” Specu-

\(^{131}\) Id. at 819.
\(^{132}\) 851 S.W.2d 139 (Tenn. 1993).
\(^{133}\) Rose v. Council for Better Educ., 790 S.W.2d 186, 208 (Ky. 1989) (citation omitted).
\(^{134}\) Edgewood v. Kirby, 777 S.W.2d 391, 397-398 (Tex. 1989) (citation omitted).
It may be impossible to definitively establish that economic conditions affect judicial decisions on funding cases, although common sense and anecdotal evidence may support this theory in some cases. Nonetheless, it is certain that the availability of funds will affect the legislative response to judicial reform mandates. Furthermore, if the prospects for an acceptable legislative response are remote, judges may be hesitant to order reform when the environment for remedial efforts appears inhospitable, fearing judicial entanglement in protracted and unproductive serial litigation or legislative defiance that may call into question the power and authority of the court. Obviously, it would be difficult or impossible to fund extremely expensive school funding reform in a time of dramatic budget deficits and budget cuts. Although judges have a duty to be guided by the law and not current economic or political conditions, most state judges are also elected officials, and likely very aware of current economic and political realities in their state.

Concerning whether state politics may affect the decisions of judges in funding equity cases, there may be some evidence of this in both the recent Alabama and Ohio school funding cases. For example, while the equity case was pending in Alabama, there were dramatic political changes, including: the conviction and removal of the Governor for a felony; a realignment of parties to the case to the extent that some judges charged that there appeared to be adverse parties; a bitter and racially charged battle over whether Amendment 111 of the Alabama was unconstitutional as an attempt to avoid the mandates of Brown v. Board of Education; and a trial court judge who appeared to have angered members of the Supreme Court of Alabama by running for election to Alabama's highest court based on a campaign rooted in his decisions on the funding equity cases. Further, a dissenting justice in this case accused the majority of issuing an unsolicited and improper opinion. While it is of course possible that judges can remain objective, even regarding their political opponents, the opinion in Ex parte James contains some very strong language regarding the actions of the trial court judge advocating funding reform in Alabama, and will likely lead some readers to conclude that state politics was a motivating factor in this case.

137. Many states' constitutions require the legislature to operate under a balanced budget. Lawmakers cannot spend funds the state is not legally authorized to spend, even for the most noble of purposes.
138. See supra footnote 99 and accompanying text.
139. See supra footnote 100 and accompanying text.
140. 836 So. 2d 813 (Ala. 2002).
Similarly in *DeRolph III*, the court highlighted the protracted and contentious history of this case, stating that: "Every justice of the court has expressed her and his views regarding the constitutional issue . . . . The informal and formal discussions among the justices regarding the jurisdictional and merit issues have been of an intensity and duration unmatched by any other case." For some reason, the court in *DeRolph III* did appear to retreat from its prior commitment to funding reform. Dissenting justices asserted that this retreat was actually a "Machiavellian maneuver" intended to halt funding reform litigation "for the sake of expediency, harmony, and consensus . . . . The majority has acquiesced to the desires of the defendants, and has abandoned all pretense of objectivity, ostensibly in the spirit of creating a consensus. The majority appears to be working hand in hand with the legislative branch of government." The majority opinion itself stated that:

A climate of legal, financial, and political uncertainty concerning Ohio's school-funding system has prevailed at least since this court accepted jurisdiction of the case. We have concluded that no one is served by continued uncertainty and fractious debate. In that spirit, we have created the consensus that should terminate the role of this court in the dispute.

However, despite the attempt to "terminate" the role of the court in *DeRolph III*, on December 11, 2002, the Supreme Court of Ohio issued yet another opinion in the *DeRolph* series of cases, *DeRolph v. State (DeRolph IV)*, leaving many observers asserting that the court may have been motivated by politics. On November 5, 2002, Ohio voters had elected two new Justices to the Supreme Court of Ohio. Clearly, a judge's political affiliation should not pre-determine the judge's views on cases before the court. Further, judicial elections in Ohio are non-partisan. Nonetheless, the political affiliations of judicial candidates are widely reported and commonly known among voters, and many voters and commentators believe that party affiliation may be a good predictor of a justices' future views on some politically divisive issues. In the November 2002 elections, Ohio voters elected two Republicans to the Ohio Supreme Court, leading many commentators to believe that these two new Republican members of the court would tip the balance against judicial activism, and make it less likely that the court would mandate significant new increases in public school funding. But in what some observers asserted was a December 11, 2002 preemptive strike prior to seating the new justices in January 2003, the Supreme Court of Ohio issued a 4-3 opinion in *DeRolph IV*, finding that the Ohio funding system remained unconstitutional, calling for a

141. 754 N.E.2d 1184 (Ohio 2001).
142. Id. at 1188.
143. Id. at 1216-1217 (Resnick, J., dissenting).
144. Id. at 1190.
145. 780 N.E.2d 529 (Ohio 2002).
complete systematic overhaul of the state's school funding system, and terminating jurisdiction over the case, effectively ending the DeRolph litigation. Even if the motivation was not political, the timing of the opinion in DeRolph IV will be questioned by opponents of funding equity reform, leaving the future of school funding in Ohio very uncertain.

In contrast, the October 2002 decision by the Supreme Court of Tennessee offers a more promising picture of the future of rural school funding litigation, at least from the perspective of advocates for rural children and schools. In Tennessee Small School Systems v. McWherter (Small Schools III), the court, for the third time, ruled in favor of rural school advocates, expressing a commitment to continue to address the negative effects of a state funding system that relied too heavily on local property taxes and local sales taxes to fund rural schools.\footnote{146. Tenn. Small Sch. Sys. v. McWherter (Small Schools III), No. M2001-01957-SC-R3-CV, slip op. at *1 (Tenn. Oct. 8, 2002).} Despite financial hardship and political opposition in the state, the court showed no indication of retreating from its mandate to reform the state's school funding system, consistent with state constitutional requirements. The court declared that: "Until that mandate is met, the inherent value of education will not be fully realized by all students in the state, regardless of where they live and attend school, and the students of Tennessee will continue to be unconstitutionally denied substantially equal educational opportunities."\footnote{147. Id. at *10-11.}

Rural schools in Tennessee and other states generally lack a sufficient property tax base to adequately support local schools, absent sufficient state level support. Given economic difficulties and a general opposition to raising taxes, legislators in all states face a formidable task in adequately funding public schools in their state. In their search for new sources of revenue, government officials, as they did in Tennessee, are increasingly turning to local sales taxes to supplement local schools. However, funding systems using local sales taxes poses a growing threat to equitable funding for rural schools as centers of commerce increasingly move from smaller communities to larger metropolitan areas.\footnote{148. Tenn. Small Sch. Sys. v. McWherter (Small Schools I), 851 S.W.2d 139, 144 (Tenn. 1993).} As the Supreme Court of Tennessee recognized in Tennessee Small School Systems v. McWherter, the use of local sales taxes to fund local schools significantly disadvantages rural school districts.\footnote{149. 851 S.W.2d 139, 144 (Tenn. 1993).} Nonetheless, because of the difficulty of acquiring additional funds for public schools in a political environment already aggravated by high taxes, funding schemes utilizing local sales taxes continue to attract supporters. Property owners have been persuaded that sales

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147. Id. at *10-11.
149. 851 S.W.2d 139, 144 (Tenn. 1993).
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taxes are a means of limiting property taxes by imposing part of the burden of funding local schools on out-of-district shoppers and persons who do not own property. This use of sales taxes not only increases disparities among metropolitan and rural schools, but also imposes a regressive tax on poorer individuals. Further, it drains additional funds from poorer rural communities into metropolitan areas as rural residents must increasingly travel to metropolitan areas to shop for goods and services not available locally. The Supreme Court of Tennessee's opinions in the Small Schools cases will likely prove most beneficial reading for advocates for rural children and schools in states that are relying on local sales taxes to fund local schools.

III. CONCLUSION

Many school funding equity cases have included rural schools among the plaintiffs. As long as rural schools continue to be placed at a disadvantage by state systems of school funding, it is likely that rural school advocates will continue to pursue remedies through litigation. Under current circumstances, it may not be possible for rural schools in many states to obtain adequate remedial legislation through the political process.

Given the limited population and wealth of rural areas in comparison to the more populous, wealthy, and consequently more politically influential metropolitan areas, poorer rural schools are unlikely to prevail in a political battle with their metropolitan counterparts. Further, both financial resources and political power are continuing to decline in many rural communities. Without the political influence that results from substantial wealth and voting power, rural school districts will have a limited voice in seeking legislative remedies for rural funding problems.

If legislators ignore the difficulties of rural schools, or if remedial legislation is under-funded or otherwise inadequate, the only remaining option for obtaining relief may be litigation. Regardless of whether reform efforts are legislative or judicial, it is likely that metropolitan area school districts will continue to vigorously oppose efforts to increase rural schools' share of the state's educational resources.

150. See, e.g., Ga. Const. amend. 2 (1996) (allowing local school districts to impose a sales tax for local use); see also James Salzer, Education Funding Rises as Sales Taxes Gain Favor, Athens Daily News, August 3, 1997, at 6A (“The amendment was an attempt to give districts a way to build new facilities without having to do what is traditionally politically unpopular—raise property taxes.”).

151. Small Schools I, 851 S.W.2d 139, 144 (Tenn. 1993).

152. See Matanuska-Susitna v. State, 931 P.2d 391 (Alaska 1997) (involving Alaska city and borough school districts that challenged state aid to rural area schools); McDaniel v. Thomas, 285 S.E.2d 156, 174 (Ga. 1981) (involving a bill giving "ru-
Because many rural districts must fund their schools by taxing a very limited tax base, they may have relatively high property tax rates but a low funding yield, leading to inadequate educational resources, inadequate education, and ultimately a low skilled or unskilled local labor force. Relatively high property tax rates and an unskilled local labor force are then additional disincentives for the economic development needed to improve the local tax base. Without adequate state educational support and taxpayer equity it is unlikely that disadvantaged rural communities will be able to attract the quality business and residential investors that could improve the tax base and local schools. For disadvantaged rural districts, inadequate educational resources and relatively high property taxes may create a cycle of poverty from which there is little hope of escape without greater adequacy in school funding and equity in taxation.1

Many legislators are aware of the financial difficulties that face rural schools, and “[t]hirty states . . . include a factor in their finance formulas to compensate for additional costs necessary to mount an educational program in rural, small schools or districts.” Unfortunately, in many of these states compensatory funds are inadequate, and the remaining states do not compensate for higher rural costs.

The status quo in school funding is a reflection of existing political and financial realities. Attempts to change the status quo that fail to address the related underlying are likely to fail. Unless the forces that created the status quo are significantly and permanently altered, reform efforts are likely to devolve towards the status quo. The enshrinement of egalitarian ideals in many state constitutional provisions concerning education was an attempt to significantly and permanently alter the status quo concerning educational opportunity. However, unless state judges and lawmakers take these constitutional ideals seriously, they will remain merely words on a piece of paper, lacking the power to change the unfortunate educational realities of millions of disadvantaged rural children.

1. See Small Schools I, 851 S.W.2d 139, 144-45 (Tenn. 1993).
Notwithstanding current inequities and political opposition, rural school advocates must continue to strive for adequate financial resources to meet the educational needs of their children and to avoid the spiral of community poverty associated with inadequate education. If litigation is necessary, rural school advocates may learn many useful lessons from a careful review of the cases discussed above.