

THE SEARCH FOR THE MAGIC FORMULA:
HISTORY OF ILLINOIS SCHOOL FUNDING REFORM

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Although strenuous efforts have been made by a diverse set of talented and resourced advocates, Illinois's K-12 school funding is stuck in a state of inadequacy and inequity. This Article defines the problem and traces constitutional, legislative, and litigation-based efforts to reform Illinois's school funding formula over the past forty-five years. Taking the research supporting the need for funding equality and the circular nature of legislative efforts through 2012 into account, wholesale funding reform must occur to ensure a bright future for Illinois's children.

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I. THE MOST IMPORTANT NUMBER IN EDUCATION: THE ZIP CODE

Framers of the 1970 Illinois Constitution knew there was work to be done in education finance.¹ Overall, the delegates to the 1970 Illinois Constitutional Convention wanted change, but there was little agreement on how to achieve greater equity and adequacy in education funding.² As each proposal for a revised Education Article traveled through the Convention's debate procedure, delegates simply could not agree.³ Some proposals went too far in increasing state control, while others did not go far enough to reduce the inequality between rich and poor districts.⁴ Simply put, although many delegates formed opinions as to what reforms should take place, no plan was floated that had the specificity to ensure equal education and popular appeal to make it out of the Convention.⁵ This led to frustration for most of the delegates; one delegate found himself "in a state of ambivalency," while another stated "I don't think the [first] amendment goes far enough; the [second] amendment doesn't go anywhere; I want to go home. Let's vote."⁶ The convention delegates, worn out and tired, applauded this suggestion.⁷

Almost forty-five years later, the feeling in Illinois is not much different, and the problem remains: the most important number in education is still a student's zip code. A majority of legislators will agree that something should be done to better distribute resources to Illinois's schools, but any discussion of school funding is complex and wrought with emotion. This has precluded any small, incremental steps from taking place, and the problem has only grown. The purpose of this Article is to further inform efforts to reform the system by defining the problem, explaining past attempts to change the system, and suggesting both incremental and wholesale reforms to make the school funding system more fair to schoolchildren and taxpayers.

Part I of this Article establishes the disparity that exists in educational outcomes in Illinois, a problem rooted in the disparity in resources provided to schools. It also demonstrates that policy can have an impact in reducing this disparity, as evidenced by efforts in other states. Part II traces legislative reform efforts in Illinois, beginning in the 1970s, emphasizing the circular nature of debates and the need for wholesale change. Part III concludes by explaining why litigation has also failed so far in Illinois, and ends with an update of the most recent actions by advocates in litigation and in legislation. All of these parts come together to show that the future of Illinois public education depends on actions taken today and that wholesale, long-term change is needed to ensure a bright future for *all* Illinois children, not only those who live in wealthy areas.

¹ See generally Thomas D. Wilson & John K. Wilson, *Equalizing School Funding and the 1970 Constitutional Convention*, 23 ILL. ISSUES 21 (1992).

² *Id.*

³ *Id.*

⁴ *Id.* at 22.

⁵ *Id.* at 21.

⁶ *Id.* at 22.

⁷ *Id.*

A. The Disparity

The story of Chicago is similar to that of other great American cities. A promising 1800s prairie town characterized by quick growth, Chicago became one of the fastest growing cities in the world by the early 1900s.⁸ However, by the mid-1900s, resources quickly left, concentrating in suburbs surrounding the city.⁹ As those resources left the city, so did the people who could afford to move: mostly established, middle-upper class, white families.¹⁰ As these families left Chicago, black and Latino families moved in.¹¹ The result was a socio-economically and racially segregated metropolitan region.¹²

This segregation has rooted itself in Chicago. As recently as 2002, a South Side Catholic high school sports league refused to allow a primarily black parish to join, claiming that the black parish was “unsafe” for whites.¹³ The Cardinal of the Roman Catholic Archdiocese of Chicago at the time was forced to write a letter to priests, nuns, and laypeople in the region to urge them to welcome African-American parishioners.¹⁴ Ultimately, the black parish was eventually allowed to join.¹⁵ This segregation has not been limited to race, however. A 2010 study by the Pew Research Center noted that Chicago has experienced a modest increase in wealth segregation from 1980 to 2010.¹⁶ This increase reflects a nationwide polarization; both the wealthy and the poor are concentrating in their own neighborhoods, while the overall share of mixed-income neighborhoods is shrinking.¹⁷

Because of the way Illinois currently funds its schools, this segregation leads to educational inequity—not only in Chicago, but in all of Illinois.¹⁸ Illinois currently ranks in the bottom quintile among states for failing to fund its schools adequately from state-based revenue;¹⁹ indeed, a majority of education funds are raised locally through property taxes.²⁰ This has resulted

⁸ ROBERT G. SPINNEY, CITY OF BIG SHOULDERS: A HISTORY OF CHICAGO 45-46 (2000).

⁹ *See id.* at 204-12.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.*

¹³ Op-Ed., *Chicago, in Black and White*, N.Y. TIMES, Mar. 16, 2002, at A14.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ RICHARD FRY & PAUL TAYLOR, PEW RESEARCH CTR., THE RISE OF RESIDENTIAL SEGREGATION BY INCOME, (2012). Measured by the Residential Income Segregation Index (“RISI”), wealth segregation in the Chicago metropolitan area has grown by six points. *Id.* Although this increase is lower than most large metropolitan areas, it does reflect a general trend toward wealth segregation in the United States. *Id.*

¹⁷ *Id.*

¹⁸ *See* RALPH M. MARTIRE ET AL., CTR. FOR TAX & BUDGET ACCOUNTABILITY, MONEY MATTERS: HOW THE ILLINOIS SCHOOL FUNDING SYSTEM CREATES SIGNIFICANT EDUCATIONAL INEQUITIES THAT IMPACT MOST STUDENTS IN THE STATE 5 (2008).

¹⁹ BRUCE D. BAKER ET AL., EDUC. LAW CTR. AND RUTGERS GRADUATE SCH. OF EDUC., IS SCHOOL FUNDING FAIR?: A NATIONAL REPORT CARD 16 (3d ed. 2014).

²⁰ *See* MARTIRE ET AL., *supra* note 18, at 5; *see also* Lisa Black, *Spending Gap Between State’s Rich, Poor Schools is Vast*, CHI. TRIB., Nov. 7, 2011.

in large disparities in spending among districts.²¹ Although Illinois ranked sixteenth in the United States in overall spending per pupil in 2011,²² a recent report written by The Education Trust placed Illinois dead last in spending its education dollars equally among rich and poor students.²³ Whereas Illinois districts spent, on average, \$10,564 in districts with 30% of students in poverty, they spent \$13,032 in districts near 0% of students in poverty.²⁴ Despite state and federal programs assisting low-income districts, Illinois education funding is so reliant upon local property wealth that low-income districts only spend 81% of the amount wealthy districts do per pupil.²⁵ This disparity in education funding has a remarkably disproportionate impact on students of color; 93% of all African-American children and 66% of all Hispanic children attend school districts in which 30% or more of the students are in poverty.²⁶

The most striking examples of this inequity exist in Chicagoland, where rich and poor districts lie in close proximity. For example, Rondout Elementary School, which serves a portion of Lake Forest in Lake County about twenty miles north of Chicago, spent \$25,189 per student in the 2013-2014 school year, of which \$15,476 was exclusively spent on instruction.²⁷ Only 7% of students were of low-income status, and 81% of students were at or exceeding grade level on the Illinois Standards Achievement Test (“ISAT”).²⁸ The median household income in Lake Forest from 2008 to 2012 was \$147,162, and the median home value was \$832,900.²⁹ Students in Rondout Elementary School are not only exposed to a top-notch core educational program, but also have extracurricular opportunities such as art club, band, choir, ecology corps, an environmental club, Lego[®] robotics, the science Olympics, and various sports.³⁰

Compare this with Washington Irving Elementary School on the west side of Chicago. Washington Irving spent \$13,791 per student in the 2013-2014 school year, with \$8,624 going to instruction.³¹ Ninety-one percent of students were considered low-income, and fifty percent were at or exceeding grade level on the ISAT.³² During the same period, the median household income

²¹ See MARTIRE ET AL., *supra* note 18, at 5.

²² BAKER ET AL., *supra* note 19, at 12-13 tbl.2, 15 tbl.3. This data does not include information from Alaska or Hawaii.

²³ NATASHA USHOMIRSKY & DAVID WILLIAMS, FUNDING GAPS 2015: TOO MANY STATES STILL SPEND LESS ON EDUCATING STUDENTS WHO NEED THE MOST 4 (2015) [hereinafter FUNDING GAPS 2015], <http://edtrust.org/resource/funding-gaps-2015/>.

²⁴ *Id.* at 15.

²⁵ *See id.*

²⁶ MARTIRE ET AL., *supra* note 18, at 6.

²⁷ ILL. STATE BD. OF EDUC., ILLINOIS REPORT CARD 2013-14, *available at* <http://www.illinoisreportcard.com> (enter “Rondout Elem School” on the home page).

²⁸ *Id.*

²⁹ U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS: LAKE FOREST (CITY), ILLINOIS (rev. 2015), <http://quickfacts.census.gov/qfd/states/17/1741105.html> (providing census data for the period between 2009 to 2013).

³⁰ RONDOUT SCH. & DIST. 72, EXTRACURRICULAR ACTIVITIES, <http://www.rondout.org/District/1741-Extra-Curricular-Activities.html> (last visited Apr. 12, 2015).

³¹ ILL. STATE BD. OF EDUC., ILLINOIS REPORT CARD, *supra* note 27 (enter “Irving Elem School” on home page, and select the school located in Chicago).

³² *Id.*

in the region was \$47,408, and the median home value was \$247,800.³³ Although the school undoubtedly has dedicated, hard-working teachers and administration, resources do not exist for the menu of extracurricular activities offered at the Rondout School. Years of emphasis on test scores, a product of the federal No Child Left Behind Act of 2001,³⁴ have resulted in many tumultuous years at the school, and this has disrupted the school's distinguished educational progress.³⁵

B. The Illinois K-12 School Funding Formula

This disparity between school resources is a result of the Illinois school funding formula. Funding for Illinois schools comes from three sources: the federal government (9%), the state government (27%), and local sources (64%).³⁶ In the 2009-2010 school year, Illinois ranked forty-eighth nationwide for state government contributions to schools;³⁷ additionally, Illinois's public school system was listed as one of the most regressively funded school systems in the country.³⁸ In this context, "regressive" indicates that as a district's rate of low-income students increases, the district receives less money per pupil.³⁹ The state's lack of commitment to school funding has led to an overreliance on local property taxes raised individually by each district.⁴⁰ Furthermore, the state's efforts to reduce disparity in funding levels have been unsuccessful.⁴¹

The majority of state funding is statutorily distributed in two ways: General State Aid⁴² ("GSA") and the Poverty Grant. The GSA is an equalization grant to ensure that every district achieves a statutory "foundation level" regardless of a district's local property wealth.⁴³ The foundation level was \$6,119 per pupil in fiscal year 2014, less than half of the 2011 U.S. average of \$12,608.⁴⁴ The Poverty Grant is a supplemental grant, which increases along with the

³³ U.S. CENSUS BUREAU, *supra* note 29.

³⁴ Pub. L. No. 107-110, 115 Stat. 1425 (codified in scattered sections of 20 U.S.C.).

³⁵ See generally *This American Life: Two Steps Back*, CHI. PUB. RADIO (Oct. 15, 2004), available at <http://www.thisamericanlife.org/radio-archives/episode/275/two-steps-back>. This radio broadcast described how increasing test scores in the late 1990s and early 2000s came about as the result of intra-school reforms initiated by the staff and administration of the school. *Id.* However, the score increases began to level out after directives from the Chicago Board of Education, as well as the federal government, unraveled the school-driven reforms. *Id.*

³⁶ AUGENBLICK, PALAICH, & ASSOCS., OVERVIEW OF THE STRUCTURE OF THE ILLINOIS SCHOOL FINANCE SYSTEM 9 (2013), available at <http://www.isbe.net/EFAC/schedule/testimony/130917/130924-apa-rpt.pdf>.

³⁷ ADVANCE ILLINOIS, *State Funding of Education: Per Pupil Expenditure by State*, <http://www.advanceillinois.org/state-funding-of-education-pages-329.php> (last visited Apr. 12, 2015).

³⁸ BAKER ET AL., *supra* note 19, at 16; FUNDING GAPS 2015, *supra* note 23, at 4.

³⁹ See *id.* at 14.

⁴⁰ See MARTIRE ET AL., *supra* note 18, at 5-7.

⁴¹ *Id.* at 8.

⁴² ILL. STATE BD. OF EDUC., GENERAL STATE AID OVERVIEW—DEC. 2014, at 1 (rev. 2015), http://www.isbe.net/funding/pdf/gsa_overview.pdf (last visited Apr. 12, 2015) [hereinafter ILL. STATE BD. OF EDUC., GSA OVERVIEW]; see 105 ILL. COMP. STAT. 5/18-8.05 (West 2014) (describing the basis for apportionment of general state financial aid to schools).

⁴³ ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 1.

percentage of low-income students in a given district.⁴⁵

Illinois districts receive one of three different types of equalization grants based on their local property wealth per pupil.⁴⁶ Using the Equalized Assessed Valuation (“EAV”) of each district from the Illinois Department of Revenue,⁴⁷ the Illinois State Board of Education (“ISBE”) determines a district’s local property wealth and ability to pay by multiplying each district’s EAV by a standardized tax rate.⁴⁸ This number is then divided by the number of students in each district, as determined by the average daily attendance in the district from the prior school year.⁴⁹ The resulting number is the Available Local Resources per student (“ALR”).⁵⁰

The first type of equalization grant is reserved for Illinois’s most property-wealthy school districts. The Flat Grant formula is applied to districts where the ALR is at least 175% of the foundation level.⁵¹ Flat Grant districts received \$218 per pupil in the 2012-2013 school year.⁵² The second type of equalization grant, the Alternative Formula, is applied to districts whose ALR is 93% to 175% of the foundation level.⁵³ Districts in this category receive between 5% to 7% of the foundation level; this comes out to about \$306 to \$428 per pupil.⁵⁴ The final type of equalization grant, the Foundation Formula, funds schools with the least ability to raise revenue.⁵⁵ For those school districts with ALR less than 93%, the Foundation Formula pays the difference between the district’s ALR and the statutory foundation level.⁵⁶ In theory, then, no school district should ever fund education at less than the foundation level set by the Illinois General Assembly.

The second largest portion of state aid is given to school districts based on their proportion of at-risk pupils, also known as a “poverty grant.”⁵⁷ The poverty grant starts at \$355 per pupil for districts where low-income student enrollment hovers around 15%, and increases along with the percentage of low-income students, topping out at \$2,994.25 for those districts

⁴⁴ *Id.*; NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., FAST FACTS (2013), <http://nces.ed.gov/fastfacts/display.asp?id=66> (last visited Apr. 12, 2015).

⁴⁵ *Id.*; *Fact Sheet: Changing Illinois Public School Demographics and Education Funding*, ILL. STATE BD. OF EDUC. (Mar. 2013), <http://www.isbe.net/budget/FY14/fact-sheet3-demo-funding.pdf>.

⁴⁶ ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 1-2; 105 ILL. COMP. STAT. 5/18-8.05(E)(2) to (4).

⁴⁷ ILL. DEP’T OF REVENUE, PUBLICATION 136: PROPERTY ASSESSMENT AND EQUALIZATION (2010), available at <http://tax.illinois.gov/publications/pubs/pub-136.pdf>. The Equalized Assessed Value reflects the property value of each district; specifically, it is 33.3% of the average market value of the property contained in a district. *Id.* For more on how this value is generated, see *id.*

⁴⁸ ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 7; 105 ILL. COMP. STAT. 5/18-8.05(D).

⁴⁹ 105 ILL. COMP. STAT. 5/18-8.05(C).

⁵⁰ 105 ILL. COMP. STAT. 5/18-8.05(D).

⁵¹ MARTIRE ET AL., *supra* note 18, at 6.

⁵² *Id.*

⁵³ *Id.* at 5-6; 105 ILL. COMP. STAT. 5/18-8.05(E).

⁵⁴ ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 2.

⁵⁵ *Id.*; 105 ILL. COMP. STAT. 5/18-8.05(E).

⁵⁶ *Id.* at 6.

⁵⁷ ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 2; 105 ILL. COMP. STAT. 5/18-8.05(H).

with 90% to 100% low-income enrollment.⁵⁸ Again, in theory, assuming that the equalization grant and poverty grants are working correctly, no high-poverty district should be funded less than around \$8,000 per pupil.⁵⁹ It is important, however, to keep in mind that \$8,000 still remains more than \$3,000 below the 2011 Illinois average of \$11,330, \$4,000 below the same year's U.S. average of \$12,608, and one-third the amount of money that wealthy schools like Rondout Elementary spent per student in Illinois in the same year.⁶⁰

The rest of state support is distributed through block grants, each with a different purpose and different system for distributing funds.⁶¹ The block grants fund areas such as early childhood education, school safety, reading improvement, and special education.⁶² Chicago District 299 also receives a separate block grant, which removes it from much of the state funding formula.⁶³ Each block grant has its own system of distribution and regulation, increasing administrative overhead and decreasing transparency.⁶⁴

C. Neither Equitable Nor Adequate

The conversation about equity in education has shifted over time. *Brown v. Board of Education*,⁶⁵ handed down in 1954, kicked off years of litigation and legislative efforts to make schools more equitable. Yet, even though disparity in schools never disappeared, the conversation shifted from equity to adequacy in the 1990s.⁶⁶ The argument for adequacy is simple: whereas equity focuses on equalizing financial inputs for all children, adequacy focuses on equalizing educational outputs, such as test scores.⁶⁷ The debate between prioritizing equity or adequacy lies outside the scope of this Article; however, the fact the debate exists is worth mentioning. Even more, the argument between equity and adequacy should not distract from the fact that the Illinois

⁵⁸ ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 2.

⁵⁹ *See generally id.* The equalization grant is designed to bring the district to the foundation level—\$6,119 in FY2014—while the Poverty Grant maxes out at \$2,994.25 for districts with the highest percentages of students in poverty. *Id.* at 1-2. Adding these together, poor districts should receive around \$8,000 to \$9,000 per pupil.

⁶⁰ *See* BAKER ET AL., *supra* note 19, at 12-13; ILL. STATE BD. OF EDUC., GSA OVERVIEW, *supra* note 42, at 1; *see* discussion at *supra* note 27.

⁶¹ SENATE EDUC. FUNDING ADVISORY COMM., GEN. ASSEMBLY, STATE OF ILL., SENATE EDUC. FUNDING ADVISORY COMMITTEE REPORT 3 (2014), available at <http://www.isbe.net/EFAC/pdf/efac-final-report013114.pdf>.

⁶² *See, e.g.*, 105 ILL. COMP. STAT. 5/1C-2 (West 2014) (early childhood education block grant); 105 ILL. COMP. STAT. 5/2-3.51.5 (West 2014) (school safety block grant); 105 ILL. COMP. STAT. 5/2-3.51a (West 2014) (reading improvement block grant); 105 ILL. COMP. STAT. 5/14-7.02b (West 2014) (special education); 105 ILL. COMP. STAT. 5/1D-1 (West 2014) (Chicago block grant).

⁶³ *See* 105 ILL. COMP. STAT. 5/1D-1 (describing the Chicago block grant). The statute makes the grant available to all cities with populations over 500,000, but Chicago is the only such city in the state, by a large margin. *See Illinois Cities by Population*, ILL. DEMOGRAPHICS BY CUBIT, http://www.illinois-demographics.com/cities_by_population (last visited Apr. 12, 2015).

⁶⁴ *Id.*

⁶⁵ 347 U.S. 686 (1954).

⁶⁶ William H. Clune, *The Shift From Equity to Adequacy in School Finance*, 8 EDUC. POL'Y 376, 376-77 (1994).

⁶⁷ *Id.* at 377.

school funding formula provides neither equity nor adequacy for Illinois children. This inadequacy and inequity can be split into two different categories: broken promises, and the downward spiral caused by inequity.

1. Broken Promises

In December of 1997, the Illinois General Assembly created the Education Funding Advisory Board (“EFAB”) by the passage of Public Act 90-548.⁶⁸ EFAB was to be made up of representatives of education, business, and the general public and charged with making yearly recommendations to the General Assembly on education spending.⁶⁹ Specifically, EFAB was to develop a methodology based on best spending practices gleaned from low-income, high-performing school districts.⁷⁰ From this methodology, EFAB would then make a recommendation on the foundation level.⁷¹

After commissioning a report on the funding strategies of high-performing, low-spending school districts from the consulting firm Augenblick & Myers in 2001, EFAB adopted the firm’s findings to develop its first recommended foundation level in January 2001.⁷² The General Assembly adopted the recommended level of \$4,560 per pupil for fiscal year 2002.⁷³ In that first year, the system worked as intended.

However, 2002 is the only year the General Assembly actually followed the recommendation of EFAB.⁷⁴ Since 2002, the General Assembly has set the statutory foundation level below—sometimes thousands of dollars below—the recommendations of the board it formed.⁷⁵ The difference between the EFAB-recommended amount and the actual amount set in law by the General Assembly, adjusted for inflation, was at first only \$120 per pupil in 2003.⁷⁶ By fiscal year 2014, however, the difference had grown to over \$2,500 per pupil.⁷⁷ Whereas EFAB recommended the foundation level be \$8,672 per student, the General Assembly set the foundation level at \$6,119—a level that has not been increased since fiscal year 2010.⁷⁸

⁶⁸ 1997 Ill. Legis. Serv., 1st Spec. Sess., Pub. Act No. 90-548 (West 1997) (codified as amended at 105 ILL. COMP. STAT. ANN. 5/18-8.05(M) (West 2015)); see EDUC. FUNDING ADVISORY BD., ILLINOIS EDUCATION FUNDING RECOMMENDATIONS: A REPORT SUBMITTED TO THE ILLINOIS GENERAL ASSEMBLY 2 (2013) [hereinafter EFAB 2013 RECOMMENDATIONS], available at <http://www.isbe.net/EFAB/pdf/final-report-01-13.pdf>.

⁶⁹ EFAB 2013 RECOMMENDATIONS, *supra* note 68, at 2.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 8; see AUGENBLICK & MYERS, A PROCEDURE FOR CALCULATING A BASE COST FIGURE & AN ADJUSTMENT FOR AT-RISK PUPILS THAT COULD BE USED IN THE ILLINOIS SCHOOL FINANCE SYSTEM (2001), available at <http://www.isbe.net/EFAB/archive/PDFs/fullreport.pdf>. The firm has since changed its name to Augenblick, Palaich and Associates.

⁷³ EFAB 2013 RECOMMENDATIONS, *supra* note 68, at 8.

⁷⁴ *Id.*

⁷⁵ *Id.* at 8-9.

⁷⁶ *Id.* at 9.

⁷⁷ *Id.*

⁷⁸ *Id.* at 2 (showing the EFAB-recommended foundation level); 105 ILL. COMP. STAT. 5/18-8.05(B) (noting the foundation level set by the General Assembly).

Furthermore, the General Assembly is not even funding the lower \$6,119 figure they set in statute.⁷⁹ Breaking its promise to Illinois school districts and the children they serve, by fiscal year 2013, the General Assembly was funding the foundation level at \$518 million less than what would be needed to fully fund schools under its own GSA funding formula.⁸⁰ As a result, Illinois districts were paid only 89% of what they were statutorily entitled to receive from the state, a function that has become known as “proration.”⁸¹

It follows that those districts that are more reliant on state aid, which are almost always property-poor districts with a higher percentage of low-income students, are hardest hit by such broken promises. As EFAB admonished in its January 2013 report to the General Assembly, “[w]hile EFAB recognizes the dire financial position of the State of Illinois, the lack of adequate funding for basic education is a failure of the state’s moral and fiduciary responsibilities.”⁸² Pointing to Article X, Section 1 of the Illinois State Constitution,⁸³ EFAB found the state is not meeting its constitutional responsibility to finance schooling for Illinois children, not only by setting its goals for education finance far too low, but also by failing to even meet those reduced goals.⁸⁴

2. The Downward Spiral of Inequity

The effects of Illinois’s over-reliance on property taxes to fund education ripple beyond district finances. This over-reliance has also made it more difficult for less wealthy areas to attract jobs and build their own property value and wealth. Because areas with less property value must tax at a higher rate to make up for a lower EAV per pupil, such areas are less likely to attract industrial and commercial business.⁸⁵ The average property tax rate for Foundation Formula districts, those districts with the least property value, was 7.84% in 2004, while the average rate in Alternative Formula and Flat Grant districts was 3.06% and 2.12%, respectively.⁸⁶ This reliance on property taxes contributes to Illinois’s status as one of the most regressive tax states in the country, taxing lower-income individuals at a higher percentage than higher-income individuals.⁸⁷

⁷⁹ EFAB 2013 RECOMMENDATIONS, *supra* note 68, at 9.

⁸⁰ *Id.*

⁸¹ *Id.* at 7.

⁸² *Id.* at 12.

⁸³ See Ill. Const. art. X, § 1, providing:

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

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

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

Id.

⁸⁴ EFAB 2013 RECOMMENDATIONS, *supra* note 68, at 12.

⁸⁵ MARTIRE ET AL., *supra* note 18, at 8.

⁸⁶ *Id.*

⁸⁷ *Id.*

Further, from 1990 to 2005, the real growth in property tax rates in Illinois was 42.12%, even though incomes rose by only 2.84% in the same time period.⁸⁸

This contributes to communities losing the ability to help themselves. Employers have little financial motivation to stay in communities with high property tax rates and struggling local schools when there are nearby areas with lower tax rates and better-resourced schools for employees' children.⁸⁹ This creates a downward spiral as companies, jobs, and corporate resources leave a school district's community.⁹⁰ Resulting drops in EAV (used to compute property taxes) cause tax rates to rise as districts struggle to fund schools.⁹¹ This affects every Illinois resident who pays property tax. As taxes rise, the incentive to stay in the community drops, and people and businesses leave.⁹² As people and businesses leave, the economic fabric of the community is torn, often leading to an accelerating rate of closing storefronts and "For Sale" signs in yards, and taxes must rise once more to compensate for a smaller tax base.⁹³ At the center of those impacted are the community's children, who had no choice as to where they were born, where they live, or where they attend school. Illinois's children deserve better.

D. Does More Money Equal Better Education?

Inquiries into whether more resources improve academic outcomes have been inconsistent and dependent on the specific context of each state or district being studied.⁹⁴ Although concrete conclusions are difficult to reach, there are truths that can be extracted from a collective look at these studies. For example, although statistical evidence indicates a rough correlation between resources and student achievement, the research suggests that simply adding money to the system without changing how schools are managed does not result in increased student performance.⁹⁵

Economist Gary Burtless's research in this area, although it was conducted almost twenty years ago, includes contributions from prominent economists around the country such as James Heckman and Frank Levy, and remains one of the prominent works regarding the effectiveness of school resources.⁹⁶ In his work, Burtless splits studies in education resource effectiveness into two distinct strands.⁹⁷ The first strand analyzes whether an increase in school

⁸⁸ *Id.*

⁸⁹ *See id.* ("Over time, [property tax reliance] is likely to drive industrial and commercial businesses out of low and moderate income communities to wealthier ones, to take advantage of the benefits of lower property tax rates coupled with better local schools, and hence higher skilled local workers.").

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *See id.*

⁹⁴ *See* Gary Burtless, *Introduction and Summary, in DOES MONEY MATTER?: THE EFFECT OF SCHOOL RESOURCES ON STUDENT ACHIEVEMENT AND ADULT SUCCESS* 1, 40 (Gary Burtless ed., 1996) (summarizing a number of different studies, all based on different metrics, that come to differing conclusions on whether an increase in resources equals an increase in student achievement).

⁹⁵ *Id.* at 41.

⁹⁶ *See generally id.*

⁹⁷ *Id.* at 3.

resources typically increases student success while the students are still in school.⁹⁸ The second asks whether more resources in education improve outcomes when students graduate and enter the labor market.⁹⁹

1. Funding and Student Achievement

Economist Eric Hanushek published the preeminent study of the first strand in the *Journal of Economic Literature* in 1986.¹⁰⁰ Hanushek concluded that “there appears to be no strong or systematic relationship between school expenditures and student performance.”¹⁰¹ At face value, Hanushek’s exhaustive analysis of more than 377 data points from over 90 published works leads to a compelling argument against simply increasing resources.¹⁰² However, Hanushek does not conclude that increasing resources *cannot* result in higher student achievement, but that there is little reason to assume that an increase in resources—without any other changes in school organization—will result in higher achievement.¹⁰³ Further, he claims that the results point to the conclusion that added resources will not have a consistent effect across schools.¹⁰⁴ “[The research] indicates, by implication, that the existing proclivities of school decisionmakers [sic] do little to ensure effective use of resources,” writes Hanushek.¹⁰⁵

The root of Hanushek’s conclusions lies in the statistical insignificance of many findings across published works in the area.¹⁰⁶ For example, in an analysis of 207 studies searching for a correlation between teacher experience and student achievement, Hanushek finds that 66 are statistically insignificant;¹⁰⁷ in other words, in those 66 studies, negative effects may be as likely to result from an increase in resources as positive effects.¹⁰⁸ However, of the statistically *significant* studies, twenty-nine show a positive correlation between teacher experience and student achievement, while only five show a negative correlation.¹⁰⁹ Of the studies Hanushek has labeled statistically insignificant, thirty show a positive correlation, twenty-four a negative

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*; see Eric Hanushek, *The Economics of Schooling: Production and Efficiency in Public Schools*, 24 J. ECON. LITERATURE 1141 (1986).

¹⁰¹ Burtless, *supra* note 94, at 3 (quoting Hanushek, *supra* note 100, at 1162) (internal quotation marks omitted).

¹⁰² See Eric Hanushek, *School Resources and Student Performance*, in DOES MONEY MATTER?: THE EFFECT OF SCHOOL RESOURCES ON STUDENT ACHIEVEMENT AND ADULT SUCCESS 43, 55-57 (Gary Burtless ed., 1996) (contextualizing the studies, explaining statistical insignificance of many seemingly correlative rises in spending and achievement).

¹⁰³ *Id.* at 57.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 57-58.

¹⁰⁶ *Id.* at 56.

¹⁰⁷ See *id.* at 54 tbl.2-3.

¹⁰⁸ *Id.* at 56 n.21.

¹⁰⁹ *Id.* at 54 tbl.2-3.

correlation, and twelve are unknown.¹¹⁰ Statistical significance, then, is crucial to Hanushek's conclusions.¹¹¹

Many have opposed Hanushek's findings.¹¹² Larry Hedges and Rob Greenwald attack an assumption in Hanushek's conclusions: that the cost and production of student achievement over the years analyzed in Hanushek's calculations are constant.¹¹³ Hedges and Greenwald argue that this assumption is incorrect, specifically noting that the level and comprehensiveness of education has increased while the social capital available to students has decreased.¹¹⁴

Hedges and Greenwald first disagree with the metrics Hanushek used to measure student achievement.¹¹⁵ They focus on Hanushek's use of the SAT (formerly known as the Scholastic Aptitude Test), and specifically his conclusion that falling SAT scores since 1960 indicate lower academic achievement among America's schoolchildren.¹¹⁶ According to Hedges and Greenwald, the SAT is a flawed social indicator as the population taking the test is self-selected.¹¹⁷ Indeed, the current general understanding is that this self-selection process, and the resulting fluctuation in who is taking the test, accounts for much of the decline in test scores.¹¹⁸ Hedges and Greenwald quote a study that Hanushek cites to come to this conclusion: "[S]election and composition factors 'exaggerated the drop in scores on the SAT-Verbal by about 75 percent and the decline in the reading comprehension scores of students taking the SAT by about 125 percent.'"¹¹⁹ Because of these problems, statisticians tend to avoid SAT scores as a social indicator.

Hedges and Greenwald also attack Hanushek's reliance upon National Assessment of Educational Progress data, disagreeing with Hanushek's conclusion drawn from the data.¹²⁰ For example, they point out that even though the achievement of white students remained fairly stable between 1975 and 1992, scores in reading and math for black and Hispanic students rose by roughly one-half of a standard deviation.¹²¹ These increases were concurrent to increases in school funding over the same time.¹²² These specifics are part of an overall picture that has shown modest increases in scores overall, while the scores of black and Hispanic students have risen

¹¹⁰ *Id.*

¹¹¹ *See id.* at 55-58 (rejecting a number of studies that find positive correlations between an increase in resources and an increase in achievement because of statistical insignificance).

¹¹² Burtless, *supra* note 94, at 9.

¹¹³ Larry V. Hedges & Rob Greenwald, *Have Times Changed?: The Relation Between School Resources and Student Performance*, in DOES MONEY MATTER?: THE EFFECT OF SCHOOL RESOURCES ON STUDENT ACHIEVEMENT AND ADULT SUCCESS 74, 74-75 (Gary Burtless ed., 1996).

¹¹⁴ *Id.* at 75.

¹¹⁵ *See id.* at 75-76.

¹¹⁶ *Id.* at 77; *see* Hanushek, *supra* note 102, at 47-48.

¹¹⁷ Hedges & Greenwald, *supra* note 113, at 76-77.

¹¹⁸ *Id.* at 77.

¹¹⁹ *Id.* (citing DANIEL KORETZ, CONG. BUDGET OFFICE, EDUCATIONAL ACHIEVEMENT: EXPLANATIONS AND IMPLICATIONS OF RECENT TRENDS 103 (1987)).

¹²⁰ *Id.* at 77-79.

¹²¹ *Id.* at 78.

¹²² *Id.*

substantially.¹²³

Lastly, Hedges and Greenwald couple this data with sociology, highlighting data that they argue shows that the social capital in American families dropped significantly between 1960 and 1990.¹²⁴ For example, the percentage of children with mothers in the workforce increased from 10% in 1940 to 59% in 1990.¹²⁵ Further, the number of children living only with their mothers increased from nearly 7% in 1940 to 20% in 1990; the authors assume that children who live with only one parent have fewer resources, both financially and socially.¹²⁶ Hedges and Greenwald use this data to argue that increases in school funding actually prevented declines in school achievement that would have resulted from diminishing social capital.¹²⁷

The take-away from this debate seems to be that statisticians and economists are working with immensely complex and constantly shifting data in their quest to determine the effects of increased school funding. It seems that almost every data point has a contextual caveat, and that only by looking at the entire universe of study on the subject can one come to a conclusion. That conclusion seems to be that there is no proof that simply increasing funding, without changing the way schools are run, will increase scores. However, strong evidence exists that without previous funding increases, student achievement would have dropped, as described above. This debate has also failed to confront growth in the comprehensiveness of American education, from increases in social services provided in schools to expensive technological and physical plant demands.

2. Funding and Outcomes in the Labor Market

The second strand of research focuses on what happens to students when they leave school. Using the almost universally accepted position that advanced degrees lead to higher earnings, the logical next step is that increasing resources in schools, and thus the quality of schools, will result in the same.¹²⁸ Increasing the quantity of schooling typically has a return on investment in the range of 5% to 12%, after controlling for factors such as race and family background.¹²⁹

Quality of schooling also seems to affect future earnings and productivity. In the 1950s, there was a large gap in the earnings gains that black men and white men received for years of additional schooling.¹³⁰ At that time, most black workers came from segregated and severely underfunded schools, leading to the reasonable inference that a lack of quality in schooling led to the gap.¹³¹ Calculations of earnings profiles from the 1960s showed a narrowing in the return on investment for additional schooling between black and white men entering the labor force.¹³² This

¹²³ *Id.* at 79.

¹²⁴ *Id.* tbl.3-2.

¹²⁵ *Id.*

¹²⁶ *Id.* at 79-80.

¹²⁷ *Id.* at 80.

¹²⁸ Burtless, *supra* note 94, at 12.

¹²⁹ *Id.* at 13.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 13-14.

is concurrent with a progressive equalization in the amount of money spent on young black and white students in the same time period.¹³³ It follows, therefore, that increased school funding has the potential to close the racial achievement gap, not only during Americans' school-age years, but also when they enter the workforce.

Further, a 1992 study by labor economists David Card and Alan B. Krueger, using data from the U.S. Department of Education and the U.S. Census Bureau, concluded that increased expenditures in education led to higher earnings for workers.¹³⁴ Particularly, policy decisions such as lengthening the school year, reducing the teacher-student ratio, and raising teacher salaries led to gains in states' return on investment via higher earnings.¹³⁵ For example, lowering the teacher-student ratio by five students correlated with a 0.4% increase in the rate of return attributed to schooling, while a 10% increase in teacher salaries correlated with a 0.1% increase in the rate of return.¹³⁶

However, this conclusion has not gone unquestioned. Using the National Longitudinal Survey of Youth ("NLSY"), a survey of young people spanning the years from 1979 to 1990, Professor Julian R. Betts came to a different conclusion.¹³⁷ In summary, Betts discovered that the more specific the data he used, the less significant the correlation between increased educational inputs and future earnings for students.¹³⁸ Betts cast doubt on Card and Krueger's use of statewide data to determine educational input. When Card and Krueger conducted their study, they had no data on the actual schools attended by the census respondents, and resorted to applying the educational input of the state in which the respondents were educated.¹³⁹ Instead of statewide data, Betts applied the input from the actual schools attended by the NLSY respondents.¹⁴⁰ Betts found that the level of resources put into the NLSY respondents' education had no statistically significant effect on the respondents' future earnings.¹⁴¹ Despite a large statistical standard error in his estimates, Betts' study did certainly question Card and Krueger's findings.¹⁴² Betts was able to essentially replicate their findings when applying broader, less specific statewide data, but when Betts applied the data specific to each respondent, much of the correlation between educational resources and earnings disappeared.¹⁴³

¹³³ *Id.* at 14.

¹³⁴ Burtless, *supra* note 94, at 14-15 (citing David Card and Alan B. Krueger, *Does School Quality Matter?: Returns to Education and the Characteristics of Public Schools in the United States*, 100 J. POL. ECON. 1 (1992)).

¹³⁵ *Id.* at 15.

¹³⁶ *Id.*

¹³⁷ *Id.* (citing Julian R. Betts, *Does School Quality Matter?: Evidence from the National Longitudinal Survey of Youth*, 77 REV. ECON. & STAT. 231 (1995)).

¹³⁸ *Id.* at 16.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

3. Conclusions for Illinois K-12 Funding

Against this background, the data for Illinois will be examined here. Although the research on the effects of increasing educational resources is conflicting, some conclusions can be made. First, there is a much better *chance* of improvement in achievement if a school is well-resourced. Second, evidence supports the theory that increases in resources over the past fifty years have narrowed disparities between racial and social groups. Third, when coupled with well-informed decisions at the district and school levels, increasing resources does correlate with increasing achievement.¹⁴⁴

With these themes in mind, it certainly seems that higher expenditures for education result in higher achievement in Illinois. Students' scores on the Prairie State Achievement Exam, the state test taken by high school students, rise in every subject with increasing amounts of money spent by district.¹⁴⁵ In Foundation Formula districts, the average scores are 157, 156, and 157 in reading, math, and science, respectively.¹⁴⁶ Compare this with average scores of 160, 159, and 160 in Alternative Formula schools, and 163, 163, and 164, respectively, in Flat Grant schools.¹⁴⁷ Even more, 90% of eighth grade students in Flat Grant districts meet or exceed ISAT reading and math standards, whereas the figure in Foundation Formula districts is 80%.¹⁴⁸

Flat Grant districts spend, on average, \$4,186 more per pupil than Foundation Formula districts.¹⁴⁹ Teachers in Flat Grant districts get paid almost \$18,000 more per year than those in Foundation Formula districts, and nearly 63% of Flat Grant teachers hold a master's degree, compared with 37% of teachers in Foundation Formula districts.¹⁵⁰ In a study measuring Illinois schools with a 3% to 8% low-income rate, student performance rose as school spending increased from \$5,000 per student to \$7,000 per student.¹⁵¹ This measurement, after being controlled for family environment, supports the proposition that "a meaningful improvement in [students'] academic performance correlates directly with an added investment in instruction," even with the advantages that come with being middle- or upper-class.¹⁵² A similar result occurred when this test was applied to districts with 27% to 32% low-income rates.¹⁵³

¹⁴⁴ Compare Hanushek, *supra* note 102, at 68-69, with Richard J. Murnane & Frank Levy, *Evidence from Fifteen Schools in Austin, Texas*, in DOES MONEY MATTER?: THE EFFECT OF SCHOOL RESOURCES ON STUDENT ACHIEVEMENT AND ADULT SUCCESS 93, 96 (Gary Burtless ed., 1996) ("We conclude with a summary [of a school principal]: 'I think money is a good thing. Money is the answer to the problems in education, with the caveat that it's spent and invested wisely.' We do not believe either Hanushek or Hedges would disagree with this statement . . . This conclusion is consistent with both their statistical summaries; it is also consistent with the theme of the Card-Krueger work.").

¹⁴⁵ MARTIRE ET AL., *supra* note 18, at 10.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 11.

¹⁵⁰ *Id.* at 9.

¹⁵¹ *Id.* at 11.

¹⁵² *Id.* at 12.

¹⁵³ *Id.*

One of most striking elements of Illinois school funding is that Foundation Formula districts (the lowest-funded) cover almost 80% of Illinois schoolchildren.¹⁵⁴ The vast majority of Flat Grant districts lie in the northern third of the state, primarily in the suburbs of Chicago.¹⁵⁵ Only three Flat Grant districts are located “downstate,” making overall educational investment in Illinois concentrated in the northern third of the state.¹⁵⁶

When it comes to exploring whether increased expenditures create better outcomes for schoolchildren and society, the research, based on shifting metrics and sometimes inadequate data, can be misleading. But when one examines the actual academic outcomes in Illinois, it becomes extremely difficult to dismiss resource inequity as having no effect on achievement. The conflicting and complex nature of research in this area should not become a red herring, distracting from the inequitable and inadequate state of school finance in Illinois. Advocates for reform should strive to maintain focus on the goals of full funding and equity, and should acknowledge what the actual numbers from Illinois support: that expenditures matter.

After all, if expenditures truly have no effect on outcomes, then solving the Illinois budget crisis becomes far easier. The highest-spending Flat Grant districts should study high-performing, low-spending districts and emulate them, cutting their high spending levels to match. This could cut some Flat Grant districts’ budgets by 60%. No wealthy community, however, would allow this to happen. They have the common sense to know what all Illinoisans know: more resources mean a higher quality and more well-rounded education.

E. Models for Successful Reform in Other States

Taking the United States as a whole, districts with the highest percentage of students in poverty receive about \$1,200 less per student than the lowest poverty districts.¹⁵⁷ Fortunately, a number of states are working to redirect dollars to districts with the highest student need.¹⁵⁸ Reform efforts in Kentucky and Massachusetts provide useful lessons.

1. Kentucky: A Focus on Schoolchildren

In the 1989 case *Rose v. Council for Better Education, Inc.*,¹⁵⁹ the Kentucky Supreme Court declared the entire Kentucky school system unconstitutional and directed the General Assembly to redesign schooling in Kentucky.¹⁶⁰ The court held that the state was not meeting the requirement of the state constitution’s education clause, and specifically that the Kentucky General Assembly was not providing an “efficient system of common schools throughout the state.”¹⁶¹ In coming to its decision, the court highlighted the “jigsaw puzzle” nature of Kentucky’s

¹⁵⁴ *Id.* at 11-12.

¹⁵⁵ *Id.* at 13.

¹⁵⁶ *Id.*

¹⁵⁷ FUNDING GAPS 2015, *supra* note 23, at 3.

¹⁵⁸ *Id.*

¹⁵⁹ 790 S.W.2d 186 (Ky. 1989).

¹⁶⁰ *Id.* at 215.

¹⁶¹ *Id.*

then-existing school finance system.¹⁶² This system had resulted in large inequalities between property-wealthy and property-poor districts, with locally generated revenues ranging from \$80 per pupil to \$3,716 per pupil.¹⁶³ The court held that this disparity was unconstitutional and a direct result of the General Assembly's failure "to establish an efficient system of common schools throughout the Commonwealth."¹⁶⁴

As a result, the court ordered the General Assembly to create a school finance system that met its definition of the word "efficient" found in the Kentucky Constitution.¹⁶⁵ Specifically, that definition required the General Assembly to adhere to three guiding concepts: adequacy, uniformity, and equal opportunity for all schoolchildren.¹⁶⁶ The new funding mechanism needed to correct prior policies that led to inequality.¹⁶⁷ However, the court explicitly allowed individual districts—if the General Assembly created them in their full overhaul of the system—to tax over and above what the state decided to spend per student.¹⁶⁸

The Kentucky General Assembly responded swiftly and within the restrictions placed on it by the court.¹⁶⁹ The response was entitled the Kentucky Education Reform Act of 1990 ("KERA").¹⁷⁰ The funding formula portion of KERA, called Support Education Excellence in Kentucky ("SEEK"), consists of a five-part system that equalizes funding across the state, yet provides local districts flexibility to raise funds over the state's base guarantee per pupil.¹⁷¹

The first element of SEEK ensures that each district receives a base guarantee per pupil—essentially a foundation level.¹⁷² Additionally, the General Assembly formed the Kentucky Office of Education Accountability to oversee education for the Assembly.¹⁷³ One of the duties this office has undertaken is recommending increases in the base guarantee when appropriate; the committee has suggested annual increases in the range of 4% to 5%.¹⁷⁴ In 1997, Jacob E. Adams, Jr. and William E. White II published a study of the effects of SEEK, indicating that the General Assembly increased the base guarantee regularly from 1990 to 1995.¹⁷⁵

The second element of SEEK involves weighted adjustments for students with special

¹⁶² *Id.* at 199.

¹⁶³ Jacob E. Adams, Jr. & William E. White II, *The Equity Consequence of School Finance Reform in Kentucky*, 19 EDUC. EVALUATION & POL'Y ANALYSIS 165, 167 (1997).

¹⁶⁴ *Rose*, 790 S.W.2d at 215.

¹⁶⁵ *Id.*

¹⁶⁶ Adams & White, *supra* note 163, at 168.

¹⁶⁷ *Id.*

¹⁶⁸ *Rose*, 790 S.W.2d at 211-12.

¹⁶⁹ See Adams & White, *supra* note 163, at 165, 169.

¹⁷⁰ *Id.* at 165; see generally Kentucky Education Reform Act of 1990, 1990 KY. ACTS ch. 476 (codified as amended in scattered sections of KY. REV. STAT. ANN. chs. 156-68 (West 2015)).

¹⁷¹ Adams & White, *supra* note 163, at 169.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

needs.¹⁷⁶ SEEK provides a higher base rate for at-risk, exceptional, and home- and hospital-bound children.¹⁷⁷ Within these larger categories are smaller increments in weight.¹⁷⁸ For example, within the special needs category, there are additional weights for severe (2.35 times), moderate (1.17 times), and minor speech- and hearing-disabled students (0.24 times).¹⁷⁹ SEEK also provides a weighted adjustment for costs of transporting children who live a mile or more from their schools.¹⁸⁰ The result of applying these three weights to the base guarantee is the “adjusted base guarantee.”¹⁸¹

The first two elements of SEEK are very similar to Illinois’s foundation formula and poverty weighting, but the third element of SEEK diverges from Illinois’s current system. SEEK’s third element requires a local contribution based on a \$0.30 tax per \$100 of assessed property value.¹⁸² The state then fills the gap between the local contribution requirement and the base guarantee level set by the government.¹⁸³ This effectively sets a baseline contribution, preventing districts from reducing taxes to take advantage of state aid.

In elements four and five, SEEK ensures that districts that wish to fund their schools above the base guarantee are able to do so.¹⁸⁴ SEEK’s fourth element, called the “Tier I guaranteed tax base,” allows school boards to raise revenues up to an additional 15% of the base guarantee without putting the issue before voters.¹⁸⁵ The state also provides equalization funds for any property-poor district—a district with less than 150% of the state average property wealth per-pupil—that elects to raise Tier I funds.¹⁸⁶ This ensures that all districts receive equal support for equal effort.¹⁸⁷

Lastly, SEEK allows districts to raise “Tier II local revenue.”¹⁸⁸ School boards have the option of raising additional revenue up to 30% of the sum of the adjusted base guarantee and Tier I funds after approval from the electorate.¹⁸⁹ There are no equalization funds available for Tier II revenue.¹⁹⁰ In essence, then, Tier II revenue acts as a cap, ensuring that disparity between rich and poor districts stays relatively low.¹⁹¹

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

KERA and SEEK have been effective in reducing the disparity among Kentucky's schools.¹⁹² After the enactment of KERA and SEEK, schools with the most funding received 1.6 times more money than schools with the least funding, whereas before, the highest-funded schools received 2.5 times more revenue than the least-funded.¹⁹³ The gap between the richest and poorest district (by per-pupil revenue) dropped 22%, from \$2,050 to \$1,590.¹⁹⁴ This does not mean that schools suffered. Not only do KERA and SEEK have "hold-harmless" provisions preventing immediate drops in funding for wealthy districts, the mean revenue per pupil among all districts in Kentucky grew from \$2,334 to \$3,262 between 1989 and 1992.¹⁹⁵ The actions of the Kentucky General Assembly after the Kentucky Supreme Court holding in *Rose* are a prime example of government working to solve a politically tough policy problem.

Over twenty years after the enactment of KERA and SEEK, Kentucky still ranks highly among states in the equitable distribution of education funds, receiving an "A" from the Education Law Center in its 2014 school funding report.¹⁹⁶ Indeed, the Kentucky General Assembly is still actively working toward equity, and in late March of 2014, the General Assembly formed a subcommittee to assess whether SEEK is still working effectively.¹⁹⁷

2. Massachusetts: State Funding with Local Control

Kentucky's efforts in the early 1990s became a model for effective school finance reform, even for a state that typically is a leader in education: Massachusetts. *McDuffy v. Secretary of the Executive Office of Education*,¹⁹⁸ decided in 1993 by the Massachusetts Supreme Judicial Court, was Massachusetts's version of *Rose*. In *McDuffy*, the court relied on the state constitution's education clause to hold that Massachusetts was not fulfilling its constitutional duty.¹⁹⁹ The court held that there was "an enforceable duty on the magistrates and [l]egislatures of this [c]ommonwealth to provide education in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the community or district in which such children live."²⁰⁰ Because the court held that the state violated this duty, it required that the legislature take steps to meet the constitutional mandate, and the court maintained jurisdiction to ensure that the state meet this mandate "within a reasonable time."²⁰¹

Just as in Kentucky, the Massachusetts legislature moved quickly to fulfill the court's mandate. Later in 1993, the governor of Massachusetts signed the Massachusetts Education

¹⁹² *Id.* at 173.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 174.

¹⁹⁶ BAKER ET AL., *supra* note 19, at 15.

¹⁹⁷ Valarie Honeycutt Spears, *Study Would Determine Whether Formula Provides Adequate Funds for Kentucky Schools*, LEXINGTON HERALD-LEADER (Mar. 24, 2014), <http://www.kentucky.com/2014/03/24/3159336/study-would-determine-whether.html>.

¹⁹⁸ 615 N.E.2d 516 (Mass. 1993).

¹⁹⁹ *Id.* at 555; *see* Mass. Const. pt. 2, ch. V, § 2 (expressing the state's commitment to education).

²⁰⁰ 615 N.E.2d at 555.

²⁰¹ *Id.* at 556.

Reform Act (“MERA”) into law.²⁰² The funding aspects of the law were closely aligned with Kentucky’s KERA, but there were differences, primarily in how local control of each district was promoted.²⁰³ MERA, unlike KERA, formed councils at each Massachusetts school, comprised of teachers, the principal of the school, parents, and community members.²⁰⁴ These councils acted similarly to mini-school boards, taking decision-making down to the school level.²⁰⁵

This decentralized decision-making sets Massachusetts apart from most other states that have instituted education reforms. One of the oft-cited critiques of injecting more money into a school system is that the money simply will not be used effectively and will not result in higher academic performance.²⁰⁶ However, after MERA’s provisions were in full force, districts spent 79% of new money on “capital expenditures or the direct, instruction-related interactions of students and teachers.”²⁰⁷ Although this does not fully support the proposition that money was not wasted, capital expenditures and instruction-related expenses are two areas that educational policymakers typically hold as priorities.²⁰⁸ It seems that MERA’s decentralized, local control provisions worked to divert dollars to where they were most effective.²⁰⁹

MERA was successful in diverting more dollars to the poorest districts in the state.²¹⁰ Additionally, MERA caused districts to change the way that they spent money.²¹¹ Although revenues increased by \$556 per pupil between 1990 and 1996, actual per-pupil spending increased by \$962.²¹² This was coupled with increases in both capital and instructional expenditures, and decreases in non-instructional expenditures.²¹³ Some of this difference could be explained by sampling variation, or working cash versus debt held by these districts. However, there is enough data to support the proposition that MERA effectively led to a significant increase in per-student spending.²¹⁴ This data supports a case for making decentralized decision-making and procedural and organizational reform key components of any school finance reform package intended to

²⁰² Massachusetts Education Reform Act of 1993, 1993 Mass. Acts ch. 71 (codified as amended in scattered sections of MASS. GEN. LAWS chs. 69-71 (West 2015)); Thomas S. Dee & Jeffrey Levine, *The Fate of New Funding: Evidence from Massachusetts’ Education Finance Reforms*, 26 EDUC. EVALUATION & POL’Y ANALYSIS 199, 201 (2004).

²⁰³ See *id.* at 201-02 (describing how MERA established a foundation level, required districts to contribute revenue, and rewarded districts with more support for more effort in raising local revenues).

²⁰⁴ *Id.* at 201.

²⁰⁵ *Id.* at 201, 203.

²⁰⁶ See, e.g., Eric A. Hanushek, *The Failure of Input-Based Schooling Policies* (Nat’l Bureau of Econ. Research, Working Paper No. 9040, 2002), available at <http://www.nber.org/papers/w9040>.

²⁰⁷ Dee & Levine, *supra* note 202, at 212.

²⁰⁸ *Id.*

²⁰⁹ *Id.* (“Another interesting dimension to these results and the Massachusetts experience is that this allocation of new revenues occurred despite the conspicuous absence of state-level regulations on how school districts should spend these new resources. Instead, these finance reforms were accompanied by organizational changes that promoted the local involvement and decision-making authority of parents, principals and teachers.”).

²¹⁰ *Id.* at 211.

²¹¹ *Id.*

²¹² *Id.* at 210.

²¹³ *Id.* at 211 tbl.6.

²¹⁴ *Id.*

make school funding more “efficient.”

Even more notably, the reform has lasted. MERA has succeeded in closing the gap in money spent per student between the richest and poorest district. In fiscal year 1993, districts in the lowest quartile of per capita income spent about \$1,400 less per pupil than districts in the highest quartile, whereas by fiscal year 2000, that discrepancy had dropped to \$370.²¹⁵ Because of this success, MERA did not experience a significant overhaul until 2007, twenty-three years after its implementation.²¹⁶ These changes were spurred by a successor lawsuit to *McDuffy*. Although this challenge, *Hancock v. Massachusetts Commissioner of Education*,²¹⁷ was unsuccessful, it renewed interest in the funding formula.

This renewed interest led the Massachusetts legislature to pass reforms that changed the way that local wealth was calculated, increasing transparency and accuracy.²¹⁸ By fiscal year 2010, Massachusetts had achieved its goal of creating a progressively-funded education system that reflected the needs of low-income communities and students. In that fiscal year, average spending in districts with the highest percentage of low-income students was \$14,249, whereas spending in districts with the lowest percentage of low-income students was \$12,458, a difference of \$1,791.²¹⁹ After almost twenty years of reforms, Massachusetts flipped its priorities on where it sent resources, from the lowest-income districts receiving \$1,400 less than the wealthiest districts in 1993 to those same low-income districts now receiving almost \$1,800 more in 2010.²²⁰

II. REFORM EFFORTS FROM 1970 TO 2014

The modern era of Illinois school funding reform work began in 1970 with the Sixth Illinois Constitutional Convention. By 1970, Illinois’s schools had reached a level of regulatory complexity and diversity in the statewide student body similar to that which more recently reoccurred in the 2010s.²²¹ The state had also urbanized—and suburbanized—to a point that made the funding formula inadequate, much like it is today.²²² Thus, this Article’s analysis of recent

²¹⁵ MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., REPORT ON THE STATUS OF THE PUBLIC EDUCATION FINANCING SYSTEM IN MASSACHUSETTS 8 (2013), available at <http://www.doe.mass.edu/research/reports/2013/07FinancingSystem.pdf>.

²¹⁶ *Id.* at 6-7.

²¹⁷ 822 N.E.2d 1134, 1136-37 (Mass. 2005) (“A majority of the Justices decline to adopt the conclusion of the . . . Superior Court that the Commonwealth presently is not meeting its obligations under . . . the Massachusetts Constitution.”).

²¹⁸ MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., *supra* note 215, at 9.

²¹⁹ *Id.* at 10.

²²⁰ *Id.* at 7-10.

²²¹ See *The Federal Role in Education*, U.S. DEP’T OF EDUC., (Feb. 13, 2012), <http://www2.ed.gov/about/overview/fed/role.html>. The anti-poverty and education initiatives of the 1960s and 1970s dramatically expanded the federal government’s role in education, including its funding role, changing the way in which schools were funded. *Id.* This culminated in the U.S. Department of Education being elevated to a cabinet level agency in 1980. *Id.*

See also Spinney, *supra* note 8, at 204-12 (tracing the migration of ethnicities across the Chicago metropolitan area, Illinois’s largest urban area).

²²² See Spinney, *supra* note 8, at 204-12.

school funding reform efforts begins in 1970.

A. All Talked Out: The Sixth Illinois Constitutional Convention

Delegates to the 1970 Constitutional Convention spent three days debating solutions to the recognized inequity in the Illinois School Funding formula.²²³ Their talks on the subject came toward the end of the Convention, and the timing of their debates did not work in favor of reform.²²⁴ The Education Article of the Constitution was the last to be given a first reading.²²⁵ In other words, delegates debated education only days before their pay was to end and the Convention was scheduled to wrap up.²²⁶ According to Thomas D. Wilson, a political science professor at Illinois State University at the time, and his son, John K. Wilson, then a graduate student at the University of Chicago, “[d]ealing with a complicated and controversial plan which had never been tried before was beyond the energy and ambition of the delegates.”²²⁷

The debates over school funding equity at the 1970 Constitutional Convention frame the resulting legislative debates that would follow over the next forty years. The views that emerged in the three days in which the Education Article was discussed survive in today’s funding debate.

Three different proposals for a new Education Article, the basis upon which funding decisions are made, came to the floor of the Constitutional Convention.²²⁸ The first was a proposal on behalf of the convention’s Education Committee by delegate Malcolm Kamin. This plan involved the state of Illinois becoming responsible for providing 90% of the cost of K-12 education in Illinois.²²⁹ Further, school districts would be limited to levying no more than 10% of the amount of money that had been received from the state.²³⁰ This proposal was voted down.²³¹ However, delegates did not oppose funding equity; they simply did not agree on the proposal that had been put before them.²³² Indeed, a number of delegates expressed mixed feelings over their “no” votes, saying that they voted against it “reluctantly” or because of a “technicality.”²³³

The second proposal, an attempt to find middle ground, was put before the convention by delegate Louis F. Bottino.²³⁴ This proposal required districts to raise up to 50% of their needed funds; the state would cover the rest.²³⁵ Bottino’s amendment made the state responsible for

²²³ 4 REC. OF PROCEEDINGS: SIXTH ILL. CONSTITUTIONAL CONVENTION 3536-70, 4144-48, 4500-07 (Aug. 1970) [hereinafter PROCEEDINGS].

²²⁴ Wilson & Wilson, *supra* note 1, at 23.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.* at 21-22; *see also* PROCEEDINGS, *supra* note 223, at 3536-70.

²²⁹ Wilson & Wilson, *supra* note 1, at 21; *see also* PROCEEDINGS, *supra* note 223, at 3536-38.

²³⁰ *Id.*

²³¹ *Id.*

²³² Wilson & Wilson, *supra* note 1, at 21.

²³³ *Id.*

²³⁴ *Id.* at 21-22.

²³⁵ *Id.* at 21.

ensuring “substantial parity of education opportunity,” and he was clear that this element would be judicially enforceable.²³⁶ The amendment represented a compromise between the two sides that had formed at the convention, with one group favoring little to no state constitutional commitment for funding by the state, and the other group favoring a strong state commitment.²³⁷ However, Bottino could not garner enough votes from these two camps.²³⁸

Delegate Dawn Clark Netsch provided the final proposal at the convention.²³⁹ This amendment was simple: “The state has the primary responsibility for financing the system of public educational institutions and services.”²⁴⁰ Netsch also stated that the amendment would not create a legally enforceable duty; in other words, judges would not be able to use the language to compel action by the state.²⁴¹ At this point in the convention, however, the frustration was palpable. In front of the entire convention, Kamin, the delegate who had floated the first proposal, stated: “I don’t think the Bottino amendment goes far enough; the Netsch amendment doesn’t go anywhere; I want to go home. Let’s vote.”²⁴² The delegates applauded.²⁴³

The next day, the delegates voted to suspend the rules to reconsider the Netsch amendment.²⁴⁴ After failed maneuvering on both sides to modify its wording, the amendment was eventually passed.²⁴⁵ Although some felt the amendment did not go far enough and some felt it went too far, both groups approved it and seemed to believe that the Netsch amendment would do for the time being.²⁴⁶ While some delegates voted for the amendment because they believed that it placed the responsibility for funding education fully on the state, others believed that this responsibility did not exist, as it would not be judicially enforceable.²⁴⁷ Essentially, the split convention “adopted a simple statement which left the matter open to the future, hoping that the legislature would be moved by it to take action.”²⁴⁸

In spite of the efforts of many, reform has been slow to occur.²⁴⁹ It seems that the General Assembly cannot free itself from the same trap in which the delegates at the Constitutional Convention found themselves. In the meantime, millions of students have passed through Illinois’s school system.²⁵⁰ Some of those students, mostly white, wealthy students, have

²³⁶ *Id.* at 21-22.

²³⁷ *Id.* at 22.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 21.

²⁴⁹ See, e.g., G. Alan Hickrod et al., *The Decline and Fall of School Finance Reform in Illinois*, 9 J. EDUC. FIN. 17, 18 (1983).

²⁵⁰ See ILL. STATE BD. OF EDUC., SCHOOLS AND DISTRICTS: A PROFILE OF ILLINOIS PUBLIC SCHOOLS IN

received much from this system, while others, mostly low-income, and many of them students of color, have received little.²⁵¹

B. Running in Circles: Legislative Efforts

Beginning with the successful 1973 school finance reform law that was later repealed, and ending with a new funding proposal introduced to the Illinois General Assembly in early April 2014, the post-Constitutional Convention history of school finance reform is filled with starts and stops. Advocates came extremely close to reform in the mid-to-late 1970s, struggled through the 1980s, and saw new hope through litigation in the 1990s. A reboot of the decades-old debate occurred in the late 1990s and early 2000s, and a return to the acrimony reminiscent of the 1970s resurfaced in the early 2010s.

1. Short-Lived Success: The 1970s

In the early 1970s, the atmosphere seemed perfect for genuine school finance reform.²⁵² Although little urgency had previously existed, the 1971 *Serrano v. Priest*²⁵³ decision in California, discussed in *infra* Part II.C of this Article, provided the fuel that Illinois lawmakers needed to move legislation forward.²⁵⁴ Immediately, different parts of the Illinois government sprang into action, each creating its own “blue ribbon” committee to search for solutions to the problem of school finance.²⁵⁵ A dedicated group of legislators, using the threat of a possible state constitutional challenge to the then-current formula, convinced fellow lawmakers to fall in line with reform.²⁵⁶ After the dust settled, following some jockeying between the state education department and a separate committee, a less-than-perfect “awful two-headed monster” compromise bill emerged from the General Assembly.²⁵⁷ After the passage of this bill, one legislator stated that, “We always pass a Christmas tree with a gift hung on it for everybody. We figure out the wiring later.”²⁵⁸

Nevertheless, the 1973 school reform bill became law.²⁵⁹ Enough people had been appeased by the bill’s “side payments” to particular constituencies for it to pass.²⁶⁰ The core tenets

2011-12, SELECTIONS FROM SCHOOL REPORT CARD FILES (2012), available at <http://www.isbe.state.il.us/reports/annual12/schools.pdf> (noting that the ISBE served 2,066,692 students in the 2011-12 school year, 49% of whom were low-income students).

²⁵¹ MARTIRE ET AL., *supra* note 18, at 5-7.

²⁵² Hickrod, *supra* note 249, at 17-18.

²⁵³ 487 P.2d 1241 (Cal. 1971).

²⁵⁴ Hickrod, *supra* note 249, at 17-18.

²⁵⁵ *Id.*

²⁵⁶ *See id.* at 19.

²⁵⁷ *Id.* at 19-20; see H.B. 1484, 78th Gen. Assemb. (Ill. 1973), Pub. Act No. 78-215 (codified at 105 ILL. COMP. STAT. 5/18-8 (West 1973)) (repealed 1998).

²⁵⁸ Hickrod, *supra* note 249, at 20.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

of the law included the “resource equalizer” and the “poverty impactation” provisions.²⁶¹ Under the banner of “equal expenditure for equal effort,” a district would receive more aid from the state if it had a high property tax rate but a low assessed value of the property in the district.²⁶² In other words, as a district’s property tax rate rose and its property worth dropped or remained low, the state would provide more support to the district.²⁶³ This mechanism came to be known as the “resource equalizer.”²⁶⁴ The poverty impactation portion of the law was simpler: it increased state funding to districts as their percentage of low-income students increased.²⁶⁵ Coupled with these provisions was a property tax roll-back.²⁶⁶

The era immediately after the passage of the 1973 reform has been called the “golden age” of Illinois school funding.²⁶⁷ Up to that point it was unusual for superintendents to be able to rely on the state as a constant and stable funding source.²⁶⁸ By the mid-1970s, the state’s share of public school funding had risen dramatically, peaking at 48%.²⁶⁹ This growth in state funding was contemporaneous with a steep drop in the disparity among Illinois’s unit and high school districts.²⁷⁰ The levels of disparity reached their lowest points when the state was funding schools at the highest level from 1976 to 1979.²⁷¹ However, trouble was on the horizon for the 1973 reform law, even though it had accomplished exactly what it was meant to in its passage.

In 1976, a group of property-wealthy districts mounted a campaign to repeal the property tax roll-back of the 1973 law.²⁷² These districts wanted to receive more state aid while retaining the power to raise money within the district.²⁷³ Their campaign was successful, marking the beginning of efforts that would chip away at the equity provisions of the 1973 law.²⁷⁴ In 1978, wealthier districts also began manipulating the foundational resource equalizer element of the law, which guaranteed a minimum payment per student to every district.²⁷⁵ Districts also found ways to play the poverty impactation elements of the law in their favor.²⁷⁶ The equity built into the 1973 law was being eroded.

²⁶¹ *Id.* at 21.

²⁶² *Id.*

²⁶³ *See id.*

²⁶⁴ *Id.* at 20.

²⁶⁵ *Id.* at 21.

²⁶⁶ *Id.* at 22.

²⁶⁷ *Id.* at 22.

²⁶⁸ *See id.*

²⁶⁹ Jacquelyn Heard, *Battle Lines Drawn on Schools Amendment*, CHI. TRIB. (Oct. 15, 1992), available at http://articles.chicagotribune.com/1992-10-15/news/9204030405_1_poorer-districts-school-funding-formula-public-education.

²⁷⁰ Hickrod, *supra* note 249, at 30.

²⁷¹ *See id.*

²⁷² *Id.* at 22.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

By 1980, “that awful two-headed monster” was finally slain.²⁷⁷ Rewarding districts for taxing more turned out to simply be incompatible with Illinoisans’ clamors for property tax relief.²⁷⁸ The resource equalizer became unrecognizable, and a new alternate method of state aid was designed, the effect of which was to provide more money to property-wealthier districts.²⁷⁹ Additionally, the poverty impaction provision was further weakened in both 1981 and 1982.²⁸⁰ The increase in state subsidies that had come with the 1973 law had vanished by 1982.²⁸¹ As the 1973 law was rolled back, so were the gains in equity the law had made. By the 1982-1983 school year, not only had virtually all gains been lost, but both elementary and unit districts had more disparity than in 1973.²⁸²

G. Alan Hickrod, the former director of the Center for the Study of Educational Finance at Illinois State University, opined that the 1973 law failed for three different reasons.²⁸³ First, the state’s urban centers and their suburbs were considered the “winners” of the 1973 reform, and the rural districts in downstate Illinois felt as if they had been left out.²⁸⁴ This, coupled with the “downstate revolt” of the 1976 and 1978 elections, eventually caused the changes in the law that diverted more money to property-wealthy districts in the middle of the state.²⁸⁵

Second, the funds the state had been using to increase state aid to school districts began to dry up.²⁸⁶ Whereas the state was able to make large increases in the few years after 1973, local revenue was unable to sustain these increases.²⁸⁷ Indeed, by the early 1980s, state funding began to decrease.²⁸⁸

Third, wealthier districts were able to increase both tax rates and assessed property valuation faster than poorer districts.²⁸⁹ Under the resource equalizer portion of the law, the wealthier districts were then able to divert a larger portion of state funds to themselves.²⁹⁰ Thus, as state aid was drying up, wealthier districts were not only able to increase their own local revenues, but also were taking more of what little state aid was left.²⁹¹

There are lessons to be learned from the 1970s and early 1980s. One lesson that was lost on the General Assembly of the 1970s is that equity is achieved when the state government and

²⁷⁷ *Id.* at 23.

²⁷⁸ *See id.* at 22-23.

²⁷⁹ *Id.* at 23.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.* at 30.

²⁸³ *Id.* at 23.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* at 23-24.

local districts join forces.²⁹² As times and circumstances change, effective laws must also change. Whereas a consensus was built under the pressure of urgency in 1973, this unlikely coalition could not stick together to provide the needed tweaks to the law as conditions changed at both the local and state levels.²⁹³ Certain tweaks to the 1973 law arguably could have maintained the gains in equity and prevented the law's demise.

Additionally, maintaining coalitions, such as those built to pass the 1973 reform, becomes paramount. There will almost certainly be tough situations that stretch the efficacy of a law, and when it comes time to provide small changes to keep the law alive, the coalition that provided the original vision for the law becomes indispensable. Constant vigilance and monitoring techniques are necessary to growing and maintaining equity. Unfortunately, when it comes to school funding equity, the arc of history does not always bend toward justice. At the very least, this arc has a propensity to twist and turn, and it takes the determined efforts of advocates to keep reform heading in the right direction.

2. Struggle and a New Hope: The 1980s and 1990s

The 1980s saw some smaller legislative moves to reform the education finance system. However, the large reforms typical of the 1970s were absent from any education finance conversation in Springfield. In 1984, Illinois placed the reforms of the 1970s directly in the rearview mirror, returning formally to a foundation-type school funding formula.²⁹⁴

In 1989, the state income tax was raised to 3%.²⁹⁵ This resulted in an increase in funding, but efforts to ensure adequacy among all schools did not gain traction again until 1991.²⁹⁶ That year an attempt to add the "fundamental right to an adequate education" to the Illinois Constitution narrowly failed, largely due to the opposition of then-Governor Jim Edgar.²⁹⁷ Such language could have had far-reaching implications in Illinois school funding reform.

Luckily, in 1992, new hope arrived for education finance equity advocates. In that year, thirty-seven school districts, eleven parents, eleven students, and the Committee for Educational Rights filed a complaint in Cook County against Edgar, alleging that the disparity in funding levels among districts violated the Equal Protection Clause and Education Article of the Illinois Constitution.²⁹⁸ *Community for Educational Rights v. Edgar* was a landmark case in Illinois school finance, but the plaintiffs failed to make it beyond the state's motion to dismiss stage, although they appealed this decision unsuccessfully up to the state supreme court.²⁹⁹ This case is

²⁹² See *id.* at 24.

²⁹³ See *id.* at 36 (noting the challenges in building coalitions in state and local politics to construct and maintain equity in school funding).

²⁹⁴ G.A. HICKROD, SIGNIFICANT DATES IN ILLINOIS SCHOOL FINANCE 2 (2004), available at http://www.ctbaonline.org/sites/default/files/reports/ctba.limeredstaging.com/node/add/repository-report/1386536159/FS_2006.01.01_History%20of%20School%20Funding%20in%20Illinois.pdf.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 2.

²⁹⁸ Comm. for Educ. Rights v. Edgar (*Edgar I*), 641 N.E.2d 602, 604 (Ill. App. Ct. 1994) (referring to the original complaint filed in the Circuit Court of Cook County).

²⁹⁹ Comm. for. Educ. Rights v. Edgar (*Edgar II*), 672 N.E.2d 1178, 1180-81 (Ill. 1996) (affirming the trial

further discussed in *infra* Part II.C.1 of the Article.

3. Post-Edgar: The Late 1990s into the 2000s and Beyond

After the constitutional challenge to the funding formula failed in the Illinois Supreme Court in 1996,³⁰⁰ the legislature attempted to rectify the inadequacy and inequity alleged by the Committee for Educational Rights. In December of 1997, the General Assembly formed the Education Funding Advisory Board (“EFAB”).³⁰¹ The board was charged with “mak[ing] recommendations . . . to the General Assembly for the foundation level . . . and for the supplemental General State Aid grant level . . . for districts with high concentrations of children from poverty.”³⁰² To do this, EFAB was to develop a methodology of calculating an adequate foundation level using best practices of districts that have both high academic achievement and high concentrations of poverty.³⁰³ However, the General Assembly was not bound to follow the recommendations of EFAB then—and today, it is still free to disregard EFAB’s advice.³⁰⁴

EFAB, on its end, has done its job. In 2001, EFAB commissioned Augenblick & Myers (“A&M”) of Denver, Colorado to design a system that could be used to determine an appropriate foundation level.³⁰⁵ In its analysis, A&M applied a “successful school” approach that used the actual spending of school districts in Illinois that were currently meeting student and school performance standards.³⁰⁶ A&M used three different metrics—(1) level of success in meeting state standards, (2) districts’ socioeconomic status of families and pupils, and (3) spending efficiency—to generate a group of schools that emulated best practices in spending and achievement.³⁰⁷ A&M then used this system to come to the optimum base cost level for a quality education.³⁰⁸

After this grouping of districts were gathered, A&M adjusted costs for variances between districts, such as regional cost-of-living differences, the percentage of students receiving special education, and federal funds received by each district.³⁰⁹ A&M then determined the average spent among those “successful” districts after considering these adjustments, and this became the base cost used to determine an adequate foundation amount.³¹⁰ Lastly, A&M laid out a number of

court’s dismissal of the plaintiffs’ complaint).

³⁰⁰ *Id.*

³⁰¹ 105 ILL. COMP. STAT. 5/18-8.05(M) (West 2014).

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *See id.* (citing statutory language which states that EFAB “shall make recommendations” rather than required proscriptions).

³⁰⁵ AUGENBLICK & MYERS, INC., A PROCEDURE FOR CALCULATING A BASE COST FIGURE AND AN ADJUSTMENT FOR AT-RISK PUPILS THAT COULD BE USED IN THE ILLINOIS SCHOOL FINANCE SYSTEM 1 (2001), available at <http://www.isbe.net/EFAB/archive/PDFs/fullreport.pdf>.

³⁰⁶ *Id.* at 3.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 12-13.

³¹⁰ *Id.* at 15.

options for providing extra resources for at-risk students.³¹¹

The A&M report has become well-known among advocates for finance equity working in Illinois. EFAB used this report to generate its first recommended foundation level to the General Assembly for the 2001-2002 school year, totaling \$4,560.³¹² That year, the General Assembly followed this EFAB recommendation.³¹³

However, since then, the General Assembly has not followed EFAB's suggestions. EFAB suggested escalating foundation levels, rising to \$5,665 in 2004, \$6,405 in 2006, and \$8,672 in 2014, yet the General Assembly has allowed the gap between the EFAB recommendation and the actual foundation level to grow to over \$2,500 per pupil by 2014.³¹⁴ Indeed, the statutory foundation level set by the General Assembly has not moved from \$6,119 since 2010, when the EFAB recommended amount, indexed to inflation, was \$7,388.³¹⁵ Thus, although EFAB fulfilled its statutory duties, the General Assembly has not heeded the suggestions of its own created body.

As a result, in July 2013, several state senators, led by Illinois State Senator Andy Manar (a Democrat representing Bunker Hill), formed the Senate Education Funding Advisory Committee ("EFAC") by the passage of Senate Resolution 431.³¹⁶ EFAC was charged with closely examining Illinois's K-12 funding system and recommending changes where necessary with the goal of making the funding system adequate, equitable, and fair to students and teachers.³¹⁷

In late summer of 2013, EFAC began its investigation of Illinois's funding formula, meeting with eighteen separate interest groups, including teachers' unions and advocacy organizations.³¹⁸ EFAC also consulted with ISBE, the Massachusetts Department of Education, and consulting firm Augenblick, Palaich and Associates.³¹⁹ The findings and suggestions of EFAC are split into ten different areas, providing the broad outlines for a genuinely equitable funding system, which are outlined in *infra*, Part II.C.2.

C. Fighting for Reform

The United States has traditionally been a country with education funding disparity, which is a result of an unwavering focus on local control and local funding.³²⁰ However, every

³¹¹ See *id.* at 17-24.

³¹² EDUC. FUNDING ADVISORY BD., ILLINOIS EDUCATION FUNDING RECOMMENDATIONS: A REPORT SUBMITTED TO THE ILL. GENERAL ASSEMBLY 9 (2005), available at http://www.isbe.net/efab/pdf/final_report_4-05.pdf.

³¹³ *Id.* at 8.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ SENATE EDUC. FUNDING ADVISORY COMM., *supra* note 61, at 1; see S. Res. 0431, 98th Gen. Assemb. (Ill. 2013).

³¹⁷ SENATE EDUC. FUNDING ADVISORY COMM., *supra* note 61, at 1.

³¹⁸ *Id.*

³¹⁹ *Id.* at 1-2.

³²⁰ John Dayton & Anne Dupre, *School Funding Litigation: Who's Winning the War?* 57 VAND. L. REV. 2351, 2355 (2004).

state constitution now recognizes a state-level obligation to pay for public education.³²¹ While this may indicate the level of importance of education to Americans, laws in each state demonstrate Americans' collective belief that education should be governed and paid for at the local level.³²² Evidently, the current system of local funding and control has led to large disparities among districts across the nation.³²³

The funding equity movement has long seen litigation as a tool to remedy this inequity. In *Commonwealth v. Dedham*, an 1819 case, the Supreme Judicial Court of Massachusetts declared that:

The schools required by the statute are to be maintained for the benefit of the whole town, as it is the wise policy of the law to give all the inhabitants equal privileges, for the education of their children in the public schools. Nor is it in the power of the majority to deprive the minority of this privilege.³²⁴

Early litigation in this area, as states adopted laws and constitutions ensuring education to their citizens, was generally unsuccessful, as courts held that education was a non-justiciable issue.³²⁵ However, in 1954, the United States Supreme Court recognized the importance of education and the effect it had on American life in *Brown v. Board of Education*:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.³²⁶

This statement was made, of course, in the context of race. It would take almost twenty years for a court to apply similar logic to resources.

The first case to do so was *Serrano v. Priest*.³²⁷ The Supreme Court of California, in establishing the “*Serrano* principle,” held that the quality of education in a community must not merely be a reflection of the wealth of that community.³²⁸ Even more, the *Serrano* court recognized education as a fundamental right that brings with it a series of constitutional protections.³²⁹

Serrano generated momentum for reform across the United States, and it was soon time for the United States Supreme Court to confront funding equity in education. In 1973, the Court

³²¹ *Id.* at 2356.

³²² *See id.*

³²³ *See id.* at 2355-56.

³²⁴ *Id.* at 2358 (quoting *Commonwealth v. Dedham*, 16 Mass. 141, 146 (1819)).

³²⁵ *Id.*

³²⁶ *Id.* at 2357-58 (quoting *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954)).

³²⁷ 487 P.2d 1241 (Cal. 1971).

³²⁸ Dayton & Dupre, *supra* note 320, at 2359.

³²⁹ *Id.* at 2360.

decided *San Antonio Independent School District v. Rodriguez*,³³⁰ a case that would soon become infamous among many education equity advocates. In *Rodriguez*, Mexican-American parents in Texas filed a class-action lawsuit alleging that children in property-poor districts were not being equally served by Texas' school finance system.³³¹ Texas, at the time, utilized a foundation-type funding formula similar to that of the current formula in Illinois, through which schools were guaranteed by state law a minimum amount of money per pupil.³³² During litigation, the state of Texas "virtually concede[d]" that its system of relying on property taxes was unequal and that, in an equal protection analysis, it would not be able to withstand strict scrutiny.³³³ Even more, the Court reasoned that if it applied strict scrutiny to Texas's system, such scrutiny would also almost certainly invalidate every other state funding formula in the country, as all states had systems that relied on property taxes in some way.³³⁴

The outcome of the case turned on which standard of review the Court would apply. The Court attacked the reasoning of the *Serrano* decision, asserting that the term "'poor' cannot be . . . defined in customary equal protection terms," and alluding to being termed "poor" as only a "relative" term, and not "absolute."³³⁵ Further, the Court refused to recognize the poor as a suspect class and therefore concluded that no suspect class was disadvantaged by the funding system.³³⁶ Lastly, despite recognizing the importance of education, the Court declined to declare education to be a fundamental right, which would have triggered strict scrutiny analysis.³³⁷ Instead the Court applied a rational basis test, and upheld the Texas system.³³⁸ Throughout its decision, the Court enumerated a series of concerns that continue to echo throughout equity litigation today:

- (1) criticism of the plaintiffs' statistical data and conclusions;
- (2) fear of engaging in judicial activism;
- (3) fear of opening the floodgates of litigation in other areas of social services;
- (4) concerns related to judicial competence in an area where courts generally have limited expertise;
- (5) the importance of judicial deference to the legislature in this area; and
- (6) the need for the plaintiffs to address their grievances to the legislature instead of the courts.³³⁹

The *Rodriguez* decision was soon conditioned in 1982 by the Supreme Court's holding in *Plyler v. Doe*.³⁴⁰ Some years after *Rodriguez*, Texas passed a law withholding funding for the education of children who were not legally in the United States and allowed school districts to

³³⁰ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4-5 (1973).

³³¹ *Id.*

³³² *Id.* at 9.

³³³ *Id.* at 16.

³³⁴ *Id.* at 16-17.

³³⁵ *Id.* at 19.

³³⁶ *Id.* at 28.

³³⁷ *Id.* at 37.

³³⁸ *Id.* at 55.

³³⁹ *Dayton & Dupre*, *supra* note 320, at 2363 (internal citations omitted).

³⁴⁰ 457 U.S. 202 (1982).

deny these children enrollment.³⁴¹ In *Plyler v. Doe*, the Supreme Court held that this particular law was unconstitutional.³⁴² Instead of applying a rational basis test, the Court distinguished education from other social welfare programs, analyzing the Texas law under a form of intermediate scrutiny.³⁴³ The Court reasoned that the law “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status,” and explained that “by denying these children a basic education, we deny them the ability to live within the structure of our civic institutions”³⁴⁴ This language would later be adopted by a number of state-based litigants alleging a relative deprivation of education.³⁴⁵

1. Illinois Litigation Efforts

The first case to present a direct challenge to Illinois’s school funding formula was *Committee for Educational Rights v. Edgar*.³⁴⁶ *Edgar* was filed in 1990, one year before the failed attempt to modify the state constitution to make education a fundamental right in Illinois.³⁴⁷ Thirty-seven school districts joined the Committee as plaintiffs, as did a number of parents and students.³⁴⁸ The plaintiffs cited data from the 1989-1990 school year to illustrate the disparity in Illinois: the average tax base in the wealthiest 10% of elementary schools was over *thirteen times* the average tax base in the poorest 10%.³⁴⁹ The disparity in high school and unit districts was also striking, at an 8.1 to 1 ratio in high school districts, and a 7 to 1 ratio in unit districts.³⁵⁰

The plaintiffs alleged five different counts in their complaint.³⁵¹ Count I alleged a violation of the state constitution’s equal protection clause, Count II alleged a violation of the state constitution’s prohibition against special legislation, and Count III alleged a violation of Article X of the state constitution, the Education Article.³⁵² These three counts sought a declaratory judgment that the formula was not adequately equalizing school resources among districts of varying property wealth.³⁵³ Counts IV and V of the plaintiffs’ complaint attacked the state’s grant-based funding system for preschool, alleging that because the funding serves only a fraction of the at-risk children who need services, the system violates the state’s equal protection

³⁴¹ *Id.* at 205.

³⁴² *Id.* at 230.

³⁴³ *Id.* at 223-24; accord Dayton & Dupre, *supra* note 320, at 2367.

³⁴⁴ *Plyler*, 457 U.S. at 223.

³⁴⁵ Dayton & Dupre, *supra* note 320, at 2367.

³⁴⁶ 641 N.E.2d 602 (Ill. App. Ct. 1994).

³⁴⁷ See HICKROD, *supra* note 294, at 2; Complaint, *Committee for Educational Rights v. Edgar*, No. 90 CH-11097 (Cir. Ct. of Cook Cnty. Nov. 13, 1990).

³⁴⁸ *Edgar I*, 641 N.E.2d at 604.

³⁴⁹ *Edgar II*, 672 N.E.2d at 1182.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.* (citing Ill. Const. art. X, § 1).

³⁵³ *Edgar II*, 672 N.E.2d at 1182.

clause (Count IV) and the Education Article of the state constitution (Count V).³⁵⁴

The Circuit Court of Cook County dismissed the complaint for failure to state a claim, and the appellate court affirmed.³⁵⁵ On appeal to the Illinois Supreme Court, the plaintiffs declined to challenge the special legislation claim (Count II), and focused instead on the claims concerning the state constitution's equal protection clause and Education Article.³⁵⁶

The Illinois Supreme Court affirmed the appellate court's dismissal of the plaintiffs' complaint.³⁵⁷ In its Education Article analysis, the *Edgar* court looked at the legislative and committee history of the Article in the 1970 Constitution.³⁵⁸ The focus of their analysis centered on the Article's use of the terms "high quality" and "efficient"³⁵⁹ in stating that "[t]he State shall provide for an *efficient* system of *high quality* public educational institutions and services."³⁶⁰ Using transcript excerpts of the debate surrounding the passage of this article, the court concluded that "efficiency" did not mean educational equality in the minds of the framers.³⁶¹ Specifically, the court stated that "[t]o ignore this careful and deliberate choice by interpreting the efficiency requirement as an enforceable guarantee of equality would do violence to the framers' understanding of the [E]ducation [A]rticle."³⁶² Further, the court reasoned that no intent toward equality existed behind the use of the word "efficiency" simply because the framers discussed their concerns about the unequal nature of Illinois school funding.³⁶³

Concerning the Education Article's language that schools should be of "high quality," the *Edgar* court again looked to the debates of the 1970 Constitutional Convention.³⁶⁴ Using the fact that the framers declined to "define all of the ramifications of 'high quality,'" the court refused to come to any judicial definition of high quality as it applies to education.³⁶⁵ The court went on to confront the fact that a significant number of other states' high courts did move to define high quality in education, and, in very clear and straightforward language, refused to follow the lead of those states.³⁶⁶ In this portion, the court effectively closed the door to any judicial enforcement of the state's Education Article, declaring the matter "outside the sphere of the judicial function."³⁶⁷

The court then confronted the plaintiffs' allegations that the funding formula violated the

³⁵⁴ *Id.*

³⁵⁵ *Id.* at 1182-83.

³⁵⁶ *Id.* at 1183.

³⁵⁷ *Id.* at 1181.

³⁵⁸ *Id.* at 1185.

³⁵⁹ *Id.* at 1187-93.

³⁶⁰ ILL. CONST. art. X, § 1 (emphasis added).

³⁶¹ *Edgar II*, 672 N.E.2d at 1187.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.* at 1190-91.

³⁶⁵ *Id.* at 1191.

³⁶⁶ *See id.* at 1191-93 (outlining nine different cases from other states where courts intervened in defining a *quality* education).

³⁶⁷ *Id.* at 1193.

state constitution's equal protection clause.³⁶⁸ The court directly applied the U.S Supreme Court's reasoning in *Rodriguez*, declining to distinguish the federal Constitution from the state constitution.³⁶⁹ Moreover, the fact that education may enable citizens of the state to utilize uncontroverted fundamental rights such as voting was not enough to persuade the court to declare education to be a fundamental right in Illinois.³⁷⁰ The court invoked the language of *Rodriguez*, stating: "we have never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice."³⁷¹ Echoing *Rodriguez*, the court emphasized the need for local control and affirmed the lower court's dismissal of the plaintiffs' equal protection claims.³⁷²

Edgar nearly eliminated any chance of using the courts and the state constitution in Illinois to advance funding equity. However, a sliver of hope remained in Justice Freeman's dissent. Justice Freeman argued that, although many issues in school funding may be outside the scope of judicial interference, determining whether a law violates the constitution is fully within the duties of the judiciary.³⁷³ Justice Freeman asserted that when the state constitution declares that it is the duty of the state to run an education system, that duty spreads to all three branches of the state government, including the judiciary.³⁷⁴ According to Justice Freeman, by refusing to confront the issue of education finance as non-justiciable, the court abandoned its constitutional responsibility to determine whether the legislature had acted within the confines of the state constitution.³⁷⁵

Edgar placed a very high bar on any future school funding litigation. However, in 1999, three years after *Edgar*, the issue of school funding once again was brought before the Illinois Supreme Court in *Lewis E. v. Spagnolo*.³⁷⁶ The plaintiffs in *Lewis E.*, a class of schoolchildren in East St. Louis, modified their strategy in light of the *Edgar* and *Rodriguez* decisions.

In their complaint to the St. Clair County Circuit Court, the plaintiffs laid out the deficiencies in the education being provided to the children of East St. Louis.³⁷⁷ Chief Justice Freeman of the Illinois Supreme Court summarized the educational deficiencies laid out by the plaintiffs in their complaint, citing:

numerous examples of unsafe conditions in the schools which . . . are the result of the District defendants' neglect, including: fire hazard; chronic flooding; structural flaws, such as falling plaster and cracked walls and roofs; malfunctioning heating systems; unsanitary restrooms; rooms sealed-off due to

³⁶⁸ *Id.*

³⁶⁹ *Id.* at 1193-94.

³⁷⁰ *Id.* at 1194.

³⁷¹ *Id.* at 1195 (quoting *Rodriguez*, 411 U.S. at 36).

³⁷² *Id.* at 1195-96.

³⁷³ *Id.* at 1202-1203 (Freeman, J., dissenting).

³⁷⁴ *Id.* at 1202.

³⁷⁵ *Id.* at 1204.

³⁷⁶ 710 N.E.2d 798 (Ill. 1999).

³⁷⁷ *Id.* at 801; see Complaint, *Lewis E. v. Spagnolo*, No. 95 CH 0097 (Cir. Ct. of St. Clair Cnty. Apr. 12, 1995).

the presence of asbestos; broken windows; burnt-out light bulbs; nonworking water fountains; the presence of cockroaches and rats; and cold, nonnutritious [sic] lunches in the cafeterias.³⁷⁸

The plaintiffs alleged that this was the fault of ISBE because it was the State Board's duty to oversee District 189 in East St. Louis.³⁷⁹

In an acknowledgment of both *Rodriguez* and *Edgar*, the plaintiffs did not argue discrepancies in education between districts, but rather a complete failure of the state to provide any kind of basic education.³⁸⁰ The *Lewis E.* court reaffirmed *Edgar*, asserting that education is not an area in which the judiciary is entitled to create remedies.³⁸¹ Further, the court dismissed the plaintiffs' other arguments, refusing to recognize a violation of the federal due process clause, the state due process clause, the Illinois School Code, or common law.³⁸²

However, in a strongly worded dissent joined by Justice Harrison, Justice Freeman once again attacked the court's reasoning that education is simply non-justiciable.³⁸³ Justice Freeman vividly described the decrepit nature of the schools in East St. Louis:

Strangers wander in and out of junior high schools. Fire alarms malfunction, and firefighters find emergency exits chained shut as they rescue children from burning schools.

. . . .

In winter, students sit through classes wearing heavy coats because broken windows and faulty boilers go unprepared . . . School libraries are locked or destroyed by fire.³⁸⁴

Calling upon the court to do its duty to enforce the state constitution, Justice Freeman distinguished the actions of the Illinois Supreme Court from those of the Ohio Supreme Court in *DeRolph v. Ohio*³⁸⁵:

The judiciary was created as part of a system of checks and balances. We will not dodge our responsibility by asserting that this case involves a non[]justiciable political question. To do so is unthinkable. We refuse to undermine

³⁷⁸ 710 N.E.2d at 801.

³⁷⁹ *Id.*

³⁸⁰ See *id.* at 804 (outlining the plaintiffs' argument, which is distinguished from that of the plaintiffs in *Edgar II*, 672 N.E.2d 1178, and *Rodriguez*, 411 U.S. 1).

³⁸¹ *Id.*

³⁸² *Id.* at 805 (federal due process clause); *id.* at 812 (state due process clause); *id.* at 815 (Illinois School Code); *id.* at 816 (common law).

³⁸³ *Id.* at 818 (Freeman, J., dissenting).

³⁸⁴ *Id.* at 817.

³⁸⁵ 677 N.E.2d 733 (Ohio 1997).

our role as judicial arbiters and to pass our responsibilities on to the lap of the General Assembly.³⁸⁶

Justice Freeman argued that the Illinois Supreme Court did exactly that in the *Lewis E.* decision: abandon its constitutional duty to the detriment of children.³⁸⁷

Although the urgency with which Justice Freeman wrote, and the fact that he was now joined by Justice Harrison, was a silver lining to the *Lewis E.* decision, advocates were now forced back to square one.

A decade later, a different approach to the issue was made in *Carr v. Koch*.³⁸⁸ *Carr* did not rely on the Education Article, nor did it emphasize any disparate effects on students.³⁸⁹ Rather, *Carr* was a taxpayer-equity suit, alleging that the Illinois funding formula led to a disparate impact on the taxpayers of the state of Illinois, as property-poor districts had to pay taxes at a higher rate to make up for a lack of funds in violation of the Illinois equal protection clause.³⁹⁰ In essence, according to the *Carr* plaintiffs, two owners of property in low-wealth areas, the state's funding formula served no rational purpose.³⁹¹ Additionally, the plaintiffs argued that their complaint was not barred by *Edgar* as local districts no longer exercise control over their own actions, but instead the ISBE had control.³⁹² In support of this contention, the plaintiffs cited the requirement that districts follow ISBE-promulgated learning standards, that students take ISBE-mandated standardized tests, and that if districts do not meet ISBE-mandated performance goals under these standards and tests, districts face harsh consequences from ISBE.³⁹³ Because of this control over school districts, the plaintiffs alleged that ISBE and the state of Illinois were the but-for cause of varying, conflicted tax rates.³⁹⁴

The *Carr* court did not adhere to the plaintiffs' logic, and held that the connection between the actions of ISBE and the state were too tenuous for the plaintiffs to establish standing.³⁹⁵ According to the court, because ISBE was not directly forcing the districts to tax at a certain level, the plaintiffs' argument of control failed.³⁹⁶ In support of this, the *Carr* court pointed out that the funding formula, learning standards, and testing provisions were addressed in separate statutes.³⁹⁷ Because the court dismissed the claim on standing, it did not confront the equal protection issue raised by the plaintiffs.³⁹⁸

³⁸⁶ *Lewis E.*, 710 N.E.2d at 818-19 (Freeman, J., dissenting) (quoting *DeRolph v. Ohio*, 677 N.E.2d at 737).

³⁸⁷ See *Lewis E.*, 710 N.E.2d at 818-19 (Freeman, J., dissenting).

³⁸⁸ 981 N.E.2d 326 (Ill. 2012).

³⁸⁹ See *id.*

³⁹⁰ *Id.* at 327-28.

³⁹¹ *Id.* at 329.

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.* at 329, 333.

³⁹⁵ *Id.* at 333.

³⁹⁶ *Id.* at 336.

³⁹⁷ *Id.* at 334.

³⁹⁸ *Id.*

The plaintiffs in each of these cases all relied on the constitution of either the United States or Illinois to stake their claim. The Illinois Supreme Court has made it clear that it is adverse to education equity claims of this nature. However, in 2003, the General Assembly passed the Illinois Civil Rights Act (“ICRA”).³⁹⁹ This Act allowed an entire new type of claim to be brought.

*Chicago Urban League v. Illinois*⁴⁰⁰ was filed in 2008 and made use of the newly passed ICRA.⁴⁰¹ Like education equity cases before it, *Urban League* asserts that Illinois’s funding formula is not meeting the needs of the children and taxpayers of the state of Illinois.⁴⁰² However, the case, which is still in pre-trial litigation as of this writing, asserts a number of novel arguments.⁴⁰³

More than anything else, *Urban League* ties the issue of race to education and taxpayer equity in context of the school funding formula.⁴⁰⁴ The plaintiff in *Urban League* points out that a disproportionate number of students in areas with the lowest property wealth reside in majority-minority districts (“MMD”).⁴⁰⁵ In particular, the plaintiff focuses on District 188 in Brooklyn, Illinois.⁴⁰⁶ District 188 ranks 386th out of 395 consolidated school districts in EAV per pupil.⁴⁰⁷ Ninety-seven percent of District 188’s students are considered low-income students, while nearly all of the district’s students are members of a minority group.⁴⁰⁸ Brooklyn is just one example of a MMD ranking toward the bottom of EAV per pupil in Illinois; indeed, the plaintiff provided data in its complaint that a disproportionate number of MMDs were toward the bottom of EAV rankings per pupil.⁴⁰⁹ Because of this, plaintiff claims that the Illinois funding system has a discriminatory and disparate impact on African-American and Hispanic students in violation of the ICRA.⁴¹⁰

In addition to the plaintiff’s first count (Count I) concerning the disparate impact on minority students, the plaintiff in *Urban League* also filed four additional counts against the State of Illinois.⁴¹¹ Count II alleged that the funding formula violated the uniformity of taxation provision of the Illinois Constitution,⁴¹² an allegation similar to that made by the plaintiffs in *Carr*.

³⁹⁹ 740 ILL. COMP. STAT. 23/1 to 23/5 (West 2014).

⁴⁰⁰ No. 08 CH 30490, 2009 WL 1632604, at *1-2 (Ill. Cir. Ct. Apr. 15, 2009).

⁴⁰¹ *Id.* at *1-2.

⁴⁰² *Id.* at *1.

⁴⁰³ *See id.* at *2.

⁴⁰⁴ *See id.* at *1-2.

⁴⁰⁵ *Id.* at *1.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* at *3.

⁴¹⁰ *Id.*

⁴¹¹ *Id.* at *2.

⁴¹² *Id.*

In Count III, the plaintiff alleged that the funding formula violates the Education Article of the Illinois Constitution.⁴¹³ This is the same argument dismissed in *Edgar*; however, in this case, the plaintiff stressed that the Illinois local learning objectives, which schools are mandated to implement by statute,⁴¹⁴ provide a mechanism for the court to define a high-quality education.⁴¹⁵ Further, as the General Assembly formed EFAB, and the General Assembly has not funded education at the EFAB-recommended baseline, the court not only has academic standards, but also financial standards by which to evaluate the constitutionality of the funding law.⁴¹⁶ Because of these changes, the plaintiff argued that the court was not bound to follow *Edgar*, and that it could find the State of Illinois and the ISBE to be in violation of the state constitution.⁴¹⁷

Lastly, the plaintiff's Counts IV and V alleged that the funding formula violated the state constitution's equal protection clause in respect to the inferior education being provided to African-American and Hispanic students, as well as students living in low property wealth districts.⁴¹⁸

The trial court dismissed Counts II through V, citing *Edgar* issues of whether the state and ISBE have actual control over local property taxes, and equal protection clause precedent.⁴¹⁹ Further, the court granted the state's motion to dismiss these counts because of the state's sovereign immunity, and denied an exemption in this instance.⁴²⁰ However, the court did not dismiss Count I against ISBE—the count alleging a violation of ICRA.⁴²¹ Based on the data presented by the plaintiff and the fact that ISBE implements the school funding formula, the court reasoned that the plaintiff had pled sufficient facts to show that ISBE's actions had a disparate and discriminatory impact on minority students.⁴²²

At the time of this writing, *Urban League* is still in pre-trial litigation.⁴²³ The ping-pong nature of motions and discovery disputes in *Urban League*, as well as the fact that the case was initially filed in 2008, demonstrates the challenge in using litigation to fuel funding reform: litigation is both time-consuming and costly.⁴²⁴

On the other hand, *Urban League* is a reason for advocates to have hope. The trial court acknowledged that not all funding equity cases will be dismissed by the courts. If *Urban League* succeeds in declaring the Illinois funding system illegal, the courts can not only bar ISBE from

⁴¹³ *Id.*

⁴¹⁴ 105 ILL. COMP. STAT. ANN. 5/2-3.63 (2015).

⁴¹⁵ 2009 WL 1632604, at *7-8.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.* at *2.

⁴¹⁹ *Id.* at *6-9.

⁴²⁰ *Id.* at *10.

⁴²¹ *Id.* at *11.

⁴²² *Id.* at *3.

⁴²³ See Electronic Docket Search, Cook County Clerk of the Circuit Court (No. 2008-CH-30490), www.cookcountyclerkofcourt.org (select "Online Case Info" in sidebar, select "Full Electronic Docket Search," select Division Name: "Chancery," and enter case number: 2008-CH-30490).

⁴²⁴ See *id.*

continuing to implement the disparate system, but can also effectively provide political cover for legislators to reform the school funding system. Even more, the case continues to raise awareness, and there is evidence that pending litigation has compelled the legislature to act in the past.⁴²⁵ Considering the recent developments regarding EFAC in the General Assembly, *Urban League* can supply the equity movement with the necessary urgency to pass legislation.

2. EFAC's Suggestions for Illinois

On January 31, 2014, EFAC presented its final report to the General Assembly.⁴²⁶ The report contained ten areas to consider for reform, each area outlining different steps that the state could take to make the funding formula more equitable and adequate.⁴²⁷ These suggested reforms were built on a foundation to which numerous advocacy and research groups contributed.⁴²⁸ In its final report, EFAC combines best practices from other states, current research on what children need to succeed, and insight from education and advocacy groups on the front lines in education.⁴²⁹

First, EFAC suggests that all separate state funding streams be collapsed into a simple foundation funding formula.⁴³⁰ Currently, state aid is split into more than eight different funding streams.⁴³¹ In addition to the GSA (41% of state funding) and poverty grant (26%) provided by the state, funding is also provided through a transportation program (10%), early childhood education (4%), a bilingual student program (1%), and other miscellaneous programs (2%).⁴³² On top of that, the City of Chicago receives its state funding through a block grant (8% of total state funding) that is not part of the normal GSA or poverty grant calculations.⁴³³ Combining all of these funding streams into a simple foundation formula would, according to EFAC, clarify state funding for districts and make state funding more stable and predictable for districts.⁴³⁴ Even more, 96% of operational state funding would be equalized based on a district's wealth under this formula, whereas only 45% of state funding is currently equalized.⁴³⁵

Second, EFAC suggests that high-need students should receive additional funding by adding certain weights to the funding formula depending on different types of needs.⁴³⁶ At-risk students, as defined by whether a student receives services such as food stamps or Medicaid from

⁴²⁵ See, e.g., Hickrod, *supra* note 249, at 18 (arguing that California's *Serrano* decision, discussed in *supra* Part II.C, was on the minds of Illinois legislators in the early 1970s, compelling them to act on school finance reform).

⁴²⁶ See SENATE EDUC. FUNDING ADVISORY COMM., *supra* note 61.

⁴²⁷ *Id.* at 2-3.

⁴²⁸ *Id.* at 1.

⁴²⁹ See *id.* at 1-2.

⁴³⁰ *Id.* at 3.

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ *Id.* at 3-4.

⁴³⁵ *Id.* at 4.

⁴³⁶ *Id.* at 5.

the Illinois Department of Human Services, would receive a weight of 0.25.⁴³⁷ English-language learners would receive a weight of 0.20.⁴³⁸ Special Education students would receive a weight based the type of services they receive.⁴³⁹ Even gifted students would receive a small twenty-five to fifty dollar grant, and as a control measure, there would be a percentage cap on the number of students who could be categorized as gifted.⁴⁴⁰

The third and fourth recommendations by EFAC are related. EFAC recommends that any increase in spending be accompanied by provisions for an increase in academic performance.⁴⁴¹ Similarly, EFAC's fourth recommendation is that districts account for how education dollars are being spent by schools.⁴⁴² Greater accountability will provide the transparency needed to ensure that any disparities that exist between schools are justified.⁴⁴³ For example, a school with a high number of special education students may reasonably receive more money than a school with an average number of such students.

In the same way, recommendations five and six are also similar. In its fifth recommendation, EFAC proposes that any new funding formula should establish a minimum amount that each district will receive.⁴⁴⁴ The sixth recommendation is that any new law have a hold-harmless provision that will allow districts to adjust to new funding levels over three to five years.⁴⁴⁵

EFAC's seventh recommendation involves an improvement in the way districts measure their ability to pay.⁴⁴⁶ A bit of history is needed to explain this provision. In the early 1990s, the counties that encompassed the majority of Chicagoland passed property tax growth caps.⁴⁴⁷ Eventually, the ability to enact this cap spread to the rest of Illinois.⁴⁴⁸ As education costs grew in these counties—and property tax revenue began to stagnate—the General Assembly passed a modification to the school funding formula that allowed districts in these areas to perform a complex series of calculations in order to make up for lost revenue.⁴⁴⁹ This has become known as the Property Tax Extension Limitation Law adjustment, which is paid out by the state.⁴⁵⁰ EFAC claims that “it was inappropriate to use the education funding formula for property tax relief,” and

⁴³⁷ *Id.* at 6.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 7.

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.* at 7-8.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.* at 8.

⁴⁴⁷ TED DABROWSKI ET AL., UNDERSTANDING ILLINOIS' BROKEN EDUCATION FUNDING SYSTEM: A PRIMER ON GENERAL STATE AID 12 (2013).

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*; see 105 ILL. COMP. STAT. ANN. 5/18-8.05(G) (describing how the Property Tax Extension Limitation Law adjustment applies to school districts).

that a better measure to determine a district's ability to pay should be devised.⁴⁵¹

EFAC's eighth recommendation concerns a problem unique to Illinois: disparate property tax revenue by type of organization of district.⁴⁵² In Illinois, districts can organize into elementary school, middle school, high school, or unit districts.⁴⁵³ Unit districts are those districts that contain all levels of schools, while other types of districts are named for the type of schools they contain. Currently, there is a disincentive in the property tax structure for specific-type districts to consolidate into unit districts.⁴⁵⁴ This should be rectified, as unit districts are more economically sound, and provide a more efficient use of tax dollars.⁴⁵⁵

The ninth recommendation concerns the mandates that ISBE often places on districts.⁴⁵⁶ Many of these mandates are unfunded, yet required.⁴⁵⁷ EFAC recommends that input be taken from all impacted groups to determine if the number of these mandates can be reduced.⁴⁵⁸

Tenth, and finally, EFAC recommends that transparency pervade any funding system utilized by Illinois.⁴⁵⁹ Such transparency enables policymakers to tweak the law and ensure that equity and efficiency are maximized.⁴⁶⁰

III. CONCLUSION

There is no doubt a long road ahead for advocates trying to enact EFAC's recommendations. However, EFAC has provided the broad strokes of genuine reform. The lessons contained in the recent history of Illinois school funding reform would go far in ensuring not only that this reform be enacted, but also that it weathers future storms and changes with the needs of Illinois. History is clear: without learning from these lessons, true reform has little chance of taking hold.

First, any movement to change the funding system must be supported by a well-organized core of supporters who have a lasting, clear vision. Such a group might have prevented the piece-by-piece disassembly of the 1973 reform. Additionally, such a focused group is necessary to break the circular nature of reform efforts encapsulated by the 1970 Constitutional Convention and represented in the current era by EFAB. Pressure must be put on the General Assembly to follow through with the promises it makes to Illinois children, and single-minded advocacy will be able to break the cycle of inaction. Of course, it is far easier for change to occur

⁴⁵¹ SENATE EDUC. FUNDING ADVISORY COMM., *supra* note 61, at 8.

⁴⁵² *See id.* at 9.

⁴⁵³ *See id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *See Bd. of Educ. of Hamilton Cnty. Cmty. Unit Sch. Dist. No. 10 v. Reg'l Bd. of Sch. Tr. of Jefferson & Hamilton Counties*, 121 Ill. App. 3d 848, 852 (Ill. App. Ct. 1984) ("Over the last four decades, the General Assembly has enacted legislation to promote larger, economically sound school districts so as to better the State's educational facilities.").

⁴⁵⁶ SENATE EDUC. FUNDING ADVISORY COMM., *supra* note 61, at 9.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *See id.*

when a legislature has a court order requiring action. Thus, the *Urban League* case should not be viewed as separate from the overall equity and adequacy movement. The simple threat of litigation has moved legislatures to action.

Second, any reform must take into account the incredibly complex nature of the school funding debate, striking a balance between transparency, clarity, and the complexity needed to generate adequacy and equity. This is likely the most difficult part of reform. Massachusetts provides as a great example in this area. The local control provisions in the law have allowed enough stakeholders to get involved to create a critical mass of understanding among Massachusetts's voters. This critical mass of local control has undoubtedly contributed to Massachusetts's lasting success in school finance reform.

Third, the context of this entire issue cannot be lost. In the short term, the consequences of finance reform may affect political careers, jobs, and taxes, but in the long term, finance reform will affect millions of Illinois children. In many ways, this is a fight for the future of Illinois children and the communities they live in. No Illinois school should ever again come close to the deplorable conditions described in *Lewis E.* No matter what budget issues arise, Illinois can do far better.

The time is ripe for funding reform. EFAC has paved the way, and stakeholders are ready to act. The children of Illinois have waited too long.