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SCHOOL FINANCE IN WASHINGTON—THE NORTHSHORE LITIGATION AND BEYOND

William R. Andersen*

[T]he current approach to financing America's public schools is characterized by unequal educational opportunity and inequitable distribution of responsibility for the support of educational services. The inequality and inequity stem, not simply from the existence of distinct differences in the quality of education among the schools and school districts of the states of the nation, but from the workings of a system by which the students who receive the highest quality education are frequently those from the most advantaged backgrounds, while the students from the most impoverished communities and most disadvantaged social environments often receive no better and frequently inferior educational services. Furthermore, under our archaic system of distributing the costs of education, the communities most hard pressed to raise revenues for public services in general, or for education in particular, are those with the largest educational burdens to support. Those communities that require fewer public services or possess higher property tax bases frequently tax themselves far less, yet provide superior education services.

—J. Berke**

I. INTRODUCTION

Controversy over various aspects of public education in the United States has been a common feature of our national life, illustrating not only the fundamental importance of public education but also the fact that we all feel, as alumni of the system, as though we are experts in diagnosing its ills and prescribing appropriate remedies. We have accordingly felt free to express our opinions, stage legislative demonstrations, bomb schoolhouses, vote down school levies, throw the "rascals" off school boards, mobilize the PTA, and in myriad other ways make the benefit of our judgment available to those operating the public education system.

** J. BERKE, ANSWERS TO INEQUITY 71 (1974).
The current controversy over the funding of public education is probably not different in kind from the other issues on which we have exercised our right of free expression. This controversy, however, involves fundamental notions of equity in taxation, the efficient organization of local government services, and fairness in the distribution of community resources. The educational financing issue has generated in the past few years a significant number of books, studies at the national level, state studies, legal periodical literature and, of course, litigation. Recently, the Washington Supreme Court considered the controversy in this state in Northshore School District No. 419 v.


2. See, e.g., National Educational Finance Project, Alternative Programs for Financing Education (1971) [hereinafter cited as Nat'l Educational Finance Project]; President's Commission on School Finance, Schools, People & Money. The Need for Educational Reform (Final Report, 1972) [hereinafter cited as President's Commission on School Finance].


After many months of deliberation, the court in a confusing and badly split decision held that the Washington system of educational finance did not violate state constitutional requirements.

This article will examine the dispute as it has arisen in Washington, a state which, while an early leader in the fair provision of education, has fallen into the same patterns of inequity as most other states. Unfortunately, the magnitude of these inequities has yet to penetrate the legislative perception, and the character of the problem has yet to be fully understood by the state supreme court—as demonstrated by Northshore. It is hoped that the data and discussion presented here will contribute to a better comprehension of the problem.

II. THE AMERICAN SYSTEM FOR DISTRIBUTING AND FUNDING PUBLIC EDUCATION

Public education today is big business, spending about 50 billion dollars annually and employing 2 million classroom teachers in the education of 46 million school children. Unlike most other services of a large business, however, education is delivered in a highly decentralized manner, with services provided through more than 17,000 essentially independent school districts organized under the laws of the 50 states.

Local funding, thought to be a condition of effective local management, is another characteristic of American public education. Federal and state revenues contribute less than half the revenue needed to support public elementary and secondary educational systems. Even though local governments may carry a larger share of the financing burden, their sources of revenue are significantly limited. Taxes on income and sales have either been preempted by other levels of government or cannot feasibly be administered at the local level. Accordingly, local governments rely on the property tax to satisfy virtually all

7. President's Commission on School Finance, FACT BOOK, Table 1, (1972) [hereinafter cited as FACT BOOK].
8. Id. Table 15.
9. Id. Table 11.
10. Id. Table 17.
11. Id. Tables 2, 5.
As a result, the revenue-raising potential of a local government is dependent upon the value of taxable property which happens to be situated within that local government's jurisdiction. If the state's taxable property were distributed among its school districts in proportion to educational costs and needs of the respective districts, there would be no problem of fairness in the distribution of resources. But such distribution does not exist, hence substantial disparity remains in each school district's ability to finance education. Recognizing this disparity, but desiring to retain the local control thought present with local funding, state governments developed a variety of state grants to supplement locally generated funds.

State supplements first took the form of flat grants to all districts, an approach which bolstered the fiscal position of the poorest districts while providing windfalls to wealthier districts. Subsequently, an "equalizing" grant concept was developed whereby state aid was distributed to local districts in inverse relation to the wealth of each district. This form of equalizing grant serves as the national pattern for state aid to local school finance in the United States. Through such formulas, the states have become more significant partners in school finance, their contributions rising from 17 percent in 1930 to 39 percent by 1950, where they have remained relatively stable.

The current controversy over school finance originated in part from the growing recognition that equalizing programs, either by reason of imperfections in the formulas or underfunding, were not adequately compensating for the massive and systematic disparities in the real

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13. This is not to suggest, however, that the property tax is a perfect revenue instrument. The property tax has been severely criticized over the years as being regressive, inflexible, inelastic, unadministerable and, overall, neither an accurate register of benefits received nor of ability to pay—the conventional criteria for determining the "justness" of a tax. For an excellent recent essay on the policy and economic questions raised by the property tax, see Ladd, The Role of the Property Tax: A Reassessment, in Broad Based Taxes: New Options and Sources 39, 78 (R. Musgrave ed. 1973).


15. For example, the state guarantees that a fixed millage (10 mills, for example) will provide the district a fixed amount of revenue (at least $200 per pupil, for example). The amount of the state grant, therefore, will be less as the district's ability to pay approaches the $200 mark.

taxing capacities of local school districts. Where equalization formulas are not adequate or where the program is underfunded, poor districts face a greater burden than rich districts in generating school revenues.

III. DOLLARS AND EDUCATIONAL QUALITY: DIFFICULTY OF MEASUREMENT

Even assuming, however, that the present system of educational financing places a greater burden on taxpayers living in poorer districts, it does not necessarily follow that children in the poorer districts are deprived of equal educational opportunity. Before such a conclusion may be reached, it must be demonstrated that taxing capacities and educational opportunities are significantly related. Unfortunately, demonstrating that relationship is fraught with difficulty. For example, how can one specify the exact nature of the additional tax burden? What index of effort is acceptable? The district with a 20-mill tax for education is generally thought to be exerting twice the effort of the district with a 10-mill tax. But there are many difficulties with this as a measure of effort.

1 It is, at best, a crude approximation of the actual level of difficulty faced by taxpayers in the respective districts. For example, suppose the district levying “only” 10 mills is a large urban district with substantial noneducational expenses not borne by the other districts. Taxpayers in the 10-mill district may already be heavily burdened by these expenses when it comes time to decide on school millage; their lower school millage may represent more sacrifice for them, therefore, than higher school millages represent elsewhere.

Another complexity in measuring relative tax sacrifice is the

17. These disparities are documented in 1 President's Commission on School Finance, Review of Existing State School Finance Programs 14 (1971).
18. See generally Advisory Commission on Intergovernmental Relations, Measuring the Fiscal Capacity and Effort of State and Local Areas (1971).
19. For example, a recent report of the Washington State Research Council indicates that the City of Seattle spends 47% more per capita for noneducational municipal services than does the City of Bellevue, Washington State Research Council, 1975 Citizen's Guide to City Budgeting, A1–A3 (Table 6) (1975). The practical consequence of such cost is that Seattle's tax millage for city services is 52% higher than the comparable millage levied in Bellevue. Thus, a simple examination of millages levied for education does not provide a satisfactory comparison of the relative tax efforts of Seattle and Bellevue because of what has been termed "municipal overburden." See Coons, Clune & Sugarman, supra note 1, at 232–40.
problem of varying personal incomes among school districts. When
the personal income of taxpayers in one district is substantially higher
than that of taxpayers in another, equal tax millages do not necessarily
mean equal tax effort.\textsuperscript{20} While school finance reform cannot be
the vehicle for income redistribution generally,\textsuperscript{21} there may be some
possibility of recognizing the problem in part in school finance
funding.\textsuperscript{22} In any event, a careful view of the notion of "tax effort"
requires that this element not be ignored.

Conceding these difficulties and accepting the premise that some
property-poor districts try harder and still produce less in the way of
school monies, a number of questions remain before one can neces-
sarily conclude that the children in those districts are in fact deprived
of educational opportunities. It is first necessary to establish that the
property-rich districts do in fact spend more dollars per pupil than the
property-poor districts. Evidence on this issue is ambiguous and cloud-
ed with statistical uncertainty, but the available data generally support
the common sense notion that people with money spend more than
people without it.\textsuperscript{23}

Assuming \textit{arguendo} that wealthy districts spend proportionately
greater funds, the next consideration is whether such additional reve-
nues are spent on "genuine" educational inputs. If, in fact, the addi-
tional money is spent on amenities not identifiable as increasing edu-
cational quality, then it cannot be said that money alone increases
educational opportunities. Indeed, there are goods and services which

\textsuperscript{20} To consider another local example, in 1970 the median family income in the
Mercer Island school district was $18,136. In Seattle it was $11,034, and in Yakima
2d 685, 530 P.2d 178 (1974). Clearly, raising a dollar of school money will require more
"sacrifice" in Yakima than it does in Mercer Island, even if the per-pupil property tax
wealth of the two districts is equal. In fact, they are not and the cumulative effect of low
personal income and low taxable wealth deals a staggering blow to efforts at equalizing
educational opportunities in some districts. For example, not only is Seattle's median
income 35\% higher than Yakima's, its per-pupil property tax base is 127\% greater.
1, 1972). Faced with this combination, for Yakima taxpayers to provide the level of
educational programs available to Seattle children seems virtually impossible. The ex-
penditure data show, not surprisingly, that Seattle spends 46\% more per pupil than does
Yakima. \textit{State of Washington Superintendent of Public Instruction Report No.}

\textsuperscript{21} See \textit{Coons, Clune & Sugarman, supra} note 1, at 220--22.

\textsuperscript{22} For example, equalizing formulas which increase state aid to local districts with
high concentrations of poor residents is one technique that would help. Such formulas
have been tried. See text accompanying note 189 \textit{infra}.

\textsuperscript{23} See text accompanying notes 104--06 \textit{infra}. 

858
School Finance

may contribute to the comfort and convenience of students the deprivation of which would not affect the educational quality appreciably. To the extent that rich districts make expenditures of this sort, relative educational opportunities remain essentially unaffected. Any analysis, therefore, of the effect of money on educational quality must account for the types of expenditures made and their effect on educational development.

Assuming that rich districts do in fact spend their additional funds on educational inputs, one must next consider the varying costs in providing education in each school district. Two districts may be spending the same number of dollars per pupil yet purchasing different levels of education because of significant cost differentials between the two districts. Between some districts, for example, there may be general cost of living differences, or differences in teacher salaries, either of which would affect the real capacity of the districts to purchase educational inputs. The degree to which school funding formulae can be adjusted to cost differences is as yet undetermined, although efforts are being made to deal with the problem.

Closely related to the problem of cost differentials is the fact that different school districts often have different needs. For instance, the makeup of the school population may differ from district to district such that one district may have a greater need for expensive specialized counselors, security forces, specialized reading programs, specialized library facilities and other services. These differences are especially likely to exist in urban school systems.

In addition to the preceding uncertainties, it is necessary to confront the most awkward question of all—whether additional dollars in fact produce higher-quality educational programs. Even if it can be assumed that these additional dollars are used to provide such things as modern textbooks, smaller classes, individualized training, more

24. For example, most would agree that band uniforms fall within this category. Some would go much further and argue that a high percentage of educational expenditures are essentially “consumption goods” and amenities not adding to educational quality. See Carrington, Financing the American Dream: Equality and School Taxes, 73 Calif. L. Rev. 1227, 1242–43 (1973).
26. The present Washington weighted-pupil formula, see note 85 infra, is typical of efforts to consider the cost implications of various programs in allocating state funds.
27. See generally Drachler, supra note 25.
highly qualified teachers and greater numbers of support personnel, it remains unsettled whether these elements actually produce programs of higher quality, and, if they do, whether increased quality of educational programs produces higher levels of educational achievement. Both issues are plagued by elusive standards and meager data.

IV. THE LEGAL BACKDROP FOR THE NORTHSHORE LITIGATION

A. Stalemate

One of the singularities of the problem under consideration is that legislative efforts to equalize education resources or tax capacities have been inadequate. Undoubtedly part of the reason for the inadequate legislative response has been the lack of sufficient funds; it is simply more expensive to engage in fully adequate equalization programs. In addition, legislatures face inherent structural and political difficulties. By definition, half of the school districts in a state are above the median per-pupil taxable wealth. Half the districts of a state are relatively better off financially under the existing system, because they receive more dollars per pupil at any level of tax effort than those school districts which are below the median. Thus citizens in the poorer districts, in seeking legislative change, face the burden of persuading the legislature either to increase substantially school spending overall or to achieve equalization at the expense of the wealthy school districts. The political implications attendant to both proposals explain, in part, the reluctance of state legislatures to grapple with the problem. Washington is no exception.

When major societal problems have not been resolved in the legislative process, action by litigants through the judicial process has often

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29. See Guthrie, et al., supra note 1. See also Part V-B-2 infra.
30. It is instructive to observe that the current legislative enthusiasm for educational finance reform in Washington does not derive from concern over the inequitable allocation of resources (which is the subject of this article), but from a series of special levy failures. Since many rich districts suffered from these failures, they are in the vanguard of reform today; they were conspicuously absent in the Northshore litigation. It remains to be seen whether reform accomplished with the aid of the wealthy districts will in fact even-out the distribution of resources, or will merely correct the special levy problem and retain for the wealthy districts their historic position of advantage.
School Finance

filled the void. Initial efforts to obtain judicial relief in the area of school finance were unsuccessful, principally because the plaintiffs presented to the courts issues which were not well suited for judicial resolution. In *McInnis v. Shapiro*, plaintiffs challenged the Illinois school financing system as violative of the equal protection and due process clauses of the fourteenth amendment. Plaintiffs alleged that the system permitted wide variations in per-pupil expenditures from district to district, thereby providing some students with quality education and depriving others with equal or greater educational needs. The three-judge district court held that plaintiffs failed to state a cause of action, concluding that the controversy was nonjusticiable because "there are no 'discoverable and manageable standards' by which a court can determine when the constitution is satisfied and when it is violated." The court observed that while plaintiffs repeatedly emphasized the importance of the pupils' "educational needs," they did not "offer a definition of this nebulous concept." The complaint, in short, would have required the court to define "educational needs" and measure existing school finance systems in terms of the degree to which those needs were being met among students and among districts.

A similar action attacking the Virginia school financing system was dismissed by a federal district court relying on *McInnis*. In *Burruss v. Wilkerson*, plaintiffs had sought to correct inequities in the provision of resources to meet varying levels of "educational needs." In rejecting plaintiffs' claim and suggesting they seek legislative relief, the court noted that it had:

neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the state. We can only see to it that the outlays on one group are not invidiously greater or less than that of another.

33. 293 F. Supp. at 335. The court concluded that "if other changes are needed in the present system, they should be sought in the legislature and not in the courts." *Id.* at 336-37. The court also rejected the further contention that the only financing system which satisfies the fourteenth amendment is one which apportions public funds according to the educational needs of the student. *Id.*
34. *Id.* at 329 n.4.
36. *Id.* at 573.
37. *Id.* at 574; *see* note 41 *infra.*
B. The Principle of "Fiscal Neutrality"

After McInnis and Burruss, the judicial path to reform appeared closed. However, a study published in 1969 by John Coons, William Clune and Stephen Sugarman, proposed a new doctrinal basis for judicial action premised ultimately on the Burruss court's concession that a court could determine whether the educational outlays for one group were invidiously greater or less than that of another. The study reasoned that however disabled a court may be when confronting directly the question of the adequacy of educational quality levels, the courts could deal with questions of interparty fairness. Accordingly, Coons and his colleagues suggested the equal protection clause should be interpreted not to require any particular funding level, but to prohibit allowing the level of educational funding to vary as a function of irrational factors such as the fortuitous location of taxable wealth. This rationale is not addressed to the aggregate level of educational services provided by the state nor to the individual level of services in a particular district. It requires only that at whatever level the state chooses to provide educational resources, those resources must be distributed to all children on a fair (not necessarily equal) basis. Fairness in this setting would require only that differences in the treatment of districts be rationally justified.

The principle of "fiscal neutrality" thus provides a method by which judicial relief can be afforded without the court becoming enmeshed in attempts to define educational quality. As noted by the Burruss court, invidious differences in outlays (dollar expenditures)

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38. Coons, Clune & Sugarman, supra note 1.
39. Id. at 303-04.
40. Id. at 201-02.
41. The fiscal neutrality principle was distinguished from the McInnis theory by the district court in San Antonio Indep. School Dist. v. Rodriguez, 337 F. Supp. 280, 283-84 (W.D. Tex. 1971), rev'd on other grounds, 411 U.S. 1 (1973): The development of judicially manageable standards is imperative when reviewing the complexities of the state educational financing scheme. Plaintiffs in McInnis sought to require that educational expenditures in Illinois be made solely on the basis of "pupils' educational needs." Defining and applying the nebulous concept of "educational needs" would have involved the court in the type of endless research and evaluation for which the judiciary is ill suited. In the instant case plaintiffs have not advocated that educational expenditures be equal for each child. Rather, they have recommended the application of the principle of "fiscal neutrality." Briefly summarized this standard requires that the function of public education may not be a function of wealth, other than the wealth of the state as a whole. Unlike the measure offered in McInnis, this proposal does not involve the court in the intricacies of affirmatively requiring that expenditures be made in a certain manner or amount.
School Finance

would be proscribed. The California Supreme Court adopted a variant of the principle in its landmark decision, *Serrano v. Priest.*

C. Serrano v. Priest

In *Serrano*, the California Supreme Court examined a typical state financing system in which more than half the public school funds derived from taxes levied by local school districts on property located within the respective districts. The system was also typical in that taxable wealth varied widely among the districts. The court indicated that the assessed valuation per unit of average daily attendance of elementary school children ranged from a low of $103 to a peak of $952,456—a ratio of nearly 1 to 10,000.

Plaintiff school children and their parents contended that the state could not, under the federal or state constitution, permit the quality of a child's education to be a function of the accident of local school district wealth. Consistent with the fiscal neutrality principle, plaintiffs did not invite the court into a debate on the meaning of educational quality but, rather, argued that the existing financing method produced separate and distinct systems, each offering an educational program which varies with the relative wealth of the districts.

The court's response to these allegations was framed in traditional equal protection terms. The court determined that the system did in fact discriminate among citizens on the basis of wealth, that such a classification was suspect, that it infringed on fundamental interests of plaintiffs; the court also found that the system was not justified by

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42. See notes 35–37 and accompanying text supra.
43. 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).
44. 487 P.2d at 1245–48, 96 Cal. Rptr. at 605–09. The official expenditure studies cited by the plaintiffs showed the consequences of these disparities. The court noted the contrast between the Baldwin Park School District (a relatively poor district with only $3,706 in assessed valuation per pupil) which, with a tax rate of 5.4% could generate enough money to spend only $577 per pupil and the Beverly Hills School District (a wealthy district with over $50,000 of assessed valuation per pupil) which, with a lower tax rate of 2.3% could produce $1232. *Id.* at 1252, 96 Cal. Rptr. at 612.
45. *Id.* at 1244 n.1, 96 Cal. Rptr. at 604 n.1.
46. *Id.*
any conception of the test of "compelling state interest." Conceding that the state's equalization program provided larger grants to poor districts than to rich ones and that local taxpayers in poor districts compensated somewhat for the absence of taxable wealth by greater tax sacrifices, the court concluded, nevertheless, that "the system as a whole generates school revenue in proportion to the wealth of the individual district." The court denied the state's attempt to identify as a compelling interest the local control of school administration and funding levels. The court stated that local control of administration could still be available, irrespective of the financing system adopted. Moreover, local control of the level of funding did not in fact exist within the present system. The court noted:

[S]o long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot really choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives less wealthy districts of that option.

The court was not obliged to conduct a definitive analysis of the question whether the variations in fiscal capacity did in fact produce differences in educational quality. The court did, however, candidly indicate its willingness to assume that differences in per-pupil expenditures do have consequences for educational quality and cited judicial authority to support the assumption.

On remand, the California trial court concluded that plaintiffs had in fact established their cause of action and were "entitled to a judgment declaring that the California public school financing system . . . is invalid as a violation of the equal-protection-of-the-laws provision

49. Id. at 1251, 96 Cal. Rptr. at 611.
50. Id. at 1260, 96 Cal. Rptr. at 620.
51. Id.
52. Id.
53. The California court was ruling on an appeal from a trial court's sustaining of general demurrers filed by all defendants. Hence, the court treated the case as one in which all facts properly pleaded were admitted. Plaintiffs had adequately pleaded deprivations in educational quality. Id. at 1265, 96 Cal. Rptr. at 623.
54. Id. at 1253 n.16, 96 Cal. Rptr. at 613 n.16.
School Finance

of the California constitution." The trial court opinion is particularly instructive on the question of the effect of divergent revenues and revenue-producing abilities on educational quality. The court concluded that because "the statistical correlational research methods employed in social science or educational research have not reached [an appropriate] degree of reliability," it was "unwilling to accept the definition of the quality of an educational program that is made to depend solely on pupil performance on . . . achievement tests . . . ." Rather than requiring plaintiffs to prove that educational outputs are increased with increases in educational spending, the trial court determined that the preferable approach would be to utilize an input measure—one that "starts with a concept that the amount of money per pupil which a school district has to spend governs the quality of its educational offerings . . . ." The trial court was:

convinced from the evidence that a school district's per-pupil expenditure level does play a significant role in determining whether pupils are receiving a low-quality or a high-quality educational program as measured by pupil test-score results on the standardized achievement tests.

The trial court thus said, in effect, that where a state implements a financing scheme which creates different money generating abilities among its school districts, there is a denial of equal protection.

56. Id. at 74–99.
57. Id. at 89.
58. Id. at 94.
59. Id. at 95.
60. Id. at 95.
61. Id. at 89.
62. The ability criterion stands out sharply in the court's opinion:
   It is an inescapable fact that under the [California system] the high wealth school districts, with far greater funds available per pupil than are available to the low wealth districts have the distinct advantages of being able to pay for, and select the better trained, better educated and more experienced teachers, the ability to offer a wider selection of courses per day, the ability to provide better and a greater variety of supportive services such as more counsellors and teachers' aid, the ability to obtain the latest and best educational materials and equipment, and the ability to keep the educational plant in tip-top shape.
   Id. at 100 (emphasis added).
D. San Antonio Independent School District v. Rodriguez

The plaintiffs in San Antonio Independent School District v. Rodriguez were not so successful. In that case, the United States Supreme Court upheld the constitutionality of the Texas educational finance system which was in most material respects similar to the California system scrutinized in Serrano. The critical doctrinal distinction between the two cases was that Rodriguez was decided solely on the basis of the equal protection clause of the Federal Constitution, while Serrano invoked the additional limitations and dictates of the California State Constitution. Thus, the divergent results in the two cases may be the product of the application of differing equal protection tests: The Serrano court subjected the California scheme to strict scrutiny; the Rodriguez Court used the rational basis test to review the Texas scheme.

The facts of Rodriguez presented the familiar picture of a system relying on locally-generated funds, which, when combined with the usual marked disparity of resources between local units, resulted in considerable inequality in per-pupil expenditures. A three-judge district court followed the California court's opinion in Serrano and held that wealth classifications of this nature are suspect, that education is a fundamental right and that the statutory scheme is to be subjected to strict scrutiny. Finding no compelling state interest, the district court concluded that the system violated the equal protection clause of the fourteenth amendment.

The Supreme Court, however, determined that it was inappropriate to utilize the compelling state interest test and that the alleged discrimination should be analyzed by reference to the rational basis test. In reversing the trial court, Justice Powell, writing for a majority of the Court, held that Rodriguez did not involve a suspect classification, finding that the appellants had made no effort to demonstrate that the Texas financing scheme operated to the peculiar disadvantage of any class fairly definable as indigent or composed of persons whose incomes were beneath any designated poverty level. Citing a recent

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64. 411 U.S. at 23.
study, Powell stated that "there is a reason to believe that the poorest families are not necessarily clustered in the poorest property districts." Even if relative poverty sufficed to define a class, Powell continued, there was no proof in the record of any general correlation between individual and district wealth. Thus, it could not be concluded that the relatively poorer citizens are grouped in the poorer districts. Justice Powell also held that classification of districts by wealth is not suspect, both because the equal protection clause does not mandate territorial equality and because classes of people so identified are large, amorphous and unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts. This system of alleged discrimination has none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.

The *Rodriguez* Court further held that education is not a "fundamental" interest for purposes of the fourteenth amendment. While conceding "the grave significance of education both to the individual and to our society," Justice Powell reasoned that fundamental rights are those interests which are "explicitly or implicitly guaranteed by the Constitution." Since the Federal Constitution does not guarantee education either explicitly or implicitly, education is not a "fundamental" interest under the Federal Constitution. Having determined that neither of the conditions for strict scrutiny was present, the Court concluded that there was sufficient connection between a legitimate state interest in preserving local control and the financing system to satisfy the less demanding rational basis test.

In evaluating the reach of *Rodriguez*, particularly its effect on similar cases brought in state courts, three aspects should be noted. First, the classification of interests and the resulting determination of the

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66. 411 U.S. at 23.
67. *Id.* at 28 n.66.
68. *Id.* at 28.
69. *Id.* at 30.
70. *Id.* at 33–34.
71. *Id.* at 49–50.
appropriate standard of review was critical. The Court was explicit in noting that had the compelling state interest (or strict scrutiny) test been applied, the system would not have survived.\textsuperscript{72}

Second, the selection of the appropriate standard of review is dependent on the terms of the particular constitution being construed; the rational basis test was applied because the \textit{Federal} Constitution does not guarantee education, either explicitly or implicitly. Therefore, \textit{Rodriguez} does not foreclose a contrary result in a case instituted under a state constitution that \textit{does} guarantee the citizen's interest in education. This interpretation is supported by the explicit language of the opinion and by both commentators\textsuperscript{73} and subsequent judicial opinions.\textsuperscript{74}

Third, it is worth observing that in \textit{Rodriguez} the Court was asked to enunciate constitutional principles of educational finance which would be binding on all 50 states. Given the vast differences in the educational finance systems of the various states, patterns of wealth distribution, percentage of state support, absolute spending levels for education, equalizing formulas and their respective powers, and differences in the tax structures of the various states, it is perhaps not surprising that a majority of the Court was reluctant to confront these complexities. Justice Powell, indeed, stated as much.\textsuperscript{75} Obviously, a much more manageable range of issues is presented in a case before a state court.

The doctrinal backdrop for the Washington Supreme Court decision in \textit{Northshore School District No. 419 v. Kinnear},\textsuperscript{76} then, involved two separate lines of analysis. Under the equal protection anal-

\textsuperscript{72} The Court stated:
If, as previous decisions have indicated, strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a "heavy burden of justification," that the State must demonstrate that its educational system has been structured with "precision," and is "tailored" narrowly to serve legitimate objectives and that it has selected the "less drastic means" for effectuating its objectives, the Texas financing system and its counterpart in virtually every other State will not pass muster.


\textsuperscript{75} See 411 U.S. at 41, 44.

\textsuperscript{76} 84 Wn. 2d 685, 530 P.2d 174 (1974).
ysis, both the Serrano court and the Rodriguez Court agreed that the existing school finance systems could not satisfy strict scrutiny. But the Rodriguez Court had held that test inapplicable under the Federal Constitution because it does not explicitly protect an interest in education. Thus, in Northshore, the Washington court had to decide whether the Washington Constitution protects an interest in education so as to invoke the strict scrutiny test. The Rodriguez Court had also left open the possibility of a challenge to a state educational finance system on the basis of state constitutional provisions involving other than equal protection language. Both of these analytical options were presented to the Washington court.

V. EDUCATIONAL FINANCE IN WASHINGTON

A. Background

The Washington school finance system which was attacked in Northshore is typical of most state funding schemes. The state of Washington delivers public school services through more than 300 school districts whose boundaries are set by statute.\(^77\) The districts vary greatly in size, from 1 pupil in the smallest (Benge) to approximately 70,000 in the largest (Seattle).\(^78\) The total number of pupils in the system is approximately 750,000\(^79\) and the delivery of public school services is subject to prescribed state standards.\(^80\)

From 1832 when John Ball opened the first school in Washington\(^81\) until the most recent session of the Washington State Legislature, school finance has been a subject of intense concern to Washington citizens and legislators. The basic partnership between the state and the localities was a normal component of the educational financing scheme during the territorial period (1853–1889).\(^82\) Shortly after statehood in 1889, the first official concerns were expressed about the

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82. Id. at 76–81.
inequities of the system which relied heavily on local tax levies reflecting substantial interdistrict tax-base disparities. Early efforts to increase state support for schools and equalize the tax burden met with limited success.

Essentially, the school financing plan in effect at the time of Northshore guaranteed each local school district a specified sum per weighted pupil ($365) from state funds irrespective of district wealth. Voters in each district could supplement the state contribution by imposing additional (special) levies.

83. State Superintendent of Public Instruction C.W. Bean proposed in 1894 a mandatory county levy for schools with the understanding that in counties where the mandated levy did not produce a prescribed minimum per child, "the amount so lacking should be made up to the county from a fund by a state levy . . . [in order to] distribute all over the state . . . the burden of assisting the weaker counties." REPORT OF SUPERINTENDENT OF PUBLIC INSTRUCTION 58, 76 (1894), quoted in Bolton & Bibb, supra note 81, at 136-37.

84. Reform efforts led to the enactment of the Barefoot Schoolboy Law in 1895 which required a state levy "sufficient to produce a sum which, when added to the estimated amount of money to be derived from the interest from the state permanent school fund for the . . . year, shall equal six dollars for each child of school age residing in the state . . . ." Ch. LXVIII. § 1. [1895] Wash. Laws 122-23. The funds are allocated strictly on a per-child minimum with the result that poor districts received more (and rich districts less) than they contributed.

As school costs continued to rise, the state levy also increased. It was apparent at an early date, however, that an increase in state funds might be more than offset by increases in the cost of providing educational services. For purposes of equalization, the critical concern was the percentage of state support in the overall state-local partnership effort. In 1921, a special study commission observed that while the state levy had increased so as to produce $20 per child, the percentage of state support had declined from 30% in 1909-1910 to 20% in 1919-1920. REPORT OF THE PUBLIC SCHOOL ADMINISTRATIVE CODE COMMISSION (1921), summarized in Bolton & Bibb, supra note 81, at 139-41. The commission noted that the state's constitutional obligation to provide equal educational opportunities to all the state's children was not being satisfied at this level of state support. Bolton & Bibb, supra note 81, at 140. A bill to raise the percentage of state support to 50% passed the legislature in 1928 but was vetoed by the governor, apparently out of fear of the higher taxes such an increase would require. Id. at 142. The 1933 legislature enacted the "New Barefoot Schoolboy Act" which mandated a state levy on all taxable property in an amount which, together with other sources of school revenues, would produce 25¢ per pupil for each day's attendance in the common schools. Ch. 28. § 4. [1933] Wash. Laws 166. The Act contained some new equalization features whereby some provision was made for differences in the cost of educational programs by utilizing a "weighted pupil" formula. Id. § 4(1). For explanation of the formula, see note 85 infra. In addition, special assistance was provided to very small school districts in the Act's requirement that each district was presumed to have a minimum of 2,500 weighted pupils. Id. § 4(3).

85. WASH. REV. CODE §§ 28A.41.140, 84.52.065 (1974). See WASHINGTON STATE DEPARTMENT OF REVENUE, 1975 TAX REFERENCE MANUAL 120 (1975). The weighted pupil formula considers such factors as the number of vocational class hours, staff experience, number of secondary school children, the size of the school district and whether the district is a remote and necessary one. Findings of Fact No. 16, Northshore School Dist. v. Kinnear, 84 Wn. 2d 685, 530 P.2d 178 (1974) [hereinafter cited as Findings of Fact].

86. WASH. REV. CODE § 84.52.052 (1974). If 60% of the voters in the school district approve an additional tax levy, the additional amounts are added to property tax bills of
While the amount of the state per-pupil guarantee appears neutral in terms of district wealth, i.e., each district receives the same number of dollars per weighted pupil regardless of the district’s assessed valuation per pupil, the weighting factors themselves may operate to the advantage of the wealthier districts. For example, the most significant element in the weighting formula relates to staff training and experience. This factor rewards districts whose certificated staff has higher average professional preparation. To the extent that wealthy districts are able to attract and retain more experienced and better trained staff, such districts are doubly rewarded by additional increments of state money provided under the state per-pupil guarantee formula. The amount of the bonus may be substantial.

The most significant source for unfairness, of course, is not the per-pupil guarantee itself but rather the need to make expenditures in excess of the guaranteed amount. Where the legislature permits the guarantee to fall below the cost of providing educational services, the difference must be derived from special levies. Such levies, as previously noted, are wholly unequalized since the amount a district can raise at any given level of tax effort is purely a function of its taxable wealth.

taxpayers within the school district. If the school district does not submit a levy or if the levy submitted does not receive the requisite 60% approval of the voters, the district must proceed solely on the current amount of the state guarantee. The 60% majority is required by WASH. CONST. art. VII, § 2 (Amendment 59). At the time Northshore was litigated, the guarantee was set at $365 per weighted pupil. Findings of Fact No. 16, supra note 85. For 1974-75, the guarantee was $395. SUPERINTENDENT OF PUBLIC INSTRUCTION [of Washington] BULLETIN No. 69-74, at 2 (Aug. 23, 1974).

87. “About 90% of the total weighting is derived from the staff weighting factor.” WASHINGTON STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, CITIZEN’S HANDBOOK ON PUBLIC SCHOOL ADMINISTRATION AND FINANCE 22 (1974) [hereinafter cited as CITIZEN’S HANDBOOK].

88. The trial judge in Northshore found that “the formula provides monetary benefits to districts which recruit and retain the more experienced and trained staff.” Findings of Fact No. 29, supra note 85.

89. An example may indicate the magnitude of the problem. In a relatively wealthy district such as Renton, the 1973–74 staff weighting factor was .623. In Federal Way, a poorer district with approximately the same student enrollment, the staff weighting factor was only .517. The effect of this difference was to make $41.76 more per pupil available to the Renton School District than was given to Federal Way. Since these districts are both approximately 15,000 in enrollment, Renton received by reason of this factor alone more than $600,000 annually above what was made available to Federal Way. If the wealthier district is able to attract teachers with more training and experience because of salaries, facilities, student/faculty ratios or any of the other things money can buy, the state formula increases the effect by giving the district more money. Letter from Barbara Dunlap, Administrative Intern, Superintendent of Public Instruction, to William Andersen, June 4, 1975 (staff weighting factors); STATE OF WASHINGTON SUPERINTENDENT OF PUBLIC INSTRUCTION REPORT No. 1061, at 3 (Feb. 21, 1974) (enrollment figures).
State support for common schools as a percentage of total education dollars received by those schools has steadily decreased in recent years. In 1960–61, state funds represented 61.9 percent of school funds. In 1970–71, the time of the Northshore trial, the percentage had slipped to 49 percent, and in 1974–75 to 42.5 percent.

In addition to the decrease in the state’s share of the total education budget, there has also been a decrease in the state’s portion as a percentage of the total state budget. At the time of the Northshore trial, state contribution to education as a percentage of the total state budget had declined from 41.6 percent in 1963–65 to approximately 35 percent in 1971–73. Current figures indicate that the decline has continued since the trial, and that for the 1973–75 biennium has reached a low of 26.8 percent.

The current trend is clear when a comparison is made between the percentage increase in the per-pupil guarantee and the increasing need for special levies. The level of the state guarantee has risen only 16 percent between 1966 and 1971 while the funds raised by local levies have increased 275 percent over the same period. Since 1972 when the Northshore complaint was filed, the state per-pupil guarantee has risen only 8 percent while funds raised by special levies have increased 74 percent.

The increasing reliance on unequalized special levies substantially undercuts the purpose of a state equalization program in a state such as Washington where the per-pupil tax base variations among the state’s school districts are substantial. The present system which

90. Findings of Fact No. 10, supra note 85.
92. Washington Office of Program Planning and Fiscal Management, Pocket Data Book 42, 43 (1972) (estimate) [hereinafter cited as Pocket Data Book].
94. Pocket Data Book, supra note 92, at 99.
96. They range from a low of $1,925 per pupil to a high of $776,567 per pupil. In districts with more than 2,000 pupils, the range is from a low of $8,464 to a high of
School Finance

combines a low per-pupil guarantee and substantial tax base disparities produces a formula which guarantees unfairness. Plaintiffs in *Northshore* alleged this unfairness was also unconstitutional.

B. Consequences of Inequity

Since the mere fact that the present financing system places a greater burden on districts with relatively poorer property tax bases does not necessarily lead to the conclusion that children in such districts are disadvantaged because of such disparities, plaintiffs in *Northshore* had to demonstrate the existence of a number of intermediate factors. The two most obvious factors are: (1) that less money is in fact spent on children in the poorer districts; and (2) that the reduced expenditures result in decreased educational quality and opportunity.

1. Do poor districts spend less?

The evidence adduced in *Northshore* tended to establish a positive correlation between district wealth and spending, although the degree of correlation varied to an extent with the sample selected. The trial judge found that:

<table>
<thead>
<tr>
<th>Findings of Fact No. 19, <em>id.</em></th>
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<tr>
<td>Findings of Fact No. 51 &amp; 52, <em>id.</em></td>
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<tr>
<td>Findings of Fact No. 51, <em>id.</em></td>
</tr>
<tr>
<td>Findings of Fact No. 52, <em>supra</em> note 85.</td>
</tr>
</tbody>
</table>

This indicates that 72 percent of all differences in spending were attributable to differences in district wealth. A sample of 158 larger districts (containing 95 percent of the school population) showed a lower correlation (.27) which would explain only 7 percent of the variations. Another sample, composed of all the school districts enrolling more than 2,000 pupils, indicated that the ten richest districts

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$87,467 per pupil. Within the metropolitan Seattle area, valuations range from a low of $8,757 to a high of $35,393 per pupil. Findings of Fact No. 19, *id.*

97. Findings of Fact Nos. 51 & 52, *id.*

98. Findings of Fact No. 51, *id.*

99. This percentage figure is computed by squaring the coefficient (.85).

100. Findings of Fact No. 52, *supra* note 85.
spent, on the average, $148 more per pupil each year than did the ten poorest districts. It is significant in this sample that the substantial spending disparity, amounting to a bonus of one million dollars annually in the rich district of average size, results even though tax rates are significantly lower in the rich districts. The average special levy in the poor districts was 14.7 mills while wealthy districts were taxed at an average rate of only 9.7 mills. Thus, such tax base disparities have the effect of allowing rich districts to enjoy both high spending and low tax rates while poor districts suffer both low spending and high tax rates.

The existence of a positive correlation between district wealth and educational expenditures is not unique to the state of Washington. Indeed, national studies indicate that such a correlation is common in the financing of public education in the United States. Moreover, the outcome is not limited to educational finance but affects any locally funded service.

Nor should the positive correlation between district wealth and spending be surprising. Viewed from the residential taxpayer's position, differential taxable wealth has a dramatic effect on the tax price of any locally funded service. The trial court in Northshore found, for example, that in order to increase the per-pupil expenditures by $100, the owner of a $25,000 home in the Seattle School District must pay $25 in additional taxes, while the owner of the same home in the ad-

101. Findings of Fact Nos. 49 & 50, id.
102. Findings of Fact No. 57, id.
103. Findings of Fact No. 49, id.
104. A U.S. Senate study of the relationship between district wealth and district spending in Boston, Los Angeles, New York, Houston and Detroit found consistently positive correlations, concluding that "these patterns and examples are not isolated instances. They are duplicated in countless studies and through the official reports of virtually every State in the land. Quite simply, they are typical examples of the fiscal roots of inequality in educational opportunity that characterize the distribution of the benefits and burdens of American public education." STAFF OF SENATE SELECT COMM. ON EQUAL EDUCATIONAL OPPORTUNITY, 92D CONG., 2D SESS. 101 (Comm. Print 1972). See also BURKE, ET AL., supra note 1, at 5–10.
105. One commentator has suggested:

There is a strong positive correlation between tax base and expenditure levels. The richer communities—those with extensive concentrations of business property . . . and those dominated by high value residential property—do spend a good deal more than the poor communities, by and large. But they do not spend as much more as their superior tax bases would permit. Therefore, tax rates and tax base tend to be negatively correlated; the richer communities provide superior services at lower tax rates.

school Finance

joining Federal Way School District must pay $99 in additional taxes. In other words, the residential taxpayer in the property-poor district of Federal Way pays approximately four times the tax price for each per-pupil dollar generated by special levies. Such dramatic differences in tax price are generally the result of the presence of valuable commercial and industrial property in the richer district, variables which make possible the generation of an equal amount of money (in our example, $100 per pupil) with substantially lower tax rates. In districts with lower tax prices, then, conventional economic analysis suggests that demand would be greater and that more of the product would be purchased; thus a positive correlation between taxable wealth and spending would be expected.

Levy campaigners in wealthy districts boast of the lower tax prices available to their residents. In a recent Seattle levy campaign, for example, a brochure in support of the levy pointed out the special privileges which derive from Seattle's relatively rich tax base:

The cost to individual Seattle taxpayers is lower than most surrounding districts because of the concentration of industrial and commercial property within the city.

The brochure then set out a chart showing that in many surrounding school districts, levies that will produce fewer per-pupil dollars will cost individual taxpayers substantially more than Seattle taxpayers will pay. Given the disparate tax price considerations, it should

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106. Findings of Fact No. 61(c), supra note 85. For a general discussion see Ladd, Local Education Expenditures, Fiscal Capacity and the Composition of the Property Tax Base, 28 Nat'l Tax J. 145 (1975).


108.

<table>
<thead>
<tr>
<th>District</th>
<th>Levy</th>
<th>Cost Per $1,000 of Property Value</th>
<th>Special Levy Revenue Per Pupil*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seattle</td>
<td>$53,000,000</td>
<td>$7.38</td>
<td>$799.40</td>
</tr>
<tr>
<td>Shoreline</td>
<td>7,597,000</td>
<td>12.77</td>
<td>562.44</td>
</tr>
<tr>
<td>Edmonds</td>
<td>12,600,000</td>
<td>15.70</td>
<td>517.39</td>
</tr>
<tr>
<td>Lake Washington</td>
<td>10,900,000</td>
<td>13.22</td>
<td>685.19</td>
</tr>
<tr>
<td>Bellevue</td>
<td>19,630,000</td>
<td>13.00</td>
<td>922.07</td>
</tr>
<tr>
<td>Mercer Island</td>
<td>3,430,000</td>
<td>11.43</td>
<td>647.90</td>
</tr>
</tbody>
</table>

*This column was not included on the chart as printed in the brochure, but was computed by the author by dividing the total levy size as indicated on the chart by
not be surprising to discover that with any given level of taste for educational services, the taxpayers in wealthy districts, such as Seattle, will purchase more than will those in poor districts. For all the uncertainties surrounding the motivations of taxpayers, their behavior, when studied carefully, tends to show a very predictable pattern in terms of short-run economic gains and losses. And on the basis of such factors, it would be expected that at any given level of preference for education, poor districts will spend less.

2. Does less money equal less education?

The conclusion, however, that wealthy districts expend more money on educational services than do poor districts does not necessarily lead to the conclusion that the educational qualities of the two types of districts are significantly different. The relationship between the level of educational expenditures and educational quality is one of unusual subtlety. Consideration of the relationship is hindered by the crudeness of the measuring devices, the absence of generally accepted standards and the intervention of other complex variables which may complicate or even neutralize the measurable effect of additional dollar inputs on educational quality. Because of these analytical problems, courts have not been anxious to confront substantively the issue of educational quality. Where it was necessary to so confront the matter, most courts have been willing to assume that a significant relationship exists between educational spending and quality.

The assumption that a cost/quality relationship exists is supported by recent data on the question. The Guthrie study completed in the enrollment of the districts as shown in Washington State Superintendent of Public Instruction Report No. 1041 (Mar. 15, 1975).


109. See McDermott & Klein, supra note 28.


1971 reviews the early research which clearly established a significant positive correlation between dollar inputs and pupil achievement.\textsuperscript{114} The Guthrie report summarizes 17 studies which were concerned with the cost/quality relationship. Four conclusions are drawn: (1) the results of all 17 studies were substantially consistent; (2) 14 of the 17 studies indicated a significant correlation between staff quality and pupil achievement; (3) class size and staff ratios are significant factors affecting educational quality; and (4) the adequacy of the physical facilities within which the educational program was being conducted enhanced the effect of these various increments on quality. The ultimate conclusion of the review was not surprising:\textsuperscript{115}

Finally, as might be expected logically because all the foregoing components translated the dollar costs, we find that measures such as expenditure per pupil . . . are correlated significantly with pupil achievement measures.

Thus, the inferences derived from available evidence suggest that money is an important ingredient in achieving educational quality.\textsuperscript{116} Indeed, taxpayers, by imposing substantial tax burdens upon themselves, implicitly indicate that money affects educational quality. Parents, likewise, are significantly influenced by the intuitive relationship between educational cost and quality in that they will normally choose higher-spending schools when the alternative is available.\textsuperscript{117} Logi-

\textsuperscript{114} In addition, the Guthrie study reviewed the famous Coleman study, Office of Education, HEW, Equality of Educational Opportunity (1966), which, contrary to earlier studies, had concluded that students' socio-economic class was a more significant variable in predicting pupil achievement than was the fiscal investment in the pupils' school. While the methods of the Coleman report have been criticized, see, e.g., Guthrie, ET AL., supra note 1, at 60--61, the conclusions are surely important to understand, for they make it clear that an optimum research design tending to isolate the effect of money on educational quality is simply not possible. Contributing variables such as the pupil's socio-economic background simply cannot be completely filtered out of the measurement process. Thus, attempts to produce judicially acceptable proof that less money produces less education may not be fruitful. Nonetheless, while a perfect research design is not possible, efforts to identify the relative effects of educational factors on pupil achievement are still useful and, for present purposes, highly suggestive.

\textsuperscript{115} Guthrie, ET AL., supra note 1, at 84.

\textsuperscript{116} This is not to suggest that all expenditures for education are of equal value in achieving educational outputs. For a recent study attempting to identify which kinds of inputs affect educational outputs, see Summers & Wolfe, Which School Resources Help Learning? Efficiency and Equity in Philadelphia Public Schools, Fed. Reserve Bank of Philadelphia Bus. Rev. (Feb. 1975).

\textsuperscript{117} The relationship between cost and quality in education is exceedingly complex and difficult to document. Despite years of research by educators and economists, reliable generalizations are few and scattered. What is clear is that when par-
cally, teachers will prefer higher-spending districts, even apart from salary levels, because smaller classes and better facilities and equipment mean more rewarding teaching experiences. The attractiveness of the higher-spending districts means that such districts can compete for better-qualified teachers. Moreover, it seems probable that most who consider the public school system and its products believe that money affects quality. Thus, it is likely that employers, college admissions officers and the like may make distinctions among graduates of schools where evidence is available to them of the tangible results of differential spending levels.

VI. LEGAL THEORY OF THE NORTHSHEL COMPLAINT

Plaintiffs in Northshore presented three legal issues, each derived from a provision in the state constitution: (1) that the state had not met its “paramount duty” under Article IX, Section 1 to make “ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste or sex”; (2) that the system for distributing educational resources in the state was not “general and uniform” as required by Article IX, Section 2;\(^{118}\) and (3) that the financing system denied taxpayers and public school children privileges and immunities guaranteed by Article I, Section 12.\(^{119}\)

A. Educational Amplitude

The “ample provision” phrase of the state constitution raises a difficult analytical issue. If there were an agreed definition of “ample,” and if data were available to make judgments about educational amplitude, Northshore would have been a relatively easy case. Unfortunately, as a substantive standard, “ample provision” (like “quality education,” a standard it much resembles) is not a very useful judicial concept. At most, it might permit a court to declare unlawful an educ-
cational program which did not meet some bare minimum level of adequacy. The term "ample," however, connotes something more than "minimum," yet there is no agreement on what provision beyond the minimum may be deemed ample. Like the quest for a judicial standard of educational quality, any attempt to delineate amplitude substantively would involve the court in precisely the unmanageable kinds of questions the McInnis and Burruss courts properly avoided.

An analysis of plaintiffs' brief in Northshore indicates one way of dealing with this analytical difficulty which does not oversell the precision of available data nor invite the court into a thicket of unmanageable standards. Plaintiffs argued that the state grant could not alone provide ample education. The trial judge found that the state guarantee covered only 49 percent of the cost of operating the schools, and that the state minimum standards could not be met in many school districts unless additional funds were available. The plaintiffs concluded that where the state contribution was so meager that special levies were required, the state had delegated to local districts the decision as to what constituted ample provision. Plaintiffs' argument was not that this delegation was per se improper, but that the delegation was impermissible if the delegees were so differently situated with respect to their capacities to provide ample education.

120. "Ample" is defined as "1: marked by extensive or more than adequate size, volume, space, or room . . . [2]b: marked by more than adequate measure in number or amount . . . 3a: marked by generous plenty or by abundance: more than adequate: not scant or niggard . . . AMPLE always means considerably more than adequate or sufficient." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 74 (unabridged 1961).

121. 293 F. Supp. 327 (N.D. Ill. 1968), discussed in Part IV-A supra.


123. Findings of Fact Nos. 10 & 41, supra note 85.

124. Findings of Fact No. 35, id.

125. Washington case law permits the state to employ agencies of local government in the execution of state duties, Newman v. Schlarb, 184 Wash. 147, 50 P.2d 36 (1935), although the state may not use a delegation as a means of escaping its obligations under the constitution. In re Chicago, Milwaukee & St. Paul R. Co., 134 Wash. 182, 235 P. 355 (1925). Plaintiff asserted, however, that:

[B]y failing to provide ample education from its own contributions, and by relying on local supplementation, the state has chosen to incorporate taxpayer tastes and willingness to sacrifice in its definition of what is an ample education. But the system permits an accurate register of taxpayer tastes only in the wealthier districts. Those taxpayers can achieve education that is ample. Taxpayers in poor districts can achieve only what is possible. The constitutional command is not satisfied where ample education is provided for some of the state's school children. In terms, it requires that such benefits be made available to all the children.

Plaintiffs' brief examined two districts which were approximately the same size but which had a substantially different per-pupil assessed valuation. The wealthier district with a tax rate of only 6.9 mills was able to spend $833,000 more annually than the poorer district which was taxing its residents at 14.5 mills. Noting that the district with lower property values taxed itself more than twice as hard as the district with high property values, plaintiffs concluded that:

it seems too plain for argument that the lower spending district is severely disadvantaged in its reach for ample education. The plain language of the constitution forbids subjecting the children in poor districts to the inevitable consequences of that disadvantage.

This approach to the educational amplitude issue is procedural rather than substantive: the court is not required to identify any particular level of amplitude as constitutionally required. As with the fiscal neutrality principle of *Serrano*, the court is merely asked to insure that at whatever level the state chooses to provide educational resources, it must permit the children in all districts an equivalent opportunity to reach the level of amplitude. The argument, at base, is not entirely separate from the equal protection and uniformity arguments discussed below, since the constitutional equivalency of differentially treated districts will rest on the same sort of rational justification as is required in equal protection analysis. But framing the argument here in terms of a procedural definition of amplitude has two additional consequences: (1) it avoids a pointless judicial debate over the substantive meaning of amplitude; and (2) it carefully preserves the principle of local control of funding levels by not attacking per se the right of the state to delegate to local units of government the task of defining amplitude (beyond some minimum level of adequacy).

**B. Generality and Uniformity**

Article IX, Section 2 of the Washington State Constitution requires that "the legislature shall provide for a general and uniform system of public schools." This provision should not be read to require either exact equality or identity of educational programs throughout the state on one hand, or similarity in the mechanical aspects of the

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126. *Brief for Petitioners*, *id.* at 18.
127. Not only would exact identity of programs be undesirable, it is not even clear
school system on the other. Analytically, determining the generality and uniformity of a system appears indistinguishable from orthodox equal protection analysis; the phrase seems to require like treatment of citizens except where they can be rationally grouped for different treatment, as well as that citizens within the rational classification should be treated alike. As one California court has stated:

A law is general and uniform . . . in its operation when it applies equally to all persons embraced within the class to which it is addressed, provided that such class is founded upon some natural, intrinsic or constitutional distinctions between the persons composing it and others not embraced in it.

Determining whether the system is general and uniform, then, requires first, that the classifications created by the system be identified and, second, that the justifications asserted for the classifications and the differential treatment which results from them be examined.

The amount of educational resources received by a school district in Washington is a function of three variables. These variables classify school districts according to their respective differences in costs, tastes and property wealth.

what the referent for uniformity is. Is a uniform system one in which a uniform number of dollars is spent per pupil? Or a uniform resource input in real terms? The varieties of meaning which the term uniform can bear are catalogued in W. Newhouse, Constitutional Uniformity and Equality in State Taxation (1959).

128. This was all that was required by the Arizona court in Shofstall v. Hollins, 110 Ariz. 88, 90, 515 P.2d 590, 592 (1973). The court was satisfied that the legislature had been uniform in providing a "method of establishing schools." 515 P.2d at 592. The trouble with this restricted view of uniformity is that a court blinds itself to the possibly differential effects of state requirements, and could mask significant discriminatory effects, so long as the discrimination occurred in the same manner in every district. Compare Lau v. Nichols, 414 U.S. 563 (1974), in which the Supreme Court considered the adequacy of language facilities provided by the San Francisco School District, a district with more than 2,000 non-English speaking Chinese students. The Court stated:

[T]here is no equality of treatment merely by providing students with the same facilities, text books, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. . . .

Discrimination is barred which has that effect even though no purposeful design is present. . . .

Id. at 566 (emphasis in original).

129. Indeed, doubt has been expressed as to whether such state constitutional provisions for "generality and uniformity" are needed at all, given the substantially identical reach and meaning of the equal protection doctrine. See Matthews, The Function of Constitutional Provisions Requiring Uniformity in Taxation, 38 Ky. L. Rev. 503, 516–19 (1950). Prior to Northshore, the Washington court had not considered the meaning of the "general and uniform" phrase.

1. Costs

More per-pupil dollars are granted by the state to districts with higher per-pupil costs. For example, under the weighted pupil formula, a district with more vocational programs receives more dollars per pupil than a district with fewer of these high-cost programs. While there is controversy over which factors should be included in the formula and what weight each should receive, the rationality of allocating more funds to higher-cost pupils has not been questioned. This classification, therefore, does not destroy the generality or uniformity of the system.

2. Taxpayer taste for education

The second variable which determines the size of a school district's funds is more controversial. In any financing system in which the determination of funding levels is made in part by local voters, the amount of available educational funds will to some degree reflect local taxpayer tastes for education and local taxpayer enthusiasm for the size of the tax bill. Schools in a district whose voters highly prize education and are willing to sacrifice greatly may receive larger sums than schools in districts where voters prefer lower taxes to expensive educational systems.

Whether such a system satisfies the generality and uniformity test (i.e., whether there is a rational basis for permitting local tastes to establish disparate spending levels), is a subject of debate between those who emphasize the importance of equality of education among all districts and those who believe local control of funding levels is a critical value which justifies the variation in expenditures. However one views this dispute, permitting local variations as a function of local taste for educational tax burdens is at least rational, and therefore

131. The formula is explained in note 85 supra.
132. For a review of the measurable cost difference in public education which can be factored into a school funding formula, see 5 Nat'l Educational Finance Project 133-71 (1971).
133. Historically, taxpayers have preferred local control to strict equality in education funding. Most state systems today permit local voters to determine to some extent the level of educational resources to be committed to the public schools. An entire field of public finance literature has arisen in the last 20 years testifying to the values of decentralizing choice over funding levels for many local services. The seminal work is Tiebout, A Pure Theory of Local Expenditures, 64 J. Economy 416 (1956). For general discussion, see R. Bish, The Public Economy of Metropolitan Areas (1971) which collects much of the literature. For discussion specifically relating to school funding, see
School Finance

consistent with constitutional requirements of generality and uniformity. A court would not be justified in relying solely upon a "general and uniform" provision to rule that a state legislature was not competent to select the controlling value of local control over strict equality if the legislature chose to do so.

3. Local property wealth

The third variable which controls the disparate size of school funds relates to local taxable wealth. This is the variable which the Northshore plaintiffs urged was without rational justification and which therefore destroyed the generality and uniformity of Washington's school finance system. Districts with equal costs per pupil and with equal taxpayer and voter tastes, may have very different educational resources if their per-pupil taxable wealth varied. A system which subjects the children in a poor district to the consequences of a low tax base while allowing the children in a wealthy district the advantages of a rich tax base cannot be rationally justified since spending differences flowing from disparities in tax bases are unrelated to differing school costs or differing tastes of local taxpayers; the spending differences are entirely random so far as educational needs are concerned.

Establishing that differential resource flows as a function of tax base disparities are unrelated to educational costs and needs does not fully state the evils of the existing system. When the wealthy district finances high-quality schools with low tax rates, it becomes more at-


As debate over school financing has increased, questions have been raised about whether inequality is too high a price to pay for local control. The Fleischmann Commission in New York, for example, concluded after extensive study that permitting variations of education resources as a function of local taxpayer tastes was undesirable. Fleischmann Commission Report, supra note 3. The Advisory Commission on Intergovernmental Relations advanced the view that full state funding of school systems was desirable in the interest of equality even at the price of eliminating local control over funding levels. Advisory Commission on Intergovernmental Relations, State/Local Finances and Suggested Legislation 318-20 (1970). It has also been suggested that variations in educational services levels as a function of local tastes is morally unjustifiable. Richards, Equal Opportunity and School Financing: Towards a Moral Theory of Constitutional Adjudication, 41 U. Chi. L. Rev. 32, 55-57 (1973).
tractive for new industrial and commercial developments which in turn further increase the district's advantage over the poor district. The nonuniformity of the system thus has a dynamic self-perpetuating character.

A special concern present in school finance cases is whether existing educational financing systems visit the poor with special burdens and, if so, whether such burdens are constitutionally significant. While the Serrano court concluded that the systems do classify citizens by their wealth in violation of the equal protection clause, the United States Supreme Court in Rodriguez refused to reach a similar conclusion. Regardless of whether the poor in Washington could be identified with sufficient precision to constitute a constitutional "class," and whether the effects of the educational finance system could be said to injure this class, the special burdens imposed on the poor demonstrate the system's elemental irrationality and thus illegality under generality and uniformity standards.

Data generated for the Northshore litigation demonstrate that, when the state is viewed as a whole, there is no overall correlation between district wealth and individual wealth. The absence of a correlation is probably the result of averaging the positive correlations found in rural areas and negative correlations found in urban areas. For example, in largely urban King County, rich school districts tend to have higher concentrations of poor people. Contrariwise, in largely rural Yakima county, the poor seem to be concentrated in poorer dis-

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135. Rodriguez imposes such conditions before an alleged wealth classification will be subject to strict scrutiny. See text accompanying notes 62-75 supra.
136. The data included for each school district in the state the median family income, the percentage of families with less than $5,000 income, and the percentage of families with incomes of more than $15,000. When correlated across the state as a whole, there proved to be no significant correlation between district and personal wealth; that is, poorer families did not necessarily live in the poorer property tax base districts. Brief for Petitioners, Appendix, Northshore School Dist. v. Kinnear. 84 Wn. 2d 685, 530 P.2d 178 (1974).
137. King County (18 Districts):

<table>
<thead>
<tr>
<th>9 Richest Districts</th>
<th>Percentage of Families with Less than $5,000 Income</th>
<th>11.6%</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 Poorest Districts</td>
<td>Percentage of Families with More than $15,000 Income</td>
<td>27.7%</td>
</tr>
</tbody>
</table>

Id.
The data also indicate that the Washington school districts with the highest concentrations of poor people had average district wealth substantially less than the state average. While tax effort in these districts was close to the state average, the amount of special levy dollars raised per pupil was well below the state average.

Although there is no statewide correlation between district and personal wealth, that fact should not mask the effects of the system on many of the state's poor. The cited data indicates that significant numbers of the poor are concentrated in districts suffering from relative tax poverty. For them the system imposes especially cruel burdens. Education is a critical service, especially for the poor. When publicly supported education is inadequately funded, the poor are without alternative sources of supply: the cost of private education is beyond their reach. Mobility is sufficiently restricted to make a move to wealthier districts an unrealistic option. Nor is it a realistic option for poor people in poor districts to achieve quality education by increasing their tax effort. For all the statistical permutations, no sensitive observer can fail to see the very special kinds of evil that this system visits on the children of the poor.

<table>
<thead>
<tr>
<th>138. Yakima County (15 Districts):</th>
<th>Percentage of Families with Less than $5,000 Income</th>
<th>Percentage of Families with More than $15,000 Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 Richest Districts</td>
<td>27.2%</td>
<td>12.0%</td>
</tr>
<tr>
<td>7 Poorest Districts</td>
<td>33.5</td>
<td>10.9</td>
</tr>
<tr>
<td>Id.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Districts with the highest concentration of poor people are defined as those with more than 35 per cent of the families earning less than $5,000.

<table>
<thead>
<tr>
<th>139. Districts with the highest concentration of poor people are defined as those with more than 35 per cent of the families earning less than $5,000.</th>
<th>Valuation Per Pupil</th>
<th>Special Levy Tax Effort</th>
<th>Special Levy Revenue Per Pupil</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Average</td>
<td>$19,990</td>
<td>12.6 mills</td>
<td>$252.46</td>
</tr>
<tr>
<td>16 Districts with at Least 30% Families with Less Than $5,000 Income</td>
<td>15,547</td>
<td>10.0 mills</td>
<td>146.39</td>
</tr>
<tr>
<td>5 Districts with at Least 35% Families with Less Than $5,000 Income</td>
<td>9,137</td>
<td>10.0 mills</td>
<td>95.23</td>
</tr>
</tbody>
</table>

Table derived from Petitioner's Complaint at 29, Northshore School Dist. v. Kinnear, 84 Wn. 2d 685, 530 P.2d 178 (1974).

C. Privileges and Immunities Clause: Equal Protection of the Laws

Analysis of the general and uniform provision of the state constitution appears identical with the equal protection analysis used to test differential treatments which do not involve suspect classifications or fundamental interests. What remains for discussion is whether the stricter equal protection standards are appropriate in this case and, if so, whether the system meets the stricter standards. As suggested in the discussion of Rodriguez, the United States Supreme Court left open the possibility that the strict scrutiny test is applicable to state financing schemes (1) if the state constitution has an equal protection clause that is (2) interpreted consistently with the Supreme Court equal protection doctrine and (3) if the interests sought to be protected are either explicitly or implicitly guaranteed by the particular state constitution.

In Washington, all three conditions are present. The state constitution's privileges and immunities clause is interpreted as being identical to the equal protection clause of the federal constitution. The Washington court has expressly adopted the United States Supreme Court's equal protection analysis including the two-tiered theory of concern here. The Washington court has held that when the state groups its citizens into classifications which are suspect, or which affect fundamental interests, the strict scrutiny standard of review is employed: the state act is presumptively invalid and the burden is upon the state to show that its action is necessary to the accomplishment of a compelling state interest. Finally, education is an interest guaranteed explicitly by the Washington state constitution. By making it the "paramount duty" of the state to provide education to all the children, the state constitution clearly makes it a right of the state's children to receive education. Under the Rodriguez analysis, the interest is "fundamental" because it is explicitly guaranteed by the state constitution and the strict scrutiny test should apply.

In urging that the system cannot meet the strict scrutiny test, plain-
tiffs relied on the Rodriguez majority's explicit statement that if the strict scrutiny test applies, wealth related systems "will not pass muster." Northshore plaintiffs thus urged the Washington court to continue its salutary practice of following United States Supreme Court interpretations of equal protection doctrine and hold that the Washington educational finance system violates the state constitution's privileges and immunities clause.

**VII. THE NORTHSHORE OPINION**

The court's opinions in Northshore, issued 18 months after oral argument, are badly split and do not provide a doctrinal foundation for legislative guidance. Chief Justice Hale, joined by Justices Hamilton and Hunter, concluded that plaintiffs had not established that the existing school finance system was unconstitutional. Justices Rosellini, Wright and Weaver concurred in the result, expressing dissatisfaction with the existing financing system, but holding that the record did not show that the state's financial contribution was inadequate. Justice Stafford, joined by Justices Utter and Finley, concluded that the existing system was unconstitutional because the state failed to meet its "paramount duty" to make "ample provision for education."

**A. The Plurality Opinion**

1. **Analysis of the facts**

In the plurality opinion, Chief Justice Hale disregarded the fact findings of the trial court, dealt simplistically with complex and subtle factual questions and failed to respond to the central legal issues except in conclusory terms. The quality of Hale's fact anal-

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under the U.S. Constitution because it is nowhere mentioned in the Constitution. The Court left open the question whether a state constitutional provision guaranteeing or providing for education mandated a holding under equal protection analysis contrary to that in Rodriguez. Nonetheless, the Court's emphasis strongly suggests that such a holding would follow. See 411 U.S. at 35.

148. 411 U.S. at 17.

149. Justice Wright joined in the concurring opinion but also added a short concurring opinion of his own.

150. Both phrases are from WASH. CONST. art. IX, § 1.

151. The Hale opinion has been excoriated by the dissenting judges and others in unusually strong language. Justice Stafford referred to Hale's opinion as a "legal pygmy of doubtful origin," 84 Wn. 2d at 732, 530 P.2d at 204, which had been "reached by an
ysis is best illustrated by an examination of his treatment of three basic factual issues presented in the case: (1) whether the level of state support for schools has declined; (2) whether rich districts spend more than poor districts; and (3) whether money has any effect on educational quality.

As indicated, the record at trial showed undisputedly that the percentage of state support of the common schools had decreased from 61.9 percent in 1960–61 to 49 percent by the date of trial. Justice Hale attempted to dismiss these figures by attributing them to excess spending at the local level. He stated that the percentage decline in state support “is due not to decreases of State funds but largely to increases in the school funds from local property taxes.” Hale ignored the fact that educational costs have been rising and, that if state contributions did not rise proportionately, local taxpayers had no choice but to increase their contributions. Hale's suggestion that the additional sacrifice of local taxpayers is the cause rather than the effect of the decline in the percentage of state support is beyond credence. In fact, the state reduced its share of support for the common schools because, according to the state's witnesses, education was relegated to a lower priority position than other state expenditures, such as for highways. Whether this could be done consistently with the state constitution was the legal question presented to the court.

Hale also ignored the finding of the trial court that there is a positive statistical correlation between district wealth and district spending. His treatment of this question is clouded, but the gist is that some variables other than district property wealth, e.g., district unconstitutional, arbitrary, usurpation of appellate power.” Id. at 735, 530 P.2d at 206. Others have described it as “confused and confusing” and filled with arguments “which practically [reduce it to] . . . inconsistent gibberish.” Morris & Andrews, Ample Provision for Washington's Common Schools: Northshore's Promises to Keep, 10 Gonzaga L. Rev. 19, 45, 54 (1974).

152. See note 91 and accompanying text supra. The latest figures were available to the court at the time Hale wrote his opinion since they were provided by the Superintendent of Public Instruction at the court's request and were included in the opinion. See 84 Wn. 2d at 710, 530 P.2d at 192.

153. Id. at 699, 530 P.2d at 187.

154. The trial court record demonstrates that special levies increased 275% between 1966 and 1971, while the state guarantee increased only 16% during the same time span. See note 94 and accompanying text supra.


156. Findings of Fact No. 51, supra note 85.
size, average pay for the certificated staff and the district's staffing ratio, correlated highly with expenditure levels and made the correlation of district property wealth and expenditures insignificant.157 Testimony indicated that there was a high correlation between educational expenditures per pupil and the average pay for certificated staff and the district's staffing ratio.158 This fact, however, merely identifies how high spending districts spend their money; districts which spend more money per pupil buy smaller classes (hence the better staffing ratios) and better trained and more experienced teachers (hence the higher average pay). But Hale's presentation of these correlations as part of his attack on the premise that wealth and spending are correlated suggests that high expenditures are caused principally by local desires for higher salaries and smaller classes rather than by anything over which the state has control. This is a sophomoric error in statistical analysis. One could as readily explain the fact that wealthy people spend more than poor people by attributing it to the desire of the wealthy to own yachts; surely there will be a high correlation between wealth and yacht ownership to "prove" the assertion. The issue here, however, is not how districts spend their money but rather what determines the amount of money they have to spend. On that question there was no dispute: all the correlations drawn between district wealth and per pupil spending were significant and positive. The trial judge concluded that "above the per pupil guarantee, the major factor determining the amount of money that a school district can raise for education is the district's assessed valuation per pupil."159

Hale's opinion implies that the relationship between wealth and spending is not legally significant so long as taxpayers in poor districts

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157. Defendants' witness Flerchinger testified, for example, that there is a correlation between educational expenditure per pupil and district size: the smaller the district, the higher the spending per pupil. But the very small school district (such as Patterson, with only 5 students) naturally appears to enjoy extremely high per pupil expenditures since the total expenditures of the district are divided by a very small number of pupils. Findings of Fact No. 55, supra note 85. This mathematical peculiarity is, at most, a caution that one is on surer ground if one omits from the computation the smaller districts which introduce this particular distortion. For this reason, the evidence submitted by plaintiffs on the correlation between district wealth and expenditure levels dealt only with school districts whose student populations numbered more than 2,000. Findings of Fact No. 19, id.

158. 84 Wn. 2d at 700, 530 P.2d at 187.

159. Findings of Fact No. 59, supra note 85. Indeed, the Flerchinger correlations show with great precision the very inequities of which petitioners complained; it is precisely because wealthier districts have smaller classes and more experienced and better trained teachers that plaintiffs felt themselves aggrieved by the existing system.
have the legal power to increase their tax rates. This argument attempts to excuse a discriminatory effect on one class of citizens (school children) by pointing to the possibility that another kind of discriminatory effect can be imposed on another class of citizens (taxpayers). The argument is effective only so long as the parts of the problem are viewed in isolation. Both fairness and clarity, however, require that the problem be examined as a whole, and that its reciprocal parts not be treated independently.

The difficulties involved in determining the relationship between monetary inputs and educational quality, the third major fact issue in the case, were largely ignored by Justice Hale. He recognized that the record showed financial disparities, but did not conclude that educational deprivations were present.\textsuperscript{160} Despite repeated evidence that some school districts taxed their property owners less than others and yet raised far more revenue per pupil for school programs,\textsuperscript{161} Justice Hale stated that:\textsuperscript{162}

\begin{quote}
there is no evidence whatever that one district or another provides unconstitutionally superior or unconstitutionally inferior opportunities; nor is there evidence as to which are the better or inferior or offending districts, if any, one way or the other ....
\end{quote}

Implicit in Hale's finding that fiscal disparities of this magnitude do not indicate educational deprivations is the conclusion that educational quality is unrelated to expenditures; excess funds available to wealthy districts are wasted from an educational standpoint. Because such resources do not contribute to the educational quality of wealthier districts, their absence in the poorer districts is not a constitutionally significant deprivation.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
District & Enrollment & Valuation & Levy & Levy & Per Pupil Revenue \\
& & Per Pupil & Mills & Revenue & Revenue \\
\hline
Longview & 8,192 & $34,060 & 6.90 & $1,925,000 & $234.99 \\
Franklin & 7,935 & 9,447 & 14.57 & 1,092,000 & 137.62 \\
\hline
\textbf{Difference} & & & & $833,000 \\
\hline
\end{tabular}
\caption{Typical data from the record as evidence.}
\end{table}

\textsuperscript{160} 84 Wn. 2d at 694, 530 P.2d at 184.
\textsuperscript{161} The following is typical of the data which appeared in the record as evidence:

\textsuperscript{162} 84 Wn. 2d at 696, 530 P.2d at 185.
Hale's unwillingness to believe that money makes a difference in educational quality seems unsupportable in light of the data reviewed above. As noted previously, there is adequate reason for a court to treat massive fiscal disparities as educationally significant. Once it is established that the financing system generates massive fiscal inequities, i.e., that it treats individuals in the same circumstances significantly differently, a rebuttable presumption that educational deprivation results should arise. The burden of going forward with the evidence should shift to the state to prove that educational deprivations do not result from such fiscal deprivations or that such inequities are justified. Plaintiffs should not bear the burden of identifying the particular educational programs and/or facilities of which poor districts are deprived by the absence of funds or that additional educational inputs for poorer districts would in fact produce differences in the achievement of their students.

2. Analysis of the law

On the first legal issue presented by the complaint—whether the present system makes "ample provision" for education—Hale merely asserted the conclusion at several places that "there is no proof that this State has ever failed to discharge its paramount duty . . . to make ample provision for the education of all children residing within its borders . . . ." Apparently, Hale was willing to confront the issue of amplitude in a fully substantive sense. Just as apparently, he provided no clues as to how one might measure the constitutionality of any particular level of educational amplitude. His opaque, conclusory language does not provide much needed judicial guidance.

163. A recent commentary reviewed the confused state of the social science data on the cost-quality issue and concluded that it would be a mistake from both a legal and practical standpoint to insist on proof of output differences in equal protection cases:
Under the equal protection clause, the concern is whether government treats people equally, not with making people equal and not with equality of results emanating from a distributed benefit, for the latter may be beyond the capacity and power of governments and schools to control. Where equality and equal protection analysis are concerned, the focus is upon the rationality and fairness of how government distributes benefits, not with what people do with those benefits. Input-output research is irrelevant to that inquiry. McDermott & Klein, supra note 28, at 432–33.
165. 84 Wn. 2d at 694, 530 P.2d at 184.
On the second question, whether the system meets the generality and uniformity requirements, the opinion is similarly disappointing. Hale defines a general and uniform system as: 166

[O]ne in which every child in the state has free access to certain minimum and reasonably standardized educational and constructional facilities and opportunities to at least the 12th grade—a system administered with that degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing and with access for each student of whatever grade to acquire those skills and training which are reasonably understood to be fundamental and basic to a child’s education.

This definition commixes “amplitude” and “generality and uniformity” —and dilutes the effect of both. The suggestion that generality and uniformity mandate a \textit{minimum} level of education is confusing; the generality and uniformity clause relates to interparty fairness in the allocation of whatever educational resources the state provides. A system which is minimally adequate could still be nonuniform. For example, if the state conferred special educational benefits on some districts, the overall system might be minimally adequate, but not general and uniform.

If it is correct to interpret Hale to mean that generality and uniformity must exist only to a certain minimum level, the threshold for discrimination identified by Hale is too low. He sets the threshold at the level at which the child can “acquire those skills and training... reasonably understood to be fundamental and basic” and “which enables a child to transfer from one district to another... without substantial loss of credit.” 167 Given the difficulty of judicial agreement about what is “reasonably understood to be fundamental and basic,” the practical effect of Hale’s standard is to test only whether the student can transfer without loss of credit, which is accomplished without difficulty except in cases of the most severe deprivation. 168 Hale’s

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166. \textit{Id.} at 729, 530 P.2d at 202.
167. \textit{Id.}
168. Placement of students upon transfer is generally within the reasonable discretion of school authorities. \textit{See, e.g.,} E. REUTTER, JR. & R. HAMILTON, \textit{THE LAW OF PUBLIC EDUCATION} 117 (1970). Conversations with school officials in Washington indicate that a form of comity is practiced. With few exceptions, each district permits transfer to its school without loss of credit with the expectation that its students will be able to transfer to other districts without loss of credit.
School Finance

standard thus dilutes the constitutional guarantee of a general and uniform school system to an insignificant level.\textsuperscript{169}

Hale's treatment of the third legal issue, whether the system deprives citizens of privileges and immunities, is no more satisfactory. Hale reasoned that since the privileges and immunities clause of the state constitution must be construed in the same way as the United States Supreme Court construes the equal protection clause of the fourteenth amendment,\textsuperscript{170} the Rodriguez Court's decision upholding a similar school financing system was controlling.\textsuperscript{171} Beneath this superficially logical argument lies an egregious misunderstanding of Rodriguez. As indicated previously, Rodriguez implies that state school financing systems do not meet appropriate equal protection standards if the state constitution guarantees the right to education.\textsuperscript{172} Since education is guaranteed by the Washington Constitution, the Rodriguez opinion does not support Hale's result. Justice Hale simply missed this step in Justice Powell's analysis in Rodriguez.

B. The Dissent

The dissenting opinion of Justice Stafford conforms to the facts in the record\textsuperscript{173} but still generates problems. Stafford concluded that the present system of financing public education is unconstitutional under all three of the constitutional provisions cited by plaintiffs, but his theory of the case was quite different from that of plaintiffs.

Justice Stafford held that the three constitutional provisions cumulate into a nondelegable duty of the state to provide ample education

\begin{itemize}
  \item \textsuperscript{169} Consider the Franklin Pierce and Longview school districts noted in note 161 supra. Franklin Pierce residents, with more than twice the tax effort of Longview residents, are able to provide only half as much money for their school children; \$833,000 more is available annually to the Longview children. This does not render the system nonuniform under Hale's analysis unless it can be shown that less money in Franklin Pierce so deprives the children in that district that they could not transfer elsewhere without loss of credit. This way of looking at the standards of generality and uniformity makes them insignificant.
  \item \textsuperscript{170} 84 Wn. 2d at 720-21, 530 P.2d at 198.
  \item \textsuperscript{171} \textit{id.} at 725, 530 P.2d at 200.
  \item \textsuperscript{172} See 411 U.S. at 17.
  \item \textsuperscript{173} Stafford appropriately regarded himself as bound by the fact findings of the judge below since they are "supported by substantial evidence and painstakingly complete insofar as the relevant facts are concerned." 84 Wn. 2d at 742, 530 P.2d at 209. Stafford considered Hale's disregard of the findings below as fatally in conflict with the prevailing case law in the state, 84 Wn. 2d at 733, 530 P.2d at 205, and concluded that Hale's decision "has been reached by an unconstitutional, arbitrary, usurpation of appellate power." 84 Wn. 2d at 735, 530 P.2d at 205.
\end{itemize}
to all children without the need for special levies. The constitutional provisions create one constitutional class of all the state’s school children. The generality and uniformity provisions, with the privileges and immunities clause, require uniform treatment of all members within that class. Stafford conceded that there may be subclassifications among school children, but such groupings must not derogate from the state's primary duty to provide ample education for all children. Stafford concluded that, under the present system, there was not equality of treatment for all members of the class since ample education was not available to poor school districts “compelled to rely on special levies for the bare necessities of operating and maintenance.”

The difficulty with this analysis is the assumption that rich and poor districts are situated differently with respect to the compulsion to utilize special levy financing. If the state guarantee is set far below the normal cost of education, the compulsion to use special levies exists for virtually all districts, rich and poor alike. The problem is not that the poor district is forced to rely on the special levy and the rich district is not, but that all are required to do so and that special levy dollars are much harder to raise in poor districts than in rich districts.

Stafford does not rule out the use of special levies completely. He would leave to the legislature the decision as to whether special levies which were truly optional should be permitted. Presumably, a state guarantee of funding up to the ample level would be necessary in order for a special levy above that to be genuinely optional. Thus Stafford seems to have concluded that the state must make funding available up to the ample level; it may not delegate to school districts any discretion in determining that level. Above that level, however, the legislature would remain free under Stafford’s view to decide whether local voters could by special levies exceed the state guarantee.

This formulation of the issue requires a definition of ample education. Stafford offered some highly general factors to consider in determining what is ample, such as preparing children to participate effectively and intelligently in the political system, to exercise their first amendment freedoms, to be able to inquire, study, evaluate and gain maturity and understanding.\footnote{175}

\footnote{174} Id. at 763. 530 P.2d at 221.
\footnote{175} Id.
The Stafford opinion needs further clarification in several respects. First, it seems to foreclose legislative choice of any financing system which would permit significant local input on the question of educational amplitude. In this respect, the opinion seems too restrictive of legislative options. Secondly, by permitting the legislature to continue the use of unequalized special levies above the ample level, the opinion seems too generous with the legislature. Until the court demands that the legislature equalize the revenue raising capacities of the districts, any use of special levies carries potential unfairness. Finally, Stafford's attempt to deal frontally with the educational amplitude produced only exceedingly broad standards, hardly the kind of specific criteria which could serve as a guide to the legislature or form the basis for an objective judicial judgment about a particular program. And if judicial standards cannot be framed to perform those functions, perhaps the doctrinal premise is wrong.

VIII. THE LEGISLATIVE AGENDA

Two fundamental policy questions must be confronted by state legislators contemplating revision of the existing school finance system: (1) how should the state allocate the burden of paying for the school system; and (2) how should the state allocate control over decisions about school funding levels? The first question, which concerns the problems associated with generating money needed for reform of the existing system, is a difficult one. It was not, however, addressed in Northshore or in this article. The second question, which assumes that the funds have been raised in some manner, concerns the alloca-

176. This difficulty was detected by Justice Utter who would abolish special levies entirely. He emphasized in a separate opinion, concurring in the dissent, that the principal defect in the existing system is that funding levels are not selected by the state but by local voters. Such a delegation to voters is unconstitutional, according to Utter, because it allows "local political and social considerations, such as those reflected in the decisions on special levies, to interfere with the basic State guaranty of education." 84 Wn. 2d at 771, 530 P.2d at 224.

177. The problems associated with generating money for reform of the existing system are difficult and significant, but cannot be addressed here. It is clear that reform of the system will cost a substantial amount of money. J. BERKE, ANSWERS TO INEQUITY 116–18 (1974). It has been estimated by the Washington Department of Revenue that at least $1 billion would be needed in Washington. Seattle Post-Intelligencer, Jan. 23, 1975, at A-4, col. 1.

There is no special reason why property taxes could not be used as the source of additional school monies. It is not the property tax as such but the way it is administered which causes the inequities which are the occasion for reform. And, Washington's property taxes are not high, compared to tax levels elsewhere. See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE PROPERTY TAX IN A CHANGING ENVIRONMENT 313
tion of those funds and who should make the decision regarding allocation. This question was at the core of *Northshore*; unfortunately, the court provided little if any guidance to legislators. It remains unclear whether or how the state constitution restrains legislative choices as to who can determine the funding level for the public school system.

It should be noted, however, that while the opinions in *Northshore* are confused and conflicting, one troublesome thread runs through them all: All the justices insisted upon analyzing the issue of "ample education" in broadly substantive terms. Hale concluded that such a quality level was in fact being provided by the state; Stafford, writing for the dissent, reached the opposite conclusion. Justice Rosellini, concurring, stated that while he personally thought the state was not providing the requisite quality level at the present time, he did not feel the record justified a finding to that effect.178

The court's unanimous view that the phrase "ample education" requires a judicial definition in substantive terms creates difficult problems even beyond the predictable impossibility of agreement shown by these opinions. More seriously, a judicial definition of substantive amplitude presumably will demand the same level of funding in all school districts, as a practical matter foreclosing legislative choice of an alternative which allows local control over funding levels. The merits of local control aside, it is questionable whether the framers of the state constitution intended to preclude legislative choice in this area. In light of the state's historic commitment to local control,179 the current emphasis on decentralized decisionmaking as reflected by current enthusiasm for citizen participation and revenue sharing,180 and the growing body of literature suggesting the importance of decentralized decisionmaking over funding levels in particu-

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(1974). Patterns of tax incidence must be watched carefully, however, in any expansion of taxes. Not only will there be effects as between individuals and classes of individuals by income, but there will also be effects as between localities. In J. BERKE, ANSWERS TO INEQUITY (1974), estimates are made about the effect of a full state funding plan on tax burdens and spending levels in Washington as between urban, suburban and rural areas. Predictably, a system which does not take their effects into account in its pupil weighting formula will redistribute substantial wealth from cities and suburbs to rural areas. *Id.* at 96–103.

178. 84 Wn. at 731. 530 P.2d at 203.

179. *See text accompanying notes 81–84 supra.*

School Finance

lar;¹⁸¹ some local control over funding of schools is an alternative the legislature should be allowed to consider. If the court continues to insist that it can define educational amplitude, a vast area of legislative choice has been eliminated, almost without discussion.

Plaintiffs in *Northshore* did not contend the legislature was constitutionally foreclosed from permitting local choice of funding levels so long as the choice was not distorted by the existence of differential levels of taxable wealth among the school districts. The *Northshore* complaint contained a challenge only to the effect of district wealth on funding levels. If that effect could be eliminated, there was nothing in the relief asked for by the *Northshore* plaintiffs which would have foreclosed legislative choice about whether funding levels should be allowed to vary as a function of local tastes.

Assuming the legislature has such a choice, several options are available to legislators who seek to delegate the power to determine funding levels to local voters without, at the same time, making funding levels vary as a function of local wealth. First, school district boundaries might be manipulated in an effort to ameliorate some of the disparities in district wealth. Just as political district boundaries are periodically redrawn in an effort to place approximately the same number of citizens within each district, a kind of "fiscal reapportionment" might produce school districts with less resource disparity than presently exists.¹⁸² Rearranging existing school districts would no doubt unsettle long-standing habits and patterns of homogeneity. The same argument, however, was rejected with respect to political reapportionment because the value of fairness in the allocation of political power was determined to be more important than the value of preserving existing patterns. A similar result is expectable and desirable in the constitutionally protected area of education.

Boundary changes could also embrace regional school financing in major sections of the state. This plan would modify somewhat the traditional meaning of "local control," but local-control advocates should prefer it to shifting control over funding levels to the state legislature entirely.¹⁸³

Still another technique would be to separate tax revenues from

¹⁸¹. *See* note 133 *supra.*
¹⁸². *See* President's *Commission on School Finance, supra* note 2, at 68–70.
¹⁸³. *See* Calahan & Goettel, *Regionalism in School Finance: Concept, Practice, and Analysis,* in Berke, et al., *supra* note 1, at 93; Washington State Legis-
commercial and industrial properties from those revenues derived from residential taxation, placing the former in a special state fund for redistribution to school districts on a weighted pupil basis. Since most tax base disparities flow from concentrations of commercial and industrial properties, this kind of disaggregation could substantially reduce existing resource disparities.

A more complicated, but in some sense a more efficient, technique for permitting local control of funding levels without the distortion from tax base differentials involves adoption of equalization formulas which guarantee to each school district a fixed number of dollars per pupil for each level of tax effort district voters are willing to impose. Under this system, known as "district power equalizing," the sole factor determining what a district could spend would be the sacrifice in property tax it was willing to make. Under this formula, the state need not yield all control over funding levels; the legislature can tailor

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the formula to achieve whatever blend of state/local control it regards as desirable. Local choice could be given effect within a range defined by a state minimum and a state maximum level of expenditures per pupil.

Moreover, a power equalizing system need ignore neither differences in district costs nor non-educational tax burdens. Cost differentials could be accounted for by use of the weighted pupil formula device which recognizes high cost pupils, programs and regions.\textsuperscript{187} The special problem of municipal overburden\textsuperscript{188} could be dealt with by the use of more precise measures of local tax effort. For example, a different schedule of tax effort could be devised for urban areas which would in some degree reflect the fact that those areas have higher tax millages for noneducational expenses. Alternatively, urban areas could be assisted by measuring fiscal capacity on a per capita rather than a per pupil basis. In addition, special target groups, such as children from low income families, could be identified and provided with special state grants above and beyond the return from equalizing formulas.\textsuperscript{189}

The power equalizing concept is consistent with achievement of whatever levels of true program equality the legislature desires. The state may adopt whatever specific standards or requirements it wishes to insure more equality and less local control over elements deemed especially in need of statewide uniformity or program needs too fragile to be left to the control of local voters. The range of options is infinite. The significant point is that it is possible to decentralize control over funding levels without such levels varying as a function of district wealth, without conceding legitimate state interests in the overall level of funding and without neglecting other basic state policies.

If the people of the state ultimately prefer that decisions over funding levels be centralized at the state level, the solution is a fully-funded state system in which virtually no local determination of funding levels is permitted. Full state control of funding levels does


\textsuperscript{188} For discussion of municipal overburden, see note 19 \textit{supra}.

\textsuperscript{189} Such a formula is included in the plan adopted by Colorado. See Grubb, \textit{supra} note 187, at 474.
not necessarily mean full state control of educational programs, although many will argue that the two are inextricable. While the pressures can be substantial, recent experience with general revenue sharing and federal bloc-grant programs indicates that considerable local discretion regarding the substance of programs can be preserved in a system where funding levels are set centrally. It is also possible for a centralized funding system to permit some local variation in the funding level and some state proposals have indicated such an option. The degree of local override must be fairly small, however, if the basic policy of statewide equality is to be preserved. Moreover, local options above the state funding levels should not vary as a function of district wealth but should also be fully equalized. Otherwise, substantial enrichment benefits to wealthy districts could persist.

IX. CONCLUSION

The Northshore litigation publicized the widespread fiscal inequities in the state's school financing system and some measure of legislative reform is sure to follow. Regrettably, the litigation did not produce much in the way of judicial guidance for the legislative effort. If further litigation proves necessary, it is hoped that the court will avoid the acrimonious and judicially unresolvable argument over the substantive meaning of quality (or ample) education and focus instead on the admittedly less exciting, but nevertheless crucial, judicial question presented by litigation of this type: whether the state should be required to give compelling justifications for its markedly different treatment of school children. The question is both legitimate and important, and to answer it a court need not venture beyond the conventional bounds of the judicial function.