4-2000

Setting a New Standard for Public Education: Revision 6 Increases the Duty of the State to Make ‘Adequate Provision’ for Florida Schools

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SETTING A NEW STANDARD FOR PUBLIC EDUCATION:
REVISION 6 INCREASES THE DUTY OF THE STATE TO MAKE
"ADEQUATE PROVISION" FOR FLORIDA SCHOOLS

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Revision 6: Article IX, § 1, Public Education of Children

Summary: Declares the education of children to be a fundamental value of the people of Florida; establishes adequate provision for education as a paramount duty of the state; expands constitutional mandate requiring the state to make adequate provision for a uniform system of free public schools by also requiring the state to make adequate provision for an efficient, safe, secure, and high quality system.

Full text of the amendment:

ARTICLE IX
EDUCATION

SECTION 1. System of Public education.—The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.¹

I. Introduction

The importance of education in our society is axiomatic. Thomas Jefferson once noted, "If a nation expects to be ignorant and free . . . it expects what never was and never will be."² From the earliest days of the


². Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 409 (Fla. 1996) (Overton, J., concurring) (quoting Letter from Thomas Jefferson to Colonel Charles Yancy (Jan. 6, 1816)). Another apposite quote comes from James Madison, who wrote:

Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power that knowledge gives. . . . Learned institutions ought to be favorite objects with every free people. They throw that light over the public mind which is the best security against crafty and dangerous encroachments on the public liberty.
public education has been considered part of the basic contract between government and citizens. Among the nine revisions proposed to Florida voters by the Constitution Revision Commission in 1998, Revision 6 fundamentally enhanced Florida's responsibility for public education. Revision 6 amended Article IX, Section 1, of the Florida Constitution, which sets forth the State's duty to provide for public education. Entitled "PUBLIC EDUCATION OF CHILDREN," Revision 6 makes a declaration of the relative importance of education to the people of Florida, and describes as "paramount" the duty of the state to adequately provide for education. Revision 6 goes on to detail and raise the constitutional standard for what constitutes "adequate provision" for public education, and obliges the state to deliver a high quality education to its children.

This Article will attempt to place Florida's recent education amendment into context, briefly examining both the development of education finance litigation in Florida and the recent waves of education finance litigation nationwide. By successfully revising its constitutional language, Florida has uniquely modified the ongoing discussion about the adequacy of state support for education. By providing specific standards for adequacy, the Constitution Revision Commission has invited greater court supervision of the Legislature's role in education funding and has guaranteed that future litigation will determine whether the state currently meets its duty to make "adequate provision" for public education. Ironically, both proponents and opponents argued that the change will provide a standard for litigation. The Constitution Revision Commission's clear goal was to increase the state's constitutional duty and raise the constitutional standard for adequate education, and in fact to make the standard high quality. It remains to be seen how the challenge of providing a sound basic education for Florida's children will be met.

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Id. (quoting James Madison).


4. Revision 6 was approved by 71% of Florida voters in the 1998 general election. See, e.g., Jeff Kunerth, Revision Defeat Sparks Recount, ORLANDO SENTINEL, Nov. 5, 1998, at D1. Only the environmental proposal (Revision 5) and the local gun-control option proposal (Revision 12) received a greater percentage of the vote. See Florida Constitution Revision Commission (visited Jan. 26, 2000) <http://law.fsu.edu/crc> (giving 1998 election results) [hereinafter CRC].

5. CRC JOURNAL, supra note 1, at 251.

6. Id.

7. See infra text accompanying notes 23-55 (discussing waves of education finance litigation in other states).

8. See infra text accompanying notes 258-66 (discussing the first education finance lawsuit following passage of Revision 6).
II. EDUCATION IN CRISIS

Among principal national concerns in the waning years of the twentieth century, Americans have increasingly focused on the quality of their education systems. Numerous articles have raised concerns about high school graduates unable to read their diplomas, or the prospect of American students increasingly falling behind their contemporaries in other countries. Public officials, whether national, state or local, have responded to these concerns, pledging new resources and promising new programs intended to improve public education. Inevitably, while debate

9. Such concerns were heightened in 1983. See NATIONAL COMMISSION ON EXCELLENCE IN EDUC., A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM (1983) (arguing that the nation’s mediocre education system posed a long-term risk to the national interest). See generally JONATHAN KOZOL, SAVAGE INEQUALITIES: CHILDREN IN AMERICA’S SCHOOLS (1991) (detailing the disparities in opportunities provided by wealthy and poor schools).

10. In Florida, for example, graduation rates declined from 78.7% in 1992-93 to 73.2% in 1996-97. See 1998 FLORIDA STATISTICAL ABSTRACT 131 (32d ed. 1998).

The Third International Mathematics and Science Study (TIMSS) evaluated the mathematics and science performance of 4th, 8th and 12th graders from 41 countries. See NATIONAL CTR. FOR EDUC. STATISTICS, HIGHLIGHTS FROM TIMSS: OVERVIEW AND KEY FINDINGS ACROSS GRADE LEVELS 11 (NCES 1999-081, 1999). This testing showed that American 4th graders scored above average in both science and mathematics, measured against their peers in other countries, but that they slipped below average in math by 8th grade, and remained below average in both subjects at 12th grade. See id. at 11-12.

11. Federal politicians have veered between proposing the abolition of the Department of Education as wasteful, the reduction of “burdensome” federal mandates, and the promise of additional federal funding to place 100,000 teachers in schools and to improve facilities. See, e.g., Marianne Means, Parties Argue Over 'Solutions' While Schools Falter, SUN-SENTINEL, Apr. 23, 1998, at 21A; Paul Barton, Officials Warm to Education Efforts; Clinton’s Proposal Draws Some Caution, CINCINNATIENQUIRER, Mar. 14, 1999, at A09; James Sterngold, Bush Would Deny Money to Schools Judged as Failing, N.Y. TIMES, Sept. 3, 1999, at A14; William Booth, Bush Proposes Giving School Funds to Parents; Opponents of Vouchers Criticize Idea, WASH. POST, Sept. 3, 1999, at A01. Over the past twenty-five years, public schools have received an increasing amount of federal funds (federal funds averaged some 6.6% of funds spent nationally on public elementary and secondary schools, and some 7.4% of funds spent in Florida in 1995-96). See NATIONAL CTR. FOR EDUC. STAT., 1998 DIG. OF EDUC. STAT. 170 (NCES 1999-036, 1999) [hereinafter 1998 DIG. OF EDUC. STAT.]. With that increase in federal funding, there has been a parallel expansion in federal mandates and rules applicable to local schools. See, e.g., Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. § 400; see also Education at a Crossroads: What Works and What’s Wasted in Education Today Before Subcomm. on Oversight and Investigations of the House Comm. on Educ. and the Workforce, 105th Cong., 2d Sess. 11-21 (1998) [hereinafter Educ. at a Crossroads] (providing a list of federal education-related programs and mandates). Describing the burden of federal mandates, then Florida Education Commissioner Brogan stated that, while 374 people in the state Department of Education administer $8 billion in state funds, 297 employees are required to oversee $1 billion in federal funds, six times as many administrative employees per dollar received. See Hearings on the “Dollars to the Classroom Act,” H.R. 3248 Before the House Comm. on Educ. and the Workforce, 105th Cong., 2d Sess. (1998) (statement of Frank Brogan, Florida Educ. Commissioner); Educ. at a Crossroads, supra at 16.
continues around issues of standards and substantive programs, much of the argument—and litigation—revolves around education finance. In Florida, high population growth has made the provision of a sound, basic education ever more difficult and expensive as districts struggle to fit more children into already crowded schools. Florida has larger classes than most other states in the nation. What is more, these larger classes are in


On the parental level, there is a growing desire for school choice, as demonstrated by the success of the Cleveland and Wisconsin voucher programs, as well as private school scholarships in places like New York. For example, in 1995, some 69% of those polled by Gallup favored allowing open school choice among all public schools in a community, and by 1997, some 44% in a similar Gallup poll favored allowing parents to choose to send their children to private schools even at public expense. See 1998 DIG. OF EDUC. STAT., supra note 11, at 30. Likewise, a steadily increasing number of parents are turning to private education even without vouchers, or are choosing to educate their children at home. In Florida, in 1997-98, over ten percent of K-12 students, or more than 270,000 students, were educated in private schools. See 1998 FLORIDA STATISTICAL ABSTRACT, supra note 10, at 118. In addition, nearly 26,000 Florida students from over 17,000 families, were home-schooled in 1996-97. See id. at 117.


14. Between 1989 and 1995, enrollment at Florida public schools expanded by some 21.7%, and enrollment is projected to continue to expand by some 8.9% between 1995 and 2007. See NATIONAL CTR. FOR EDUC. STATISTICS, PROJECTIONS OF EDUCATION STATISTICS TO 2007, at 106 (Debra E. Gerald & William J. Hussar, eds., NCES 97-382, 1997). While the burden on elementary schools is projected to taper off somewhat between 1995 and 2007, high school enrollment in Florida will continue to expand drastically, with a projected increase of some 27.8% between 1995 and 2007. See id. at 112.

15. See 1998 DIG. OF EDUC. STAT., supra note 11, at 79. In 1993-94, average class sizes in Florida were 26 for elementary schools and 26.6 for secondary schools; nationwide averages were
schools almost twice the size of the nationwide average.\textsuperscript{16} Though Florida schools may warehouse increasing numbers of students, education results as measured by performance on standardized tests continue to decline, consistently placing Florida students in the bottom quarter among the fifty states.\textsuperscript{17} The result is children who do not graduate, or who graduate unprepared to participate productively in the modern economy or in civil society.

The role of education-related litigation has likewise expanded. The courts have long been deeply involved with education in America.\textsuperscript{18} Whether the question was who may go to what school,\textsuperscript{19} what may be

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\textsuperscript{16}See id. Florida ranks in the bottom five states for both elementary and secondary schools based on class size. See id.

\textsuperscript{17}See id. at 119-20. In 1996-97, the average American elementary school had 478 students, while the average Florida elementary school had 783 students, the highest average in the nation. See id. at 119. Likewise, for secondary schools, while the U.S. average was 777 students in 1996-97, Florida averaged 1,612 students in each secondary school, again the highest in the nation. See id. at 120. Because they are co-terminus with counties, Florida school districts are also larger than most others in the country. Six of the country's largest school districts based on enrollment are in Florida. See id. at 116. The significance of these super-districts is that, while 50% of public school students are enrolled in only 5% of the nation's school districts, it is these large districts that face disproportionate problems of dropout rates and low achievement. Meanwhile, as administrative bureaucracies grow, governance of these districts may become remote from and less accountable for operations of individual schools. See James W. Guthrie, \textit{Reinventing Education Finance: Alternatives for Allocating Resources to Individual Schools}, in \textbf{NATIONAL CTR. FOR EDUC. STATISTICS, SELECTED PAPERS IN SCHOOLFINANCE} 1996, at 94 (William J. Fowler, ed., NCES 98-217, 1998).

\textsuperscript{18}See 1998 \textit{DIG. OF EDUC. STAT.}, supra note 11, at 131, 138-39, 143 (showing that Florida 4th and 8th graders perform in the bottom quarter in reading, mathematics and science as measured against other students nationwide). Florida high schoolers also perform lower than the U.S. average on both the verbal and mathematics portion of the Scholastic Assessment Test (S.A.T.). See id. at 148.


Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
taught in school, courts have been called upon to resolve these issues. This involvement of the courts would seem to be inevitable, for as De Tocqueville aptly wrote, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." Such is also the case with the issue of education finance, even though these cases raise complex political and educational issues that make them difficult for courts alone to resolve.

III. EDUCATION FINANCE DISPUTES IN OTHER STATES

A. Waves of Education Finance Litigation

Over the past twenty-five years, commentators have noted three "waves" of education finance-related litigation in the United States. The first wave was based on the Equal Protection guarantee of the Fourteenth Amendment to the U.S. Constitution. This wave ended with the U.S. Supreme Court's 1974 decision in San Antonio Independent School District v. Rodriguez, that education is not a fundamental right under the U.S. Constitution.

Id. at 493. Brown and its progeny of desegregation suits may well be the most visible example of court involvement in schooling. Compare id. with Wisconsin v. Yoder, 406 U.S. 205, 233 (1973) (affirming right of Amish parents to direct the education of their children over state attempts to require education beyond the eighth grade).


22. IALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA ch. XVI, at 280 (Everyman's Library, 1994).


25. See id. at 35. The Court noted that "[e]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution." Id. (applying rational basis review). Plaintiffs had been initially successful in other Equal Protection-based suits prior to Rodriguez. See, e.g., Serrano v. Priest, 487 P.2d 1241, 1244 (Cal. 1971) (Serrano I). In Serrano I, the California
After the failure of the first "wave," reformers turned to state constitutions. The second wave of equity litigation was founded on both state equal protection and, to a somewhat lesser extent, the education provisions of state constitutions. Much like the prior federal equal protection wave, this litigation wave focused on educational equity or lack of educational equality, namely the disparity of both resources and quality.

Supreme Court accepted plaintiffs' allegations that monetary inequalities in California's school finance system violated both the state and federal equal protection guarantees by making education "a function of the wealth of [(the child's)] parents and neighbors." Id. Following Serrano I, similar suits were filed in nearly two-thirds of the states. See Betsy Levin, Current Trends in School Finance Reform Litigation: A Commentary, 1977 DUKE L.J. 1099, 1101 (1978).

Subsequent litigation in California upheld the declaration that the public school finance system violated the state equal protection clause by discriminating against the poor, but granted only declaratory relief. See Serrano v. Priest, 557 P.2d 929, 940 (Cal. 1976), cert. denied, 432 U.S. 907 (1977) (Serrano II) (wherein the court stated that its declaration should not be "construed to require the adoption of any particular system of school finance.").

Even after Rodriguez, several scholars see some evidence that there does exist some federal constitutional right to a basic education. This is based, in part, on Rodriguez dicta that "some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise" of federal rights. 411 U.S. at 36; see also Julius Chambers, Adequate Education for All: A Right, an Achievable Goal, 22 HARV. C.R.-C.L. L. REV. 52, 67-72 (1987) (exploring theories supporting federal right to education); Erica B. Grubb, Breaking the Language Barrier: The Right to a Bilingual Education, 9 HARV. C.R.-C.L. L. REV. 52, 87-92 (1974) (focusing on rights of non-English speaking children); Lynch, supra note 11, at 970-86 (noting that state efforts to improve education have been ineffective, and appealing for a federally recognized and uniform fundamental right to an education); Gershom M. Ratner, A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills, 63 TEX. L. REV. 777, 823-28 (1985).

26. See William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 HARV. L. REV. 489, 495-502 (1977) (applauding the expanding reliance upon state constitutional rights and state constitutional jurisprudence which offers greater rights than those afforded under the Federal Constitution). In an important passage in this article, Justice Brennan states:

State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.


27. See Peter Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 VAND. L. REV. 101, 128-32 (1995); William E. Thro, The Role of Language of the State Education Clauses in School Finance Litigation, 79 EDUC. L. REP. 19, 20-21 (1993) [hereinafter Role of Language]. William Thro notes that the state education clause was the basis for only two successful pre-1989 education finance suits. See id. at 20-21 (These suits were Robinson I, in New Jersey, and Seattle School District No. 1, in Washington.).
of education between wealthier and poorer school districts which resulted from an over-reliance on local property taxes to fund schools.\textsuperscript{25} From the beginning of this wave in about 1973,\textsuperscript{29} through 1989, education finance lawsuits were brought in at least forty-one states.

By 1989, courts in seven states had found their public school financing systems unconstitutional for equity reasons,\textsuperscript{30} while litigation had been unsuccessful in at least fifteen states.\textsuperscript{31} The result of the second equity wave was a patchwork of inconsistent state court decisions, continuing legal uncertainty as to the sufficiency of many education finance systems, and, according to some commentators, a heavy price paid both in "the use of judicial as well as political resources."\textsuperscript{32}


The "third wave"\(^{33}\) of education finance litigation began in 1989 with two decisions that also dealt with equity issues. In *Rose v. Council for Better Education, Inc.*,\(^{34}\) the Kentucky Supreme Court accepted plaintiffs’ arguments that the Kentucky school finance system violated the equal protection guarantee of the Kentucky constitution\(^{35}\) and the education provision of the state constitution.\(^{36}\) The court relied exclusively on the state constitution in affirming the lower court’s decision for plaintiffs.\(^{37}\) Exploring a litany of uncontroverted inadequacies in several districts and the demonstrable poor results of Kentucky schools,\(^{38}\) the *Rose* court declared the entire system of financing public education to be unconstitutional.\(^{39}\) The Kentucky legislature promptly responded with new legislation that refinanced the public school system,\(^{40}\) increasing revenues by over a billion dollars.\(^{41}\) Most importantly, the Kentucky court set forth several criteria explaining what would constitute an adequate education.\(^{42}\) These adequacy criteria, which have had great influence on other courts considering their state constitution’s education requirements, are as follows:

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34. 790 S.W.2d 186 (Ky. 1989).

35. See KY. CONST. §§ 1 ("[a]ll men are, by nature, free and equal") and 3 ("[a]ll men, when they form a social compact, are equal").

36. See KY. CONST. § 183 (requiring state to “provide for an efficient system of common schools”).

37. See *Rose*, 790 S.W.2d at 215.

38. See *id.* at 197; Stark, supra note 28, at 644-47 (detailing many of the factual inadequacies and disparities among Kentucky schools).

39. See *Rose*, 790 S.W.2d at 215. The Kentucky court emphasized the significance of its decision:

Lest there be any doubt, the results of our decision is that Kentucky’s entire system of common schools is unconstitutional. There is no allegation that only part of the common school system is invalid, and we find no such circumstance.

This decision applies to the entire sweep of the system—all its parts and parcels.

40. See The Kentucky Education Reform Act, 1990 Ky. Acts 476 (codified at KY. REV. STAT. ANN. §§ 156.005-990 (Baldwin’s West 1998)).


42. See *Rose*, 790 S.W.2d at 212-13.
An efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.43

43. Id. at 212; see also Pauley v. Kelley, 255 S.E.2d 859, 877 (W.Va. 1979) (also giving very specific criteria for adequacy under the state constitution). West Virginia’s influential criteria for a “thorough and efficient” education system are as follows:

It develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically.

Legally recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work—to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interest in all creative arts, such as music, theater, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.

Implicit are supportive services: (1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency.

Pauley, 255 S.E.2d at 876 (citing Robinson II). The West Virginia court also found a fundamental right to education under that state’s constitution. See id. at 879 (applying strict scrutiny to its review of the education finance system).

Both the Rose and Pauley criteria have often been cited by other states in considering their own constitutional provisions. See, e.g., Ex Parte James, 713 So. 2d 869, 879 (Ala. 1997); Opinion of the Justices, 624 So. 2d 107, 155 (Ala. 1993); McDuffy v. Secretary of the Exec. Office of Educ., 615 N.E.2d 516, 554-55 (Mass. 1993); Claremont Sch. Dist. v. Governor, 703 A.2d 1353, 1358-59
The Kentucky reforms led initially to visible improvement in both the overall equity of Kentucky's public schools, and in the adequacy of the education they provide.\footnote{44} The second new adequacy case was a Montana decision, \textit{Helena Elementary School District No. 1 v. State}.\footnote{45} \textit{Helena} combined equity with adequacy issues, but concluded by finding that the state failed to “adequately fund” the state school system,\footnote{46} noting that this in turn “failed to provide a system of quality public education granting to each student the equality of educational opportunity guaranteed.” Both \textit{Rose} and \textit{Helena} shared some aspects of previous equity cases, but introduced a novel exploration of the “adequacy” or overall sufficiency of an entire system of education. These two successes led reformers to hope that adequacy arguments might offer a winning strategy in education finance litigation.\footnote{48} The idea of focusing on adequacy as requiring some basic level of educational quality was also attractive to those who realized that equity arguments often failed in court or in the public forum by pitting poorer districts against richer districts, raising poor schools only by handicapping those schools that are succeeding.\footnote{49} The exclusive reliance upon an


\footnote{44. See \textit{Quality Counts '98}, \textit{EDUC. WEEK}, Jan. 8, 1998, at 161 (giving Kentucky a “B” in funding adequacy, and a “B+” in the equity of its education funding). Kentucky began its reforms from an extremely low level relative to other states, ranking last or near last in adult literacy, high school completion, and K-12 per-pupil spending. \textit{See Quality Counts '97}, \textit{EDUC. WEEK}, Jan. 22, 1997, at 114. Kentucky's struggle is not over, however, and recent measurements indicate some decline in both its levels of equity and adequacy, prompting renewed modifications of Kentucky's Education Reform Act. \textit{See Quality Counts '99}, \textit{EDUC. WEEK}, Jan. 11, 1999, at 147.}

\footnote{45. 769 P.2d 684 (Mont. 1989).}

\footnote{46. \textit{Id.} at 690.}

\footnote{47. \textit{Id.} Some scholars regard \textit{Helena} as the proper beginning of the “third wave” of adequacy litigation, while others see in \textit{Helena} a continuation of second wave equity cases. \textit{Compare} William E. Thro, \textit{The Third Wave: The Implications of the Montana, Kentucky, and Texas Decisions for the Future of Public School Finance Reform Litigation}, 19 J.L. & EDUC. 219, 238-39 (1990) and Thro, \textit{Judicial Analysis} supra note 33, at 603 (seeing the first emergence of third wave adequacy cases) \textit{with} Enrich, \textit{supra} note 27, at 138 n. 192 (finding an equity claim as the basis for \textit{Helena}). \textit{But see} Heise, \textit{supra} note 29, at 1163 (finding a basis for both theories in \textit{Helena}'s combination of equity and adequacy terminology).}


\footnote{49. \textit{See} Enrich, \textit{supra} note 27, at 166-73 (contrasting the appeal of adequacy’s argument for basic minimal education levels with the traditional equality argument that “immediately suggests a zero-sum game in which the lot of the worse off can only be improved at the expense of the better
educational clause was attractive because these provisions, unlike equal protection, may have fewer ramifications and unforeseen effects on other areas of the law. Furthermore, a focus on adequacy preserved the flexibility of local districts to go beyond minimal requirements. As with the equity wave, however, results of third wave adequacy litigation are mixed. Since 1989, courts in twelve states have found their education systems unconstitutional based in whole or in part on adequacy issues. In

off"; Heise, supra note 29, at 1174-75 (noting adequacy's appeal to our ideas of "fairness and opportunity" and useful relation to an "emerging educational standards movement"); cf. Leandro, 488 S.E.2d at 259 (N.C. 1997) (distinguishing between a right to equal educational opportunities and the adequacy right to a "sound basic education").

50. See Judicial Analysis, supra note 33, at 603-04.

51. See Enrich, supra note 27, at 170 (noting that "adequacy [need not] constrain the prerogative of a local district to dedicate additional resources to its schools or to develop educational programs that distinguish it from its neighbors").


Equity issues remain important even in adequacy litigation, and indeed a system, to be adequate, should also be equitable. See Robert M. Jensen, Advancing Education Through Education Clauses of State Constitutions, BYU Educ. & L.J. 1, 27-34 (1997) (describing these "hybrid" claims that combine adequacy with equity). For example, in the successful 1993 Tennessee case, the court looked more to state equal protection than to the education clause of the state constitution when it invalidated the state's education finance system. See Tennessee Small School Systems, 851 S.W.2d at 152-57. Although the education clause was held to provide an "enforceable standard," the court
another twelve states, courts have upheld their education systems, or have found the issue non-justiciable. In a further three states, litigation has been allowed to proceed, but there has been no final resolution of the case.

B. Education and State Constitutions

Every state has some education provision in its state constitution. did not articulate or define this standard, relying instead on traditional equity arguments of funding disparities between richer and poorer districts in concluding that the education system was inadequate. See id. at 151-52; see also Enrich, supra note 27, at 139-40 (discussing mixture of equity and adequacy arguments in recent cases, and noting that equity issues often predominate). The same mixture of equity and adequacy arguments is also present in recent Texas, Arizona and New Jersey litigation. See Edgewood I, 777 S.W.2d at 394-97; Hull, 950 P.2d at 637; Abbott IV, 693 A.2d at 456; see also Stark, supra note 28, at 641-43.


55. See Campaign for Fiscal Equity, Inc. v. State, 655 N.E.2d 661 (N.Y. 1995); Leandro v. State, 488 S.E.2d 249 (N.C. 1997); Abbeville County Sch. Dist. v. State, 515 S.E.2d 535 (S.C. 1999). Each of these cases overruled lower court decisions that adequacy issues under the respective state education provision were non-justiciable, and allowed litigation to proceed.

56. See ALA. CONST art. XIV, § 256 ("a liberal system of public schools"); ALASKA CONST. art. VII, § 1 ("a system of public schools"); ARIZ. CONST. art. XI, § 1 ("a general and uniform public school system"); ARK. CONST. art. XIV, § 1 ("a general, suitable and efficient system of free public schools"); CAL. CONST. art. IX, §§ 1 ("encourage [education] by all suitable means") & 5 ("a system of common schools"); COLO. CONST. art. IX, § 2 ("a thorough and uniform system of free public schools"); CONN. CONST. art. VIII, § 1 ("free public elementary and secondary schools"); DEL. CONST. art. X, § 1 ("a general and efficient system of free public schools"); FLA. CONST. art. IX, § 1 ("Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education"); GA. CONST. art. VIII, § 1 ("provision of an adequate public education . . . shall be a primary obligation of the State"); HAW. CONST. art. X, § 1 ("a statewide system of public schools"); IDAHO CONST. art. IX, § 1 ("a general, uniform and thorough system of public, free common
Though these provisions differ widely, depending on the history of the provision and its intent and scope,\(^7\) the result is to make education a state legislative responsibility.\(^8\) Considering the wording of the various

\(^7\) For more on state constitutional history with regard to education, see, e.g., Kern Alexander & Richard G. Salmon, Public School Finance 2-11 (1995); Adolphe E. Meyer, An Education History of the American People (1957); Sparkman, supra note 3, at 570-78. See also Coalition for Adequacy, 680 So. 2d at 408-09 (Overton, J., concurring).

\(^8\) Cf. Brown, 347 U.S. at 493 (“Education is perhaps the most important function of state and local governments”). See generally Allen W. Hubsch, The Emerging Right to Education Under
education clauses of state constitutions, scholars have divided them into four general categories based upon the level of the duty imposed upon the respective state legislature.\(^{59}\) Category I provisions merely mandate some system of free public schools with no requirement as to support or quality.\(^{60}\) Category II provisions impose some minimal standard of quality.\(^{61}\) Category III provisions strengthen this standard by adding some specific mandate.\(^{62}\) Category IV provisions make education a very important duty of the state, and impose the highest mandate of support.\(^{63}\)

As ranked by these scholars,\(^{64}\) eighteen states can be categorized as Category I, merely mandating that the state provide some system of free public schools.\(^{65}\) An example of a Category I state is Oklahoma, whose constitution requires that “[t]he legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.”\(^{66}\) Such language makes no mention of any standard of quality for the schools, and, so long as the system of free schools is established, the state constitutional mandate would seem to be met.

Category II states include twenty-two states with some minimum qualitative standard of education.\(^{67}\) Category II constitutions include


59. See, e.g., Grubb, supra note 25, at 66-70; McUsic, supra note 48, at 333-39; Ratner, supra note 25 at, 814-16 n. 143-146; Role of Language, supra note 27, at 19. See also Barbara J. Staros, School Finance Litigation in Florida: A Historical Analysis, 23 STETSON L. REV. 497, 498-99 (1994) (applying this standard to Florida’s present and past constitutions).

60. See supra note 59 (explaining the categorization system).

61. See id.

62. See id.

63. See id.

64. William Thro’s synthesis of Grubb and Ratner’s categorizations is probably the most workable. See The Role of Language, supra note 27, at 23-25.

65. See ALA. CONST. art. XIV, § 256; ALASKA CONST. art. VII, § 1; ARIZ. CONST. art. XI, § 1; CONN. CONST. art. VIII, § 1; HAW. CONST. art. X, § 1; KAN. CONST. art. VI, § 1; LA. CONST. art. VIII, § 1; MASS. CONST. pt. 2, ch. 5, § 2; MICH. CONST. art. VIII, § 2; MO. CONST. art. IX, § 1(a); NEB. CONST. art. VII, § 1; N.H. CONST. pt. 2, art. LXXXIII; N.Y. CONST. art. XI, § 1; OKLA. CONST. art. XIII, § 1; S.C. CONST. art. XI, § 3; TENN. CONST. art. XI, § 12; VT. CONST. ch. 2, § 68. Mississippi, omitted from Thro’s list, is placed in Category I by other scholars. See MISS. CONST. art. VIII, § 201; cf. The Role of Language, supra note 27, at 23-25; Heise, supra note 29, at 1159 n.64; McUsic, supra note 48, at 311 n.5.

66. OKLA. CONST. art. XIII, § 1.

67. See ARK. CONST. art. XIV, § 1; COLO. CONST. art. IX, § 2; DEL. CONST. art. X, § 1; FLA. CONST. art. IX, § 1; IDAHO CONST. art. IX, § 1; KY. CONST. § 183; MD. CONST. art. VIII, § 1; MINSK. CONST. art. XIII, § 1; MONT. CONST. art. X, § 1; N.J. CONST. art. VIII, § 4; N.M. CONST. art. XXII, § 1; N.C. CONST. art. IX, § 2; N.D. CONST. art. VIII, § 1; OHIO CONST. art. VI, § 3; OR. CONST. art. VIII, § 3; PA. CONST. art. III, § 14; TEX. CONST. art. VII, § 1; UTAH CONST. art. X, § 1; VA. CONST. art. VIII, § 1; W. V. CONST. art. XII, § 1; WIS. CONST. art. X, § 3; WYO. CONST. art. VII, § 1.
Pennsylvania’s requirement that the legislature provide for “maintenance and support of a thorough and efficient system of public education.” This “thorough and/or efficient” language is typical of Category II education clauses. Thus, Maryland, Minnesota, New Jersey, Ohio, Pennsylvania, West Virginia and Wyoming have “thorough and efficient” requirements; Colorado, Idaho and Montana require “thorough” systems; and Arkansas, Delaware, Illinois, Kentucky and Texas require “efficient systems.” Another variation of Category II clauses is the “uniformity” requirement present in Florida, New Mexico, North Carolina, and Utah. An example of the remaining versions is Virginia’s somewhat exceptional provision requiring “an educational program of high quality.”

The six Category III states have education clauses which go beyond this minimal standard by including some stronger or more specific mandate (including “all means” or a purpose preamble). Of these Category III states, California combines a purpose preamble with a strong mandate, providing: “A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.” Likewise, Rhode Island’s constitution requires that the legislature “promote public schools ... and ... adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education.”

Finally, there are four Category IV states, specifically making education an important, if not the most important, duty of the state. Thus, Washington’s constitution closely resembles the language of Florida’s 1868 constitution, stating: “It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste,

68. PA. CONST. art. III, § 14.
70. VA. CONST. art. VIII, § 1.
71. See CAL. CONST. art. IX, § 1; IND. CONST. art. VIII, § 1; IOWA CONST. art. IX, § 2; NEV. CONST. art. XI, § 2; R.I. CONST. art. XII, § 1; S.D. CONST. art. VIII, § 1.
72. CAL. CONST. art. IX, § 1. This clause is supplemented by a strong funding clause. See CAL. CONST. art. XVI, § 8 (“From all state revenues there shall first be set apart the monies to be applied by the state for support of the public school system and public institutions of higher education.”).
73. R.I. CONST. art. XII, § 1.
74. See GA. CONST. art. VIII, § 1, ¶ 1 & ¶ 8, ¶ 1; ILL. CONST. art. X, § 1; ME. CONST. art. VIII, pt. 1, § 1; and WASH. CONST. art. IX, § 1.
75. See infra notes 94-96, and accompanying text (discussing the 1868 Florida Constitution).
or sex." Washington alone makes education "the paramount duty," though Georgia, Illinois and Michigan make education a "primary duty." Illinois states in its constitution that "[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities." Georgia's Category IV education clause states "[t]he provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia . . . [the expense of] which shall be provided for by taxation."  

In Florida, this categorization is significant, particularly because the Supreme Court took notice of it in Coalition for Adequacy, noting that Florida went from a Category IV state under its 1868 Constitution to a Category II state under its current Constitution (prior to the 1998 revision). As shall be seen, the Constitution Revision Commission also stressed the significance of these categories by announcing an intention to restore Florida's constitutional standard to the Category IV "paramount duty" used in the 1868 Constitution. As a practical matter, however, some of the effective distinction between categories has blurred to differing results in recent education finance cases. To an extent, broad

76. WASH. CONST. art. IX, § 1. Following this preamble, Section 2 mandates that the legislature "provide for a general and uniform system of public schools." WASH. CONST. art. IX, § 2.

77. ILL. CONST. art. X, § 1.

78. GA. CONST. art. VIII, § 1, ¶ 1. This provision is supplemented by a further requirement that "[t]he General Assembly shall by taxation provide for an adequate education for the citizens of Georgia." GA. CONST. art. VIII, § 8, ¶ 1.

79. See 680 So. 2d. at 405 n.7 (citing Staros, supra note 59, at 498-99).

80. See id.; see also infra text accompanying notes 94-96.

81. See infra notes 161-63 and accompanying text (intention of CRC to increase Florida educational clause from Category II to higher Category IV standard); cf. infra notes 94-96 and accompanying text (discussing the Florida Constitution of 1868).

82. For example, in numerous states with "thorough and efficient" or "efficient" in their education clauses (usually considered Category II), courts have found standards sufficient to invalidate the state's education finance systems. See, e.g., DeRolph, 677 N.E.2d at 1 (finding strict and meaningful standards in the "thorough and efficient" language of Ohio's education clause); Abbott II, 575 A.2d at 408; Rose, 790 S.W.2d at 212-13; Pauley, 255 S.E.2d at 877. Likewise, in North Carolina, regarded as Category I, see To Render Them Safe, supra note 69, at 1661 n.106, courts have allowed litigation to proceed on adequacy grounds, reading significant qualitative standards into North Carolina's education provision. See Leandro, 488 S.E.2d at 254-55 (citing Rose and Pauley).

Meanwhile, in Illinois, a Category IV state, the court has consistently rejected attempts to define adequacy under its state constitution. See Lewis, 710 N.E.2d at 802-04; Committee for Educ. Rights, 672 N.E.2d at 1188-93 (rejecting other states' definitions of "efficient" and finding adequacy a nonjusticiable political question); cf. Danson, 399 A.2d at 365; Marrero by Tabales v. Commonwealth, 709 A.2d 956, 963-66 (Penn. Super. Ct. 1998) (Pennsylvania's "thorough and efficient" clause establishes only a "minimum" or "basic" education and is matter for legislature alone); Hornbeck, 458 A.2d at 776 ("thorough and efficient" clause commands only that legislature
provide students "with a basic public school education"). Likewise, Georgia, another Category IV state, left definition of "adequacy" to the legislative branch). See McDaniel, 285 S.E.2d at 165. Rhode Island, nominally considered Category III, has found no judicially manageable standards in its education provision, and the court declined to interfere in the legislature's sphere. See City of Pawtucket, 662 A.2d at 58-59.

83. See To Render Them Safe, supra note 69, at 1659 (pointing to the virtually identical education provisions in fifteen states). Thro, points out, however, that even when framers chose to borrow an education clause, their choice as to which clause should be borrowed may be significant. See id. at 1659 n.100.


86. See id.


88. In full, the amendment provided:
Both initiatives were rejected by voters in the 1996 election. Voters feared that the limits on property taxes would result in new sales and income taxes to pay for education improvements, as well as the risk of new litigation. The lack of change in other states’ constitutional provisions means there is thus no parallel for the work of Florida’s Constitution Revision Commission, which has so changed the landscape for education in Florida.

IV. EDUCATION AND THE FLORIDA CONSTITUTION

A. Constitutional Provisions Related to Education

Some provision for education has been a feature of every one of Florida’s six constitutions. The Constitutions of 1838, 1861 and 1865 contained similar education clauses. These provisions contained no

Quality education is essential to the survival of a free society and is a fundamental right of each individual. It is the paramount duty of the State to provide for the thorough and efficient education for all individuals between the ages of five and twenty-one years who are enrolled in the common school of the State. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.

See Neb. Op. Att’y Gen. 95095, at 626-27 (1995) (noting that the proposal would, if adopted, give Nebraska “the most stringent education clause in the United States”). Initiative 411, along with another initiative proposing to limit property taxes, were both sponsored by the State Education Association and the Nebraska Farm Bureau. The two initiatives were originally combined, but separated by the attorney general for violating that state’s single subject requirement. See Neb. Op. Att’y Gen. 96005, at 598 (1996).

89. See Stephen Buttry, School, Property-Tax Initiatives Fall in Face of Strong Opposition, OMAHA WORLD-HERALD, Nov. 6, 1996, at 8 (noting that the education amendment received only 22% of the vote).


91. See Fla. Const. of 1838, art. X, §§ 1, 2; Fla. Const. of 1861, art. X, §§ 1, 2; Fla. Const. of 1865, art. 10, §§ 1, 2; Fla. Const. of 1868, art. VIII, §§ 1, 2; Fla. Const. of 1885, art. XII, § 1; Fla. Const. art. IX, § 1; see also TALBOT D’ALEMBERTE, THE FLORIDA STATE CONSTITUTION: A REFERENCE GUIDE (1991); THOMAS E. COCHRAN, HISTORY OF PUBLIC-SCHOOL EDUCATION IN FLORIDA 15, 34-36, 79-84 (Florida Dept. of Educ., 1921) (providing historical analysis of education article of previous constitutions); see generally TARR, supra note 84, at 201-05 (discussing the use of prior constitutions in constitutional interpretation).

92. Article X of the 1838 Constitution provided:

Section 1. The proceeds of all lands that have been, or may hereafter be, granted by the United States for the use of schools and a seminary or seminaries of learning, shall be and remain a perpetual fund, the
constitutional requirement or standards, focusing rather on the proceeds of lands dedicated for education purposes. The Reconstruction Constitution of 1868, however, greatly expanded the education article from two to nine sections. This expanded article made a declaration, in Article VIII, Section 1, that it was the "paramount duty of the State to make ample provision for education." Article VIII, Section 2 first introduced the requirement for a "uniform system of common schools.

When in 1885, after Reconstruction, Florida again adopted a new constitution, the education article was modified once more. Although the requirement for a "uniform system of public free schools" was retained, the language making education "the paramount duty" was removed. In

interest of which, together with all moneys derived from any other source applicable to the same object, shall be inviolably appropriated to the use of schools and seminaries of learning, respectively, and to no other purpose.

Section 2. The general assembly shall take such measures as may be necessary to preserve from waste or damage all lands so granted and appropriated to the purposes of education.

FLA. CONST. of 1838, art. X, §§ 1-2. Article X, sections 1 and 2, of the 1861 Constitution and Article 10, Sections 1 and 2, of the 1865 Constitution are, as the Supreme Court noted in Coalition, "almost identical" to the 1838 provision. Coalition for Adequacy, 680 So. 2d at 405.

93. These lands, the sixteenth section in every township, were granted to Florida by Act of Congress on March 3, 1845, 5 Stat. 742, for school purposes. The lands also include other swamp and overflowed lands granted by Act of Congress of September 28, 1850, 9 Stat. 519. Article VIII, Section 4 of the 1868 Constitution provided that twenty-five per cent of the sales of other public lands also should be paid into the Common School Fund, which was also to include proceeds of escheated or forfeited lands, unspecified donations and appropriated. These provisions continued under the 1885 Constitution. See FLA. CONST. of 1885, art. XII, § 4; see also State ex rel. Town of Crescent City v. Holland, 10 So. 2d 577, 582-83 (Fla. 1942) (discussing the history of these lands and the meaning of "public lands").

94. See FLA. CONST. of 1868, art. VIII, §§ 1-9.
95. Id. § 1. In full, article VIII, section 1 provided: "It is the paramount duty of the State to make ample provision for the education of all the children residing within its borders, without distinction or preference."

96. Id. § 2. In full, article VIII, section 2 provided: "The legislature shall provide a uniform system of common schools and a university, and shall provide for the liberal maintenance of the same. Instruction in them shall be free." See generally D’ALEMBERTE, supra note 91, at 7 (1991); Staros, supra note 59, at 500-01.

97. FLA. CONST. of 1885, art. XII, § 1.
98. Id. Though the written record of the 1885 Constitution does not confirm this, the fact that the language from the article VIII, section 1 of the 1868 Constitution making education "paramount" and requiring education provision for all Florida children "without distinction or preference" were removed, and a section added to the 1885 Constitution explicitly requiring racial segregation even with "impartial provision" (article XII, section 12), may suggest that in their zeal to overturn the Reconstruction Constitution, drafters of the 1885 Constitution wished to prevent both mixed-race schooling and any real "equality" requirement for the supposedly "separate but
full, the 1885 section provided: "The Legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same." When the current Constitution was adopted in 1968, the "uniform system" requirement was included along with the requirement that "adequate provision be made by law" for its support.ُ

Education was once financed mainly through local ad valorem taxes, and this remains an important source of education funds. Since the establishment of the current Florida Education Finance Program (FEFP) in 1973,٠ education has been financed through both state and local funds. The stated purpose of the FEFP is to "guarantee to each student . . . the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any other student notwithstanding geographic differences and varying local economic factors."٠٠ Instead of basing state assistance on the number of teachers or classrooms, the FEFP adjusts funding based on the number of individual pupils, counted in terms of "full-time equivalents" (FTE's), with differential costs assigned to differing types of educational programs.٠١ By multiplying these weighted FTE's by a base student allocation set by the legislature, and by cost differentials based on different districts, the

99. FLA. CONST. of 1885, art. XII, § 1. Another significant change in the 1885 Constitution was the creation of an elected Superintendent of Public Instruction position. See id., art. XII, § 2. Another of the 1997-98 CRC's proposals, Revision 8, relating to Cabinet Reform, abolished the elected position of Education Commissioner (successor to the superintendent under the 1968 Constitution), along with the Cabinet's supervisory role as the State Board of Education. In its place after 2003, the Governor will appoint the members of the State Board of Education, which will itself appoint the Commissioner of Education. See FLA. CONST. art. IX, § 2 (1999).

100. FLA. CONST. of 1968 art. IX, § 1. This provision, prior to the 1998 revision, read in full: "Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require." Id.


102. FLA. STAT. § 236.012(1).

103. See 1999-2000 FUNDING FOR FLORIDA SCHOOL DISTRICTS, STATISTICAL REPORT, supra note 101, at 1.
legislature determines the base funding from state and local FEFP funds. In each year, the legislature sets the percentage to be financed by state and local funds. Local funding is composed of “required local effort” and discretionary ad valorem tax levies. In 1997-98, school districts in Florida received 50.58% of their funding from the state, 41.94% from local sources, and 7.48% from the federal government. This allocation is comparable to the overall national average. The Florida lottery contributes revenues to the Educational Enhancement Trust Fund, from which the legislature appropriated some $151,535,000 in 1999-2000 for public schools.

The first Constitution Revision Commission under the 1968 Constitution, met in 1977-78 and considered possible changes to the education provision of the Florida Constitution. One option involved an amendment of Article I, Section 2, and would have guaranteed every person “a right to equal educational opportunity.” Another proposal

104. See id.
105. See Fla. Stat. § 236.081(1)(b).
106. Fla. Stat. § 236.081(4) (required local effort); § 236.25(1) (discretionary tax levies). The discretionary tax levies may include levies of up to 2.0 mills for certain capital outlay and maintenance purposes, as well as up to 0.510 mills, with a supplemental 0.25 mills, for current operation purposes. See Fla. Stat. §§ 236.25(2), .25(5)(a) (by 2004, discretionary millage should only be used for facilities construction or repair; leasing of facilities, equipment or materials; or purchase or lease of school buses); 1999-2000 FUNDING FOR FLORIDA SCHOOL DISTRICTS, STATISTICAL REPORT, supra note 101, at 3-5.
107. See 1999-2000 FUNDING FOR FLORIDA SCHOOL DISTRICTS, STATISTICAL REPORT, supra note 101, at 2. In 1995-96, state funds made up about 48.6% of Florida education spending, with local funds accounting for 40.2%. See 1998 DIG. OF EDUC. STAT., at 170. The remaining 7.4% of education spending was from federal monies. See id. The State, in 1999-2000, appropriated some $5.6 billion mainly from General Revenue to finance the FEFP, and set about $3.87 billion in required local effort. See 1999-2000 FUNDING FOR FLORIDA SCHOOL DISTRICTS, STATISTICAL REPORT, supra note 101, at 2-3.
108. See 1998 DIG. OF EDUC. STAT., at 170. These Florida statistics compare with a U.S. average of 47.5% state, 43.2% local, and 6.6% federal funds for education. See id. The percentage of state funds used in education varies from highs of 73.9% (New Mexico), 68% (Washington); 66.8% (Michigan), 66.6% (Delaware), 66.1% (Alaska) and 63% (West Virginia); to lows of 7.0% (New Hampshire), 27.3% (Illinois), 29.7% (South Dakota) and 31.1% (Virginia). See id. Hawaii and D.C. have but one school district, and are omitted from comparison. See id.; see generally Penny L. Howell & Barbara B. Miller, Sources of Funding for Schools, 7 THE FUTURE OF CHILDREN 39-49 (Winter 1997) (reviewing education finance in the several states).
109. See 1999 Fla. Laws, ch. 99-226, § 1. These specific lottery funds come from a total of $784,697,504 in lottery monies appropriated to general education purposes in 1999-2000. See id. An additional $180 million in lottery monies went to school capital outlay programs and $103,765,000 went to pre-school projects. See id. Most of the rest of the lottery monies went to scholarship programs ($130 million), community colleges ($95 million) and universities ($104 million), and thus did not directly benefit K-12 public education. See id.
110. FLORIDA CONSTITUTION REVISION COMMISSION, FINAL SUMMARY OF ACTION TAKEN ON ALL COMMISSION PROPOSALS 1 (1978) (CRC proposal 26).
would have expanded Article IX, Section 1 to include the right “to an efficient and high quality education from the kindergarten to the secondary level.” Although these two proposals were withdrawn, the 1978 Constitution Revision Commission did offer a subsection (b) to Article IX, Section 1, which stated that the primary purpose of elementary and secondary education was “to develop the ability of each student to read, communicate and compute.” This proposal, along with every one of the 1978 Constitution Revision Commission’s other proposals, was rejected by Florida voters.

B. Litigation Related to Education Finance in Florida

Until recently, education-related litigation played a very minor role in defining the state’s responsibilities with regard to education finance. Early education litigation in Florida focused on the meaning and extent of the “uniform system” requirement in the Education Article. The first case to do so, State ex rel. Clark v. Henderson, examined the clause under the 1885 Constitution, and found that the “uniform system” requirement required public schools that were “established upon principles that are of uniform operation throughout the state and that such system be liberally maintained.” The Supreme Court noted in Henderson that “the purpose intended to be accomplished in establishing” the uniform system of free public schools was “to advance and maintain proper standards of enlightened citizenship.”

111. Id. at 39 (CRC proposal 78); see Staros, supra note 59, at 503-04 (summarizing the history of these two proposals).

112. FLORIDA CONSTITUTION REVISION COMMISSION, PROPOSED REVISION OF THE FLORIDA CONSTITUTION 20 (1978). This proposal included provision for vocational training and instructional assistance for special needs students. See id. Cabinet reform, another 1978 CRC proposal, included the amendment of article IX, section 2 to make the State Board of Education an appointed body, and a new article IX, section 7 to constitutionalize the State Board of Regents. See id; see also MANNING J. DAUER, PROPOSED 1978 FLORIDA CONSTITUTION REVISION AND PROPOSAL ON CASINO GAMBLING 24-25 (1978) (offering a brief analysis of the 1978 CRC proposals); Patricia A. Draper, A New Look for Public Education: The Proposed Revision of Florida’s Educational Governance System, 6 FLA. ST. U. L. REV. 851 (1978) (discussing the structural changes to the public education system); Robert F. Williams, Are State Constitutional Conventions Things of the Past? The Increasing Role of the Constitutional Commission in State Constitutional Change, 1 HOFSTRA L. & POL’Y SYMP. 1, 15-17 (1996).


114. 188 So. 351 (Fla. 1939).

115. Id. at 352.

116. Id. at 353. In the 1970s, a series of cases involving the levy of local discretionary millage came before the court which implicated the “uniform system” of public schools. In one of these, School Bd. of Escambia County v. State, 353 So. 2d 834, 838 (Fla. 1977), the Supreme Court of Florida expanded its definition of uniformity, holding that “by definition . . . a uniform system
Two more recent cases focus on the specific requirements of the current "uniform system" provision. In *St. Johns County v. Northeast Florida Builders,* the Florida Supreme Court examined a county ordinance which imposed an impact fee on building permits in order to pay for new school facilities. The ordinance excluded from the impact fee those households which did not have children. The Court found that an impact fee on building permits did not in itself violate the uniformity clause of Article IX, Section 1. However, the exemption for households without children was regarded by the Court as transforming the impact fee into a "user fee" which violated Article IX, Section 1's requirement that public schools be free. The Court rejected arguments that the scheme violated the uniform system requirement by introducing local variations in public school finance, declaring that uniformity requires only that every student have an equal chance to achieve the basic educational goals set by the legislature, not that the education must in fact be equal.

The Florida Constitution only requires that a system be provided that gives every student an equal chance to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, such as varying revenues because of higher or lower property values or difference in millage assessments, will always favor or disfavor some districts.

The court also found that the impact fee in question could not be collected until it was imposed within municipalities in the county to ensure that the funds spent would benefit those who were subjected to the fee. See id. at 637-39 (citing Contractors & Builders Ass'n v. City of Dunedin, 329 So. 2d 314 (Fla. 1976)).

General education goals set by the Florida Legislature are found in Section 229.591, Florida Statutes. These eight goals include:

(a) **Readiness to start school.**—Communities and schools collaborate in a statewide comprehensive school readiness program to prepare children and families for children's success in school.

(b) **Graduation rate and readiness for postsecondary education and employment.**—Students graduate and are prepared to enter the workforce and
Two years later the Court revisited the uniform system requirement in *Department of Education v. Glasser.*\(^\text{121}\) Glasser involved an attempt by a school board to increase their discretionary ad valorem taxes without postsecondary education.

\(c\) **Student performance.**—Students make annual learning gains sufficient to acquire the knowledge, skills, and competencies needed to master state standards; successfully compete at the highest levels nationally and internationally; and be prepared to make well-reasoned, thoughtful, and healthy lifelong decisions.

\(d\) **Learning environment.**—School boards provide a learning environment conducive to teaching and learning, in which education programs are based on student performance data, and which strive to eliminate achievement gaps by improving the learning of all students.

\(e\) **School safety and environment.**—Communities and schools provide an environment that is drug-free and protects students' health, safety, and civil rights.

\(f\) **Teachers and staff.**—The schools, district, all postsecondary institutions, and state work collaboratively to provide professional teachers and staff who possess the competencies and demonstrate the performance needed to maximize learning among all students.

\(g\) **Adult literacy.**—Adult Floridians are literate and have the knowledge and skills needed to compete in a global economy, prepare their children for success in school, and exercise the rights and responsibilities of citizenship.

\(h\) **Parental, family and community involvement.**—Communities, school boards, and schools provide opportunities for involving parents, families, guardians, and other community stakeholders as collaborative partners in achieving school improvement and education accountability.

1999 Fla. Laws ch. 99-398, § 9 (amending FLA. STAT. § 229.591(3) (1997)). Similar provisions are contained in the Education component of the State Comprehensive Plan. See FLA. STAT. § 187.201(1). Likewise, the Department of Education, in the Sunshine State Standards, has set specific standards for what students should know at PK-2nd grade, 3rd-5th grades, 6th-8th grades, and high school in subject areas including language arts; mathematics; science; social studies; the arts; health and physical education; and foreign languages. See FLA. STAT. § 229.57 (authorizing the State Board of Education to approve these standards); FLA. ADMIN. CODE R. 6A-1.09401 (adopting the Sunshine State Standards) & R. 6A-1.0941 (adopting minimum student performance standards). These standards are available at [http://www.fim.edu/doe/curric/prekl2frame2.htm](http://www.fim.edu/doe/curric/prekl2frame2.htm). Florida generally receives high marks for its academic standards and assessments compared with other states. See *Quality Counts '99*, EDUCATION WEEK, Jan. 11, 1999, at 114 (giving Florida an “A-” in its standards, assessments and accountability). The Florida Comprehensive Assessment Test, since 1998, has tracked performance of elementary, middle and high school students on these standards. See FLA. STAT. § 229.57(3)(c)(3).

121. 622 So. 2d 944 (Fla. 1993).
The Court found that the school board violated Article VII, Section 9(a), Florida Constitution, which requires legislative authorization for the imposition of new taxes. The Court also rejected arguments that its decision in Northeast Florida Builders allowed school boards to provide any level of support as long as legislatively adopted education goals were met. In support of the Florida Education Finance Program, the Court added:

The right to education is basic in a democracy. Without it, neither the student nor the state has a future. Our legislature annually implements a complicated formula to fund this basic right. We find that the legislation at issue here, which is part of the overall funding formula, is in harmony with the Florida Constitution.

The result of these two decisions, according to Justice Kogan, concurring specially in Glasser, is that:

Florida law now is clear that the uniformity clause will not be construed as tightly restrictive, but merely as establishing a larger framework in which a broad degree of variation is possible. ... [V]ariance from county to county is permissible so long as no district suffers a disadvantage in the basic educational opportunities available to its students, as compared to the basic educational opportunities available to students of other Florida districts.

The uniformity requirement of Article IX, Section 1, thus does not require public schools to deliver equal service to each student or to spend equally. Rather, because “uniform” has been defined as a “common plan or purpose,” the duty to each student is a substantially equal chance at an education.

122. See id. at 946-47. The legislature had set the maximum amount of discretionary millage that school districts could levy under the FEFP. See id. at 948 (discussing Fla. Stat. § 236.25 (1989)).
123. See id.
124. See id. at 947. The court stated that it was not required to explicitly define “an uniform system of free public schools,” but that this was for the legislature to do. Id.
125. Id. at 948-49 (citation omitted).
126. Id. at 950 (Kogan, J., concurring). Justice Kogan went on to state that differences among districts in the ability to offer “Latin or painting classes” would not create “lack of uniformity,” but the inability of a district to fund any language or mathematics classes would indeed amount to lack of uniformity. Id. at 951 (Kogan, J., concurring) (“The Legislature cannot allow students in one district to be deprived of basic educational opportunities while students in other districts do not suffer the same.”).
The Florida Education Finance Program, which provides for state education funds in addition to the funds raised by school boards through local ad valorem property taxes, has been a visible success at delivering uniform education funding to Florida’s sixty-seven school districts. Florida generally receives high marks for the equity of its education system. This may in part account for the relative paucity of litigation related to equity or “uniformity,” and for the absence of Florida from the so-called “second wave” of education litigation. A finding of constitutional uniformity does not necessarily mean that the system is good because, in fact, a uniformly poor system would be constitutional under this provision. However, the rise of “adequacy” litigation in other states prompted Florida education reformers to address this issue of the quality of education provided by the state through litigation.

In Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles, the Florida Supreme Court first addressed the issue of the overall adequacy of the public school system, upholding dismissal of a suit by students, parents, and school boards against the Governor and other state officials. The plaintiffs sought a declaratory judgment that a fundamental right to an adequate education existed under Article IX, Section which the state had violated by failing to provide sufficient resources to public education.

127. See supra notes 101-09 and accompanying text (describing the FEFP program).
128. See supra notes 107-08 and accompanying text (discussing Florida’s education spending and comparison to other states).
129. For example, “Education Week” recently gave Florida a “B” in equity based on 1994-95 education data, finding only a 7.6% relative per pupil spending inequity among Florida school districts. See Quality Counts ’99, EDUC. WEEK, Jan. 11, 1999, at 137. Only Hawaii (which has but one statewide school district), West Virginia, and Delaware score better than Florida in the overall equity of their public education systems. Id. at 120; see also Thomas B. Parrish & Christine S. Hikido, Inequalities in Public School District Revenues 101 (Nat’l Ctr. for Educ. Statistics, NCES 98-210, 1998) (ranking Florida with Nevada, West Virginia, Delaware, and North Carolina in the highest quartile among the states for all measures of educational equity based on relative purchasing power).
130. See supra notes 17-43 and accompanying text (discussing the waves of education finance litigation).
131. Cf. Opinion of the Justices, 624 So. 2d 107, 151 (Ala. 1993) (“It would, of course, be possible for the state to offer plaintiffs equal educational opportunity but still offer them virtually no opportunity at all.”).
133. See Coalition for Adequacy, 680 So. 2d at 402.
134. See id. The Supreme Court of Florida did find that declaratory action was proper, and that individual plaintiffs as citizens and taxpayers, and the school boards, had standing to sue even absent showing of some special injury. See id. at 402-03 (citing Chiles v. Children A, B, C, D, E & F, 589 So. 2d 260, 262 n.5 (Fla. 1991); Department of Revenue v. Kuhnlein, 646 So. 2d 717,
The three-judge plurality of the Court in *Coalition for Adequacy* found that "adequacy" had no "judicially discoverable and manageable standards," and decided that the issue of "adequacy" was a nonjusticiable political question which, under the separation of powers, properly belonged to the legislature. A majority of the Court also rejected the idea of a fundamental right to an education under the Florida Constitution. However, of critical importance is the conclusion of a majority of justices.


135. See id. at 408 (Grimes, Harding, and Wells, JJ., concurring). Justice Overton also concurred with the judgment of the Court. See id. at 408-10 (Overton, J., concurring). Justices Anstead and Shaw and Chief Justice Kogan dissented. See id. at 410-11 (Anstead, J., dissenting).

136. Id. at 407-08 (citing *Baker v. Carr*, 369 U.S. 186, 209-17 (1962)). The court noted that at least two of the six criteria established by the U.S. Supreme Court to determine the existence of a nonjusticiable political question were present with regard to education. See id. at 408.

The *Baker* Court linked the political question issue to the separation of powers. The *Baker* criteria include, the following:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

*Baker*, 369 U.S. at 217; *see also* *Nixon v. United States*, 506 U.S. 224, 236-37 (1993); *Powell v. McCormack*, 395 U.S. 486, 516-17 (1969). According to the Court in *Coalition for Adequacy*, the Florida Constitution commits the determination of adequacy to the legislature, and no "judicially discoverable and manageable standards" exist to determine adequacy. 680 So. 2d at 408. The plurality accepted appellees' arguments contrasting "adequacy," which has no such standards, with "uniformity," which "has manageable standards because by definition this word means a lack of substantial variation." Id.; *see supra* note 54 and accompanying text (courts in at least four states have taken similar positions and refused to adjudicate adequacy on political question grounds).

137. *Coalition for Adequacy*, 680 So. 2d at 402. Only Justice Overton, writing of the importance of educated citizens to a functioning democracy, recognized a fundamental right to an education. See id. at 410 (Overton, J., concurring). The dissenting justices contented themselves with recognizing the importance of education as a "fundamental value" of our society. *See id.* (Anstead, J., dissenting) (also noting that the requirement in the Constitution mandating "adequate provision" goes beyond mere statement of a value).

However, the linkage by Justice Overton of a claim for inadequacy with a showing of drastic systemic failure, such as the thirty percent illiteracy rate, suggests that he may not have used the term "fundamental right" in its usual sense of an individual right. *See id.* at 410 (Overton, J., concurring); cf. *Wagner*, *supra* note 132, at 349 (criticizing Justice Overton for failing to consider the education system's role as it affects individual students).
that Article IX created a duty for the Legislature to provide some minimal level of support for public education, and that this duty was enforceable by the courts.\textsuperscript{138} Four justices agreed that certain allegations would give rise to a justiciable claim of action under Article IX, Section 1.\textsuperscript{139}

The narrow division of the Supreme Court in \textit{Coalition for Adequacy}, with Justice Overton voting with the three-judge plurality, though writing much that agreed with the dissent,\textsuperscript{140} offered clear encouragement to those who pushed education finance reform.\textsuperscript{141} Indeed, the dissent seemed to invite another suit by plaintiffs or others who could make the allegations which would respond to Justice Overton's thirty-percent illiteracy standard.\textsuperscript{142} One commentator saw room for success in future education suits challenging specific legislative enactments, noting that this would offer the court an opportunity to fashion adequacy standards to guide the legislature.\textsuperscript{143}

In an interesting postscript to \textit{Coalition for Adequacy}, an organization called the Coalition to Reclaim Education's Share proposed an initiative amendment to the Florida Constitution in 1997. The Requirement for Adequate Public Education Funding initiative would have offered a very

\textsuperscript{138} See \textit{Coalition for Adequacy}, 680 So. 2d at 409-10 (Overton, J., concurring); \textit{id.} at 410-11 (Anstead, J., joined by Kogan, C.J. and Shaw, J., dissenting).

\textsuperscript{139} See \textit{id.} at 409-10 (Overton, J., concurring). Justice Overton wrote:

\begin{quote}
While 'adequate' may be difficult to quantify, certainly a minimum threshold exists below which the funding provided by the legislature would be considered 'inadequate.' For example, were a complaint to assert that a county in this state has a thirty-percent illiteracy rate, I would suggest that such a complaint has at least stated a cause of action under our education provision. To say otherwise would have the effect of eliminating the education provision from our constitution.
\end{quote}

\textit{Id.} at 409 (Overton, J., concurring). The dissenting justices agreed with Justice Overton that a thirty-percent illiteracy rate would violate the adequacy provision of the Constitution. \textit{See id.} at 410 (Anstead, J., dissenting).

\textsuperscript{140} See \textit{id.} at 409-10 (Overton, J., concurring).


\textsuperscript{142} See \textit{Coalition for Adequacy}, 680 So. 2d at 410 n.10 (Anstead, J., dissenting) ("The appellants, of course, have the option of filing another action if they can allege and demonstrate inadequacies sufficient to meet the requirements set out in the various opinions of the judges of the Court filed in this case.").

\textsuperscript{143} See Buckner, \textit{supra} note 141, at 27-30. Such challenges to specific legislative enactments would avoid another of the plurality's criticisms in \textit{Coalition for Adequacy}, i.e. that in not challenging more specific legislative acts or appropriations, the plaintiffs were in reality asking for a prohibited advisory opinion. \textit{See Coalition for Adequacy}, 680 So. 2d at 407 (citing May \textit{v. Holley}, 59 So. 2d 636 (Fla. 1952)).
specific definition to "adequate provision" in Article IX, Section 1, requiring state education funding to equal a minimum of forty percent of appropriations. The forty percent figure was the historic proportion of the state budget spent on education prior to adoption of the state lottery in 1986. The Supreme Court invalidated the initiative, finding that the use of a fixed, mandatory percentage constituted a violation of the single subject requirement of Article XI, Section 3.

V. LEGISLATIVE HISTORY OF REVISION 6

A. Public Proposals Related to Education

Upon appointment in the summer of 1997, the Constitution Revision Commission held thirteen public hearings throughout Florida to hear the views of Florida citizens and receive their suggestions for changes to the state constitution. Of the more than 300 separate proposals


145. See id. at 447. Although total distributions by the Florida lottery to the Department of Education amounted to some $793.1 million in 1996-97, education-related appropriations declined from over 40% in 1985-86, prior to adoption of the lottery, to 31% in 1995-96 and 33% in 1996-97. See Office of Planning and Budgeting, Ten Year Summary of Appropriations Data; cf. Susan A. MacManus, Financing Government, in GOVERNMENT AND POLITICS IN FLORIDA 208 (Robert J. Huckshorn, ed., 2d ed., 1998) (pointing out that education as a share of state expenditures fell from 34% in 1991 to 26% in 1996). The Governor's office has noted that, through fiscal year 1996-97, only 9% of the $7.4 billion in lottery proceeds raised by that year had been spent on education-related purposes. See FLORIDA EXECUTIVE BUDGET, FY 1999-2000, at 19 (Office of the Governor, 1999). Since that time, school construction programs and scholarship programs have increased the overall lottery education expenditures, though the scholarships do not benefit K-12 education. See id.; see supra note 109, and accompanying text (analyzing level of support provided to education from lottery in 1999-2000).

146. See Advisory Opinion to the Attorney General Re: Requirement for Adequate Pub. Educ. Funding, 703 So. 2d 446, 450 (Fla. 1997) [hereinafter Requirement]. Article XI, Section 3, Florida Constitution, allows citizens to propose amendments by initiative "provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith." FLA. CONST. art. XI, § 3. The problem with this initiative, according to the Court, was the use of a fixed percentage because this percentage affected every tax dollar raised and spent, and thus would affect many other functions of government which, according to the court, would be relegated to the remaining 60 percent of appropriations. See Requirement, 703 So. 2d at 449.

Justice Anstead dissented, noting that the court would have benefitted in Coalition for Adequacy "if there had been an express statement in the constitution defining 'adequate provision' to guide us." Id. at 450 (Anstead, J., dissenting).

147. Article XI, section 2(a) of the Florida Constitution, provided for appointment of the CRC within thirty days after adjournment of the 1997 regular session of the legislature. See FLA. CONST. art. XI, § 2(a).

148. See, e.g. Randolph Pendleton, Panel Hears Constitution Concerns, FLA. TIMES-UNION,
received by the CRC, many related to education. These included such
issues as requests both to increase and to limit education funding, to
provide school vouchers, to ensure school choice, to return to the 1868
Constitution's "paramount duty" language, as well as to provide free
community college education to Florida students. Meeting together on
September 25, 1997, the Commission decided which of the public
proposals should receive further consideration by the CRC. Again, on
October 20, 1997, the Constitution Revision Commission considered
other public proposals, including a proposal to make education a
fundamental right, and another proposal to constitutionalize a base
funding formula for education spending.

The concerns raised by the public were reflected and supplemented
by the formal proposals submitted by the various commissioners. Of the

July 30, 1997, at B1; Howard Troxler, Line Forms Here for Democracy in Florida, St.
149. See CRC JOURNAL, supra note 1, at 54-55.
150. See id.
151. See id. The Commission first voted to refer three general education-related issues for
further consideration: (1) splitting counties into multiple school districts; (2) bonding and taxing
authority of school boards; and (3) the reformation of the State Board of Education. See id. at 54.
Neither of the above three issues is significant for this discussion, but several specific public
proposals did address the adequacy of the public education system in Florida. For example Public
Proposal IX-1-1 would have required a specific appropriation budget for education to be designated
in the Constitution. See id. This proposal failed to receive the ten votes required by CRC rules to
proceed for further consideration. See id.; see also CRC JOURNAL, supra note 1, at 35 (also
available at <http://www.law.fsu.edu/crc/>) (requiring initial vote of at least 10 Commissioners for
public proposals to receive further consideration); cf. supra text accompanying notes 142-44
(discussing the failed initiative amendment to the Florida Constitution which would have involved
a similar amendment to Article IX, Section 1).

Public Proposal IX-1-2, initially offered by Charles B. Reed, Chancellor of the State University
System, suggested a return to the "paramount duty" language of the 1868 Florida Constitution, as
well as suggesting a free public university system. See CRC JOURNAL, supra note 1, at 54.
Chancellor Reed's proposal received the necessary ten votes and was filed for later consideration.
See id. Other Public Proposals included Pub. Prop. IX-x-1 (no additional funding for the schools
until underlying problems are solved and students prepared with basic skills); Pub. Prop. IX-x-2
(better discipline in schools); Pub. Prop. IX-x-3 (providing for educational vouchers and school
choice); Pub. Prop. IX-x-3a (another school choice provision); and Pub. Prop. IX-x-5 (funding for
education should equal not less than 25% of amount spent on prisoners). See id. at 54-55. Of these
proposals, only Public Prop. IX-x-3, sponsored by Commissioner Connor, was moved for further
consideration, but failed to receive the necessary ten votes. See id.

152. See CRC JOURNAL, supra note 1, at 58-87.
153. See id. at 82 (discussing Proposal IX-1-2a). This proposal received the necessary ten
votes and was filed for further consideration. See id.
154. See id. at 83 (discussing Proposal IX-x-8). This public proposal failed to receive the
necessary ten votes. See id.
155. Brief summaries of all formal CRC proposals are found in December 1997-January 1998
CRC Newsletter. See Constitution Revision Commission Proposals Filed, FLA. CONST. REVISION
187 formal proposals considered by the Constitution Revision Commission, twenty dealt in some way with public education, and ten directly related either to education funding or substantive educational quality, as opposed to the general structure and authority of school boards or the State Board of Education.

B. CRC Education Proposals

Two substantive proposals emerged which promised to address the questions raised in Coalition for Adequacy and better define the state’s duty to make adequate provision for public education. Both proposals sought to amend Article IX, Section 1 to provide not just aspirational language, but also to introduce meaningful and measurable standards for the state’s duty to ensure educational adequacy. Proposal 157, introduced by Commissioner Jon Mills, one of the authors of this Article, originally made education a fundamental right for Florida citizens, and defined “adequate provision” as “the provision of financial resources, to achieve a thorough, efficient, high-quality, safe, and secure system of public education for all public schools and access to public institutions of higher education.”

156. Proposals involving article IX included CRC Props. 22 (Rundle) (relating to two years college free to students); 28 (Riley) (relating to appointed district school superintendents); 40 (Marshall) (subdividing counties into multiple school districts); 54 (Zack) (defining adequate education funding as 40% of total appropriations); 111 (Mills) (making education a fundamental right); C/S for Prop. 116 (Corr & Educ. Comm.) (creating an education scholarship fund); 117 (Corr) (membership of State Bd. of Educ.); 119 (Corr) (eligibility requirements for receiving state school funds); 139 (Mathis) (abolishing elected school board members); 140 (Mathis) (free public schools and universities); C/S for Prop. 157 (Mills & Educ. Comm.) (defining “adequate provision”); 158 (Marshall) (nonpartisan school board elections); C/S for Prop. 166 (Riley & Educ. Comm.) (appointed State Bd. of Educ. & appointed Comm’r of Educ.); 181 (Brochin) (state duties to provide adequate education). See CRC NEWSLETTER, at 5-11. All CRC proposals are also available at <http://www.law.fsu.edu/crc>. Furthermore, other proposals relating to elections or to taxation and finance also implicated public education.

157. See supra notes 131-42, and accompanying text (discussing Coalition for Adequacy).

158. The stated intention of both proposals was to raise Florida from a Category II to a Category IV state in the level of duty to provide for education. See FLORIDA CRC MEETING PROCEEDINGS, Jan. 15, 1998, at 278-80 (Statement of Commissioner Brochin) [hereinafter CRC MINUTES]; supra text accompanying notes 80-108 (discussing the categorization of education clauses); CRC MINUTES, Feb. 26, 1998, at 68-72 (Statement of Commissioner Brochin) (the intention of Prop. 181 was to move Florida’s education clause “where it rightfully belongs as a category four, the highest category, meaning it demands the highest responsibility of this state to provide the education for all of our children”).
An amendment to Proposal 157 removed the specific linkage of adequacy to "the provision of financial resources." Proposal 181, introduced by Commissioner Robert Brochin, also declared primary and secondary education to be a fundamental right. Proposal 181, introduced by Commissioner Robert Brochin, also declared primary and secondary education to be a fundamental right.

159. 2 FLORIDA CONSTITUTION REVISION COMMISSION, SPECIAL ORDER PACKET, WEEK OF JANUARY 12-16, 1998, Proposal 157 [hereinafter CRC Proposal 157]. CRC Proposal 157, as originally drafted, would have amended Article IX, Section 1, as follows:


(a) Residents of this state have a fundamental right to an adequate system of public education. Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.
(b) As used in this section, the term "adequate provision" means the provision of financial resources to achieve a thorough, efficient, high-quality, safe, and secure system of public education for all public schools and access to public institutions of higher learning or education. This section shall be self-executing.

Id. CRC Prop. 157 was quickly amended to remove the clause making the provision self-executing. See CRC JOURNAL, supra note 1, at 140.

On March 17, 1998, the CRC considered an amendment which would have added further purpose language to Prop. 157. See id. at 217. The amendment would have defined adequate provision to mean "an efficient, safe, secure, and high quality system of public education for the purpose of allowing students to achieve a high quality education that prepares students to participate in a democratic society and to successfully compete in a global economy." Id.; cf. FLA. STAT. § 229.591(3) (1999) (Florida's comparable education standards); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989) (comparable aspirational adequacy definition); Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 409 (Fla. 1996) (Overton, J., concurring) (stressing importance of education to democratic society). Ultimately, the additional aspirational language was removed from Prop. 157 after some commissioners expressed a concern with the explicit outcome-based link in the amendment. See CRC JOURNAL, Mar. 17, 1999, at 218; CRC MINUTES, supra note 158, Mar. 17, 1998, at 234-35 (Statement of Commissioner Evans).

160. CRC JOURNAL, supra note 1, at 140.; see also CRC MINUTES, supra note 158, Jan. 13, 1998, at 167 (Statement of Commissioner Dexter Douglass).

161. See 5 FLA. CONST. REVISION COMM'N, SPECIAL ORDER PACKET, WEEK OF JANUARY 12-16, 1998, Proposal 181 [hereinafter CRC Proposal 181]. CRC Proposal 181, as originally drafted, would have amended article IX, section 1, as follows:


Each resident of this state has a fundamental right to a public education during the primary and secondary years of study, and it is the paramount duty of the state to ensure that such education is complete and adequate. Ample Adequate provision shall be made by law for a uniform system of free public schools and for
181, using the language of the 1868 Constitution, declared education to be the “paramount duty of the state,” and required the state to make “ample provision” for the system of public education. In his introduction, Commissioner Brochin made explicit reference to the higher standards included in the 1868 Florida Constitution. The reference to “ample

the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

_Id.; cf. Department of Educ. v. Glasser, 622 So. 2d 944, 948 (Fla. 1993) (“The right to education is basic in a democracy.”).

162. _See supra_ text accompanying notes 94-96 (discussing the Florida Constitution of 1868).

163. _CRC Proposal 181_. This wording, taken from the 1868 Florida Constitution, is also very similar to the current Washington constitutional provision. _See Wash. Const_. art. IX, § 1; _see supra_ text accompanying notes 74-75 (discussing this Category IV provision). The Washington Supreme Court, examining that provision, has found that it “does not merely seek to broadly declare policy, explain goals, or designate objectives to be accomplished. It is declarative of a constitutionally imposed duty.” _Seattle Sch. Dist. No. 1 v. State_, 585 P.2d 71, 85 (Wash. 1978) (en banc) (concluding that the provision was not directed only at the legislature, but could also be enforced by the courts). The Washington court explained that “‘paramount’ is not merely a synonym of ‘important.’ Rather, it means superior in rank, above all others, chief, preeminent, supreme, and, in fact, dominant.” _Id._ at 91. The court also held:

By imposing upon the State a _paramount duty_ to make ample provision for the education of all children residing within the State’s borders, the constitution has created a “duty” that is supreme, preeminent or dominant. Flowing from this constitutionally imposed “duty” is its jural correlative, a correspondent “right” permitting control of another’s conduct. Therefore, all children residing within the borders of the State possess a “right,” arising from the constitutionally imposed “duty” of the State, to have the State make ample provision for their education. Further, since the “duty” is characterized as _paramount_ the correlative “right” has equal stature.

_Id._ Under this provision, the state had the obligation to provide “fully sufficient funds” for the schools “as a first priority.” _Id._ at 95 (noting that these funds had also to be drawn from dependable and regular tax sources).

164. _See CRC Minutes, supra_ note 158, Jan. 15, 1998, at 263-64 (Statement of Commissioner Brochin). Noting the similarities between his proposal and the education clause of the 1868 Constitution, Commissioner Brochin declared:

[This proposal] comes out of our Constitution of 1868. And although I didn’t use the exact language, I used language fairly close. And what the 1868 Constitution says is that it is the paramount duty of the state to ensure that children, and they use the word children, have a right to an education without distinction or preference. And this is modeled after that. It was a good idea in 1868 and it is even a better idea in 1998.

_Id.; see also CRC Minutes, supra_ note 158, Feb. 26, 1998, at 66-67 (Statement of Commissioner Brochin) (linking Prop. 181 to the 1868 Constitution).
provision" was removed, however, and the "adequate provision" requirement of Article IX, Section 1 was retained. 165

Much debate centered on the use of the term "fundamental right" in both Proposals 157 and 181. 166 Ultimately this language was removed from both proposals. 167 Many commissioners and others feared that the term "fundamental right" would place too severe a burden on school districts and the state, and might ultimately make their actions subject to strict judicial scrutiny with regard to litigation by individuals. 168 Commissioners

165. See CRC JOURNAL, supra note 1, at 148-49; see also CRC MINUTES, supra note 158, Jan. 15, 1998, at 265-67 (discussion between Commissioners Sundberg and Brochin on the retention of the word "adequate" for the sake of consistency, in light of the earlier introduction of Prop. 157 defining "adequate provision").


A recent West Virginia case upheld local school district discipline procedures under strict scrutiny examination. See Cathe A. v. Doddridge County Bd. of Educ., 490 S.E.2d 340, 348 (W. Va. 1997). However, the West Virginia court found that the state had an obligation to provide alternative education opportunities to suspended students in all but the most exceptional circumstances. See id. at 350-51.

In an Opinion on a proposed initiative amendment, the Nebraska Attorney General warned of possible effects of creating an explicit "fundamental right" to education in that state. See Neb. Op. Att'y Gen. 95095, at 627. The attorney general warned that it had serious legal consequences, and that "[a]ny legislation affecting that right would be subject to strict judicial scrutiny." Id. The Nebraska amendment was subsequently rejected by voters. See supra text accompanying notes 88-90.

167. See CRC JOURNAL, supra note 1, at 207.

168. See, e.g., FLA. CONST. REVISION COMM'N, SPECIAL ORDER PACKET, WEEK OF JAN. 12-16, 1998, Proposals 157 & 181; see also United States v. Caroleene Prods., 304 U.S. 144, 152-53 n.4
also feared that the proposal might be interpreted as creating a cause of action for failing to meet the particular education needs of individuals, as compared with the systemwide responsibility intended by Article IX, Section 1.\textsuperscript{169} Responding to these concerns, Commissioner Brochin proposed an amendment to Proposal 181, making education "the fundamental value," instead of a fundamental right.\textsuperscript{170} Commissioner Corr

\textsuperscript{169} See CRC MINUTES, supra note 158, Jan. 15, 1998, at 282 (Statement of Commissioner Riley); id. at 284-85 (Statement of Commissioner Marshall); id. at 285-87 (Statement of Commissioner Langley). Commissioner Marshall discussed the "horror scenario" in Kansas City, Missouri, of a federal judge taking control of a school system and compelling taxation and spending. See id. at 284 (Statement of Commissioner Marshall); cf. Missouri v. Jenkins, 515 U.S. 70, 82 (1995) (discussing fact that, despite large investments in Kansas City schools, students outcomes were "at or below national norms at many grade levels"); see also Mark Walsh, Achievement Standard at Issue in Kansas City Case, EDUC. WEEK, Jan. 11, 1995, at 18 (discussing the Kansas City case, and noting that over $1.3 billion in forced spending and capital improvements have failed to produce more than "modest improvements in student achievement").

In another discussion, Commissioner Riley, noting that a fundamental right triggered the compelling government interest test, inquired as to whether the state had such a compelling interest, and if so, why it should not be clearly stated in the Constitution. See CRC MINUTES, supra note 158, Jan. 15, 1998, at 288 (Statement of Commissioner Riley). Responding to this question, Commissioner Langley stated:

If you want to turn the funding of education to the courts, do it, that is what that would do. I don't want to do that. I would rather go fuss at my Senator or Representative or whatever rather than depend on some judge who is never going to answer to me and come back with a court-ordered taxation, that's got to be the worst kind.

Id. at 289 (Statement of Commissioner Langley); cf. CRC MINUTES, supra note 158, Feb. 26, 1998, at 81 (Statement of Commissioner Connor) (warning of the "Pandora's box" of possible litigation).

\textsuperscript{170} See id. at 65-66 (Statement of Commissioner Brochin). Commissioner Brochin stated:

I sensed a concern, and on further reading and discussion of the subject was concerned that it would create perhaps litigation in the area of special needs by people coming forward, as Commissioner Corr alluded to earlier, and claiming individual rights fundamentally had been violated, and therefore, people with special needs and juveniles, perhaps in juvenile detention centers, would bring forth claims that their fundamental right to an education had been violated. That was not the intent, initially, and that is not the intent today.

Id. at 65. Again, Commissioner Brochin stated, "It is a collective purpose, it is not an individual purpose, it's not there to allow individual students to claim reparations, it's not there to allow individual or potential students to claim that their rights have been deprived. It is there to put the burden on our government to take education . . . to a much higher level." Id. at 67-68.
then proposed a substitute amendment making education "a fundamental value" (not "the fundamental value"), and this was adopted by the Commission. Having rejected the earlier "fundamental right" language, the wording now echoes Justice Anstead's dissent in *Coalition for Adequacy*, when he wrote:

Surely all would agree that education is a fundamental value in our society. The question remains as to how we have recognized that value in Florida. The most obvious and effective way to recognize a value as fundamental and of the highest importance is to make provision for that value in our society's supreme and basic charter, our constitution. We did that in Florida. The people of Florida recognized the fundamental value of education by making express provision for education in our constitution. 

This amendment, making education a "fundamental value of the people" of Florida, instead of a fundamental individual right, emphasizes that the focus of Article IX is the public education system, and the adequacy of that system in general. Furthermore, the addition of the high quality language more specifically responds to Justice Anstead's comments. The result was to specify a higher standard for the system.

In the debates surrounding Proposals 157 and 181, no commissioner ever expressed an intent or desire to restrict the standing of citizen-taxpayers to challenge the taxing and spending decisions of the legislature in funding the public education system. Commissioners were concerned with the possibility of challenges by individuals for failures to meet specific individual needs in specific instances, or for disciplining individuals, and with the level of scrutiny the courts would apply to these cases. Even after the change from "fundamental right" to "fundamental value," the new education provision would seem to leave intact the standing rule of *Coalition for Adequacy* with regard to system-wide

171. See CRCJOURNAL, supra note 1, at 207; CRC MINUTES, supra note 158, Feb. 26, 1998, at 80-81 (Statement of Commissioner Corr). Likewise, the term "the paramount duty" in Proposal 181 was amended to "a paramount duty." See id. at 207; id. at 81 (Statement of Commissioner Corr); id. at 69-70 (Statement of Commissioner Connor) (worrying that if education were "the paramount" duty, other important state functions such as public safety, law enforcement, might be shortchanged).

172. *Coalition for Adequacy*, 680 So. 2d at 410 (Anstead, J., dissenting); cf. Plyler v. Doe, 457 U.S. 202, 221 (1982) ("Education has a fundamental role in maintaining the fabric of our society."); *Edgewood IV*, 917 S.W.2d at 726 ("there can be no dispute that education of our children is an essential Texas value").


174. See supra note 134 and accompanying text (discussing standing).

175. See supra text accompanying notes 166-71.
Nothing that the CRC said or did could rationally be construed to reduce access to legal remedies since the Commission itself contemplated court intervention to enforce constitutional standards.177

Both Proposal 157 and 181 were adopted by the Constitution Revision Commission by overwhelming votes.178 Presented together to the Commission, the education revision was finally approved on March 23, 1998, by a 28-7 vote of the Commission.179 In the November 1998 general election, Revision 6 received the votes of over seventy percent of Florida voters,180 and became part of the Constitution in January 1999.


Changes to the Florida Constitution are always significant. When the language of the constitution is altered or amended, courts have presumed that such changes are intentional, and that a different effect is intended from prior language.181 When interpreting a new constitutional provision, Florida courts have stated that their duty is to discern and give effect to the will of the voters who adopted the provision.182 Also, courts should keep in view the objective to be accomplished and the evils to be remedied by the constitutional provision, and so interpret the constitution as to accomplish rather than to defeat that objective.183 Courts look to the legislative history of the provision and statements by the drafters and

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176. See Coalition for Adequacy, 680 So. 2d at 403.
178. See CRC JOURNAL, supra note 1, at 216-17. CRC Proposal 157 was adopted by a 28-2 vote, while Proposal 181 was approved by a 28-1 vote of the CRC. See id. Both approved provisions were combined by the Style and Drafting Committee and submitted to the full CRC with a proposed Ballot Summary as Revision 2 on March 23, 1998. See id. at 226.
179. See id. at 226. The Secretary of State subsequently placed Revision 2 on the November 1998 ballot as Revision 6 because the nine CRC proposals followed four legislatively proposed constitutional amendments on the November 1998 ballot.
180. See supra note 4 and accompanying text.
181. See, e.g., State v. Creighton, 469 So. 2d 735, 739 (Fla. 1985); Williams v. Smith, 360 So. 2d 417, 419 (Fla. 1978); In re Advisory Opinion to the Governor, 112 So. 2d 843, 847 (Fla. 1959).
182. See Plante v. Smathers, 372 So. 2d 933, 936 (Fla. 1979) (discussing interpretation of Florida’s new Ethics in Government Amendment); In re Advisory Opinion to the Governor, 243 So. 2d 573, 577 (Fla. 1971); State ex rel. McKay v. Keller, 191 So. 542, 545-46 (Fla. 1939). See generally 1 THOMAS COOLEY, CONSTITUTIONAL LIMITATIONS 165-72 (8th ed. 1927).
183. See State ex rel. Dade County v. Dickinson, 230 So. 2d 130, 135 (Fla. 1970); Gray v. Bryant, 125 So. 2d 846, 851-52 (Fla. 1960); Amos v. Mathews, 126 So. 2d 308, 315-16 (Fla. 1930) ("The object of constitutional construction is to ascertain and effectuate the intention and purpose of the people in adopting it. That intention and purpose is the ‘spirit’ of the Constitution—as obligatory as its written word.").
adopters in interpreting a constitutional provision. 184

In interpreting the provision, courts presume that the words have their
"most usual and obvious meaning, unless the text suggests that they have
been used in a technical sense." 185 A dictionary may supply this commonly
understood meaning, and is often referred to by courts. 186 The Florida
Supreme Court, in an Advisory Opinion to the Governor, 187 further
described the method of construing a new constitutional provision, stating
that "the words should be given reasonable meanings according to the
subject matter, but in the framework of contemporary societal needs and
structure. Such light may be gained from historical precedent, from present
facts, or from common sense." 188 Furthermore, new constitutional
provisions "must be viewed in light of the historical development of the
decisional law extant at the time of . . . adoption and the intent of the
framers and adopters." 189

D. Explanation of the CRC Education Revision

Revision 6 does three things. First, it emphasizes the importance of
education to the people of Florida, declaring it to be a fundamental value.
Second, it clarifies the state's duty to adequately provide for education as
"paramount." Finally it defines what is meant by "adequate provision." To

184. See, e.g., Winfield v. Division of Pari-Mutual Wagering, 477 So. 2d 544, 548 (Fla.
1995). In Winfield, the Florida Supreme Court considered the recently adopted Privacy
Amendment, Article I, Section 23, Florida Constitution ("Every natural person has the right to be
let alone and free from governmental intrusion into the person's private life except as otherwise
provided herein."). Id. at 544. The court, looking into the legislative history behind this proposal,
noted that the drafters had rejected such terms as "unreasonable" or "unwarranted" in modifying
the protection from "governmental intrusion." Id. The conclusion of the court was that the
amendment intended to provide for a greater level of protection from governmental intrusion. Id.
at 548; see also In re T.W., 551 So. 2d 1186, 1191-92 (Fla. 1989) (again discussing this intended
greater protection as evidenced by legislative history).

185. City of Jacksonville v. Continental Can Co., 151 So. 488, 489-90 (1933) ("The
 presumption is in favor of the natural and popular meaning in which the words are usually
understood by the people who have adopted them.").

186. See, e.g., Advisory Opinion to the Governor—1996 Amendment 5 (Everglades), 706 So.
2d 278, 282 (Fla. 1997) (citing Myers v. Hawkings, 362 So. 2d 926, 930 n.10 (Fla. 1978)).

187. 276 So. 2d 25 (Fla. 1973).

188. Id. at 29; see also Burnett v. Department of Corrections, 666 So. 2d 882, 885-86 (Fla.
1996) (citing Plante v. Smathers, 372 So. 2d 933, 936 (Fla. 1979)) ("Intent is traditionally discerned
from historical precedent, from the present facts, from common sense, and from an examination of
the purpose the provision was intended to accomplish and the evils sought to be prevented.
Furthermore, we may look to the explanatory materials available to the people as a predicate for
their decision as persuasive of their intent.").

189. Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980); see also 2 RONALD D. ROTUNDA &
JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 18.6 (2d ed.
1992) (analyzing the legislative history of the Fourteenth Amendment).
be adequate under the revised provision, the public education system must be all of the following:

- uniform,
- efficient,
- safe,
- secure,
- high quality, and
- allow students to obtain a high quality education.

Were the system to fail any of the above standards, it would be inadequate. The plain meaning of the new terms is helpful. "Efficient" is defined by Webster as "productive of desired effects [especially] productive without waste." Among definitions for "safe" are "freed from harm or risk" and "affording safety from danger." "Secure" is similar to "safe," with definitions including "free from danger," "free from risk of loss," and "affording safety; inviolable." Finally, "quality" is defined by Webster as "a degree of excellence; grade" or "superiority in kind." The Oxford English Dictionary notes that there is an expressed or implied comparison in "quality" with other things of a like nature. "High" is used to modify "quality" to specify further what degree of excellence is required by the new provision.

Ample legislative history exists to explain the intent of the drafters of Revision 6, and to explain as well their intent behind the specific words used in Revision 6, including such terms as "paramount," "efficient," "safe," "secure" and "high quality." For example, Commissioner Brochin explained his intent behind Proposal 181, saying:

The intent, and I do want to be clear on intent, is as follows: One it is to allow the people of this state, through its document, that is the Constitution, through its document, that it has fundamental values, and one of those fundamental values is the education of its children.
Commissioner Brochin went on to explain that a second important intention was “to allow the people of this state, through the Constitution, its document, to instruct its state government that its paramount duty is to provide an adequate . . . education for its children.”196 Finally, Commissioner Brochin affirmed that Proposal 181 intended to benefit the education of all of Florida’s children.197 The target of Revision 6 is clear: “all children residing within [Florida’s] borders.”198 Such language would seem to foreclose any attempt to exclude resident non-citizen children from the public education system should federal jurisprudence in the area change.199 Commissioner Brochin concluded, “Proposal 181 is quintessential constitutional language that sets forth, in clear and unambiguous terms, the high value of education that we place in our Constitution.”200

Likewise, intent language is present to better explain Proposal 157’s attempt to define “adequacy.” The sponsor of Proposal 157, Commissioner Mills, explicitly referred to *Coalition for Adequacy,*201 noting that Proposal 157 was intended “to define what adequate education should be in the state of Florida with common terms used in other constitutions.”202 Recognizing the likelihood of future litigation following *Coalition for Adequacy,* Commissioner Mills stated that it was important for the Constitution Revision Commission to provide a definition for adequacy “which would give guidance to either the legislature or the courts.”203 Commissioner Mills added, “the terms used here are understandable, they are derived . . . from other states that have a higher standard, and they give the court and

196. *Id.* at 237-38 (Statement of Commissioner Brochin).
197. *See id.* (Statement of Commissioner Brochin) (speaking of the possible effect of Proposal 181 on vouchers and charter schools).
198. FLA. CONST. art. IX, § 1; *see also* CRC MINUTES, *supra* note 158, Mar. 17, 1998, at 231-34 (Statement of Commissioner Mills about applicability and purpose of Prop. 181 and intent of K-12 education).
199. *Cf. Plyler v. Doe,* 457 U.S. 202, 220-23 (1982) (striking down a Texas statute which attempted to exclude children of illegal aliens from public schools, but noting that illegal aliens are not a suspect class nor is education a fundamental right). The existence of “adequate and independent state grounds,” as with a state constitutional provision, would allow Florida to continue to provide greater protection even in the event of a reappraisal by federal courts. *See Michigan v. Long,* 463 U.S. 1034, 1038 (1983).
201. *See Coalition for Adequacy,* 680 So. 2d at 400. *See supra* text accompanying notes 132-46 (discussing *Coalition for Adequacy*).
203. *Id.* at 148.
any future legislature an opportunity to meet a standard of adequacy.\footnote{204}{Id.}

A brief examination of the terms used to define "adequate provision" will further demonstrate the intent of the Constitution Revision Commission to provide increased specificity. The term "uniform," retained in Article IX, Section 1, has a long history in Florida,\footnote{205}{See supra text accompanying notes 114-33 (discussing the uniformity requirement).} and the meaning is unchanged by Revision 6. The stated intention of Revision 6 was to define "adequacy."\footnote{206}{See Ballot Summary for Revision 6, in CRC MINUTES, supra note 158, Mar. 17, 1998, at 234.} As revised, the Florida Constitution now requires the education system to be "uniformly adequate" and meet the new standards uniformly.\footnote{207}{See supra text accompanying notes 114-33 (discussing the uniformity requirement).} The state's duty is also defined in terms of making "adequate provision" for a "system of free public schools."\footnote{208}{FLA. CONST. art. IX, § 1 (1999).} The focus of Article IX, Section 1 is the public school system, not individual schools or students.\footnote{209}{See CRC MINUTES, supra note 158, Feb. 26, 1998, at 57-59 (discussion between Commissioners Connors and Mills regarding this issue). After affirming that "adequate provision" modified the system of public schools, and not a particular school, discussion proceeded:}

Comm'r Connors: And so if you had a particular school which was neither efficient or deficient in terms of safety or security or in the quality of education that it provided, would that necessarily mean that the system as a whole failed to meet the standard?

Comm'r Mills: No, it wouldn't. There is a good example of this in Justice Overton's opinion [in Coalition for Adequacy] where he said . . . if the entire school system, that is the school board, had a [30 percent illiteracy] rate, that would be emblematic of an entire system that was broken.

Comm'r Connors: Then, in response to Commissioner Corr's question about litigation by parents on behalf of their child in a given school, for instance where it may have been deemed by them that adequate provision was not being made, would they be perhaps less likely to prevail than otherwise because the adequate provision refers to the system as a whole as opposed to individuals?

Comm'r Mills: The [term] adequate provision does refer to the system; any particular school of course would be evidence of that [unconstitutionally].

\textit{Id.} Such an issue of localized inadequacy might also violate the uniformity requirement, as well as the state equal protection guarantee. See FLA. CONST. art. I, § 2.
educational system, not necessarily to meet special educational needs of particular individuals.\textsuperscript{210}

Could the new "efficiency" standard alter Florida's uniformity requirement and be read to require equality in education funding? Many other state constitutions contain the phrase "efficient" or "thorough and efficient," and the words have been examined during the course of many equity and adequacy suits. For example, the West Virginia Supreme Court, in \textit{Pauley v. Kelly},\textsuperscript{211} defined a "thorough and efficient" school system not as requiring equal opportunity, but in terms of meeting various specific substantive educational goals.\textsuperscript{212} Likewise, the New Jersey Supreme Court, in \textit{Abbott II},\textsuperscript{213} explained that the "thorough and efficient" clause in New Jersey's Constitution required "a certain level of educational opportunity, a minimum level, that will equip the student to become 'a citizen and . . . a competitor in the labor market.' . . . If, however, that level is reached, the constitutional mandate is fully satisfied regardless of the fact that some districts may exceed it."\textsuperscript{214} The New Jersey Court, however, went on to find a requirement that education in poor urban school districts be funded at substantially equal levels as in more affluent suburban districts.\textsuperscript{215} The situation in Florida, however, is different from the situation in New Jersey, where issues of educational equity have been as important as adequacy

\textsuperscript{210} See CRCMINUTES, supra note 158, Feb. 26, 1998, at 67-68 (Statement of Commissioner Brochin) ("It is a collective purpose, it is not an individual purpose; it's not there to allow individual students to claim reparations, it's not there to allow individual or potential students to claim that their rights have been deprived. It is there to put the burden on our government to take education [from] where it's been to a much higher constitutional level."); \textit{id.} at 52 (Statement of Commissioner Mills); see also supra text accompanying notes 166-73 (discussing removal of "fundamental right" language).
\textsuperscript{211} 255 S.E.2d 859 (W.Va. 1979).
\textsuperscript{212} See \textit{id.} at 874. See supra note 43, and accompanying text (providing the standards from \textit{Pauley}).
\textsuperscript{213} See \textit{Abbott II}, 575 A.2d at 359.
\textsuperscript{214} \textit{id.} at 369 (quoting \textit{Robinson I}).
\textsuperscript{215} \textit{id.} at 397. There was some criticism of the difference between the court's description of what the constitutional "thorough and efficient" language meant and the ultimate decision to require substantial equality. \textit{See}, e.g., Richard D. Ballot, Note, \textit{State Constitutional Law—Public School Financing—Spending Disparity Between Wealthy School Districts and Poor Urban School Districts Caused by Reliance on Local Property Taxes is Violative of the "Thorough and Efficient" Clause}, 21 SETONHALL. REV. 445, 477-80 (1991). In Kentucky and Texas cases, courts have also used language suggesting that "efficiency" has some inherent equality requirement. \textit{See} Rose v. Council for Better Educ., Inc, 790 S.W.2d 186, 211 (Ky. 1989) (the constitutionally required "efficient" system of public schools "must be substantially uniform throughout the state," providing every child in the state "with an equal opportunity to have an adequate education"); \textit{Edgewood I}, 777 S.W.2d at 397 ("efficient" system guarantees "substantially equal access to similar revenues per pupil at similar levels of tax effort" so that students are "afforded a substantially equal opportunity to have access to educational funds").
during the long course of New Jersey education litigation. The intention of the CRC, moreover, was not to modify Florida's already satisfactory uniformity requirement.

The second term, "efficient," is used in many other state constitutions. The recent Ohio case, DeRolph v. State, interpreted Ohio's constitution, which mandates that the state provide for a "thorough and efficient" education system. The Ohio court upheld a lower court finding that the legislature had failed in its duty to provide such a system. In its decision, the Ohio court relied upon a long factual record detailing weaknesses in curriculum, numerous examples of dangerous or inadequate facilities, and a lack of both teaching staff and materials. Members of the Constitution Revision Commission were aware of the Ohio case, and pointed to it both as a warning of what might happen if school conditions worsened, and an example of the usefulness of better defining the adequacy requirement. The use of the term "efficient" was also intended to signify that more than money alone is required for an adequate system. Explaining the "efficient system" standard under the Texas Constitution, the Texas Supreme Court noted, "An efficient system of public education requires not only classroom instruction, but also the


217. See CRC MINUTES, supra note 158, Jan. 15, 1998, at 292-95 (Statement of Commissioner Sundberg) (explaining Florida's more equitable education finance system). Support for this may come from the recent Leandro case in North Carolina, which interpreted that state's "general and uniform system" provision. Leandro, 488 S.E.2d at 249. Accepting plaintiffs' adequacy arguments, the court rejected a claim that the constitution also included a "right to equal educational opportunities." Id. at 255-56.

218. See supra notes 67-69, and accompanying text. The word "efficient" is also used in the Kentucky Constitution, and was given an influential definition by the Kentucky Supreme Court in Rose, 790 S.W.2d at 213. See supra notes 33-44, and accompanying text.

219. 677 N.E.2d 733 (Ohio 1997). DeRolph was especially significant because the decision came in the spring of 1997, shortly before the Florida CRC was appointed, and shortly after the very different decision by the Florida Supreme Court in Coalition for Adequacy. See supra text accompanying notes 132-46 (discussing the Coalition for Adequacy case).

220. See DeRolph, 677 N.E.2d at 747. Reviewing a long list of deficiencies in the Ohio school system, the court concluded: "All the facts in the record lead to one inescapable conclusion—Ohio's elementary and secondary schools are neither thorough nor efficient... Consequently, the present school financing system contravenes the clear wording of the Constitution and the framers' intent." Id. at 745.

221. See id. at 744-45.


223. See id. at 149 (Statement of Commissioner Mills); cf. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212-13 (Ky. 1989) (listing qualitative aspects to an "efficient" education system).
classrooms where that instruction is to take place. These components of an efficient system—instruction and facilities—are inseparable.\footnote{Edgewood IV, 917 S.W.2d at 726.} 

The terms “safe” and “secure,” as used in Revision 6, are not meant to be redundant. The term “safe” applies to health issues related to school facilities,\footnote{See, e.g., CRC MINUTES, supra note 158, Jan. 13, 1998, at 150 (Statement of Commissioner Mills); cf. DeRolph, 677 N.E.2d at 744 (“Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment.”). The Ohio Court also affirmed:} while the issue of “security” involves physical safety, as against guns and drugs.\footnote{Id., at 746.} The use of both terms is intended to provide increased specificity and broader requirements.

Finally, the term “high quality” is introduced to Article IX, Section 1.\footnote{See CRC MINUTES, supra note 158, Jan. 13, 1998, at 150 (Statement of Commissioner Mills). In the meetings of the CRC’s education committee, discussion concerning use of the terms “safe” and “secure” was resolved with “safety” having a connotation of “health issues,” while “security” was linked to a possible dangerous environment like guns in schools. See Florida Constitution Revision Commission, Hearings of the Educ. Comm., Dec. 11, 1997 (discussion of CRC Prop. 157, transcript of taped committee hearing available with author); Florida Constitution Revision Commission, Hearings of the Style & Drafting Comm., Feb. 2, 1998 (discussion of C/S for Prop. 157, transcript of taped committee hearing available with author).} “High quality” is also a term which appears in other state constitutions,\footnote{See supra text accompanying notes 56-78 (discussing other state constitutions).} and is often regarded as a hallmark of a Category IV constitutional provision.\footnote{But see Lewis v. Spagnolo, 710 N.E.2d 798, 803-04 (Ill. 1999) (definition of “high quality” for legislature, not courts); see also supra note 70 and accompanying text (Virginia’s education provision also mandates a “high quality” educational program, despite being ranked as only Category II).} Nonetheless, the term “high quality” has not necessarily been an effective tool in education finance lawsuits. The Illinois Supreme Court, in the recent case \textit{Lewis v. Spagnolo},\footnote{710 N.E.2d at 798.} again confronted an adequacy challenge based upon the Illinois Constitution.\footnote{See ILL. CONST. art. X, § 1.} Article X, Section 1 of the Illinois Constitution, a provision which many commentators consider a Category IV provision, placing the highest duty

\footnote{See, e.g., CRC MINUTES, supra note 158, Jan. 13, 1998, at 150 (Statement of Commissioner Mills); cf. DeRolph, 677 N.E.2d at 744 (“Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment.”). The Ohio Court also affirmed:}
upon the state, reads in full:

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

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

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

Rejecting both adequacy and equity challenges by students in the deprived district of East St. Louis, the Illinois court found that "questions relating to the quality of education are solely for the legislative branch to answer." The Illinois court noted that "what constitutes a 'high quality' education cannot be ascertained by any judicially discoverable or manageable standards and that the constitution provides no principled basis for a judicial definition of 'high quality.'" The history in Florida,
however, does provide clear standards and demonstrates an intent that courts be able to enforce the provision.

The second use of the term "high quality" in the new Article IX, Section 1, is the clause, "that allows students to obtain a high quality education." The appearance of "high quality" here may help distinguish Florida from other states which include the term in their constitution.237 It is also not intended to be redundant. The adequate education system in Florida must be a system "which allows students to obtain a high quality education."238 The second use of "high quality" is a separate, outcome-based standard.239 In other words, high quality defines the education received by the students and relates to results as compared to the quality of the system. A high quality education should not only meet standards set by the Legislature,240 but should also be high quality compared with other states.241 Thus, Revision 6 is intended to provide for both an input and outcome-based standard that can be measurable and meaningful in Florida.242

VI. PROSPECTS FOR EDUCATION FINANCE REFORM IN FLORIDA

Revision 6, approved by the voters in the November 1998 general election, became part of the Florida Constitution in January 1999.243 The CRC, proposing amendments to Article IX, Section 1, intended to provide specific standards for the state's duty to make "adequate provision" for the public school system. The standards were provided to assist all branches of government who may be involved in managing the public schools.

Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 407-08 (Fla. 1996).

237. See supra text accompanying notes 216-24; see also Enrich, supra note 27, at 166-67; Jensen, supra note 52, at 38-39 (both describing the utility of a constitutional provision which addresses the quality of the school system in adequacy litigation).

238. FLA. CONST. art. IX, § 1 (1999).


240. See supra note 120, and accompanying text (discussing these legislative goals); cf. St. Johns County v. Northeast Fla. Builders Ass'n, Inc., 583 So. 2d 635, 641 ((Fla. 1991); Leandro, 488 S.E.2d at 259 (relating educational standards to adequacy).

241. Cf. Rose, 790 S.W.2d at 212 (stressing the importance of providing an education that compares favorably with other states).

242. See McUsic, supra note 48, at 330-32 (noting that educational performance "outputs" may be a useful measurement of the adequacy of an education system, and indeed may also be more reliable than mere measurement of funding level inputs).

243. See FLA. CONST. art. XI, § 5(c) (effective dates of approved constitutional amendments).
whether legislative, executive or judicial.\textsuperscript{244} Not only legislative history, but also information generally available to the public make clear that Revision 6 would raise the state’s duty to provide for education, that this duty might well include additional funding and higher standards, and that this duty would be enforceable in court.\textsuperscript{245}

The sole legislative response to Revision 6 has been the new Florida voucher law.\textsuperscript{246} Referring specifically to the new constitutional revision and the desire of Floridians to “provide the opportunity to obtain a high-quality education,”\textsuperscript{247} the voucher law was signed by Governor Bush on June 21, 1999. Significantly, the voucher law provides for the grading of Florida schools based upon student and school performance data.\textsuperscript{248} Where schools are ranked as failing, the board of education is authorized to provide additional resources or change practices, or allow parents to send their children to another school.\textsuperscript{249} Most controversially, the legislature also established the Opportunity Scholarship Program,\textsuperscript{250} which grants parents of students in schools ranked as failing for two years vouchers to attend private schools.\textsuperscript{251}


\textsuperscript{245} See, e.g., Robert M. Brochin, Revision 6 a Demand for Education, Not Litigation, PALM BEACH POST, Oct. 29, 1998, at 21A (Revision 6A mandate to provide better support for education, and government would be accountable for its performance of that mandate); Editorial, Revision 6: Vote YES to Boost Public Education’s Performance, SUN-SENTINEL, Oct. 26, 1998 at 8A (Revision 6 would offer a guide to lawmakers, education officials and educators by setting standards, and would offer a constitutional ground for legal challenges when the system fails to meet these standards). Significantly, even those newspapers which opposed passage of Revision 6 made similar statements as to its likely effects. See, e.g., Shirish Date, School Issue Could Cost Taxpayers Billions, PALM BEACH POST, Oct. 23, 1998, at 8A (Revision 6 could result in “court-dictated level of funding which would be greater than legislature had provided”); Martin Dyckman, Making Education a State Priority, ST. PETERSBURG TIMES, Oct. 22, 1998, at 17A (Revision 6 provides standards for legislature; possibility of lawsuits, but the standards are meant to assist courts also); Gary Fineout, Late in the Game, Amendment 6 Is Picking Up Critics, TALLAHASSEE DEMOCRAT, Oct. 26, 1998 (Revision 6 could openly allow for lawsuits to compel more funding for education system); Editorial, Schools and the Risks of Revision 6, TAMPA TRIB., Oct. 26, 1998, at 8 (lawsuits could force the state to spend more money on education).


\textsuperscript{247} Id. (creating FLA. STAT. § 229.0537(1)).

\textsuperscript{248} See id. §§ 1 (amending FLA. STAT. § 229.0535) & 7 (amending FLA. STAT. § 229.057). Performance data include student achievement levels on the FCAT, as well as attendance levels, dropout rates, school discipline data, and information on student readiness for college. See id. § 7.

\textsuperscript{249} See id. § 1.

\textsuperscript{250} See id. § 2 (to be codified at FLA. STAT. § 229.057).

\textsuperscript{251} See id. Two lawsuits were filed challenging the Florida voucher program on the following grounds: 1) the education provision, FLA. CONST. art. IX, § 1; 2) the public school funding clause, FLA. CONST. art. IX, § 6; 3) the Florida religious establishment clause, FLA. CONST. art. I, § 3; and 4) the establishment clause of the First Amendment to the United States Constitution. See Holmes
The voucher program is outside the scope of this article, but several features of the new program are important: first, the grading of schools implicates the state's duty under Article IX, Section 1, inasmuch that a state declaration that schools are "failing" would seem also to be a declaration as to the adequacy of public education in that school and the uniformity of education offered by the system; second, vouchers may or may not be legal, but their existence does not satisfy the state's duty to make "adequate provision" for a "system of public schools." The state still has a duty to ensure that the public school system is efficient, safe, secure and high quality, and that it allows students to obtain a high quality education. Where even the state recognizes that schools are failing, this may be prima facie evidence that the state is not meeting that standard, though the question still remains as to whether a few failing schools are enough to establish a system-wide violation of Article IX, Section 1. Vouchers may or may not be a part of any large-scale adequacy remedy, but alone they do not appear sufficient to satisfy the very high duty the citizens of Florida have imposed upon the state. After only one legislative session, it is too soon to determine what the reaction of the Florida Legislature will be to the newly expanded duty with regard to adequate provision.

If it is too soon to judge the reaction of the legislature, it is even more premature for any judicial response to Revision 6. Following Coalition for Adequacy, and the narrow division of the Florida Supreme Court on

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252. See supra text accompanying notes 208-10.

253. See CRC MINUTES, supra note 158, Mar. 17, 1998, at 238 (Statement of Commissioner Brochin) (foreseeing the possibility that vouchers, charter schools and private schools might be a part of an overall solution to Florida's adequacy problems). During meetings of the Education Committee regarding Prop. 157, Commissioner Mills was asked whether this proposal would have any impact on parental choice issues, whether charter or magnet schools, or voucher programs. Hearings of Educ. Comm., Dec. 11, 1997 (Statement of Commissioner Mills). In committee, Commissioner Mills answered:

I don't see this language as having any [such] effect. I would state that for the record. Because this [proposal] relates to a definition of adequate provision, I think it relates to the grammatical provision in the first paragraph which is a uniform system of free public schools. . . . It might even enhance other public education programs. But there is clearly no intent to circumscribe that effort.

Id.

254. See Coalition for Adequacy, 680 So. 2d at 400.
whether Florida's Constitution already contained some minimal educational adequacy requirement,\textsuperscript{255} additional education finance litigation was almost a certainty in Florida. The dissent in \textit{Coalition for Adequacy} as much as invited further attempts to convince a majority of the court that the system was inadequate.\textsuperscript{256} The members of the CRC drafted Revision 6 knowing that litigation was likely no matter what they did, and they realized their unique ability to provide more explicit standards to guide any future court considering the public education system. Introducing Proposal 157, Commissioner Mills denied that the proposal itself would cause litigation, but stated, "There is going to be litigation anyway. What this will do is provide a standard . . . for a court to judge."\textsuperscript{257}

The litigation began very quickly after Revision 6 was adopted, but relied on the existing constitutional provision as well as the new one. The first case, \textit{Honore v. Florida State Board of Education},\textsuperscript{258} was filed in the circuit court in Leon County on January 4, 1999,\textsuperscript{259} or immediately prior to Revision 6 coming into effect.\textsuperscript{260} Plaintiffs in this class action suit include minority students and their parents from poor communities who attend "inadequate" Florida schools, most of which are in communities in which a majority of local students are either poor or from minority groups.\textsuperscript{261} The \textit{Honore} complaint makes two adequacy-related charges. First, the complaint alleges that the student plaintiffs are denied an adequate education so as to be unreasonably at risk of functional illiteracy in all capacities and have been denied an equal chance to achieve the educational goals prescribed by both the Present Constitutional Provision and the Amended Constitutional

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\textsuperscript{255} See supra text accompanying notes 132-46 (discussing the Coalition for Adequacy case).
\textsuperscript{256} See \textit{Coalition for Adequacy}, 680 So. 2d at 410 n.10 (Anstead, J., dissenting).
\textsuperscript{257} CRCMINUTES, supra note 158, Jan. 13, 1998, at 150 (Statement of Commissioner Mills). Exploring the specific definitions that Prop. 157 added to "adequate provision," Commissioner Mills went on to say, "I think there will be litigation irrespective of what we do. Will it make that—the resolution of that litigation more acceptable? Probably." \textit{Id}.
\textsuperscript{258} No. CV-99-17 (Fla. 2d Circuit, filed Jan. 4, 1999).
\textsuperscript{259} See id.
\textsuperscript{260} See FLA. CONST. art. XI, § 5(c) (amendments approved by electors are effective "on the first Tuesday after the first Monday in January following the election," or as otherwise provided in the amendment). The CRC revisions were thus effectively part of the Florida Constitution on Tuesday, January 5, 1999. See id.
\textsuperscript{261} The class action suit seeks to define the class as "all children in Florida who are, or may in the future be, attending public elementary, middle or high schools which fail to offer a substantial number of their students an adequate and high quality education." \textit{Honore} Complaint at ¶ 21 (on file with author). Plaintiffs also include civil rights and immigrant rights organizations. See id. at ¶ 14-18. Defendants include the State Board of Education, the Governor, the Commissioner of Education, the President of the Senate and the Speaker of the House. See id. at ¶ 28-33.
}
Provision. Plaintiffs have been denied the education necessary to permit them to graduate, to enter the workplace, to compete with their peers, and to participate as citizens.\footnote{262}

The complaint also appeals to the quality language of Article IX, Section 1, claiming that plaintiffs have been "denied the high quality system affording a high quality education guaranteed by the Amended Constitutional Provision."\footnote{263} The complaint alleges that the state has failed to provide adequate resources, staffing, leadership, or educational programs for schools attended by children in the Plaintiff class.\footnote{264}

Relief requested includes inter alia a declaration that education is a "fundamental right of Florida children, and that adequate education guaranteed by [the] Florida Constitution includes . . . sufficient oral and written communication skills to enable students to function in [a] complex society."\footnote{265} Additionally, the Honore plaintiffs seek an order compelling the state "to establish an effective remedial plan for public education."\footnote{266}

The nature of the named plaintiffs in Honore, coming solely from certain disadvantaged districts, may present an incomplete and unbalanced view of Florida's overall education needs. Their reliance on due process as a supplement to the Education Article, as opposed to equal protection, is also interesting. No action has been taken on this case, however, since filing in January 1999.

Although it is impossible to predict with accuracy the outcome of this or future cases, the language of the new constitutional provision, together

\footnote{262. Honore Complaint at ¶ 73 (Count I); cf. Coalition for Adequacy, 680 So. 2d at 409 (Overton, J., concurring) (30% illiteracy-standard for demonstrating inadequacy).}

\footnote{263. Honore Complaint at ¶ 74. Finally, in their second count, plaintiffs make a state due process claim that an adequate education is now a "fundamental right implicit in the concept of ordered liberty and constitutes a substantive liberty and property interest of plaintiffs. Obtaining such an education is also a necessary predicate to the ability to exercise other fundamental rights." Id. at ¶ 77 (Count II); cf. FLA. CONST. art. I, § 9 ("No person shall be deprived of life, liberty or property without due process of law . . . ").}

\footnote{264. See id. at ¶ 74.}

\footnote{265. Honore Complaint at 27 (request for relief).}

\footnote{266. Honore Complaint at 29 (request for relief). Such a plan would include:

a. Provide necessary resources, staffing, leadership, and educational programs, to meet performance criteria to prevent functional illiteracy and to afford a high quality education; and

b. Establish and adequately fund accountability provisions that bring meaningful assistance to schools and classrooms that valid testing instruments show are failing to provide students with an opportunity for a high quality education by permitting functional illiteracy in one or more capacity, and establish and fund responsive changes when failure persists.

Id.
with the clear intent of the CRC, should be sufficient to overcome the *Coalition for Adequacy* holding that separation of powers and political question concerns prevent review. The intent is clear that the new provision is judicially enforceable. The role of the court, as always, is “to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.” Though Florida courts, as the guardians of the separation of powers, are rightly wary of interfering with the constitutional roles of other branches of government, a conceivable situation might arise where the courts were obliged to mandate legislative or executive actions to fulfill a clear constitutional mandate. Although the CRC did not explicitly declare education a fundamental right, it is clear that the courts will be obliged to determine whether the state is meeting its duty to provide for public education, as even under the previous standard the right facts would have resulted in a declaration of unconstitutionality of the education system. The issue becomes what facts exist and can be proven by future plaintiffs.

267. Cf. *Coalition for Adequacy*, 680 So. 2d at 406-08; see supra text accompanying notes 132-46 (discussing the *Coalition for Adequacy* case).

268. Marbury v. Madison, 5 U.S. 137, 177 (1803); cf. THE FEDERALIST No. 78 (Alexander Hamilton) (“The interpretation of the laws is the proper and peculiar province of the courts.”).

269. The Florida Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” FLA. CONST. art. I, § 3.

270. Indeed, an earlier case examining Article IX, Section 1, Florida Constitution, prompted the following observation by the Florida Supreme Court:

The judiciary is in a lofty sense the guardian of the law of the land and the Constitution is the highest law. A constitution would be a meaningless instrument without some responsible agency of government having authority to enforce it. . . . When the people have spoken through their organic law concerning their basic rights, it is primarily the duty of the legislative body to provide the ways and means of enforcing such rights; however in the absence of appropriate legislative action, it is the responsibility of the courts to do so.

Dade County Classroom Teachers Ass’n v. Legislature, 269 So. 2d 684, 686 (Fla. 1972). The plaintiffs in *Coalition for Adequacy* argued that *Dade County Classroom Teachers Ass’n* created an exception to the separation of powers in the area of constitutionally guaranteed rights, but the plurality of the court declined to find any basis for judicial intrusion into the role of the other branches. *See Coalition for Adequacy*, 680 So. 2d at 407.

271. The change perhaps reinforces what may have been the case after *Coalition for Adequacy*, but may also persuade other justices that the new higher standard is justiciable. In this regard, the change may be more apparent than real, given that four justices (the three dissenters and Justice Overton) in *Coalition for Adequacy* would found adequacy issues justiciable given certain factual allegations. See 680 So. 2d at 409 (Overton, J., concurring) (30% illiteracy rates would trigger justiciability).

272. See id.
In other states where courts have allowed adequacy challenges to go forward, or have found education systems to be inadequate, explicit facts provided evidence for these inadequacies. These states offer hints as to what Florida courts might consider a demonstration of inadequacy. In *Leandro v. State*, 273 for example, the North Carolina Supreme Court remanded an adequacy challenge to the trial court, noting several factors that might substantiate the plaintiffs' claims that they were being denied the right to a "sound basic education" afforded by the state constitution. 274

First, the court pointed to the "educational goals and standards adopted by the legislature" as important but not determinative. 275 Likewise, the performance of students on various standardized tests is an important "output" measurement. 276 General levels of state per-pupil education expenditure is also relevant. 277 These factors were not exclusive.

Failure of schools and students to meet academic standards is a factor often pointed to by courts as evidence of educational inadequacy. 278 Likewise, lack or failure of adequacy in teaching of core subjects is significant. 279 Failure to provide teaching materials is significant. 280 Inferior library resources is another oft-cited factor. 281 Dropout rates may be evidence of inadequacy. 282 Lack of counseling and guidance services for

274. See id. at 259.
275. Id.
276. See id. at 259-60; McUsic, *supra* note 48, at 332.
277. See *Leandro*, 488 S.E.2d at 260 (citing Levittown Union Free Sch. Dist. v. Nyquist, 439 N.E.2d 359, 369 (N.Y. 1982)). The North Carolina court noted however, that even greatly increased funding sometimes only translated into very modest performance gains. See id. (adding that the state had increased education funding every year since 1969-70).
278. See, e.g., Opinion of the Judges No. 388, 624 So. 2d 107, 127 (Ala. 1199) (evidence of inadequate system that some public schools failed to meet state accreditation standards due to inadequate funding); Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 197 (Ky. 1989); *Abbott II*, 575 A.2d at 400; DeRolph v. State, 677 N.E.2d 733, 743 (Ohio 1997) (also noting that state had itself suspended routine minimum standard evaluations).
279. See, e.g., Opinion of the Judges No. 388, 624 So. 2d at 121; McDuffy v. Secretary of Exec. Office of Educ., 615 N.E.2d 351, 321(Mass. 1993); DeRolph, 677 N.E.2d at 743. The New Jersey court, in *Abbott II*, elaborated on these problems, criticizing a system where some districts "offer curricula denuded not only of advanced academic courses but of virtually every subject that ties a child ... to school—of art, music, drama, athletics, even, to a very substantial degree, of science and social studies." *Abbott II*, 575 A.2d at 398.
280. See, e.g., DeRolph, 677 N.E.2d at 743 (noting, for example, that in some schools no books existed for some classes, in others a "lottery" was held to award a few books to students, and many districts used old and outdated teaching materials).
281. See, e.g., Opinion of the Judges No. 388, 624 So. 2d at 121; McDuffy, 615 N.E.2d at 521; *Abbott II*, 575 A.2d at 402.
282. See, e.g., *Abbott II*, 575 A.2d at 401 ("A district cannot deliver a thorough and efficient education to a dropout.").
students contributes to a showing of inadequacy. Courts may also compare the state's education to that afforded by other states.

It is in the area of facilities, however, that the most striking problems occur. The inadequacies may go beyond overcrowding, or failure to provide necessary equipment and technological resources. Older buildings and plant may be in disrepair, and even in dangerous condition. In New Jersey, the court noted instances of crumbling buildings, collapsing floors, and an instance of a building sinking into the ground, as well as many instances where schools required repairs of roofs, ventilation systems, electrical systems, plumbing systems, or required asbestos removal. In Ohio, the court noted the presence of dangerous facilities problems: nearly all schools had asbestos problems; an elementary school "sliding downhill at a rate of an inch per month"; coal dust in the air; outdated sewage systems; "arsenic in the drinking water" at one elementary school; "a dangerously warped gymnasium floor;" and no heating or the use of kerosene heaters. A system with such problems would be inadequate under Florida's new provision, perhaps for failure to be "safe."

Of course, the outcome of any litigation is not predetermined. Plaintiffs in any case would have to persuade the court that the Florida education system does not meet the newly defined adequacy standard. If success in any such case is defined as real improvement in the public education system, this depends upon the legislature responding positively and comprehensively to a court declaration. Such a positive response

283. See, e.g., McDuffy, 615 N.E.2d at 521; Abbott II, 575 A.2d at 402. Speaking of the failures of one plaintiff school district, the Texas Supreme Court noted that it offered no foreign language programs, "no pre-kindergarten, no chemistry, no physics, no calculus, no college preparatory, no honors program, virtually no extra-curricular activities like band, debate or football." Edgewood I, 777 S.W.2d at 393.

284. See, e.g., Rose, 790 S.W.2d at 197 (noting that Kentucky students compared poorly both nationally and within the region).

285. See, e.g., McDuffy, 615 N.E.2d at 553; DeRolph, 677 N.W.2d at 743. In New Jersey, the court noted instances of children eating lunch in the boiler room in the basement or in the hall; remedial classes being taught in a bathroom or in storage closets. Abbott II, 575 A.2d at 397. In Texas, one-third of school districts failed to meet state standards on maximum class size at the beginning of litigation. See Edgewood I, 777 S.W.2d at 393.

286. See, e.g., Opinion of the Judges No. 388, 624 So. 2d at 121; Abbott II, 575 A.2d at 395-97.

287. See Abbott II, 575 A.2d at 397.

288. See DeRolph, 677 N.W.2d at 743-45.

seems to have happened in Kentucky following the 1989 Rose decision, where the legislature immediately provided for an overhaul of the education system in compliance with that decision. The situation in Florida may be distinguished from those states where education litigation has been most protracted, forcing courts to repeatedly invalidate insufficient legislative responses. In states such as New Jersey, Texas or New Hampshire, inequities between districts played a major part in the litigation. Florida has a system generally judged more equitable than those states. Furthermore, Florida courts have upheld that system under the Florida Constitution’s “uniformity” requirement. Thus, at the outset, a Florida court will be able to concentrate on the adequacy of the education system rather than on funding disparities, but there may also be equal protection issues with very bad or failing schools as distinct from a uniformity issue. An unequal system is inadequate.

Furthermore, the state funding structure would be important should a court invalidate the education-finance system. Florida shares the situation of Texas in that both states forbid a state income tax, while New Hampshire has an income tax only for interest, dividends, trusts and

290. See Rose, 790 S.W.2d at 186.
291. See supra text accompanying notes 34-44 (discussing the outcome of the Kentucky litigation).
292. New Jersey, with a short pause, has been involved in education-finance litigation for over twenty-five years, reviewing the constitutionality of both initial and subsequent revised education funding programs. See supra notes 29 & 52 (summary of New Jersey cases, Robinson v. Cahill and Abbott v. Burke). The Rhode Island court, in City of Pawtucket v. Sandlin, pointed to the “morass” of New Jersey litigation, and the “decades-long struggle of the Supreme Court of New Jersey that has attempted to define what constitutes the ‘thorough and efficient’ education specified in that state’s constitution.” 662 A.2d at 59. The Rhode Island court noted that this protracted litigation had consumed significant financial resources, time, effort and court attention, justifying Rhode Island’s decision to avoid entering the fray. See id. (“The volume of litigation and the extent of judicial oversight provide a chilling example of the thickets that can entrap a court that takes on the duties of a Legislature.”).
293. See Edgewood I, 777 S.W.2d 391 (Tex. 1989) (overturning Texas funding system because of substantial disparities among districts’ ability to raise revenue); Edgewood II, 804 S.W.2d 491 (Tex. 1991) (invalidating as insufficient attempt by legislature to address these disparities); Edgewood III, 826 S.W.2d 489 (Tex. 1992) (invalidating second attempt by legislature); and Edgewood IV, 917 S.W.2d 717 (Tex. 1995) (narrowly approving legislative funding scheme).
294. See Claremont Sch. Dist. v. Governor, 703 A.2d 1353 (N.H. 1997) (finding school finance system based entirely on varying property tax rates across the state to be unconstitutional).
295. See Reed, supra note 289, at 97 (comparing legislative and popular responses to court involvement in Connecticut, New Jersey, Texas and Kentucky); see supra text accompanying notes 114-31 (discussing Florida’s uniformity requirement).
296. See supra text accompanying notes 114-31 (discussing Florida’s uniformity requirement).
297. See Fla. Const. art. VII, § 5(b) (forbidding a personal income tax, except under the unlikely condition that the federal government offers a full credit for state income tax against federal income tax); Tex. Const. art. VIII, § 1-e.
partnerships. New Hampshire has the additional difficulty of no state sales tax. Other state finance structures may make it more difficult to address a court’s invalidation of an education system, especially when there are substantial inequities present. Under Florida’s longstanding FEFP program, the state makes a much higher contribution to public education, a fact which contributes to the relative equity of the Florida system. In the end, however, any long-term solution to educational inadequacy must depend on the legislature responding constructively to a judicial declaration. Only this response will forestall what all parties should wish to avoid: further and sustained judicial interference in the education system. The example of Kentucky affords the salutary example of a constructive legislative response that expanded funding, revised the curriculum, mandated new testing, and introduced other reforms, effecting real improvement in that state’s education system.

VII. CONCLUSION

Responding to widespread concerns about the inadequacy of Florida’s public education system, and the lack of commitment of the state to fund that system, the 1997-98 Constitution Revision Commission attempted to find an acceptable medium between two unsatisfactory alternatives: a provision that does nothing and one that does too much. The solution, Revision 6, is not aspirational language to be ignored as meaningless by the legislature and unenforceable by courts. Nor did the CRC wish to use the constitution to micro-manage every executive and legislative decision regarding education finance. Unlike other CRC proposals and the

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300. See supra text accompanying notes 101-09 (discussing the Florida Education Finance Program).
301. See Brown, supra note 289, at 544; see also Kelly, supra note 216, at 403-33 (comparing legislative responses to court decisions in Kentucky, Massachusetts, New Jersey, Tennessee and Texas).
302. See Quality Counts, EDUC. WEEK, Jan. 22, 1997, at 114-16; see supra text accompanying notes 34-44 (describing further the Kentucky case and resulting reforms).
unsuccessful initiative amendment in 1997, the CRC declined to inscribe in stone a specific number or percentage as the minimal level of education support. Such a course of action would have represented a marked decrease in the discretion of the legislature. Rather, the Commission sought to make clear the necessity for improvement to education and to set out criteria to clarify the state’s duty to make provision for public education.

The Florida Constitution Revision Commission gave the legislature the opportunity to respond to and comply with the mandate of the revised constitutional provision, but made clear their intention that the courts should be able to interpret the constitution and enforce the provision if the legislature did not. An overwhelming majority of Floridians supported this change in their organic law. In the long years of education-finance litigation across the United States, Florida alone has chosen to amend the constitution to provide standards for reluctant courts and the legislature. The challenge and duty is clear to all branches of government: to bring about an improved educational system that is high quality. How and when this challenge is met depends on how the legislature responds and how the courts enforce the will of the voters as enshrined in their constitution.

303. See Advisory Opinion to the Attorney General Re: Requirement for Adequate Pub. Educ. Funding, 703 So. 2d 446 (Fla. 1997); see supra text accompanying notes 144-46 (discussing the unsuccessful initiative amendment which would have fixed state education funding at 40% of state appropriations).

304. See CRC MINUTES, supra note 158, Jan. 13, 1998, at 149-52 (Dialogue between Commissioners Barkdull & Mills); id. at 279-80 (Statement of Commissioner Brochin).
APPENDIX I: STATE CONSTITUTIONAL PROVISIONS
RELATIVE TO PUBLIC EDUCATION

Alabama: Category I

Amendment 111 Art. XIV, § 256

It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order.

Alaska: Category I

Art. VII, § 1 Public Education

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Arizona: Category I

Art. XI, § 1 Public School System

The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate State institutions of such character.) The Legislature shall also enact such laws as shall provide for the education

† See supra text accompanying notes 60-63 (discussing the categorization of education clauses).
and care of the deaf, dumb, and blind.

Art. XI, § 6 Admission of Students of Both Sexes

The University and all other State educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible. The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

Arkansas: Category II

Art. XIV, § 1 Free School System

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable, and efficient system of free public schools.

Art. XIV, § 3 School District Tax

The General Assembly shall provide for the support of common schools by general law. In order to provide quality education, it is the goal of this state to provide a fair system for the distribution of funds. It is recognized that, in providing such a system, some funding variations may be necessary. The primary reason for allowing such variations is to allow school districts, to the extent permissible, to raise additional funds to enhance the educational system within the school district. It is further recognized that funding variations or restrictions thereon may be necessary in order to comply with, or due to, other provisions of this Constitution, the United States Constitution, state or federal laws, or court orders.

California: Category III

Art. IX, § 1 Encouragement of Education

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.
Colorado: Category II

Art. IX, § 2 Establishment and Maintenance of Public Schools

The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously. One or more public schools shall be maintained in each school district within the state, at least three months in each year; any school district failing to have such school shall not be entitled to receive any portion of the school fund for that year.

Connecticut: Category I

Art. VIII, § 1 Free Public Schools

There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.

Delaware: Category II

Art. X, § 1 Establishment and Maintenance of Free Public Schools—Attendance

The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means.

Florida: Category IV (Category II Prior to 1998)

Art. IX, § 1 Public Education

The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.
Georgia: Category IV

Art. VIII, § 1 Public Education

Paragraph I: Public education; free public education prior to college or post-secondary level; support by taxation. The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or post-secondary level shall be free and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amount as may be provided by law.

Hawaii: Category I

Article X, § 1 Education

The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist not-for-profit corporations that provide early childhood education and care facilities serving the general public.

Idaho: Category II

Art. IX, § 1 Legislature to Establish System of Free Schools

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.

Illinois: Category IV

Art. X, § 1 Goal—Free Schools

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational
institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has the primary responsibility for financing the system of public education.

**Indiana: Category III**

Art. VIII, § 1 Common Schools System

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

**Iowa: Category III**

Art. IX, § 3 Perpetual Support Fund

The general assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been or hereafter may be, granted by the United States to this state, for the support of schools, which may have been or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress, distributing the proceeds of the public lands among the several states of the union, approved in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such percent as has been or may hereafter be granted by congress, on the sale of lands in this state, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the general assembly may provide, shall be inviolably appropriated to the support of common schools throughout the state.

**Kansas: Category I**

Art. VI, § 1 Schools and Related Institutions and Activities

The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.
Kentucky: Category II

§ 183 General Assembly to Provide for School System

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.

Louisiana: Category I

Art. VIII, § 1 Public Education System

The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.

Art. VIII, § 13 (B) Minimum Foundation Program

The State Board of Elementary and Secondary Education or its successor shall develop and adopt a formula which shall be used to determine the cost of a minimum foundation program of education in all public elementary and secondary schools as well as to equitably allocate the funds to parish and city school systems.

Maine: Category IV

Art. VII, Part 1, § 1 Legislature Shall Require Towns to Support Public Schools; Duty of Legislature

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature is authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State; provided, that no donation, grant or endowment shall at any time be made by the Legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the Legislature of the State shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in any such literary institution, as shall be judged necessary to promote the best interests thereof.
Maryland: Category II

Art. VIII, § 1 General Assembly to Establish System of Free Public Schools

The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

Massachusetts: Category I

Part 2, Chap. V Duty of Legislatures and Magistrates in All Future Periods

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

Michigan: Category I

Part 1, Chap VIII, § 2 Free Public Elementary and Secondary Schools; Discrimination

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.
Minnesota: Category II

Art. XIII, § 1 Uniform System of Public Schools

The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

Mississippi: Category I

Art. VIII, § 201 Free Public Schools

The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

Missouri: Category I

Art. IX, § 1(a) Free Public Schools—Age Limit

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.

Montana: Category II

Art. X Educational Goals and Duties

§ 1. It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

§ 3. The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state’s share of the cost of the basic elementary and secondary school system.
Nebraska: Category I

Art. VII, § 1 Legislature; Free Instruction in Common Schools; Provide

The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.

Nevada: Category III

Art. XI, § 2 Uniform System of Common Schools

The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

New Hampshire: Category I

Part II, Art. 83 Encouragement of Literature, etc.

Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.
New Jersey: Category II

Art. VII, § 4.1 Maintenance and Support of Schools

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

New Mexico: Category II

Art. XII, § 1 Free Public Schools

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

New York: Category I

Art. XI, § 1 Common Schools

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

North Carolina: Category II

Art. IX, § 1 Education Encouraged

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

North Dakota: Category II

Art. VIII, § 2

The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education.
Ohio: Category II

Art. VI, § 2 Public School System to Be Adequately Funded

The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

Oklahoma: Category I

Art. I, § 5 Public Schools

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools.

Art. XIII, § 1 Establishment and Maintenance of Public Schools

The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.

Oregon: Category II

Art. VIII, § 3 System of Common Schools

The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.

Pennsylvania: Category II

Art. III B. § 14 Public School System

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.
Rhode Island: Category III

Art. XII, § 1 Duty of General Assembly to Promote Schools and Libraries

The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

South Carolina: Category I

Art. XI, § 3 System of Free Public Schools and Other Public Institutions of Learning

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.

South Dakota: Category III

Art. VIII, § 1 Uniform System of Free Public Schools

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

Tennessee: Category I

Art. XI, § 12 Education’s Inherent Value—Public Schools—Support of Higher Education

The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher
learning, as it determines.

**Texas: Category II**

Art. VII, § 1 Support and Maintenance of
System of Public Free Schools

A general diffusion of knowledge being essential to the preservation
of the liberties and rights of the people, it shall be the duty of the
Legislature of the State to establish and make suitable provision for the
support and maintenance of an efficient system of public free schools.

**Utah: Category II**

Art. X, § 1 Free Nonsectarian Schools

The Legislature shall provide for the establishment and maintenance
of the state’s education systems including: (a) a public education system,
which shall be open to all children of the state; and (b) a higher education
system. Both systems shall be free from sectarian control.

**Vermont: Category I**

Chap. II, § 68 Laws to Encourage Virtue and Prevent
Vice; Schools; Religious Activities

Laws for the encouragement of virtue and prevention of vice and
immorality ought to be constantly kept in force, and duly executed; and a
competent number of schools ought to be maintained in each town unless
the general assembly permits other provisions for the convenient
instruction of youth. All religious societies, or bodies of people that may
be united or incorporated for the advancement of religion and learning, or
for other pious and charitable purposes, shall be encouraged and protected
in the enjoyment of the privileges, immunities, and estates, which they in
justice ought to enjoy, under such regulations as the general assembly of
this state shall direct.

**Virginia: Category II**

Art. VIII, § 1 Public Schools of High Quality to Be Maintained

The General Assembly shall provide for a system of free public
elementary and secondary schools for all children of school age throughout
the Commonwealth, and shall seek to ensure that an educational program
of high quality is established and continually maintained.

**Washington: Category IV**

Art. IX, § 1 Preamble

It is the paramount duty of the state 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.

**West Virginia: Category II**

Art. XII, § 1 Education

The legislature shall provide, by general law, for a thorough and efficient system of free schools.

**Wisconsin: Category II**

Art. X, § 3 District Schools; Tuition; Sectarian Instruction; Released Time

The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.

**Wyoming: Category II**

Art. I, § 23 Education

The right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts.

Art. VII, § 1 Legislature to Provide for Public Schools

The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and
the means of the state allow, and such other institutions as may be necessary.
APPENDIX II: BRIEF SUMMARY OF STATE EDUCATION LITIGATION†

A. States Where Education System Was Struck as Inequitable, Inadequate, or Otherwise Unconstitutional

Alabama: Category I

Opinion of the Judges Number 388, 624 So.2d 107 (Ala. 1993), holding that legislature must comply with circuit court order in *Alabama Coalition for Equity, Inc. v. Hunt*, CV-90-883-R, invalidating education funding system, and requiring provision of substantially equitable and adequate educational opportunities.

Arizona: Category I

*Hull v. Albrecht*, 950 P.2d 1141 (Ariz. 1997), appeal after remand of *Roosevelt*, infra, holding that system was still inequitable, because it allowed for substantial facility disparity.  
*Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973), holding that inequities in the state education system violated federal equal protection clause, as well as state education provision.

Arkansas: Category II

*Tucker v. Lake View School District Number 25 of Phillips County*, 917 S.W.2d 530 (Ark. 1996), holding that system was inequitable, in violation of state and federal equal protection clauses.  
*DuPree v. Alma School District Number 30 of Crawford County*, 651 S.W.2d 90 (Ark. 1983), holding that disparities in funding system violated both education provision and equal protection.

California: Category III

*Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) [*Serrano I*], holding that system was inequitable, in violation of the Fourteenth Amendment.

Serrano v. Priest, 557 P.2d 929 (Cal. 1976) [Serrano II], cert. denied, 432 U.S. 907 (1977), holding that funding system violated state equal protection provision by conditioning availability of school revenues on district wealth and district expenditures.

Connecticut: Category I

Sheff v. O'Neil, 678 A.2d 1267 (Conn. 1996), holding that system was inequitable and violated both state equal protection and education provisions, noting the existence of racial and ethnic isolation in public schools as important factor in this decision.

Horton v. Meskill, 376 A.2d 359 (Conn. 1977), holding that system was inequitable, in violation of the state equal protection clause.

Kentucky: Category II

Rose v. Council for Better Education, 790 S.W.2d 186 (Ky. 1989), holding that education system was inadequate under state education provision, but that order would be stayed to allow Legislature opportunity to act.

Massachusetts: Category I

McDuffy v. Secretary of the Executive Office of Education, 615 N.E.2d 516, holding that system was inadequate under state education provision, on evidence that less wealthy districts suffered in educational opportunity.

Michigan: Category I

Milliken v. Green, 212 N.W.2d 711 (Mich. 1973) [Milliken II], on rehearing after Rodriguez, vacating Milliken I, and holding that system was inequitable, in violation of state equal protection clause.

Milliken v. Green, 203 N.W.2d 457 (Mich. 1972) [Milliken I], pre-Rodriguez decision, holding education system violated federal equal protection clause.

Missouri: Category I

Committee for Educational Equality v. State, 878 S.W.2d 446 (Mo. 1994), reviewed a trial court holding that education funding system was inequitable under state education and equal protection provisions, but dismissed appeal because the trial court judgment was not final. See infra for subsequent decision upholding system after legislative amendments.
Montana: Category II

_Helena Elementary School District Number I v. State_, 784 P.2d 412 (Mont. 1990), holding that system was inequitable under state education provision, on grounds of disparity in educational opportunities.

New Hampshire: Category I

_Claremont School District v. Governor_, 703 A.2d 1353 (N.H. 1997), holding that system was inequitable under state education provision, on grounds of disparity in educational funding and resources.

New Jersey: Category II

_Abbot v. Burke_, 575 A.2d 350 (N.J. 1990) [Abbott II], holding that system was inequitable and inadequate, in that funding system must be sufficient to provide for the educational needs of the poorer districts. On two subsequent occasions, the New Jersey Supreme Court has rejected legislative reforms as insufficient to address the inadequacies of the education system. See _Abbot v. Burke_, 643 A.2d 575 (N.J. 1994) [Abbott III]; _Abbot v. Burke_, 639 A.2d 417 (N.J. 1997) [Abbott IV].

_Robinson v. Cahill_, 303 A.2d 273 (N.J. 1972) [Robinson I], cert. denied, 414 U.S. 976 (1973), holding that system was inequitable, on grounds of disparities in funding.

North Dakota: Category II

_Bismarck Public School District v. State_, 511 N.W.2d 247 (N.D. 1994), holding system inequitable under state equal protection provision, but unable to order remedy due to lack of statutorily-mandated quorum of Justices.

Ohio: Category II

_DeRolph v. State_, 677 N.E.2d 733 (Ohio 1997), holding that system was inadequate, on grounds that disparities in funding and educational opportunities violated "thorough and efficient" clause of state education provision.

South Carolina: Category II

_Abbeville County School District v. State_, 515 S.E.2d 535 (S.C. 1999), holding that education system was inadequate, on grounds that it did not provide minimal educational opportunities.
Texas: Category II


Vermont: Category I

*Brigham v. State*, 692 A.2d 384 (Vt. 1997), holding that system was inequitable because lack of substantially equal educational opportunities violated education and equal protection provisions of state constitution.

Washington: Category IV

*Seattle School District Number 1 v. State*, 585 P.2d 71 (Wash. 1978), holding that system was inadequate under education provision of state constitution because legislature failed to meet its “paramount duty” to fully fund system.

West Virginia: Category II


Wyoming: Category II

B. States Where Education System Was Upheld

(Cases marked with ** where court refused to address the issue on the merits, e.g., for separation of powers reasons.)

Alaska: Category I


Colorado: Category II

Lujan v. Colorado State Board of Education, 649 P.2d 1005 (Colo. 1982), reversing a trial court holding that system was inequitable, in violation of state equal protection and education provisions, and noting that constitution permitted some disparities in wealth among districts.

Florida: Category II (subsequently amended to Category IV provision)

**Coalition for Adequacy & Fairness in School Funding v. Chiles, 680 So. 2d 400 (Fla. 1996), refraining from adjudication on grounds of separation of powers, though majority of court found issue could be justiciable under certain circumstances.

Georgia: Category IV

McDaniel v. Thomas, 285 S.E.2d 421 (Ga. 1981), upholding education system as adequate and rejecting a claim that system violated equal protection.

Idaho: Category II


Thompson v. Engelking, 537 P.2d 635 (Idaho 1975), holding that state funding system does not violate state uniformity provision.

Illinois: Category IV

**Lewis E. v. Spagnolo, 710 N.E.2d 798 (Ill. 1999), holding that students have no cause of action under the state constitution based on the allegation that the state has not provided a minimally adequate education.

**Committee for Educational Rights v. Edgar, 641 N.E.2d 602 (Ill.
1996), refraining from adjudication on grounds of separation of powers.

Kansas: Category I


Louisiana: Category I


Maine: Category IV

*School Administrative District Number 1 v. Commissioner*, 659 A.2d 854 (Me. 1995), upholding education funding laws against a state equal protection challenge.

Maryland: Category II

*Hornbeck v. Somerset County Board of Education*, 458 A.2d 758 (Md. 1983), upholding system as equitable under state education provision.

Michigan: Category I

*East Jackson Public Schools v. State*, 348 N.W.2d 303 (Mich. Ct. App. 1984), holding that education is not a fundamental right under state constitution, and that state’s obligation to provide a system of free public education is not synonymous with an obligation to provide equal per student funding between districts.

Minnesota: Category II

*Skeen v. State*, 505 N.W.2d 299 (Minn. 1993), holding that disparities in state finance system did not violate state education provision.

Missouri: Category I

*Committee for Educational Equality v. State*, 967 S.W.2d 62 (Mo. 1998), affirming trial court judgment upholding education funding system, modified by legislature since 1994 decision, *supra*, as meeting adequacy requirements of state education provision.
Nebraska: Category I

*Gould v. Orr*, 506 N.W.2d 349 (Neb. 1993), upholding summary judgment dismissing claim that funding system violated state education and equal protection provisions where petition failed to allege that funding deficiencies harmed education quality.

New York: Category I


North Carolina: Category II

*Leandro v. State*, 488 S.E.2d 249 (N.C. 1997), rejecting an equality claim under state education clause, but allowing separate adequacy claim to proceed to trial.

Oklahoma: Category I


Ohio: Category II

*Board of Education of the City School District of Cincinnati v. Walter*, 390 N.E.2d 813 (Ohio), *cert. denied*, 444 U.S. 1015 (1979), upheld Ohio’s education funding system against an equity challenge, holding that the legislature has wide discretion, but that a minimum level did exist.

Oregon: Category II


*Coalition for Equitable School Funding, Inc. v. State*, 822 P.2d 116 (Or. 1991), holding that state education funding scheme did not violate state constitution.

*Olsen v. State*, 554 P.2d 139 (Or. 1976), upholding system as equitable under state education provision.
Pennsylvania: Category II


Danson v. Casey, 399 A.2d 360 (Pa. 1979), holding that constitutional sections that provided for a thorough and efficient system did not guarantee identical education programs, and upholding education system.

Rhode Island: Category III

City of Pawtucket v. Sundlun, 662 A.2d 40 (R.I. 1995), holding that state funding scheme for public education violated neither education nor equal protection clauses of the state constitution, and noting that courts should give great deference to legislature in this area.

South Carolina: Category I

Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988), holding that public school funding system violated neither state equality guarantee nor education provision.

Virginia: Category II

Scott v. Commonwealth, 443 S.E.2d 138 (Va. 1994), upholding system as equitable under education provisions of state constitution, which did not mandate substantive equality in funding.

Wisconsin: Category II

Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989), upholding system as equitable under state “uniformity” clause, and under state equal protection clause.