Equity in Public Education: School-Finance Reform in Michigan

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In the two decades since the Michigan Supreme Court refused to accept the responsibility of directing Michigan school-finance reform and dumped it into the political arena, the debate over improving the quality and equity in Michigan schools has raged. Born as a response to political maneuvering and a school finance lawsuit pitting the Governor against the State Treasurer, the Bursley Act resolved the first round of the
school-finance debate, promising to reduce the disparities between Michigan's rich and poor school districts. Nearly twenty years later severe disparities still exist, and the legislature continues to grapple with the complex problem of providing a quality education and an equal opportunity for Michigan's children without further burdening Michigan's taxpayers. This Note argues that the only adequate compromise between the pressure to limit taxes and the need to provide both educational quality and equity is to institute a form of full-state funded education. Part I of this Note briefly defines equity in public education and discusses the importance of increasing equity. Part II discusses other values and concerns that arise in the school-finance debate, such as liberty, local control, efficiency, and quality of education. Part III considers several fundamental school-finance alternatives. Part IV provides a historical overview of Michigan school finance-reform and a description of the current State School Aid Act and its resulting inequities. The Note concludes in Part V by arguing that the future of Michigan's children is best secured through a system of full-state funding.

I. THE DIMENSIONS OF EDUCATIONAL EQUITY

As the former chair of the United States House of Representatives' Committee on Education and Labor, Augustus F. Hawkins once opined, "The concept of equal opportunity is deeply embedded in our national ethos. We Americans love to be seen as good sports who guarantee a fair chance for all." But this only begs the question. What does it mean to strive for equity in public education? Are we striving for equal funding per student? An equal level of educational

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5. See Hain, supra note 1, at 361 (discussing the equalizing characteristics of the Bursley Act).


8. See infra part III (discussing full-state funding, as well as other school-financing alternatives).


achievement? In Michigan, as elsewhere, per-student funding inequities arise from several factors, including varying property tax rates and property tax bases. Inequities in educational outcome, on the other hand, may result from any number of factors, including teacher quality, parental influence, or the child's motivation. Some argue that equity should be measured by the educational inputs, especially money, available to each child, while others require substantially equal educational achievements. The problem is clear: before we can consider the best ways to combat the inequities in our schools, we first must understand what is meant by educational equity.

A. Defining Equity in Education

In constructing a working definition of equity in public school finance, several dimensions of equity should be considered: (1)
"who is the target of the equity assessment, that is, equity for whom?";\(^{18}\) (2) what "objects" (inputs, outputs, outcomes) should be distributed fairly among the equity targets?\(^{19}\) and (3) "what principles should be used to determine whether a particular distribution is equitable?"\(^{20}\) This Note will consider each of these dimensions in turn.

1. Equity for Whom?: The Equity Target—Students are the most obvious targets for an equitable distribution of educational resources. Children of low-income parents often attend poorer school districts with inexperienced teachers, larger classes, and shoddier physical resources.\(^{21}\) To continue to deprive poor children of a fair chance in the classroom (in addition to their upstream struggle against social and economic forces) surely shows that Americans are not the "good sports" that we make ourselves out to be. Fortunately, the federal government has recognized the need for an equitable distribution of school-finance resources and has granted financial support to schools attended by low-income students in an attempt to promote equity.\(^{22}\) But this federal equalization is far from complete;\(^{23}\) state mechanisms for creating equity are necessary and will occupy the balance of this Note.

Students are not the only beneficiaries of school-finance reform, however. Other groups, including parents and taxpayers, also have a claim on equitable school-finance mechanisms. Parents heavily invest in their children's present and future well-being and often make substantial life choices, such as the choice of where to live, based upon their concerns for the educational development of their children.\(^{24}\) Research has suggested that the emphasis parents place on child rearing and child development "transcends boundaries of [economic] class."\(^{25}\) Unfortunately, the equal provision of educational resources does not cross such economic boundaries.\(^{26}\) It is not unreasonable for affluent parents to seek to protect their investment in their

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18. Kearney & Chen, supra note 6, at 322; see also SWANSON & KING, supra note 17, at 243 (posing a similar question).
19. See Kearney & Chen, supra note 6, at 322; SWANSON & KING, supra note 17, at 243.
20. SWANSON & KING, supra note 17, at 243.
23. Benson, supra note 21, at 402.
25. Benson, supra note 21, at 403 & n.8.
children's educational future by maintaining that their local tax dollars should be spent in their local school district. Nevertheless, "no humane educational policy should overlook the plight of conscientious inner-city [and low-income] parents who must send their children to grossly ineffective schools." The most that can be asked of parents is an investment in raising happy and competent children; society and the state should be obligated to help fund the educational training.

Taxpayers also have a claim to equity in school finance. Equity seems to require that equal burdens be placed on taxpayers. In school finance, the traditional and awful choice taxpayers face is between a heavier tax burden and more poorly funded schools. The equity issue arises when taxpayers in property-poor districts must tax themselves at a higher rate to obtain the same or similar amounts of revenue generated at a lower rate in property-rich school districts. Property-poor school districts accordingly receive unequal tax revenue from an equal tax effort. Taxpayer equity requires fiscal neutrality (sometimes referred to as access equality), under which equal tax rates yield equal tax revenues. The state's role is to ensure that property-poor districts will collect as much as property-rich districts at a given tax rate.

But the problem of taxpayer equity goes far beyond this familiar complaint of property-poor district residents and the well-known regressivity of the property tax. The [property] tax, in theory, is a tax on wealth; the amount of property one

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27. Benson, supra note 21, at 403.

28. States such as Michigan rely heavily on local property taxation to support the local school district. See Mich. Comp. Laws Ann. § 388.1621 (West 1989). Taxpayers have the option of maintaining or increasing their local district's funding by levying a higher tax rate on themselves in a millage election. C. Philip Kearney, A Primer on Michigan School Finance 5 (2d ed. 1990).

A "mill" is "a money of account equal to 1/10 cent," while a "millage" is "a rate (as of taxation) expressed in mills per dollar." Webster's Ninth New Collegiate Dictionary 754 (1987). Thus, a property tax millage rate of one translates into one dollar in taxes for every one thousand dollars in assessed property value.

29. Coons et al., supra note 15, at 2 ("The quality of public education may not be a function of wealth other than the wealth of the state as a whole.").


31. Coons et al., supra note 15, at 34, 205. The state may make up the difference from its school-financing funds derived from sources other than property taxes, or it may employ a "Robin Hood" technique of "recapture" by taking away the excess revenues generated at a given tax rate in a property-wealthy district and distributing these revenues to property-poor districts. See Swanson & King, supra note 17, at 161.

32. Kearney, supra note 28, at 27 (stating that "most economists agree that the property tax is an extremely regressive tax").
owns is considered to be a measure of a person's wealth. Perhaps this was true in the past, and it still may be true for commercial, industrial, and agricultural property owners, but inequities arise when taxing residential property owners, who may own property assessed at high values but who do not have the liquidity to pay the tax bill. Another source of taxpayer inequity is the quality of assessment practices within a given assessing unit. The ability of assessors and the quality of assessment varies considerably among the local assessing units and even among the separate classes of property. Finally, severe inequities stem from the unequal distribution of highly valued commercial and industrial properties. With the "blessing" of a large industrial or commercial concern in its district, a given local taxing unit can afford to levy a significantly lower tax rate and still generate revenues equivalent to a unit which levies much higher rates. Although state tax law alleviates some of the burden that these inequities create, school-finance taxation is far from the equity ideal.

33. Id. at 26.
34. Id.
35. Id. at 27.
36. Id. at 32-33.
37. Michigan income and property tax law has several devices which go a long way toward reducing the regressivity and the inequities of property taxation. To combat the regressivity problem, Michigan adopted the Homestead Property Tax Credit. See MICH. COMP. LAWS ANN. §§ 206.520-532 (West 1986 & Supp. 1992). The tax credit is one of the most generous "circuit breaker" devices in the nation. KEARNEY, supra note 28, at 28. Under the circuit breaker provision, the state will refund 60% of property taxes which exceed 3.5% of total income for both renters and homeowners. MICH. COMP. LAWS ANN. § 206.522(1)(a) (West 1986 & Supp. 1992).

Because school funding is only one governmental function supported by local property taxes (police and fire protection, city and county road service, and city and county courts are others), Michigan has chosen to constitutionally limit the aggregate rates that can be levied on property. The Michigan Constitution places a limit of 15 mills (18 mills where approved) on the aggregate tax rate levied by school districts, townships and counties. MICH. CONST. art. IX, § 6. This limit may be exceeded, however, by voter override, but in no case can the aggregate rate exceed 50 mills. Id.

A more complicated limit to Michigan property taxes is the Headlee Amendment, which requires a reduction in the local property tax rate when the property tax base in a school district increases in value faster than the rate of inflation. MICH. CONST. art. IX, §§ 25-34. Finally, the Michigan legislature recently adopted a controversial "Robin Hood" school-funding plan, which aims to take half of the new business property tax revenues from school districts with property tax revenues high enough to disqualify them from receiving most state school aid and to distribute the revenues to property-poor tax districts. See 1991 Mich. Pub. Acts 108 (codified at MICH. COMP. LAWS ANN. §§ 380.752-.756 (West Supp. 1992)); see also infra part IV.C (discussing the "Robin Hood" plan which is actually a form of recapture).

38. KEARNEY, supra note 28, at 26. Of course, taxpayer equity is intimately intertwined with state tax law not involving school-finance issues (such as provision of local police, fire protection, and road service). This Note, however, only will consider taxpayer equity insofar as equity is tied to local tax effort and the funding of education.
2. Equity of What?: The Equity Object—The objects of educational equity generally are grouped into inputs, outputs, and outcomes.\(^39\) “Inputs” are the resources upon which schools rely: dollars and the things that dollars can buy, such as teachers, computers, and classrooms. Although inputs may be measured by the actual amounts of physical resources at the students’ disposal,\(^40\) dollar inputs are the most common measure of educational inputs because they may be easily expressed in the form of revenues or expenditures per student.\(^41\)

While this Note expressly uses input measures to evaluate school finance equity, it should be noted that education policymakers,\(^42\) researchers,\(^43\) and courts\(^44\) all consider outputs and outcomes as important measures of equity in education. “Output” figures measure the products of the educational process, such as student achievement or behavioral changes.\(^45\) Finally, the “outcome” measure of school-finance equity looks to the earnings, well-being, or quality of life that the student has obtained.\(^46\) Granted, it is entirely appropriate to focus on the products of the educational system when evaluating the quality of the system. In turn, an equitable system of public education ideally should turn out competent and productive students. Yet the output and outcome measures are inadequate and impractical yardsticks for determining the equity of school-finance policy for several reasons.\(^47\)

39. Kearney & Chen, supra note 6, at 322–23; Swanson & King, supra note 17, at 243. Note that the Michigan Supreme Court refused to decide upon a measure of equal educational opportunity, partly because of a disagreement over the equity object—inputs or outputs. Milliken v. Green (Milliken II), 212 N.W.2d 711, 716 (Mich. 1973) (T.G. Kavanagh and Levin, JJ., concurring).

40. See Swanson & King, supra note 17, at 243.

41. See Kearney & Chen, supra note 6, at 323–24.

42. See Bennett, supra note 16, at 222.

43. See Kearney & Chen, supra note 6, at 323.


45. Swanson & King, supra note 17, at 243.

46. Id.

47. In most of the states which now operate under judicially mandated school finance standards, the courts have primarily relied upon input measures of school quality and equity. See, e.g., Helena Elementary Sch. Dist. No. 1 v. State, 769 P.2d 684, 690 (Mont. 1989) (“The State attempted to present an argument at trial that equality of educational opportunity is more appropriately measured by output, . . . rather than by input of dollars. The District Court concluded that the State had failed to submit convincing evidence on the output theory of measurement. We agree . . . .”); Abbott v. Burke, 575 A.2d 359, 374 (N.J. 1990) (finding output evidence of substantive education to be “insufficient to exclude consideration of dollar input and expenditure disparity”); Edgewood Indep. Sch. Dist. v. Kirby (Edgewood I), 777 S.W.2d 391, 397 (Tex. 1989) (“Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds.”).
The first is practical: How would the state or school district meet a requirement of equal educational outputs or outcomes? Because there are so many factors beyond the control of schools and teachers—parental influence, student discipline and motivation, and peer influence—which affect educational outputs and achievement, schools would find it difficult (if not impossible) to produce balanced educational outputs. Second, measuring educational equity based on outcomes is, at best, difficult and, at worst, suspect. Measuring achievement through commonly used standardized testing materials only gauges one aspect of interest in educational output—how well our children can perform on standardized tests. These tests ignore other important products of the educational system such as maturity, citizenship, and self-concept; and important educational outcomes such as employment and income. Moreover, academic scholars have criticized standardized tests for being subject to subtle biases which disadvantage children based on race, socioeconomic status, or gender. Put simply, measuring educational output through standardized test scores is incomplete and inaccurate. Finally, "quality might be sacrificed to equality under [an output definition of equity]. The level of academic achievement need not be high, but simply equal, to satisfy this principle. A graduating class of illiterates would satisfy."

Because of these difficulties and pitfalls with measuring equity on an outputs or outcomes scale, this Note evaluates

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48. See supra notes 13–15 and accompanying text. Note that the very fact that so many factors affect educational output and outcomes makes the value of increased educational inputs questionable. Part I.B infra deals with the issues of how and why equity in educational inputs is important.


50. Thomas, supra note 17, at 264.


52. Thomas, supra note 17, at 264 (“The data needed to support an outcomes [not distinguished from outputs] orientation are more difficult to obtain and less reliable than the information required by the input approach.”).

53. Levine, supra note 30, at 517 n.73. Of course, this criticism of measuring equity by educational outputs just as easily could be levelled at measuring equity by educational inputs. As long as inputs are equal, educational outputs and outcomes are irrelevant.
school-finance equity in terms of educational inputs. Although there are shortcomings in relying on physical resource and dollar inputs as the equity objects, this Note will nevertheless consider input equity in terms of per-pupil expenditures of dollars or the physical inputs that dollars can buy.

3. The Equity Principles—In evaluating school-finance equity, this Note will consider three principles of equity—horizontal equity, vertical equity, and equality of opportunity. The traditional notion of equity is “horizontal equity,” or equal treatment of equals. This principle translates into equal finance expenditures for equally situated students. “Vertical equity” recognizes differences among students and requires us to treat unequal individuals unequally. This version of equity recognizes that equal treatment is not always fair or just for those students “experiencing abnormal conditions such as poverty and physical, psychological, and mental handicaps (or high costs of living, dispersed populations, and municipal overburden).” The third principle, “equality of opportunity,” is a negative condition which requires that there be no educational input differences among students as a result of

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54. As the Montana Supreme Court phrased it, “[W]e do not suggest that financial considerations . . . are the sole elements of a quality education or of equal educational opportunity. There are a number of additional factors which are a significant part of the education of each person in Montana . . . .” Helena Elementary Sch. Dist. No. 1 v. State, 769 P.2d 684, 691 (Mont. 1989). The court cited teachers, parental influence, and student motivation as other factors important to a quality education. Id.

55. Per-student equity, rather than per-school district equity, is the most appropriate unit of measure:

The pupil unit of analysis focuses on the pupils in a state; thus, districts that have greater numbers of pupils have a greater influence on the equity assessment compared to smaller districts. Basically, each pupil receives equal weight in the pupil unit of analysis. The district unit of analysis [on the other hand] ignores district size and gives equal weight to each district in the state. This implies that each pupil in the larger districts has a relatively smaller influence on the equity assessment than each pupil in the smaller districts.


56. SWANSON & KING, supra note 17, at 242; Kearney & Chen, supra note 6, at 325.

57. SWANSON & KING, supra note 17, at 242; Kearney & Chen, supra note 6, at 325.

58. SWANSON & KING, supra note 17, at 242. The concept of vertical equity requires policymakers to provide additional funds for those districts that are more expensive to run or those students who are more expensive to educate. In Michigan, the legislature has sought to achieve vertical equity through the provision of state categorical aid grants to support districts in providing such programs as bilingual education, gifted and talented student programs, transportation, and special education. See infra part IV.C.
such factors as school district wealth, geographic location, race, or gender. Although equality of opportunity is an appropriate principle under which equity should be measured, this Note does not expressly evaluate equality of educational opportunity. Rather, the Note implicitly considers equality of opportunity insofar as it is reflected in measures of horizontal equity among school districts of different wealth, location, and socioeconomic class.

To summarize, this Note defines educational equity along several dimensions. First, the students and taxpayers are the primary targets of equity evaluation. Second, equity will be expressly considered under the principles of horizontal and vertical equity. Finally, and most important, this Note accepts equity of inputs as the most practical and appropriate object of equity analysis.

**B. Does Money Make a Difference?**

Some may argue that defining equity as horizontal and vertical equality of inputs implies that providing more inputs—more money—makes a difference in the quality of education that our children receive. Clearly, money can buy better physical equipment (computers, classrooms, labs, and lockers), more teachers (decreasing the student-teacher ratio), and perhaps better teachers (pulling educators from other school districts and other occupations), but will these input expenditures somehow improve the education our children receive?

This question has troubled researchers, educators, and policymakers ever since equality of educational opportunity became vogue and the influential *Coleman Report* was issued in 1965. Some empirical research finds no significant

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59. SWANSON & KING, supra note 17, at 242; Kearney & Chen, supra note 6, at 325.

60. In response to the Civil Rights Act of 1964's mandate to investigate the extent of inequality (based on suspect class) in America's schools, Pub. L. No. 88-352, § 402, 78 Stat. 241, 247 (1964), the United States Office of Education conducted an expansive study delving into the differences among schools and teachers. Hanushek, supra note 24, at 430–31. This study, known as the *Coleman Report*, cast serious doubt on the assumptions that increased funding, better schools, and better teachers improved student performance. *Id.* at 431. The report argued that the influence of the family and the child's peers have a greater effect on outcome than those educational inputs that money can buy. *Id.*
relationship between educational inputs and outputs,\textsuperscript{61} while other studies show a correlation between particular inputs which money can buy and educational achievement.\textsuperscript{62} Simply, the empirical evidence does not answer the question of whether money makes a difference reliably. Increased educational inputs may or may not have a significant effect on outcomes and are clearly only one factor in the student's level of achievement, but public policy considers much more than statistical proof. As one commentator stated, "[I]t is simply indefensible to use the results of quantitative studies of the relationship between school resources and student achievement as a basis for concluding that additional funds cannot help public school districts."\textsuperscript{63} An equitable school
system and increased funds for those lagging behind in expenditures make a difference for other reasons.

The objection to boosting revenues in underfunded schools is clear: Why throw good money at a problem that money might not solve? But this objection only tells half the story; the converse is equally persuasive: Why risk something as important as our children's future just because we are not sure that money is the solution? It is fruitless to debate these arguments from ignorance. Beyond empirical evidence and the "what-we-don't-know-won't (might)-hurt-us" arguments, several concerns dictate the need for increased equity of inputs in our schools.

First, money matters because we think that it matters. If we didn't think so, wealthy school districts would not zealously defend their property tax revenues earmarked for their local school district. Likewise, parents and students in underfunded districts would not litigate the issue. The fact is that as long as we perceive money to be an important educational input, the issue of increased educational funding for poor districts will be at the top of the political agenda. Without proper funding, we will perceive our poor urban and rural schools and the products of such schools as inadequate; and this perception might be crucial in the higher education and job markets.64

This leads to the second concern—sheer fairness.65 In a society which values giving everyone a fair shake, we should

A second concern is that the logic underlying the argument that money does not matter does not carry over to similar studies of other organizations. The rationale behind the conclusion that money does not affect school performance presumes waste when school expenditures do not appear...as having positive relationships with student achievement...It follows from the logic underlying this argument...that...organizations that do face competitive pressures...[should] show positive relationships between all resources funded...and their measures of output.

This simply is not the nature of the evidence.

Id. at 458-59.

64. As one high school teacher in a poorly funded urban district observed in Jonathan Kozol's recent bestselling book Savage Inequalities:

I have four girls right now in my senior home room who are pregnant or have just had babies. When I ask them why this happens, I am told, "Well, there's no reason not to have a baby. There's not much for me in public school." The truth is, that's a pretty honest answer. A diploma from a ghetto high school doesn't count for much in the United States today.


65. See Minow, supra note 60, at 398-99.
not tolerate significant differences, even if only perceptual ones, in our public schools. Of course, fairness is only one of the values at stake in the school-finance debate, but it cannot be easily overlooked. Finally, money and equity matter in theory because the effects of equity and money impact real life. Popular and scholarly literature is filled with stories of schools with inadequate and grossly unequal resources. For instance, in his recent indictment of America's public school system, Jonathan Kozol quoted one student in a poorly funded high school:

"I don't go to physics class, because my lab has no equipment . . . . The typewriters in my typing class don't work. The women's toilets . . . " She makes a sour face. "I'll be honest," she says. "I just don't use the toilets. If I do, I come back into class and I feel dirty."67

As Professor Minow penned,

Schools are not just means to ends, but also places where great numbers of people spend their days. This means . . . disparities don't just look bad on paper; they feel bad in life. It is true that researchers find it difficult to measure the outputs of education, and even more difficult to correlate those outputs with inputs. However, equality of inputs is something we can measure. Equal inputs also actually affect current quality of daily school experiences.68

II. EQUITY'S IMPACT ON THE OTHER VALUES AT STAKE

Even though improving equity of inputs among Michigan's school districts is the primary concern of this Note, it is far
from the only value enmeshed in the school-finance discussion. School-finance reform affects the complicated relationships among children, parents, the community, and the state. In the process, several deeply held values are dragged into the debate, including liberty, localism, efficiency, quality, and the value of education itself. 69

A. Liberty

Equity's classic adversary, liberty, or "freedom from coercion and the absence of external restraint," 70 is an amorphous value and probably subsumes the entire category of local control. For purposes of this discussion, however, liberty will be limited to the freedoms that the family unit—and parents in particular—possess.

Parents certainly possess the freedom to bear and nurture their children with only limited governmental constraint. 71 In the realm of education, the nurturing influence of the family is great. Children from families that value education and participate in their children's intellectual development through interaction with teachers, educational activities, and encouragement tend to reach higher levels of educational achievement. On the average, children from families that are indifferent toward their children's educational development do not do well in school. 72 "By the time an infant reaches school age, the likelihood of academic success or failure is to a large degree determined" 73—determined by the parental emphasis on education.

The implication is that the state can do nothing; it is within the parents' liberty to determine the child's academic achievement. But those who provide and support public

69. This list is probably not complete, nor is each category self-contained. On the contrary, there is substantial overlap, interplay, and conflict among these values.
70. Thomas, supra note 17, at 267.
72. Id. at 221–22.
73. Id. at 221.
education do not believe that one's academic future is determined exclusively at home. Public schools and the quality of education play a role in leveling these differences, and the quality of education arguably is affected by state funding. More money for property-poor school districts may mitigate the parents' influence, but such a minor incursion on parental liberty ideally will benefit the child.

B. Local Control

Embraced by some, disparaged by others, the value of local control pervades the school-finance debate. Freedom for local taxpayers to choose how much they spend on educational services has been an essential part of the Michigan school-finance scheme. Any proposal to equalize funding across districts necessarily infringes on this interest, be it legitimate or hoax. We accordingly must ask the question: What are the primary reasons that we Americans value local control over education?

First, local control makes it easier for parents-taxpayers to choose an ideal package of taxes and educational services for themselves and their families. For many, this is a very real choice among the preferred services each community offers. For others, however, financial, occupational, and other constraints cut against this market-based rationale.

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74. See supra notes 59–65 and accompanying text.
77. See infra parts IV.C–D.
78. Weinstein, supra note 71, at 230.
79. Hanushek, supra note 24, at 445–46.
80. It may also be argued that local control actually hinders the parents' ability to choose an appropriate level of education expenditure for their children. Once a family has made the crucial decision to locate in a community, future educational expenditures for their children will depend on the decisions of the family's neighbors. For instance, "[a] rural family desiring and willing to pay for an excellent education for its children might find its neighbors preferring low taxes and low school expenditures." JAMES W. GUTHRIE ET AL., SCHOOL FINANCE AND EDUCATION POLICY 156 (2d ed. 1988). Thus, the family's future educational choices become quite limited. Cf. Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71, 98 (Wash. 1978) (en banc) (declaring unconstitutional the State of Washington's school-finance system, which was heavily dependent on local tax levies, and stating that "[t]he special excess levy is neither dependable nor regular. It is wholly dependent upon the whim of the electorate").
Second, proponents argue that local control stifles the bureaucratizing tendencies of centralization and allows experimentation and the development of new ideas with only the community's approval. Innovation is fine for those districts with the ability to implement and evaluate new ideas, but again, the poorer districts retain only marginal or secondary benefits from this rationale. Opponents of the local control argument also counter that lack of control over educational funds is not incompatible with local autonomy with respect to other matters, such as curriculum, school operation, and staffing decisions.

Third, local control over school district funding provides accountability. Localism, so the argument goes, stems the growth of bureaucracy and allows school administrators to be more sensitive to the community's needs. "Experience teaches that the system is much more responsive when a telephone call or visit to the local school or board is an avenue for complaints." But experience also shows that school boards sometimes are controlled by constituencies, rather than by the community as a whole. Moreover, centralized financial control does not necessarily require bureaucratization of daily school operation or insensitivity to community needs.

Despite the arguments on both sides, localism is a deeply held value in the arena of public education. Any move toward further centralization of funding eventually must confront the attitudinal barriers that localism erects.

81. See, e.g., Weinstein, supra note 71, at 230.
82. Id.
83. See, e.g., Thomas, supra note 17, at 302.
84. Weinstein, supra note 71, at 231.
85. Id.
86. Id. at 231–32; see also Seth Mydans, A Political Proving Ground for a Rising Religious Right, N.Y. TIMES, Feb. 20, 1993, at A1 (reporting that one group of Christian fundamentalists, which garnered a majority of a suburban San Diego, California school board in the recent election, is seeking to push its agenda in the school district but is receiving heated public opposition).
C. Efficiency

In the modern economy, attention must be given to the distribution and use of our scarce public resources. Because public education is but one recipient of public funds, it is entirely fair to ask whether we are getting the most for our educational dollar. As was discussed previously, the empirical evidence regarding the effects of educational inputs on educational outputs is rather muddled. Nonetheless, the public justifiably can demand quality education for its tax dollar, and any school-finance plan should consider ways to improve the efficiency of the educational system.

D. Quality

Even though there is disagreement on how to define educational quality and what produces high-quality educational outputs, any financing scheme which promotes equity at the perceived cost of quality should be avoided. If equal funding requires pulling down highly funded, high-quality schools to some average level of funding or quality, we should be concerned. Such a politically suspect scheme likely would cause flight to the private school system among those who could afford it, as the perceived quality of public education declines. Although quality need not be sacrificed for equity in school funding, quality can be maintained only with an infusion of revenues to “level-up” the underfunded districts.

It is doubtless that no financing scheme can optimally address the sometimes conflicting values of equity, liberty, localism, efficiency, and quality. The most we can expect is a plan with adequate trade-offs promoting equity while sufficiently maintaining the other values.

88. See supra notes 60–63 and accompanying text.
89. Thomas, supra note 17, at 273–75.
90. Id.
III. THE FUNDAMENTAL STATE FINANCING SCHEMES

State school-finance plans can take on a multitude of forms and hybrid models, each with its attendant strengths and weaknesses. This Part will consider briefly the basic financing plans and how the plans affect the values at stake.

A. Foundation Plan

Even though Michigan abandoned its foundation plan (FP) in favor of an arguably more equitable finance scheme,91 FPs are still the state-funding scheme used in a majority of the states.92 With a FP, the state defines a minimum funding level which provides the minimum adequate education, while the local districts are free to raise additional revenues through an optional levy (known as a local leeway).93 In effect, the state and the local district form a partnership to fund the required minimum program, with the amount of state participation declining as local tax base wealth increases.94 Reform usually occurs through an increase in state aid—a "quick fix that gets the voters' attention because the shift in funds [from wealthy to poorer districts] or increase in spending is apparent immediately."95

The benefits of an FP are increased local control and parental liberty in choosing an appropriate level of local district funding above the foundation level. But as the experience in Michigan shows,96 FPs may be subject to severe funding disparities if the guaranteed foundation level is not set high enough to minimize the incentive for local taxpayers in wealthier districts to boost the district's revenues above the foundation.

91. Hain, supra note 1, at 350 n.2, 361.
92. See SWANSON & KING, supra note 17, at 152 tbl. 8.1, 156.
93. Id. at 156–59.
94. Id. at 156–57.
Equity in Public Education

B. Tax Base Equalizing

For the past two decades, Michigan has funded its schools with one of the variants of tax base equalizing (TBE)—a guaranteed yield program. Basically, TBE plans attempt to mitigate disparities by providing equal tax revenues for equal tax effort. TBE essentially requires the state to provide a uniform tax base for each district and to allow the local voters to determine the appropriate tax level without regard for the district's wealth. Property-poor districts which have actual property tax revenues that are less than those which a uniform tax base would provide receive the difference from the state. In its purest form, TBE also requires wealthy districts to surrender their excess revenues to the state through recapture.

Clearly, TBE seeks a compromise between the competing values of equity and liberty. TBE is successful in promoting taxpayer equity and allowing local voters to retain control of education expenditures. Nonetheless, disparities in per-pupil spending still may exist. Where the guaranteed tax base is not set at a sufficiently high level to minimize the impetus to increase local school revenues, districts which place greater value on education still may tax themselves at higher rates and raise more funds. Moreover, despite the ability of poor districts to raise more dollars per mill levied, in the absence of full recapture, property wealth still may make a difference on the upper end, as wealthy districts are not prevented from spending at much higher levels.

98. See Swanson & King, supra note 17, at 159–67. TBE may take on several mathematical variations—including guaranteed tax base, district power equalization, and percentage equalization—but the basic principle remains the same: equal tax revenue for equal tax effort. Id.
99. Id.
100. Id. at 164–65.
101. Even with Michigan's Equal Yield Plan, per-student spending disparities are drastic, as local taxpayers choose to tax themselves at varying rates and many districts far exceed the guaranteed yield per mill levied, without being subject to state recapture. See infra part IV.D.
C. Full-State Funding

As its title indicates, full-state funding (FSF) places full responsibility for funding education in the state’s hands. All revenues collected, whether from state or local sources, are distributed to local school districts at equal per-student levels. Adjustments are then made for local cost differences or special student needs to provide vertical equity.\textsuperscript{102}

The premise behind FSF is “that the level of funds available for designing educational programs should not in any way rely upon districts’ fiscal capacity or effort.”\textsuperscript{103} The fact that only a few states have implemented a form of FSF\textsuperscript{104} shows that this is the most radical departure from traditional school-funding mechanisms. Certainly, the goal of equality is sufficiently attained with FSF.\textsuperscript{105} For instance, California, which enacted a mild form of FSF on the heels of the controversial Proposition 13, achieved equal funding for more than ninety percent of its students, with the remaining differentials reduced to less than two hundred dollars per student.\textsuperscript{106}

\begin{itemize}
  \item \textsuperscript{102} See SWANSON & KING, supra note 17, at 168–69.
  \item \textsuperscript{103} Id. at 168.
  \item \textsuperscript{104} Id. at 152–53 tbl. 8.1.
  \item \textsuperscript{105} FSF has been advocated as the “appropriate policy choice for school-finance reformers,” because “[j]ustice in the allocation of school resources to children is most likely to be achieved if the distribution question is separated from questions pertaining to revenue, thus eliminating the potential for decisions based on the desires of adult taxpayers.” Michelson, supra note 87, at 457.
  \item \textsuperscript{106} Serrano v. Priest, 226 Cal. Rptr. 584, 613 (Ct. App. 1986). Professor Joseph Henke describes Proposition 13 as a “radical” reform, “which limited the property tax to one percent of full market value for all purposes throughout the state with no local property tax override . . . .” Joseph T. Henke, Financing Public Schools in California: The Aftermath of Serrano v. Priest and Proposition 13, 21 U.S.F. L. Rev. 1, 2, 23 (1986). Professor Henke goes on to discuss the effects of FSF and Proposition 13 on the funding of California’s public schools. Id. at 1–2, 24–29.
  \item Not everyone is satisfied with California’s FSF plan, however. Despite the improvement in equity among California’s schools, one recent study criticized California’s school-spending scheme because state fiscal and spending limitations constrained California lawmakers’ ability to “level-up” poorly funded schools, caused California schools to lag behind much of the nation in school spending, and created competition among school districts vying for precious state funds. See Lawrence O. Picus, Cadillacs or Chevrolets?: The Evolution of State Control over School Finance in California, 17 J. Educ. Fin. 33, 57–59 (1991). Professor Picus concluded his research by stating, “It appears that the increased equity the California system has achieved has also created more Chevrolets and fewer Cadillacs among the state’s schools.” Id. at 59.
\end{itemize}
The critics of FSF argue that FSF will result in centralized control of school operations, including the selection of curriculum and school materials. This concern seems dubious, however, as there is no compelling evidence that centralized funding leads to less control over school operations. A more valid criticism of FSF is the perceived loss of liberty for the local taxpayers and parents, as they realize that they have little ability to influence the quality of their children's education. Moreover, some may fear that the inability to raise revenues above the state mandated level will stifle creativity and innovation in education. Whether founded or not, such concerns should be addressed so that parents will not take their children and exit the public school system, furthering the perception of poor quality in public schools.

One final and practical concern with FSF may arise: local districts could frustrate the equity goal of FSF by supplementing local school revenues with "fundraising, sale or lease of school property, student fees, benefit assessments, developer fees, intergovernmental transfers, and special taxes." California's experience with FSF may be indicative. "By 1983, more than one hundred tax-exempt, nonprofit foundations had been organized to raise supplemental funds for particular districts." Furthermore, by 1985, several wealthy districts approved special tax assessments to bolster their districts' coffers. State equalization of some of these supplemental revenues is entirely appropriate and possible, but

107. See Thomas, supra note 17, at 302.
108. See id.; Michelson, supra note 87, at 457–58.
110. Id. at 24.
111. Id. at 30.
112. Proponents of parental liberty and local control may argue that parents and the local community should be permitted to exercise their autonomy and contribute their personal funds to the community's school district. But allowing such community efforts will only thwart the purposes of providing equity. See supra parts I.A–B. By boosting the revenues of the local school district, parents and the community again may increase the disparities between wealthier and poorer school districts. The perceived quality of the poorer school districts will decline, and children in the poorer districts will feel shortchanged. Granting local tax overrides or allowing local residents to contribute to the local school district simply will create a vicious circle of increasing disparities and pressures to bring poorer districts on a par with wealthier districts.

Local control proponents similarly may argue that under a regime of equal funding, the wealthier school districts will not be given an opportunity to lead the way in innovation and raising educational standards. As a consequence, so the argument goes,
equality of a few of those revenue sources might be legally questionable and practically unenforceable. Nonetheless, an effective FSF program largely could avoid these consequences by maintaining perceived quality in educational services. It is clear that the challenge for FSF is to improve equity without sacrificing perceived quality.

While FSF is an effective tool for improving equity among students and taxpayers, fiscal constraints may tempt the state to decrease or freeze school funding. State lawmakers should be wary of school spending cuts as wealthy districts may accuse the state of "leveling-down" their schools, and the state citizenry as a whole may cast the blame for spending decreases on the FSF plan. But spending decreases are not a result of a defect in FSF; rather, they stem from statewide fiscal problems and legislative prioritizing. FSF should not be condemned for these ubiquitous dilemmas.

In addition to FP, TBE, and FSF—the fundamental school-finance alternatives that affect the mix of state and local school funds—other finance reform mechanisms that need not alter the composition of state and local funds should be noted. First, school choice (choice) allows the individual child and family to choose their preferred school and spend their allocated funding at that school. Like FSF, choice

there will be less pressure to improve poorer school districts to keep pace with wealthier districts. Although this criticism of an equal funding rule is not without force, these fears can be alleviated by provision of a local enrichment fund which would allow communities to tax themselves a few extra mills (up to a state-mandated level) and retain the revenues from the taxes. With this enrichment fund, communities that desire to lead the way in educational innovation will have an opportunity to do so, but not at the expense of a drastically widening funding gap.


115. See Swanson & King, supra note 17, at 339; see also infra note 239 (discussing Michigan's recently enacted Schools-of-Choice program).

With the perceived decline in the educational achievement of America's students, market-based reform such as choice recently has become a viable and attractive alternative. See Chubb & Moe, supra note 60, at 215–29. Choice has also received national attention as former President George Bush endorsed a choice program that would offer families vouchers to send their children to public or private schools, while President Bill Clinton supports a public school choice policy. See Susan Chira, Furor Over 'Choice', N.Y. TIMES, Oct. 28, 1992, at B10; Charles A. Radin, Report Blasts Mass. School Choice Program, BOSTON GLOBE, Oct. 26, 1992, at 1.
programs ideally provide state-equalized funds for each student and allow parents the liberty to choose the appropriate school for their child. Because choice programs successfully may coexist with FSF or TBE (so long as revenues are distributed directly to students so they may spend their allocations at their chosen schools), this Note will only consider choice programs insofar as they differ from, hinder, or enhance school-finance plans.

Second, school district reorganization and consolidation are also feasible school-finance reforms. Setting aside the political and logistical difficulties of implementing adequate redistricting proposals, redistricting would fail to enhance the values at stake sufficiently. Taxpayer and student equity could be improved marginally, but significant differences might remain among the redrawn districts. Moreover, parents might feel even less able to influence their child’s education with an added tax dollar as redrawn districts necessarily would be larger and arguably more bureaucratic. Granted, redistricting certainly would provide a quick fix and an adequate short-term solution to some of Michigan’s most glaring equity problems, but the threat of only limited and local effectiveness and the potential flight of the wealthy cut against the long-term efficacy of such a solution.

IV. TWO DECADES OF SCHOOL-FINANCE REFORM IN MICHIGAN

Throughout the country, the early 1970s were witness to a wave of school-finance reform initiatives, as reformers sought change in the courtrooms and the state legislatures. Support for choice is far from universal, however. The Carnegie Foundation for the Advancement of Teaching released a report in November 1992 arguing that choice is not a panacea—without proper safeguards, it primarily benefits children of better-educated parents, does not necessarily improve student performance, and actually may widen the gap between rich and poor districts. THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, SCHOOL CHOICE 14,16,20,25 (1992) [hereinafter CARNEGIE FOUNDATION]; see also Susan Chira, Research Questions Effectiveness of Most School-Choice Programs, N.Y. TIMES, Oct. 26, 1992, at A1 (discussing the Carnegie Foundation’s report and the effectiveness of school choice programs). 116. Thomas, supra note 17, at 306. 117. See generally Symposium, Future Directions for School Finance Reform, 38 LAW & CONTEMP. PROBS. 293 (1974).
Michigan was no exception. In 1971, then-Governor William Milliken, seeking to stake out the political high ground, challenged Michigan's system of school finance in state court.\textsuperscript{118} Although reform through the courts was not forthcoming,\textsuperscript{119} the state legislature changed the school-funding rules\textsuperscript{120} and has continued down the path of reform ever since.

\subsection*{A. School-Finance Litigation}

Although school-finance litigation has achieved some measure of success in other states,\textsuperscript{121} litigators in Michigan have had

\begin{footnotesize}
\begin{enumerate}
\item Milliken v. Green (\textit{Milliken I}), 203 N.W.2d 457 (Mich. 1972), \textit{vacated}, (\textit{Milliken II}), 212 N.W.2d 711 (Mich. 1973); \textit{see also} Hain, \textit{supra} note 1, at 351–52 (describing the background behind the filing of the suit).
\item \textit{Milliken II}, 212 N.W.2d at 718–21.
\item Hain, \textit{supra} note 1, at 360–65.

School-finance reform litigators have used two basic constitutional strategies to challenge state school-funding schemes in state courts. Some litigators have had success in arguing that state funding schemes violated the state's Equal Protection Clause. \textit{See}, \textit{e.g.}, Horton, 376 A.2d at 374–76 (finding education to be a fundamental right in Connecticut and striking down the state's school funding scheme on state equal protection grounds). Other school finance litigators have successfully challenged state school-funding schemes under the state's Education Article. \textit{See}, \textit{e.g.}, Edgewood Indep. Sch. Dist., 777 S.W.2d at 369–97 (finding that the Texas public school system, which was characterized by gross inequalities and inadequacies, failed to satisfy the efficiency requirement of the Texas Constitution's education provision). \textit{See generally} Molly McUsic, \textit{The Use of Education Clauses in School Finance Reform Litigation}, 28 HARV. J. ON LEGIS. 307 (1991) (analyzing and arguing for the use of education clauses in school-finance reform litigation).

The principal U.S. Supreme Court case regarding school funding and the Fourteenth Amendment is San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973). In \textit{Rodriguez}, the plaintiffs argued that the Texas school-funding scheme violated the federal Equal Protection Clause because differences in per-student funding denied students of poorly funded schools their fundamental right to an education, \textit{id.} at 11–14, and because the Texas funding scheme denied poor people the benefits of wealth-related
\end{enumerate}
\end{footnotesize}
little luck in pushing reform through the courts. *Milliken v. Green*, 122 Michigan's key school-finance case, was the product of political posturing; 123 nevertheless, it remains the Michigan Supreme Court's only statement on the constitutional requirements for Michigan public school finance in the last two decades.

1. *The Climate of Reform in 1971*—In 1971, Republican Governor William Milliken already had established himself as an education-minded politician and wanted to further his position as an education reformer with the Michigan electorate. 124 Particularly, Milliken sought to change Michigan's highly inequitable foundation plan, but had little luck in prodding the legislature toward action. 125 After seeing reform activity in the courts of other states, 126 Milliken decided to bypass the legislature and seek school equity in the courts.

At the same time, Michigan's Attorney General, Frank Kelley, who reportedly was eyeing a possible run at one of Michigan's United States Senate seats, also saw an opportunity to gather political steam and equalize public school funding through the courts. 127 Upon learning of each others' desire to challenge Michigan's school-finance system, Milliken and Kelley jointly filed a complaint against the State Treasurer, Allison

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123. See *Hain*, supra note 1, at 351.

124. *Id.*

125. *Id.* Much of Milliken's concern about the state of inequality in Michigan's schools may have stemmed from the legislatively commissioned *Thomas Report*, which exhaustively studied equity in Michigan's public schools in the late 1960s. J. ALAN THOMAS, SCHOOL FINANCE AND EDUCATIONAL OPPORTUNITY IN MICHIGAN (1968).

126. See *Hain*, supra note 1, at 351 (stating that Milliken, after seeing the positive results in California school-finance litigation in the *Serrano v. Priest* case, felt the same could be accomplished through the Michigan courts).

127. *Id.*
Green, and three wealthy, suburban Detroit school districts, alleging that Michigan's school-finance system violated both the Michigan and United States Constitutions.128

The case was an oddity. The logical defendants in a school finance lawsuit, the Governor and Attorney General, were plaintiffs; and the traditional defender of state law, the Attorney General, attacked Michigan's law. In addition to the peculiar posturing in the case, several factors muddled the suit in the public eye. These factors included a district court ruling ordering interdistrict busing as a desegregation remedy129 and voter rejection of a constitutional amendment in Michigan to enact a FSF system for Michigan's public schools.130

The plaintiffs' complaint alleged that Michigan's deductible millage system denied equal protection to students in property-poor school districts under both the United States'131 and Michigan132 Constitutions.133 Upon the Governor's request, the Michigan Supreme Court certified several gubernatorial questions for review and directed the trial court to expedite its hearings.134

The questions certified by the Michigan Supreme Court differed from the allegations made in the original complaint; the Governor now wanted the court to consider the unequal revenue-raising ability per student, rather than the unequal expenditure per student, as the constitutionally infirm effect of the funding rules.135 Perhaps the intervening defeat of the FSF proposal prompted the switch, because a constitutional ruling dictating equal expenditure likely would have required FSF—a politically unpopular outcome.136 After the expedited ninety-day hearing in the trial court, the supreme court

128. Milliken I, 203 N.W.2d at 459; Hain, supra note 1, at 351.
130. See Hain, supra note 1, at 351.
132. Michigan's Equal Protection Clause provides:

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

MICH. CONST. art. I, § 2.
133. See Hain, supra note 1, at 352–53.
134. Id. at 353.
135. Milliken I, 203 N.W.2d at 460–61 (stating the certified question).
136. Hain, supra note 1, at 353.
heard arguments on the certified question and subsequently issued its opinion on December 29, 1972.

2. *Milliken I*—Even though the court would vacate its *Milliken I* opinion only a year after handing it down, several of the issues discussed by Justice G. Mennen Williams' majority opinion are worth considering.

From the start, the court made it clear that its opinion did not hinge on a finding that educational inputs affect the quality of education by stating, "The Michigan Supreme Court . . . is presented with unrebutted evidence which destroys plaintiffs' assumption that the quality of a child's education is a function of the wealth of the school district in which he resides." Rather, the court narrowed the issue to whether "substantial INEQUALITY OF MAINTENANCE AND SUPPORT OF THE ELEMENTARY AND SECONDARY SCHOOLS, DENY the equal protection of the [Michigan] laws."

In finding the state school-financing scheme unconstitutional, the court reasoned that the Michigan Constitution's Education Article, which provided that "[t]he legislature shall maintain and support a system of free public elementary and secondary schools," coupled with the state's Equal Protection clause, required the state to provide financial support and maintenance to its schools. Finding that the state had the primary responsibility for financing public schools, the court took note of the evidence indicating wide

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137. Id. at 353–54.
138. *Milliken I*, 203 N.W.2d at 457; Hain, supra note 1, at 354.
140. Id.
141. MICH. CONST. art. VIII, § 2. In relevant part, the Michigan Constitution's Education Article provides:

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Sec. 2. 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.

MICH. CONST. art. VIII, §§ 1, 2.
142. MICH. CONST. art. I, § 2.
144. Id. at 461–62.
disparities under the deductible millage formula caused by unequal property values across districts.\textsuperscript{145} With the evidence established, the court turned to its equal protection analysis.

It is noteworthy that the court found the deductible millage formula unconstitutional under both a "rationality" test and a "close scrutiny" test.\textsuperscript{146} To apply close scrutiny, the court must have found either that there was a fundamental interest affected or that a classification inherently was suspect.\textsuperscript{147} The court found both. Relying on both the Michigan Constitution's Education Article and Michigan Supreme Court precedent, the court concluded that education is "a fundamental interest under the Michigan Constitution requiring close scrutiny of legislative classifications concerning the distribution of educational resources."\textsuperscript{148} The court also recognized wealth as a suspect classification and ironically cited several pre-\textit{San Antonio Independent School District v. Rodriguez} United States Supreme Court cases for support.\textsuperscript{150} Applying close scrutiny, the court then rejected the defendants' argument that "local control" was a compelling state interest which would justify a wealth classification and affect the fundamental interest of education.\textsuperscript{151}

Even under a rationality test, the court found "no logical connection between the asserted justification of 'local control' and the amount of school funds the state distributes to or permits to be expended in a school district based \textit{solely} on the fortuitous circumstance that the district has more or less valuable properties per pupil within its borders."\textsuperscript{152} Particularly interesting was the court's hostility toward the recognized value of local control in education:

\begin{itemize}
\item \textsuperscript{145} Id. at 462-67.
\item \textsuperscript{146} Id. at 468-71.
\item \textsuperscript{147} Id. at 468.
\item \textsuperscript{148} Id. at 469.
\item \textsuperscript{149} 411 U.S. 1 (1973) (holding that the Texas school-funding system was rationally related to the state's interest in local control of its schools and therefore did not violate the Equal Protection Clause).
\item \textsuperscript{150} \textit{Milliken I}, 203 N.W.2d at 469-70 (citing McDonald v. Board of Election Comm'rs, 394 U.S. 802, 807 (1969), Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668, 670 (1966)).
\item \textsuperscript{151} Id. at 470.
\item \textsuperscript{152} Id. at 471.
\end{itemize}
[T]he seemingly plausible argument of local control to permit school districts to opt for the greener pastures of education is really a heavy yoke for all school districts to bear and adds up to the major share of the State's burden to "maintain and support" free public schools. For the poorer school districts it is a hoax that they can follow the richer school districts into the green pastures. All in all, this Court finds no rationality justifying the substantial inequalities found.153

But the Governor's victory was short-lived, as the Michigan Supreme Court vacated its decision a year later in a brief and cryptic order.154

3. Milliken II—Much had changed since Governor Milliken brought the action challenging Michigan's school finance law—the legislature had enacted a form of TBE,155 and the United States Supreme Court handed down San Antonio Independent School District v. Rodriguez.156 Although the court dismissed the Governor's suit and vacated its Milliken I opinion on the grounds that the Governor's requests for certification had been "improvidently granted,"157 it seemed apparent that the case had become moot, and the court wanted to wash its hands of the political ramifications of its prior decision.158

Although the majority simply ordered dismissal of the case, Justices Kavanagh and Levin felt compelled to discuss the merits of the case in a concurring opinion.159 Because later Michigan Appellate Court cases have used reasoning similar to that in the concurrence in other education-related lawsuits,160 the opinion warrants discussion.

From the outset, the concurring justices made it clear that they were faced with "generalized arguments concerning the nature of educational opportunity in [the] State," and that

153. Id.
157. Milliken II, 212 N.W.2d at 711.
158. See Hain, supra note 1, at 359.
159. Milliken II, 212 N.W.2d at 711–12 (T.G. Kavanagh & Levin, JJ., concurring).
they were not presented with any "concrete" claim of the state's denial of any "judicially enforceable right to an education [a student] may have under [Michigan's] Constitution." Such a statement implied that there may be constitutional rights to an education in Michigan, but that these rights do not include the right to equal tax-raising ability per student, nor are they spelled out in the opinion. The opinion hinted only at a minimum educational right, stating, "All that can properly be expected of the state is that it maintain and support a system of public schools that furnishes adequate educational services to all children." The concurring justices then proceeded to the merits of the claim that Michigan's school-financing scheme denied equal protection to students in property-poor districts. Noting first that the Rodriguez decision held that the "new" strict scrutiny test did not apply to school-funding legislation essentially similar to that in Michigan, the concurrence considered the plaintiffs' state equal protection claim. Because the "Michigan Constitution 'secures the same right of equal protection' as is secured by the Equal Protection Clause of the Fourteenth Amendment," the concurrence adopted reasoning similar to that of the Rodriguez court and refused to find any "suspect classifications" or "fundamental interests" enmeshed with the state school-financing legislation.

The concurrence argued that the type of wealth discrimination inherent in the Michigan school-finance system did not violate any constitutional directive. It did imply that certain forms of wealth discrimination might be constitutionally questionable, such as "those situations in which indigents are totally excluded from public benefits by their inability to pay." But the court made it clear that "[t]he [Michigan] Constitution does not forbid disparities in wealth," and that "[a] rule requiring government in the distribution of benefits, such as education, to take into

161. Milliken II, 212 N.W.2d at 713 (T.G. Kavanagh & Levin, JJ., concurring).
162. Id. at 720 (emphasis added).
163. Id. at 713–14.
164. Id. at 714 (quoting Fox v. Employment Sec. Comm'n, 153 N.W.2d 644, 647 (Mich. 1967)).
165. Id. at 714–21.
166. Id. at 716–18, 21.
167. Id. at 716.
168. Id. at 718.
account and alleviate all differences in ability to pay would work a revolutionary change in the system of furnishing benefits."169

Without defining educational opportunity as being dependent upon educational inputs or outputs,170 the concurrence then found that the Michigan Constitution did not contain a fundamental right to equality in the ability to fund education.171 The constitutional mandate to "maintain and support a system of free public . . . schools"172 did not provide such a fundamental interest.173 Nor did the evidence presented show any "constitutionally significant" inequalities in the provision of educational services.174 The concurrence simply found that "the state's obligation to provide a system of public schools is not the same as the claimed obligation to provide equality of educational opportunity."175

Because the Milliken II majority refused to address the merits of the plaintiffs' claim, the precedential value of the concurring opinion is unclear. Certainly the concurrence's reasoning would disallow constitutional challenges to any school-finance system which provides disparate revenues based on local property values; and subsequent lower court opinions seemingly have followed the concurrence's arguments.

4. The Judicial Aftermath of Milliken v. Green—In the wake of the Governor's lawsuit, the legislature enacted a mild form of district power equalizing which was intended to lessen the disparities in interdistrict school funding.176 Yet the disparities apparently persisted and reformers challenged Michigan's new Equal Yield Plan in state court.

In East Jackson Public Schools v. State,177 the plaintiffs, twenty Michigan public school districts and one student from each district, argued that (1) unequal funding of public schools violated the Michigan Constitution's Education Article, (2) the interaction of the Education Article and the

169. Id. at 716–17.
170. Id. at 716.
171. Id. at 716–21.
172. Id. at 717 (quoting MICH. CONST. art. VIII, § 2).
173. Id. at 717–18.
174. Id. at 719.
175. Id. at 720.
176. See Hain, supra note 1, at 361.
state Equal Protection Clause created a constitutional right to equality of educational financial support which is denied by the equal yield plan, and (3) the Michigan school-funding system denied equal protection to the individual plaintiffs-students.\footnote{178}{Id. at 304–05.}

The Michigan Court of Appeals dismissed all three allegations, following the reasoning of the \textit{Milliken II} concurrence.\footnote{179}{Id. at 305–06.} Even though the plaintiffs attempted to distinguish their claim from that of the plaintiffs in \textit{Milliken I} and \textit{Milliken II} by characterizing their position as concerned with equality of educational support (tracking the Education Article's language), rather than equality of educational opportunity, the court found the claims to be identical—equality of funding per student.\footnote{180}{Id. at 305.} Without explicitly relying on the \textit{Milliken II} concurrence, the court then agreed with the opinion's reasoning and found no obligation to provide equal funding per student under the Education Article or the Equal Protection Clause.\footnote{181}{Id.}

Although not a school-finance case, an earlier court of appeals decision, \textit{Sutton v. Cadillac Area Public Schools},\footnote{182}{323 N.W.2d 582 (Mich. Ct. App. 1982).} apparently found that education was not a fundamental right under Michigan's constitution. The plaintiffs sought an order requiring free transportation to and from a public school and argued that failure to do so amounted to a denial of a fundamental right to public education and discrimination on the basis of a suspect classification—wealth.\footnote{183}{Id. at 583–84.} Noting that equal protection in Michigan generally is coextensive with federal constitutional protection, the court, relying on \textit{Rodriguez}, found no fundamental right or suspect classification.\footnote{184}{Id. at 584.} Then, applying the rational basis test to the decision not to supply free busing to the plaintiffs, the court found no denial of equal protection.\footnote{185}{Id. at 584–85.}
Finally, it should be noted that the Michigan Supreme Court had another opportunity to put some substance into Michigan's Education Article in the 1985 case of Durant v. State Board of Education, but refused to consider whether the application of the state school-aid formula to the plaintiffs-school districts violated the Education Article. Durant was a consolidation of two cases in which the plaintiffs-school districts alleged that the decrease in state school aid which they suffered under the state school-aid formula violated Michigan's Constitution. Writing for the court, Justice Patricia Boyle did not consider the constitutionality of the reduction in state aid under the Education Article. Rather, she held that (1) the reduction of unrestricted state aid under the state aid formula did not violate the Headlee Amendment to the Michigan Constitution which prohibited the reduction of state financing for necessary costs of services required of local government by state law; (2) the reduction of categorical state aid toward costs of state mandated activities violated the Headlee Amendment; and (3) the Headlee Amendment required that the state need only maintain the overall percentage allotment of the state budget for all units of local government, taken as a group, at the 1978–79 levels.

Unsatisfied with the Durant majority's failure to address the state school-aid formula's constitutionality under the Education Article, the author of Milliken I, Chief Justice G. Mennen Williams, dissented. Chief Justice Williams argued that because the trial judge in the consolidated Waterford v. Board of Education case found that the reduction in state school aid jeopardized students' college

Michigan Constitution affords the same equal protection rights as the U.S. Constitution, the court found that "[t]he mere fact that the Michigan Constitution of 1963 mentions education, while the federal constitution does not, provides no justification for abandoning past decisions and holding education to be a fundamental right under Michigan's constitution." Id. at 507 (footnote omitted).

186. 381 N.W.2d 662 (Mich. 1985).
187. Id. at 666.
188. MICH. CONST. art. IX, §§ 25–31.
189. Durant, 381 N.W.2d at 671.
190. Id. at 674.
191. Id. Justice Boyle also refused to consider whether the school-aid formula violated Michigan's Equal Protection Clause because the issue was raised for the first time on appeal. Id. at 675.
192. Id. at 675 (Williams, C.J., dissenting).
admission prospects and their opportunities to enter apprenticeships after school, the operation of the state school-aid formula failed to "support a system of free public education" as required by the Education Article. Despite the reasoned arguments in the Chief Justice's dissent, which discussed the history of the Education Article and the state's education policy, the majority's decision leaves no guidance as to the substance behind the Education Article.

The upshot of these cases is apparent: Michigan courts have been unwilling to interpret the state constitution as providing a right to equal per-student funding, or even equal per-student ability to raise educational funds. Although further constitutional litigation clearly is not foreclosed in the school-finance arena, reformers have been forced to seek legislative action as the more effective route to educational equity.

B. Lansing's Response: Reform Through the Legislature

While the Governor attempted judicial reform through his suit against the State Treasurer, others sought school-finance reform through the legislature. With a statewide initiative, reformers attempted to install a FSF plan which would provide centralized state financing of the public schools, a graduated state income tax to support the increased costs of

193. Id. at 678 (Williams, C.J., dissenting).
194. As these cases indicate, constitutional litigation over finance equity issues is hampered severely in Michigan because of its relatively weak Education Article, which does not provide a sturdy peg on which to hang a constitutional claim. See supra note 141. One observer even noted that Michigan's Education Article provides "little basis for claiming that a minimum standard of educational quality is guaranteed." McUsic, supra note 121, at 338.

Nonetheless, litigation-minded reformers may retain some hope in the current constitution after the Milliken II decision. Because the court did not reach the merits of the claim in Milliken II, it is unclear what the precedential value of the decision may be. Moreover, even the concurrence, with its vague references to "adequate" education under the Michigan Constitution, at least may provide support for claims that educational services in a particular district have fallen below some constitutionally minimum standard.

Finally, reformers could attempt to amend Michigan's Education Article to provide equality and quality in the public schools. Such a beefed-up constitutional provision would provide the necessary support for equity claims. In fact, one group of reformers, Knowledge Is Democracy's Safeguard (KIDS), has been quite active (albeit, so far unsuccessfully) in seeking a constitutional amendment of the Education Article to provide a stronger claim for equity in Michigan's schools. Interview with C. Philip Kearney, Professor of Education, University of Michigan, in Ann Arbor, Michigan (Nov. 17, 1992).
the plan, and a small enrichment millage which would allow local districts to levy a few additional mills if desired.\textsuperscript{195} Despite sponsorship from the Michigan Education Association and gubernatorial endorsement, the initiative failed miserably.\textsuperscript{196}

In the public eye, the FSF proposal had several fatal flaws. First, voters and politicians were concerned with the progressive income tax proposal. Michigan has a state income tax, but it is constitutionally limited to a flat rate.\textsuperscript{197} Republicans opposed a graduated rate structure, while Democrats feared that passage of FSF without passage of the tax initiative would transfer much of the funding responsibility from industry to wage earners and consumers.\textsuperscript{198} Moreover, many voters feared a loss of local control over their school districts.\textsuperscript{199} And, as if that were not enough, Judge Stephen Roth's desegregation order in \textit{Bradley v. Milliken}\textsuperscript{200} pounded the final nail in FSF's coffin. Many voters who opposed the interdistrict busing remedy confused that issue with the FSF proposal, while more savvy opponents of interdistrict desegregation opposed FSF because they felt that passage of a centralized funding plan would make it easier to implement the remedy than if the United States Supreme Court, on appeal, faced a patchwork of tax bases, millage rates, and school expenditure levels.\textsuperscript{201}

Despite the defeat of FSF, reformers in the Michigan legislature remained undaunted. With bipartisan support in the Senate, a TBE plan, dubbed the Bursley Act,\textsuperscript{202} was passed in 1973 following the Michigan Supreme Court's withdrawal of its \textit{Milliken I} decision.\textsuperscript{203} Lauded for its taxpayer equity and reduction in per-student revenue disparity attributes,\textsuperscript{204} the basic function of the Bursley Act

\begin{itemize}
\item \textsuperscript{195} Hain, \textit{supra} note 1, at 360.
\item \textsuperscript{196} \textit{Id}.
\item \textsuperscript{197} MICH. CONST. art. IX, § 7.
\item \textsuperscript{198} Hain, \textit{supra} note 1, at 360.
\item \textsuperscript{199} \textit{Id}.
\item \textsuperscript{201} Hain, \textit{supra} note 1, at 360.
\item \textsuperscript{203} See Hain, \textit{supra} note 1, at 360–61.
\item \textsuperscript{204} See \textit{id} at 361–64. Upon signing the Bursley Act, Governor Milliken stated, "It is wrong that the wealth of a school district should affect either the quality of education a child receives or the tax rates paid by his parents and neighbors. This act will virtually eliminate property tax base wealth as a factor in school finance among districts." \textsc{Gene Caesar et al., New Equity in Michigan School Finance: The Story of the Bursley Act} 26 (1974).
was to "equalize[] operating revenues raised per pupil per mill in all but the wealthiest of districts."205

Initially, the Bursley Act's formula for the distribution of state school revenue guaranteed each district a yield of thirty-eight dollars per student per mill up to twenty-two mills.206 To put it differently, the Bursley Act provided each district with the revenue-raising power of a district with a SEV of $38,000 per student.207 Additionally, the Act partially equalized revenues for retiring bond indebtedness and capital outlays.208 The Bursley Act was not, however, a pure TBE plan, as it provided no mechanism for recapture of excess tax revenues in wealthy school districts.209 Because the Act is functionally similar to the current State School Aid Act,210 this Note will discuss the details of the Bursley Act in conjunction with the current school-finance package.

C. School Finance Today

Since the passage of the Bursley Act, school-finance reforms largely have been in the form of modifications to the TBE plan and provision of relief for Michigan's taxpayers.

Professor Elwood Hain, co-counsel for the intervenors in Milliken v. Green, wrote, "Quite clearly, school finance will not hereafter be a function of the real property wealth of a district except in [a] handful of districts," Hain, supra note 1, at 362, but qualified his remarks by saying, "the [Bursley Act] is not perfect: it favors high income districts and districts with few competing demands for tax dollars." Id. at 364.

205. Id. at 361.
207. The basic formula for distribution of state aid under the Bursley Act was:

\[ S = T \cdot (38,000 - SEV \text{ per student}) \]

where

- \( S \) = state aid per student
- \( SEV \) per student = state equalized valuation per student
- \( T \) = millage rate
- $38,000 = guaranteed valuation per student

1973 Mich. Pub. Acts 101. In Michigan, the property tax base for purposes of ad valorem taxation is assessed at 50% of its true cash value and equaled across units at the county and state levels to produce the district's SEV. See Mich. Const. art. IX, § 3; Mich. Comp. Laws Ann. §§ 209.4, 211–234 (West 1990); Hain, supra note 1, at 350 n.4.

209. Hain, supra note 1, at 361.
Significant among the legislative and voter initiatives were the passage of Michigan’s Equal Yield Plan\(^\text{211}\) (which replaced the Bursley Act, but left its essential characteristics intact), the defeat of an increased sales tax referendum (which would have earmarked additional sales tax revenues for the public school system),\(^\text{212}\) and the recent passage of a commercial and industrial property-tax-base-sharing plan (pejoratively referred to as the “Robin Hood” plan).\(^\text{213}\) What follows is a discussion of how Michigan’s State School Aid Act works in practice.

The Michigan State School Aid Act\(^\text{214}\) (the Act) basically is a guaranteed yield variant of TBE, which provides a minimum yield per mill of tax but neither recaptures fully excess yield, nor equalizes the yield across all districts.\(^\text{215}\) Moreover, the Act provides special and categorical grants for certain programs to promote vertical equity.\(^\text{216}\) Finally, the Act makes necessary adjustments for municipal overburden.\(^\text{217}\)

To receive state dollars for general-purpose school expenditures, a school must meet the qualifications for the membership formula grant.\(^\text{218}\) In the 1991–92 school year, all districts meeting certain quality, class-size, and graduation and class incentives were guaranteed a yield of $335 per student plus $94.38 per student for each mill of operating tax levied.\(^\text{219}\) Those districts without sufficient tax bases to generate the minimum yield are deemed “in-formula”\(^\text{220}\) and

\[ Y = \text{yield per student} \]
\[ T = \text{tax (millage) rate}. \]

The $335 figure is comprised of a $266 per-pupil base allowance, plus $30 per pupil for meeting graduation and class incentives, $14 per pupil for meeting class-size incentives, and $25 per pupil for meeting quality incentives. \(\text{Id.}\)

\(^\text{220}\) \(\text{Id.} \ \text{§ 388.1621(4)(a)}.\)
qualify for state membership aid. Because the state does not fully recapture excess revenues, or cap school operating millage rates, the Act allows districts to keep any excess revenues generated by taxing property assessed at a higher SEV than the guaranteed minimum and to set their millage rates at the community's desired level.

State categorical grants are provided by the Act to both "in-formula" and "out-of-formula" districts to provide vertical equity and support programs for, among other things, foreign student impact, bilingual education, gifted and talented students, special education, vocational education, and transportation. Although out-of-formula districts receive state categorical aid under the Act, the state recaptures some of the categorical dollars to which an out-of-formula district may be entitled based on a sliding scale related primarily to the district's wealth. The state may recapture up to ninety-nine percent of a district's categorical aid under the Act, but because there is a cap on the aggregate amount recaptured, there is a significant reduction of the amount actually recaptured in practice.

One form of categorical aid which deserves special attention is the provision for municipal overburden, which allocates additional revenues to those districts in which tax rates for nonschool purposes are high relative to the state average. The nonschool tax rate is a figure reflecting the additional expenses which stem from population density,

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221. Id. State contribution is calculated as:

\[ S = (\$335 + (\$94.38 \times T)) - (SEV \times T) \]

where

\begin{align*}
S &= \text{state contribution} \\
T &= \text{tax (millage) rate} \\
SEV &= \text{state equalized valuation per student}
\end{align*}

222. Id. § 388.1621(4)(c).
223. Id. § 388.1629.
224. Id. § 388.1641.
225. Id. § 388.1647.
226. Id. § 388.1651.
227. Id. § 388.1661.
228. Id. § 388.1671.
229. Id. § 388.1621(5)-(8).
230. Id.
231. Id. § 388.1621(8).
232. See KEARNEY, supra note 28, at 17.
population growth, and lower-income population, including police and fire protection, street and road maintenance, and increased administrative expenses. If the nonschool tax rate exceeds a statutory level, the Act will kick in categorical funds to defray nonschool expenses.\textsuperscript{234}

In 1991, the Michigan legislature enacted the property-tax-base-sharing provision\textsuperscript{235} in an attempt to improve equity among the state’s school districts. Basically put, the tax-base-sharing plan takes half of the new commercial and industrial-property-tax-growth revenues from out-of-formula school districts and sends the revenues to districts with low property tax incomes.\textsuperscript{236} Although it is too early to determine how far this share-the-wealth plan may go toward reducing inequity, optimistic early estimates indicate a shift of $350 million to $400 million from wealthier to poorer school districts over the first ten years.\textsuperscript{237} Opponents of the legislation contended that such a wealth transfer would be minimal, amounting to twenty-three dollars per student in those districts that will receive funds under the legislation.\textsuperscript{238}

And, as the next section makes clear, twenty-three dollars per student will not go very far toward reducing the large spending gap between the state’s wealthiest and poorest school districts.\textsuperscript{239}

\begin{enumerate}
  \item \textit{Id.}
  \item \textit{Id.} 1991 Mich. Pub. Acts 108 (codified as amended at MICH. COMP. LAWS ANN. §§ 380.752–.753 (West Supp. 1992)). Although the legislature has enacted the tax-base-sharing plan, implementation of the plan has been blocked in the courts. \textit{See infra} note 259.
  \item \textit{See MICH. COMP. LAWS ANN. §§ 380.752–.753 (West Supp. 1992)}.
  \item \textit{See Pluta, supra note 6}.
  \item \textit{Id.}
  \item Michigan recently enacted a provision requiring intradistrict school choice for any district that wants to receive funds under the State School Aid Act. \textit{See} 1991 Mich. Pub. Acts 118 (codified as amended at MICH. COMP. LAWS ANN. § 388.1623a (West Supp. 1992)). The school-choice provision requires that “each district that operates more than one school offering instruction at the same grade level shall establish a schools of choice planning committee by not later than November 15, 1991,” develop an adequate school choice plan not later than April 1, 1992, and implement the plan for the 1992–93 school year unless the district appropriately is exempted from the school-choice provision. \textit{Id.}

  The school choice provision also requires that the intradistrict school choice program include, among other things, the following: provision of information and adequate counseling about the program to parents and students, a plan to ensure transportation to the student’s school of choice, a plan to ensure that each student has an equal opportunity for enrollment within the open enrollment availability of a particular school, a plan to ensure that the district maintains all existing standards of racial and ethnic integration within the district, and a provision that the district is not required to force students from neighborhood schools. \textit{Id.}

  Michigan’s school choice program is not as comprehensive as the interdistrict programs in other states, \textit{see} Chira, \textit{supra} note 115, and is only in its infant stage at
When passed, the Michigan Equal Yield Plan was hailed as the mechanism that would improve per-student spending equity among the schools and help guarantee taxpayers more equal revenues for equal tax effort. Two decades later, it is time to assess equity in Michigan public school finance and determine whether the Equal Yield Plan met its initial objectives and satisfies the primary concern of this Note—equity. Relying heavily on the work of Philip Kearney and David Anderson of the University of Michigan School of Education, this Section considers horizontal equity among two equity targets—students and taxpayers—and concludes that not only do severe inequities still exist, but there also has been a decline in equity among students and taxpayers under the Equal Yield Plan.

In a 1991 study, Kearney and Anderson looked at the equity trends in Michigan public school finance from the school year 1976–77 (three years after passage of the Equal Yield Plan) through 1988–89. Taking students as the initial equity target, it is clear that horizontal equity among students declined during the thirteen-year period studied. Using local revenue plus state membership aid per pupil as the equity object, Kearney and Anderson note that “[t]here is twice as much horizontal inequity in 1988–89 as there was in 1976–77,” whether one measures equity using the time of the writing of this Note. It is unclear what effect, if any, the school-choice program will have on the allocation of funds among the state’s school districts, but because the provision does not call for interdistrict school choice, the effect would seem to be minimal. This Note will not consider its impact beyond discussing how an alternative school-finance program would mesh with the current school-choice program or an interdistrict choice program.

240. See supra note 204 and accompanying text.

241. C. PHILIP KEARNEY & DAVID M. ANDERSON, EQUITY TRENDS IN MICHIGAN SCHOOL FINANCE (1991). Kearney and Anderson explicitly refuse to summarize their findings or draw any general conclusions, but rather invite the reader to analyze the material presented and draw her own conclusions. Id. at 46. This Note takes them up on their invitation and bases its conclusions on their data.

242. Although this Note also is concerned with promoting vertical equity in any school-finance plan, it is difficult to measure accurately vertical equity and trends in vertical equity. See id. at 5; Kearney & Chen, supra note 6, at 365–66. Thus, this Note does not consider the impact of the Equal Yield Plan on vertical equity.

243. KEARNEY & ANDERSON, supra note 241, at 8.
a restricted range or the federal range ratio. Moreover, there is a strong positive correlation between the local revenues plus state membership aid per student and the SEV per student. This correlation indicates that the relative tax wealth of a district is a large determinant of how many dollars are available. Such correlation between a relative tax burden and available revenues led Kearney and Anderson to write, “Equality of opportunity has worsened over the thirteen year period.”

When using current operating expenditure per student as the equity object, Kearney and Anderson’s findings indicate that horizontal equity declined in a similar fashion as when local revenues plus state membership aid is used as the equity object. Moreover, SEV per pupil is somewhat strongly correlated with current operating expenditures, indicating a trend away from equality of opportunity.

Turning to the taxpayer as the equity target, Kearney and Anderson’s results clearly point to a large and increasing gap in horizontal equity under the Equal Yield Plan. Using levied mills as the equity object, there has been a significant and

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244. The “restricted range” measures the “difference between the values of the equity objects per pupil at the 95th and fifth percentiles of the distribution.” Id. at 4. The restricted range ignores the upper and lower tails of the distribution and avoids any undue influence from “outliers.” An increase in the restricted range measure indicates an increase in inequity between the fifth and 95th percentiles of the distribution. Id. In 1988-89, the restricted range measured $2641 in constant dollars compared to only $1248 in 1976-77. Id. at 8-9.

245. The “federal range ratio” is calculated by dividing the restricted range by the value of the equity object per pupil at the fifth percentile. Id. at 4. Like the restricted range, the federal range ratio avoids any undue influence from outliers, but has the additional advantage of not being subject to equal percentage changes and shifts due simply to inflation. Id. Also like the restricted range, any increase in the federal range ratio indicates a decrease in horizontal equity. Id.

246. Id. at 14.

247. Id.

248. Id. Kearney and Anderson did not find an increase in inequity over the 13-year period when using the McLoone Index, a measure that places emphasis on reducing disparities in the bottom half of the dispersion. See id. at 12. Because this Note is concerned with improving equity among all of the state’s public schools, such a finding is of little value.

249. Id. at 18, 20.

250. Id. at 24.

251. Looking beyond money as the equity object, Kearney and Anderson also considered horizontal equity among students using instructional staff per 1000 students as the equity object and found that although the spread between the schools with the best student-teacher ratio has not increased over the 13-year period, there was still a substantial difference of 17 instructional staffpersons per 1000 students between the 95th and fifth percentiles of the distribution in the 1988-89 period. Id. at 28-31.
slightly increasing difference between the mills levied by those in the fifth and ninety-fifth percentiles of the distribution.\footnote{252} In fact, there was a difference of 15.450 mills between the ninety-fifth and fifth percentiles in the 1988–89 school year.\footnote{253} Using levied mills as the equity object is misleading, however, as the Equal Yield Plan is not intended to produce identical operational millage rates. On the contrary, the Plan allows a great degree of local control in setting millage rates to raise money for the local school district.\footnote{254} The more salient question is whether higher relative millage rates result in higher relative revenues per student. Kearney and Anderson answer this question in the negative by showing virtually no correlation between mills levied and local revenues plus state membership aid.\footnote{255} This finding indicates that Michigan's taxpayers are not rewarded with equal tax revenues for their equal tax efforts as was intended by the TBE plan.

Finally, the most recently published school-spending statistics indicate that the state of inequality has not improved since 1989, as there was a current operating expenditure spread of $5959 per student between Michigan's wealthiest and poorest school districts in the 1990–91 school year.\footnote{256} Moreover, per-student operating expenditures in the ninety-fifth percentile cutoff totalled $5801, while the fifth percentile schools spent under $3154 per student.\footnote{257}

\footnote{252. \textit{Id.} at 38–41.}
\footnote{253. \textit{Id.} at 39.}
\footnote{254. See \textit{supra} text following note 221.}
\footnote{255. \textit{KERNEY \\& ANDERSON, supra} note 241, at 44.}
\footnote{256. \textit{MICHIGAN DEP'T OF EDUC., BULLETIN 1014}, at 14–15, 28–29 (1991) [hereinafter \textit{BULLETIN 1014}]. This spending difference is particularly startling when one considers that the highest-spending district, Oakland County's Lamphere Public Schools, is relatively the same size as the lowest-spending district, Kingsley Area Schools of Grand Traverse County. \textit{Id.} Moreover, the two districts have a student-to-teacher ratio difference of 13 students per teacher, as the Lamphere district has 27 students per teacher, while the Kingsley district has only 14 students per teacher. \textit{Id.}}
\footnote{257. \textit{Id.} at 9, 19.}
As horizontal equity among students and taxpayers was an important mission for Michigan's Equal Yield Plan,\textsuperscript{258} it is safe to say that the mission has been less than successful. Inequity among students and taxpayers was great when the plan was enacted and actually has increased since the mid-1970s.\textsuperscript{259} A commitment to equity in our public schools requires a commitment to the reform of Michigan's school finance plan.

V. A PROPOSAL FOR FSF: MICHIGAN NEEDS A SECOND CHANCE

Twenty years after the adoption of a TBE plan, Michigan is again at a crossroads in school-finance policy, and the climate is one of reform. The Equal Yield Plan has failed to meet its essential goal of providing equity for students and taxpayers. The electorate seems hungry, but not ravenous, for property tax reform,\textsuperscript{260} and the public is concerned with reforming school finance.\textsuperscript{261} The 1973 passage of the Equal

\textsuperscript{258} See supra note 204 and accompanying text.
\textsuperscript{259} Although the 1991 enactment of the tax-base-sharing provision is clearly a step in the direction of increased equity, see supra notes 235–42 and accompanying text, to date it has had virtually no effect on equity in Michigan's schools as implementation of the provision has been stalled in Michigan's courts. Mark Hornbeck, \textit{Schools Wary of Engler Tax Plan}, DET. NEWS, Jan. 26, 1993, at B1 (reporting that Macomb Circuit Judge Lido Bucci ruled that the tax-base-sharing plan is unconstitutional insofar as it withholds certain mandatory state payments to school districts when the school districts fail to comply, and speculating that the plan could be tied up in court for a few more years). Even if the dollars are distributed as planned, there will be little effect on equity as the amount redirected is quite minimal relative to the size of the gaps. Interview with C. Philip Kearney, \textit{supra} note 194. Moreover, the controversy over the "Robin Hood" plan has had the unforeseen negative effect of driving a wedge between the in-formula and out-of-formula districts. \textit{Id.}
\textsuperscript{260} After the 1992 failure of two property tax reform ballot initiatives, one tax-reform advocate explained "[P]eople are tired of tax schemes. They want real property tax relief." Johnson, \textit{supra} note 2, at A10.
\textsuperscript{261} At the time this Note went to press, the Michigan electorate was preparing to vote on a ballot proposal that would substantially revamp the state's property tax and school-funding schemes. See Chris Christoff, \textit{Engler-Backed Tax Plan Will Face Voters}, DET. FREE PRESS, Apr. 1, 1993, at 1A. Under the proposal, most school millage rates would be rolled back to eighteen mills, but local school districts would be permitted, with voter approval, to levy an additional nine mills. \textit{Id.} at 12A. To replace the tax revenues lost to the property tax rollback, the state sales tax would be increased from four to six percent. Property tax assessments would be rolled back three percent from their 1993 levels; they would be frozen at that level in 1994; and after 1994, they would be annually increased at the lesser of five percent or the rate of inflation. Finally, in a substantial move toward equity, the proposal guarantees that all school districts will spend a minimum of $4600 per student. \textit{Id.}
The ballot proposal, which received bipartisan legislative support and was endorsed by Governor John Engler, provides a significant first step toward equity in Michigan's public schools. By guaranteeing $4800 per student, the legislature and Governor Engler have made clear their concern with equity. But the proposal will not create complete equity in Michigan's schools. The $4800 per-student guarantee is only a base—schools may levy an additional nine mills with voter approval, and wealthy districts will be able to retain all of the revenue raised from taxing high-valued property. In terms of taxpayer equity, the shift from the property tax to the regressive sales tax may further burden low-income state residents. Despite these shortcomings, the proposal would improve equity in Michigan's public schools and would go a long way toward making the state the guarantor of educational opportunity in Michigan.

Before adopting the current ballot proposal to roll back property taxes and increase the state sales tax, Michigan legislators proposed several mechanisms to overhaul Michigan's school-finance scheme. One proposal advanced by a bipartisan legislative “Team” called for a 50% reduction in school operating taxes for homeowners and farmers and an increase in the state income tax rate to replace the school revenues lost to the property tax cut. Memorandum from the Bi-Partisan Legislative “Team” to House Colleagues/Senate Colleagues (Feb. 4, 1993) (on file with the University of Michigan Journal of Law Reform). To finance Michigan's public schools, the Team proposal provided for a state education financing authority to levy a 17 mill residential and agricultural property tax in 1993 and 1994 (which will be reduced to 16 mills in 1995) and an increase in the state income tax to six percent. The Team proposal would have distributed the school revenues by payment of a per-student basic grant to the school district in which the student is enrolled. In addition, local school districts would have been able to levy a resident income tax to be distributed to the local school district. Id. Although the Team proposal would have been welcomed for its equity and property tax relief attributes, the increased reliance on the flat-rate income tax may have been quite regressive, as low-income Michiganders may have been forced to cut further into their necessity expenditures than the higher-income state residents.

Governor John Engler also had proposed a drastic tax cut plan which would have undoubtedly impacted the state's schools. Peter Luke, Engler to Unveil Tax Plan, ANN ARBOR NEWS, Jan. 26, 1993, at A1. Under the plan, local school property taxes would have been cut 10% in the first year to offset residential property assessments, which are expected to increase an average of 11%. Property taxes would have again been slashed in the second and third years by reducing the assessment ratio on which the taxes are based from 50% to 40% of a home's value. Id. Moreover, in his budget proposal for the 1993–94 fiscal year, Governor Engler initially had suggested several drastic school-spending measures. Under Governor Engler's initially proposed budget, state school aid would have been increased by $94 million. Districts that levy at least 34.6 mills would have received a minimum of $4211 per student, but per-student funds would not have been equalized above that level. The controversial tax-base-sharing provision would have been repealed. And in a move toward choice, $240 million for adult education would have been divided by competitive bid among providers that would include nonprofit organizations, private contractors, and public schools. See Dawson Bell, Engler Proposes Education Shake-Up, DET. FREE PRESS, Mar. 20, 1993, at 3A. Taken together, Governor Engler's tax plan and budget proposal would seem to have had several effects on school funding and would have created several uncertainties. It is unclear that the infusion of state monies proposed by Governor Engler would have been adequate to compensate schools for tax revenues lost to the tax cut proposal. Moreover, there is no sure and identifiable revenue source from which the additional state funds would have been obtained. The per-student funding base would have been, however, a praiseworthy step in the direction of increased equity. But the proposed repeal of the tax-base-sharing provision and the failure to equalize per-student funds across the board would have only resulted in continued inequity.

In addition to the school-funding schemes advanced by government officials, several education advocates have offered school-funding reform proposals. One such proposal,
Yield Plan and the recent approval of tax-base-sharing reflect the state's ongoing concern with providing equity for our children and taxpayers. Given this concern, any reform proposal should emphasize the equity value.

But no school-finance scheme is a panacea—there always will be a need for tradeoffs among our essential values. Adequate schools require dollars, and dollars imply taxes. Equity requires a degree of state control of funding, and state control implies a loss of autonomy. Nonetheless, this quagmire of tradeoffs is not insurmountable. Michigan has expressed its concern with creating equity. With proper safeguards, school-finance reform can create equity without significantly sacrificing other values.

To achieve the goal of obtaining equity for Michigan's children and taxpayers while accommodating other values and the desire to control taxes, Michigan should adopt a FSF plan with provisions to also address vertical equity and local control. To promote horizontal equity among students, all revenues earmarked for school spending (except those retained by the local district under the provision set forth below) should be directed to the state to be distributed to the school districts on an equal per-student basis. Vertical equity can be promoted by essentially maintaining the state's

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offered by Professor Philip Kearney and former Detroit School Board Finance Chairman David Olmstead, calls for a rollback of school millage rates to 30 mills and an expenditure by the state to reimburse schools for lost revenues. Press Release, Olmstead/Kearney Proposal, Jan. 15, 1992 (on file with the University of Michigan Journal of Law Reform). Dubbed "50-50 plus the lottery," the proposal aims to increase state school spending to equal total local school property taxes plus state lottery proceeds. Id. While providing clear increases in taxpayer equity, the Olmstead/Kearney Proposal would not have an immediate effect on equity among students, as the plan calls for reimbursement of lost local district revenues in the short run, but phases out this built-in maintenance of the status quo in the longer term by tying per-pupil revenues for "equity" districts (read: in-formula districts) to an increasing "equity index." See id.

Perhaps the most radical school-finance reform package was introduced by the Michigan Education Association (MEA). Like the Olmstead/Kearney proposal, the MEA plan would limit local millage rates to 30 mills and require the state to increase funding to poorer school districts. But the MEA plan goes a step further toward centralized school funding by reorganizing the more than 500 school districts in the state into 14 regional districts. Moreover, the MEA plan provides for a degree of local autonomy by allowing the individual districts to vote themselves a one percent income tax for schools. See Janet Miller & Patricia Windsor, Educators Find Points to Praise in MEA Plan, ANN ARBOR NEWS, Jan. 26, 1993, at C1. Although it is unclear whether the MEA plan will continue the existing structure of local millage rates or whether it will levy mills at the regional district level, this plan should be given attention because it increases equity, further centralizes funding, and maintains some local control.
current system of categorical grants. Moreover, because small schools do not enjoy the same economies of scale as larger districts, the state should provide an additional categorical grant to small school districts so that they may provide the essential capital resources such as libraries, computers, and athletic facilities. Categorical aid also may be necessary in those districts which face higher costs in providing the essential resources. For instance, a district which has a higher cost of living may need to offer higher salaries to attract teachers.

To promote equity among taxpayers, the FSF plan should be financed by a uniform, statewide homestead property tax rate and uniform commercial and industrial property tax rates for school expenditures. All school tax revenues should go to the state for distribution. Granted, savvy taxpayers in wealthy school districts will be sounding the "Robin Hood" horn louder than ever under such a plan, but if the plan is marketed as a uniform, statewide rate rather than a recapture of all excess revenues, it may not face insurmountable political difficulties. Finally, the proposed reform would have to provide safeguards for its existence by prohibiting unauthorized local tax overrides and the use of local supplemental funds to increase spending in local school districts.

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262. See supra notes 222-34 and accompanying text.
263. To the greatest extent possible, the state also should encourage consolidation of small districts to capitalize on any available economies of scale opportunities.
264. This Note argues for reliance on a statewide property tax to fund the state's schools, rather than an elimination of or rollback on property taxes, and an increased reliance on other state taxes such as the income and sales taxes for several reasons. First, because Michigan traditionally has funded its schools through property taxes, it seems likely that the shift from local to statewide funding will be more palatable with a familiar revenue-generating mechanism—the homestead property tax. Second, a statewide property tax rate would provide relief for those districts that need it most, and lesser relief for those currently without a heavy property tax burden. Third, if the property tax burden proves to be too great under this proposal, it should not be unduly difficult for legislators to grant statewide property tax relief and shift the school-funding burden to state income and sales taxes. Finally, and perhaps most importantly, the property tax may be a more stable source of revenue than either the income or sales taxes. The property tax, although certainly tied to Michigan's economy, does not respond as directly to minor economic downturns as the income and sales taxes. Interview with C. Philip Kearney, Professor of Education, University of Michigan, in Ann Arbor, Michigan (Feb. 5, 1993). Moreover, even when one type of property (residential, for instance) is experiencing a drastic decline in value, other sources of property tax revenues (such as agricultural and commercial property) may remain relatively stable and work to iron out the downturns.
265. See supra notes 109-15 and accompanying text.
To promote a degree of local control, however, the state should authorize school districts to levy up to three mills as an enrichment fund. These three mills should be levied on a state-guaranteed tax base, which should be set high enough to maintain a high degree of taxpayer and student equity. The additional revenues will give taxpayers and parents the flexibility to promote innovation and experimentation without greatly increasing the per-student spending gap between schools.

How does this proposal affect the values identified in Part II? The FSF proposal certainly meets the objective of achieving equity among children and taxpayers. FSF not only improves equity in theory, but it improves equity in practice; the California experience with FSF shows that per-student funding differentials can be virtually eliminated.266

As for liberty and local control, it is clear that centralizing school funding will inhibit local control to some degree, but the three-mill enrichment allowance will provide some autonomy.267 Moreover, as was discussed above, the value of local control may be suspect, given the fact that it may not be appropriate to trust our children's futures to the local community's whims.268

One additional benefit of lodging responsibility for funding the public schools with the state is that local financial difficulties or local voter refusal to bear a heavy tax burden likely will have little effect on school funding. At the time this Note was written, the school district of Kalkaska, located in the rural northern part of Michigan's lower peninsula, was faced with a financial crisis, and the Kalkaska voters were given a choice of approving a 7.36-mill property tax increase or closing the school doors ten weeks early.269 School officials had already decided not to operate the district with a large deficit, and the state had refused to put the district in

266. See supra note 106 and accompanying text.
267. This three-mill allowance may prove to be quite generous and more than adequate to allay the fears of those who support local control. For instance, a three-mill rate levied over a state guaranteed tax base equal to a per-student SEV of $150,000 translates into $450 per student in additional revenues. See supra note 28.
268. See supra part II.B.
receivership.\textsuperscript{270} Thus, when the local voters rejected the millage increase, the Kalkaska Class of 1993 graduated ten weeks earlier than usual, and with an upbeat sense of humor, dubbed themselves the "Class of 92 3/4."\textsuperscript{271} Although it is useless to cast blame\textsuperscript{272} or find the cause of the tragedy in Kalkaska (there are, after all, many possible reasons for a lack of school funds), it is not unlikely that a system of FSF could have prevented the fiscal crisis in that local school district, as the state could simply have supplied the necessary funds from a statewide pool of education dollars. Of course, a sagging statewide economy would create pressure to decrease funds to all state schools under FSF, but at least no single local district would bear the burden of a depressed local economy.

On efficiency grounds, this FSF proposal is difficult to evaluate. Some may argue that throwing money at poorly run schools may be wasteful. But it can be contended equally that the current system may throw money at inefficient schools in wealthy districts. Perhaps efficiency concerns are better handled by providing incentives for efficient management of our schools.\textsuperscript{273}

Finally, and perhaps of greatest concern, Michigan must work to preserve the perceived quality of its schools to avoid flight to private schools and prevent further parental dissatisfaction. Financial constraints will make it extremely difficult to level all schools up to the per-student funding levels of the wealthiest schools. Nonetheless, per-student

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\textsuperscript{270} See Hacker, \textit{supra} note 269, at 3A; Kalkaska: Blame School Cuts on State Inequities, \textit{supra} note 269, at 14A.

\textsuperscript{271} See Hacker, \textit{supra} note 269, at 3A; Kalkaska: Blame School Cuts on State Inequities, \textit{supra} note 269, at 14A. School officials reportedly are planning another millage election to salvage the remainder of the 1992-93 school year, Kalkaska: Blame School Cuts on State Inequities, \textit{supra} note 269, at 14A, and Governor Engler has appointed a panel to investigate the situation and make recommendations. \textit{Put Kalkaska in Receivership}, \textit{supra} note 269, at 6A.

\textsuperscript{272} One editorial, however, did not withhold blame so easily:

It's easy to condemn Kalkaska's hard-pressed taxpayers—most of whom don't have children in local schools—for selfishness, its school administrators for fiscal incompetence, its teachers for greed. But the real blame must be placed where it belongs: on Michigan's unfair, inadequate system of public school finance, and on the feckless Lansing politicians who have refused for two decades to fix it.

\textit{Kalkaska: Blame School Cuts on State Inequities, supra} note 269, at 14A.

\textsuperscript{273} See, e.g., CHUBB \& MOE, \textit{supra} note 60, at 216–32 (advocating a school choice plan as a means of improving the efficiency and quality of America's schools); CARNEGIE FOUNDATION, \textit{supra} note 115, at 79–82 (recommending a shift toward school-based management).
spending levels must be maintained at a sufficient level so that wealthy schools will not take an extreme hit. Gains in equity may require the pain of higher taxes, but if Michigan is serious about improving its schools, it seems difficult to imagine a finance-reform mechanism that will not impose some pain on either parents, students, or taxpayers.

Skeptics of FSF will likely point to the defeat of a similar FSF proposition just over twenty years ago, and argue that FSF is unpopular in the state. The response to that is simple—that was twenty years ago. Michigan has witnessed the failure of TBE and is aching for a second chance. The Equal Yield Plan and the legislature’s subsequent tinkering have proven wholly ineffective in improving our schools and increasing equity. The legislature and the electorate seem willing to try significant reform such as the recent experiment with intradistrict school choice. If the legislature feels confident in the virtues of school choice, it will be easier to implement choice at the interdistrict level with FSF. Besides, the shift from TBE to FSF is not nearly as drastic as the rejected attempt to shift from an FP to FSF. Perhaps most importantly, the Michigan electorate may not have been amenable to the radical shift from a FP to FSF twenty years ago, but today the electorate may be open to reform and the shift from TBE to FSF will not be considered as radical.

CONCLUSION

Twenty years after embarking on a path toward improved equity in Michigan’s schools, Michigan has reached a crossroads, a choice between continuing down the failed path of TBE or the adoption of reform to improve quality and equity in our public schools. Reform through the courts seems all but foreclosed. Reform on a small scale has been inadequate. Reform must come through an overhaul of the state’s school-finance mechanism. To ensure an equal opportunity for our children, Michigan should adopt FSF and invest in our children’s futures.

274. See supra notes 195–99 and accompanying text.
275. See supra note 239.
276. Interdistrict choice will be easier to implement with FSF because each student will be awarded an equal endowment which he may spend in any district of his choice. With TBE and varying local tax rates, taxpayers rightfully may be upset if they watch students spend their tax dollars at neighboring districts, and these taxpayers may refuse to vote for millage renewals or increases, thus frustrating the choice plan.