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**FOOTING THE BILL FOR A SOUND BASIC
EDUCATION IN NEW YORK CITY: THE
IMPLEMENTATION OF CAMPAIGN FOR FISCAL
EQUITY V. STATE***

Bonnie A. Scherer

“In whatever way a man sets out in his education, such accordingly will be its consequences.”¹

INTRODUCTION

A democratic society has a vested interest in a well educated populous. Educated citizens are capable of forming a productive workforce and actively participating in the electoral process.² Individuals without a high school diploma are significantly less likely to find meaningful employment and lead economically stable lives in today’s economy.³ Most states, in order to promote an educated citizenry, provide for some form of adequate education under their respective state constitutions. The New York State Constitution dictates that “[t]he Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this state may be educated.”⁴

On March 16, 2005, in what appeared to be a victory for the children of New York City, the Court of Appeals of New York, applying the Education Article, upheld a lower court decision and recommendation, by a panel of judicially appointed Special Referees, holding that the New York State

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1. Plato, *The Republic*, in THE WORKS OF PLATO **I**, 136 (Henry Davis M.A. trans., Tudor Publishing Company 1933).

2. Campaign for Fiscal Equity, Inc. v. State, 719 N.Y.S.2d 475, 484-85 (Sup. Ct. 2001).

3. *Id.* at 487.

4. N.Y. CONST. art. XI, § 1.

school funding system failed to provide New York City children with a “sound basic education.”⁵ The Court of Appeals mandated that the State Legislature phase in \$5.6 billion annually, as well as an additional \$9.2 billion in a capital fund to reform the City public schools.⁶ The opinion, however, failed to address one key question: where will the money come from? Members of the State government, including Governor George Pataki, indicate that New York City should be responsible for forty percent of the bill.⁷ Local officials, such as Mayor Michael Bloomberg, insist that providing a sound basic education is the responsibility of state government, that the State should pay for the entire amount, and that any effort by the City to contribute will result in the loss of other programs that support children, as well as public safety.⁸ The only guidance provided by an otherwise activist court was that the City may be responsible for a reasonable portion of education-related expenses and that the State may not overburden the City to the point where it cannot provide the funds.⁹

Part I of this Comment will first demonstrate various approaches in narrowing the achievement gap between wealthy and poor students under federal and state constitutional schemes over the past fifty years. Part I will further delineate the relative successes and failures in implementing education finance reform in various states. Lastly, Part I will explore the unique education system in New York City and education finance reform in New York State over the last few decades, focusing on the multiple judicial proceedings in *Campaign for Fiscal Equity, Inc. v. State*.

Part II will detail conflicting opinions on how and by whom a sound basic education for the children of New York City shall be funded under the mandate of *Campaign for Fiscal Equity, Inc. v. State*. Part II will further explore the argument that the judiciary lacked the authority to delegate \$5.6 billion to provide a sound basic education. Part III will show how extreme solutions are unlikely to survive the political process and how the Court of Appeals’ most recent decision in *Campaign for Fiscal Equity, Inc. v. State* leaves the door open for potentially endless litigation without timely benefit for the children in the New York City Public School System. Part III will also demonstrate how public engagement on where sound basic

5. *Campaign for Fiscal Equity, Inc. v. State*, No. 111070/93 (N.Y. Sup. Ct. Mar. 16, 2005), available at <http://www.cfequity.org/compliance/degrassefinalorder031505.pdf>.

6. *Id.* at 4.

7. Michael Cooper & David M. Herszenhorn, *It's Time to Pay the School Bill, But No One's Volunteering*, N.Y. TIMES, Dec. 1, 2004, at B4.

8. *Id.*

9. Report and Recommendations of the Judicial Referees at § IV, ¶ 87, *Campaign for Fiscal Equity, Inc. v. State*, No. 111070/93 (N.Y. Sup. Ct. Nov. 30, 2004), available at <http://www.cfequity.org/compliance/RefereesFinalReport11.30.04.pdf>.

education funds should come from and additional educational reforms, in addition to increased funding, are needed to ensure that the New York City schools provide constitutionally mandated sound basic education to its students.

PART I: PROVIDING AN ADEQUATE EDUCATION FOR ALL CHILDREN:

THE COMPLEX HISTORY OF EDUCATION FINANCE REFORM LITIGATION IN NEW YORK AND ACROSS THE UNITED STATES

In order to understand the current state of school finance, it is necessary to first look at the history of education finance reform litigation over the last fifty years. In *Brown v. Board of Education of Topeka*, the Supreme Court held that if government chooses to take on the job of educating its citizenry it must do so equally, or not at all.¹⁰ *Brown* was only the first of many cases brought to promote education reform, a trend that continues today, over half a century later.¹¹ First, individuals attempted to bring federal equity claims under the Fourteenth Amendment.¹² When this approach failed, plaintiffs seeking education reform brought similar cases under state constitutions and using equal protection arguments.¹³ The current wave of education reform cases seek to challenge whether states are providing an adequate education to all students, as guaranteed by the education articles of many state constitutions.¹⁴

A. Federal Equity Claims

Immediately following *Brown*, in the 1960's and early 1970's, advocates of education finance reform brought cases under the Fourteenth Amendment utilizing a theory of fiscal neutrality.¹⁵ Advocates argued that

10. See 347 U.S. 483, 493 (1954).

11. See Sara S. Erving, *New York's Education Finance Litigation and the Title VI Wave: An Analysis of Campaign for Fiscal Equality v. State*, 10 J.L. & POL'Y 271, 279-82 (2001) (observing that *Brown* was the first of three waves of education finance reform).

12. See Damian V. Gosheff, Comment, *Brown's Unfulfilled Promise: Education Finance Reform and the Separate But Equal Effect of State Education Clause Remedies: New York as a Model*, 35 U. TOL. L. REV. 889, 890 (2004).

13. *Id.*

14. *Id.*

15. *Id.* at 891 (citing William E. Thro, *Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model*, 35 B.C. L. REV. 597, 600 (1994)).

equalizing educational spending would in turn equalize educational opportunities for all children, a right guaranteed under the Equal Protection Clause.¹⁶ Though the fiscal neutrality theory had early judicial support, the Supreme Court eventually struck down the argument that educational equality is a federally guaranteed right under the Fourteenth Amendment, ending the federal equity wave.¹⁷

The first case to address education finance reform under the federal Equal Protection Clause was *Serrano v. Priest*, in which the California Supreme Court declared that a funding scheme based on wealth of districts violated the Equal Protection Clause.¹⁸ In the wake of *Priest*, several other states faced similar suits under the Equal Protection Clause framework.¹⁹ The success of *Priest*, however, was short-lived. The United States Supreme Court, in *San Antonio Independent School District v. Rodriguez*, put an end to federal education funding litigation.²⁰

Rodriguez addressed disparities in educational opportunities for low income students.²¹ The Court, in analyzing the Texas system, held that education was not a fundamental right and, as such, was not entitled to heightened protection under the Equal Protection Clause.²² Using a deferential scrutiny analysis, the Court stated that Texas' tax-based system was rationally related to a legitimate governmental purpose, and thus did not run afoul of the Fourteenth Amendment.²³ The Court noted that issues

16. *See id.* The Equal Protection Clause of the Fourteenth Amendment provides that no state may deny any citizen equal protection under the laws. U.S. CONST. amend. XIV, § 1.

17. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4 (1973).

18. 487 P.2d 1241, 1255 (Cal. 1971). The *Priest* court, using a fiscal neutrality analysis, stated that California should base school funding on the wealth of the state as a whole, rather than the wealth of individual localities to ensure equality. *Id.*; *see also* Gosheff, *supra* note 12, at 891 (citing Betsy Levin, *Current Trends in School Finance Reform Litigation: A Commentary*, 1977 DUKE L.J. 1099, 1101 (1977)).

19. *See* Gosheff, *supra* note 12, at 891. Following the decision in *Priest*, similar suits were immediately filed in two-thirds of the states. *Id.*

20. *Id.*; *see also Rodriguez*, 411 U.S. at 24.

21. *See Rodriguez*, 411 U.S. at 1.

22. *See id.* at 40. All equal protection cases ask whether there is a sufficient purpose to justify a particular classification. Under a strict scrutiny analysis, used for discrimination based on race or national origin, the government must show that the means is "necessary to achieve a compelling purpose." ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 9.1.2 (2d ed. 2002). Under heightened, or intermediate scrutiny, the government must show that a law is substantially related to achieving an important governmental purpose. Under a rational basis test, or deferential scrutiny, the government only needs to show that a law is rationally related to achieving a legitimate government purpose. This is the easiest burden to bear, and laws are rarely invalidated under the rational basis test. *Id.*

23. *Id.* The Court noted that there may be an equal protection issue if the children in poor districts were deprived of an education, but such was not the case. *See* Gosheff, *supra*

of school finance and state and local property taxes were beyond the scope of federal authority.²⁴ The Court's analysis ended federal claims based on unequal educational funding.²⁵

B. State Equity Claims

After *Rodriguez*, advocates for equal educational financing were forced to look beyond the federal law.²⁶ Seeking relief under a different statutory scheme, plaintiffs brought substantially similar education finance claims under state constitutions.²⁷ Initially, defining education as a fundamental right under state constitution frameworks, rather than federal law, seemed to yield enhanced potential for education reform.²⁸ But courts have interpreted state equity claims with varying results.²⁹

Within a decade of *Rodriguez*, courts became increasingly reluctant to sustain state equity claims,³⁰ requiring plaintiffs to meet one of two standards in order to prove that a school financing scheme violated the respective state constitution.³¹ First, the plaintiff could show that wealth-based financing was discriminatory, and as such required heightened scrutiny.³² The courts did not want to label wealth as a suspect class,

note 12, at 891-92.

24. *Rodriguez*, 411 U.S. at 40-41 (1973).

25. Avidan Y. Cover, Note, *Is "Adequacy" a More "Political Question" Than "Equality?" The Effect of Standards-Based Education on Judicial Standards for Education*, 11 CORNELL J.L. & PUB. POL'Y 403, 409 (2002).

26. *Id.*

27. *Id.*

28. *Id.* Education is at least implicitly mentioned in nearly all state constitutions, meeting the requirement that a right be implicitly or explicitly found in the text of the constitution in order to be considered a fundamental right. There is no mention of education in the U.S. Constitution. *Id.*; see also *Rodriguez*, 411 U.S. at 1.

29. See Gosheff, *supra* note 12, at 892. Some states adhered closely to the federal equal protection analyses, courts only found against the state in question if they broadly construed the standard to include education as a fundamental right. Meanwhile, other states created their own state-specific equal protection analyses, resulting in a wide variety of results. Plaintiffs prevailed in Arkansas, California, Connecticut, Tennessee, and Wyoming. Other states either denied claims or refused to hear them at all. *Id.* at 892-93 (citing *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90, 91 (Ark. 1983); *Serrano v. Priest*, 487 P.2d 1241, 1255 (Cal. 1971), *appeal after remand*, 557 P.2d 929, 953 (Cal. 1976); *Horton v. Meskill*, 376 A.2d 359, 374 (Conn. 1977); *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 315 (Wyo. 1980)).

30. See Gosheff, *supra* note 12, at 892 (citing Brian J. Nickerson & Gerard M. Deenihan, *From Equity to Adequacy: The Legal Battle for Increased State Funding of Poor School Districts in New York*, 30 FORDHAM URB. L.J. 1341, 1349 (2003)).

31. *Id.* at 893.

32. *Id.*

deserving of heightened scrutiny.³³ Several state programs, including Medicaid, used wealth, or a lack of wealth, to determine eligibility.³⁴ Defining wealth as a suspect class would put the legality of such programs in serious danger.³⁵ In the alternative, courts required plaintiffs to demonstrate that the current system failed to pass a rational basis analysis, a difficult burden to bear.³⁶

Furthermore, state equity claims indicated that a redistribution of wealth was necessary to provide an equal education to all children.³⁷ In other words, the financing available to wealthier districts would have to be lowered in order to support poorer districts.³⁸ Such redistribution of wealth met furious opposition as a counter-capitalist ideal.³⁹

The state equity trend dissipated and education reformers were forced to seek a third avenue to address school financing disparities: bringing actions under the education articles of many state constitutions.

C. State Adequacy Claims under the Education Article

Currently, plaintiffs bring educational inadequacy claims under the education articles of their respective state constitutions.⁴⁰ Virtually every state has an education article in its constitution that guarantees some form of free public education.⁴¹ Using the education articles, as opposed to either state or federal equal protection clauses, shifts the focus from the unequal funding a poorer school district receives to the question of what such funding provides, or fails to provide, for students.⁴² Thus, the theory

33. *Id.* (citing Quentin A. Palfrey, *The State Judiciary's Role in Fulfilling Brown's Promise*, 8 MICH J. RACE & L. 1, 20-21 (2002)).

34. *Id.* at 894; *see also* *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (holding that rational basis review is appropriate for wealth-based classification). In *Dandridge*, the Supreme Court accepted the state's interest in allocating limited state funds for public assistance as a rational basis to justify a cap on welfare benefits regardless of family size. *Id.*

35. Gosheff, *supra* note 12, at 894-95.

36. *Id.*

37. *Id.*

38. *Id.* (citing Palfrey, *supra* note 33, at 18).

39. *Id.*

40. *See* Deborah Verstegen & Robert Knoeppel, *Equal Education Under the Law: School Finance Reform and the Courts*, 14 J.L. & POL. 555, 558-59 (1998).

41. *See, e.g.*, CONN. CONST. art. VIII, § 1; N.Y. CONST. art XI, § 1; *see also* William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 EDUC. L. REP. 19, 19 (1993) (observing that every state except Mississippi has an Education Article).

42. *See* Gosheff, *supra* note 12, at 895 (citing Nickerson & Deenihan, *supra* note 30, at 1355).

indicates that while unequal funding may not be inherently unconstitutional, disparate effects of unequal funding violate the guarantee of the states' respective education articles.⁴³

Typically, in addressing adequacy claims, a court establishes a minimum obligation guaranteed under the education article of the particular state. This minimum obligation serves as a "constitutional floor."⁴⁴ The court then looks to see if the state is meeting its minimum burden.⁴⁵ If the court determines that the state is failing to meet the standard set out in its constitution, the court must then determine whether there is a causal link between disparate financing and failure to meet the standard.⁴⁶ Courts have applied this analysis with varying results.

i. New Jersey and the Abbot Mandate

It took twenty-five years, ten New Jersey Supreme Court opinions, three legislative overhauls, and a failing education system to prompt the New Jersey Supreme Court to take drastic action to remedy their school finance system.⁴⁷ New Jersey first tried to correct disparities in educational financing with the Public School Education Act of 1975 ("PSEA").⁴⁸ In *Abbott v. Burke II*, the court held that the PSEA violated the New Jersey constitution as it applied to several low income districts (hereinafter, the "Abbott districts").⁴⁹ The legislature, in response to *Abbott II*, enacted the Quality Education Act of 1990 ("QEA") to ensure "substantially equivalent" per pupil expenditures and money to address specific disadvantages.⁵⁰ Despite the legislature's efforts the QEA never came to realize its goals.⁵¹

43. *Id.*

44. Gosheff, *supra* note 12, at 896.

45. *Id.* at 897.

46. *Id.*

47. See Alexandra Greif, *Politics, Practicalities, and Priorities: New Jersey's Experience Implementing the Abbott V Mandate*, 22 YALE L. & POL'Y REV. 615, 620-26 (2004).

48. *Id.* at 620.

49. *Id.* at 621 (citing *Abbott v. Burke (Abbott II)*, 575 A.2d 359, 408 (N.J. 1990)). The twenty-eight Abbott districts comprised approximately twenty-five percent of New Jersey's public school system. See Erain Applewhite & Lesley Hirsch, Educ. Law Ctr., *The Abbott Preschool Program: Fifth Year Report on Enrollment and Budget* (Oct. 2003), available at www.edlawcenter.org/ELCPublic/Publications/PDF/PreschoolFifthYearReport.pdf (last visited Nov. 17, 2005).

50. Greif, *supra* note 47, at 621. The original QEA also included increased state aid to the Abbott districts, a phase-out of wealthy district aid, and a reduction in state aid for teachers' pension plans. *Id.*

51. *Id.* at 622.

Subject to the pressures of interest groups, New Jersey's teacher organizations, and suburban voters, the New Jersey Legislature chose to replace the QEA with the Quality of Education Act of 1991 ("QEA II"), a significantly more lenient version of the original.⁵² Politicians who supported the original QEA, including Governor Jim Florio, fell victim to the electoral process and failed to win re-election. The judiciary eventually responded. In *Abbott III* the judiciary declared the QEA II unconstitutional because it failed to ensure parity funding. The judiciary gave the legislature a year to devise a new, constitutional funding scheme.⁵³

At the time of *Abbott III*, the legislature, which was controlled by a Republican majority and was often persuaded by the new, highly conservative Governor, Christine Todd Whitman, failed to comply with the court's mandate.⁵⁴ Instead, the legislature enacted the Comprehensive Educational Improvement and Financing Act ("CEIFA"), which did not provide for parity funding and focused on a model school formula rather than inputs and outputs.⁵⁵ The CEIFA failed, and the court in *Abbott IV* remanded the case to the New Jersey Superior Court for a hearing to determine the cost of funding to provide a constitutionally adequate education to the students in the *Abbott* districts.⁵⁶ The Superior Court, in *Abbott V*, issued a report recommending whole-school reform, full day pre-kindergarten, full day kindergarten, summer school, school-based health and social services, a program of fiscal and academic accountability, and added social security.⁵⁷ The court estimated these reforms would cost an additional \$312 million per year.⁵⁸

Implementation of the *Abbott V* mandate, however, came at a slower pace than expected. This brought into question with the widely held notion that school finance reform failed in the past because broad judicial remedies allowed state legislatures to avoid making significant changes.⁵⁹ Though *Abbott* implemented a specific timetable for reform, deadlines were not met, and reforms came somewhat slower than proponents

52. *Id.*

53. *Id.* at 622-23 (citing *Abbott v. Burke* (*Abbott III*), 643 A.2d 575 (N.J. 1994)). This process bears a striking similarity to the *Campaign for Fiscal Equity v. State* line of cases, under which the legislature was also given a year to correct educational inadequacies and failed. See *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 947 (2003).

54. Greif, *supra* note 47, at 623 (citing *Abbott v. Burke* ("*Abbott IV*"), 693 A.2d 417, 436-37 (N.J. 1997)).

55. *Id.*

56. *Abbott IV*, 693 A.2d at 456.

57. Greif, *supra* note 47, at 615.

58. *Abbott v. Burke* ("*Abbott V*"), 710 A.2d 450, 515 (N.J. 1998).

59. Greif, *supra* note 47, at 615-16.

expected or desired.⁶⁰

Implementation of the *Abbott V* mandate was slow in part because it was met with interference both from the executive and legislative branches of the New Jersey government, despite the court's specific instructions.⁶¹ The judicial remedies lacked public and political support, and were decried by some as a grossly inappropriate expansion of the court's powers.⁶² This resistance proved to be a key barrier to school-based reform, and changes only began to materialize after administrative changes at the executive level and a shift in public opinion.⁶³

Though the judiciary detailed remedies through the *Abbott V* mandate, it still entrusted a lot of general responsibility to the state legislature.⁶⁴ This proved fatal, as the executive branch, openly opposed to urban school reform, exerted pressure on the legislature to redefine what was necessary to provide a thorough and efficient education, in order to minimize government spending. The election of a new governor in 2002, however, helped change the tide of school finance reform in New Jersey.⁶⁵

The legislature, apart from executive pressure, put up its own barriers to the implementation of the *Abbott V* mandate.⁶⁶ Suburban districts, which composed a large part of New Jersey's electorate, slowed the process because they were not willing to pay more in taxes without seeing any benefit in their schools.⁶⁷ Furthermore, the legislature resisted the *Abbott V* mandate as an unfair encroachment on their power to determine how to spend the tax-payer's money, especially considering the requirement that all of the money come from state funding, rather than local contributions.⁶⁸ Lastly, the *Abbott V* mandate faced logistical difficulties and a changing

60. *Id.* at 626.

61. *Id.* at 628.

62. *Id.* at 628-43.

63. *Id.* at 638, 640-41.

64. *Id.* at 629-30.

65. *Id.* New Jersey elected James McGreevey as Governor in 2002. He was much more receptive to education reform than his predecessor. *Id.* at 638-40.

66. *Id.* at 639-40.

67. *Id.* As Senator Joseph Palaia noted, "[T]alking about thirty Abbott districts as opposed to [616] school districts in the state of New Jersey, so you know that others aren't going to be thrilled that the biggest pot of all is going to the thirty districts." *Id.* The suburban districts also wanted funding for construction projects, arguing that because of a large imbalance in state funding they also needed government help. *Id.* On June 5, 2000 both houses of the New Jersey legislature agreed the non-Abbott districts would receive a minimum of forty percent funding to cover their construction and facilities needs. *Id.* (citing Randy Diamond, *Legislature Far Apart on School Funding*, BERGEN REC., Mar. 9, 2000, at A3).

68. See Greif, *supra* note 47, at 642.

economy that hindered reform.⁶⁹

Though implementation of the *Abbott V* mandate was slower than expected, it was not necessarily a failure. School reform continues to be a major issue in New Jersey, and campaigns to improve public opinion on urban school funding give hope to meaningful reform.⁷⁰

ii. Judicial Activism and Failure in West Virginia

The story of school finance reform in West Virginia differs somewhat from New Jersey in that it began in a small rural district rather than a large urban system.⁷¹ Like the children in New Jersey, the children in West Virginia were not receiving their constitutionally guaranteed education under the education article.⁷² Following several rounds of litigation, in an unusual display of judicial activism, the judiciary in West Virginia declared the school finance system unconstitutional and mandated very specific reforms.⁷³ In a supplemental opinion by Judge Recht, the court provided extremely detailed remedies, including such detail as how many rooms in a school should be designated for art classes.⁷⁴

The reforms in West Virginia were by and large unsuccessful and failed to benefit the children. Two decades after Judge Recht's supplemental opinion, change was still stagnant and costs were upwards of \$1.2 billion.⁷⁵ The reforms came at a difficult time in the State's economy and the government needed to cut spending.⁷⁶ The courts, however, blocked any

69. *Id.* at 643-52.

70. *Id.* at 656.

71. See Jonathan R. Werner, Note, *No Knight in Shining Armor: Why Courts Alone, Absent Public Engagement, Could Not Achieve Successful Public School Finance Reform in West Virginia*, 35 COLUM. J.L. & SOC. PROBS. 61, 61 (2002).

72. *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979); see also *Pauley v. Bailey*, No. 75-1268 (Kanawha Co. Cir., W. Va., May 11, 1982) (outlining Judge Recht's plan for judicial overhaul of the education system set forth on remand to the trial court); Werner, *supra* note 71, at 68-72.

73. See Werner, *supra* note 71, at 71. Judge Recht's plan, entitled *Components of a Thorough and Efficient System of Free Schools Within Specific Educational Offerings*, listed details such as one-hundred minutes per week of art education, with one art room for every 350-400 students, measuring at least sixty-five square feet of work area per pupil. This level of specificity permeated the entire decision. *Pauley v. Bailey*, No. 75-1268 (Kanawha Co. Cir., W. Va., May 11, 1982).

74. *Pauley v. Bailey*, No. 75-1268 (Kanawha Co. Cir., W. Va., May 11, 1982).

75. See Werner, *supra* note 71, at 73-74, 76. Judge Recht issued a supplemental opinion shortly after the decision, in part to calm public opinion, stating that the court did not have the power to demand that the legislature adopt his plan under the separation of powers doctrine. *Pauley v. Bailey*, No. 75-1268 (Kanawha Co. Cir., W. Va., May 11, 1982).

76. See Werner, *supra* note 71, at 68 (citing Richard Meckley, *Court Grants Education a Preferred Funding Status in West Virginia*, 7 J. EDUC. FIN. 227 (1981)).

cuts in education spending, creating a rift between the branches of the government.⁷⁷ The public was split between those that hailed the court's opinion as a victory for children, and those that felt it was an unconstitutional act of judicial activism.⁷⁸ Such polarity was pervasive throughout the public and the government, and prevented any actual reform from materializing.⁷⁹ The different branches of government fought one another's efforts at every step, using the checks and balances process to prevent funding changes and educational reform measures from taking effect.⁸⁰

iii. Kentucky as a Model of Success

While judiciary-imposed reform in New Jersey and West Virginia met significant resistance from the executive and legislative branches as well as the public, in Kentucky, public engagement, prior to the implementation of reform, ensured a more successful result.⁸¹

As was the case in other states, legislative results did not come fast enough in Kentucky and a coalition of poor districts brought suit against the state for failing to provide a constitutionally guaranteed education.⁸² The Supreme Court of Kentucky, in *Rose v. Council for Better Education, Inc.*, declared the entire education system in Kentucky unconstitutional.⁸³ In response to this decision, the legislature quickly enacted the Kentucky Education Reform Act (KERA) which changed how the school system was governed and financed.⁸⁴ Under KERA, Kentucky raised approximately \$1.6 billion for school finance in two years.⁸⁵

KERA's success was largely attributable to a grass-roots campaign which laid the foundation for reform before the legislation was actually introduced.⁸⁶ The Prichard Committee, which consisted of parents,

77. *Id.* (citing Meckley, *supra* note 76).

78. Werner, *supra* note 71, at 72.

79. *See generally* Werner, *supra* note 71.

80. *Id.*

81. *See generally* Jacob E. Adams, Jr., *School Finance Policy and Students' Opportunities to Learn: Kentucky's Experience*, 7 THE FUTURE OF CHILDREN 79 (1997), available at http://www.futureofchildren.org/usr_doc/vol7no3ART6.pdf.

82. *See* Werner, *supra* note 71, at 65.

83. *Id.* (citing *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989)).

84. Werner, *supra* note 71, at 66.

85. *See* Adams, *supra* note 81, at 81-82.

86. Werner, *supra* note 71, at 66. The Prichard Committee was a reflection of support throughout Kentucky. Furthermore, business leaders agreed to contribute financially and to pay higher taxes if the legislature substantially changed the school system. Public support for increased taxes to improve the education system also helped to lay the foundation for successful reform. Furthermore, the state's largest education union, the Kentucky Education

politicians, local media outlets, and business leaders, rallied support for substantial changes to the school system.⁸⁷ By 1993, KERA reduced the relationship between a school district's wealth and the amount of revenue its students received by fifty-five percent, allowing for greater equity throughout the system.⁸⁸ Over the next decade, Kentucky continued to reduce funding disparities between poor and wealthy districts.⁸⁹

Kentucky's reform initiative did not come without opposition. Researchers identified five significant challenges to Kentucky's reform initiative:

- (1) to create capacity at all levels of the education system,
- (2) to implement the various components of reform in a reasonable sequence,
- (3) to avoid recreating a stifling top-down bureaucracy,
- (4) to foster the public and professional support needed to change over time, and,
- (5) to develop mechanisms for continuous learning and adaptation.⁹⁰

Though Kentucky was successful in increasing revenue and decreasing disparities in its districts, the percentage of total spending allocated to instruction actually decreased from approximately seventy-two percent to seventy percent.⁹¹ This slowed the actual progress of new finance structures, but progress is ongoing and Kentucky stands as a model of success from which other states can learn and improve upon.⁹² The failure to change allocations in Kentucky is important to consider when implementing reform in New York.⁹³

Association also supported reform. All collaborative efforts occurred before the case was even filed in the lower court. *Id.*

87. *Id.*

88. *Id.*

89. Adams, *supra* note 81, at 81-85.

90. *Id.* at 91.

91. *Id.* at 82. After reform, Kentucky's spending patterns changed less than one percent with respect to administration, student services, transportation, operations, maintenance, fixed costs, and debt service. *Id.*

92. See Werner, *supra* note 71, at 63.

93. See Raymond Domanico, *No Strings Attached? Ensuring that "CFE" Funds are Spent Effectively*, MANHATTAN INST. CIVIC REPORT NO. 42 (July 2004), available at http://www.manhattan-institute.org/html/cr_42.htm. Between 1982 and 2002 the total revenues in New York nearly tripled, and the state's share of funding in New York City increased. Increased funding alone, however, did not translate into improved schools. *Id.*

D. The New York State Aid System and the Unique Character of the New York City Public Schools

New York uses a state aid formula to “equalize” state educational opportunity.⁹⁴ The theory of the state aid formula is to ensure that all students receive the highest minimum possible with the available resources, without stunting the growth of communities that wish to contribute above the minimum.⁹⁵ The state provides a base amount to all districts that is less than what is required to educate a child.⁹⁶ State operating aid is then distributed on a formula based on property and income.⁹⁷ Then the State computes Extraordinary Needs Aid, which assists children in districts with condensed poverty or low achievement levels. Extraordinary Needs Aid includes: (1) a fund for special education, (2) per capita funding for textbooks and other instrumentalities, and, (3) aid for transportation and building.⁹⁸ For the upcoming 2005-06 school year, the state will give New York City approximately \$5.6 billion dollars in aid (an amount determined by the aforementioned formula), and an additional \$140 million in special grant programs.⁹⁹

Generally, New York City receives approximately thirty-nine percent of any operating aid increase from the State, otherwise known as the “state share.”¹⁰⁰ Regardless of state share, no district receives less than they did the year before, due to the “save harmless” provisions which guarantee districts with declining enrollment or changing wealth the same funding as the previous year.¹⁰¹ Even the wealthiest districts receive some form of state aid.¹⁰²

There are several additional factors that lead to funding considerations in New York City. The New York City schools have revenues of \$12 billion, which equals allowing \$11,165 per student.¹⁰³ This is significantly less

94. See Kent K. Anker, *Differences and Dialogue: School Finance in New York State*, 24 N.Y.U. REV. L. & SOC. CHANGE 345, 356 (1998).

95. *Id.*

96. *Id.*

97. EDUC. UNIT, N.Y. STATE DIV. OF THE BUDGET, DESCRIPTION OF 2005-06 NEW YORK STATE EXECUTIVE BUDGET RECOMMENDATIONS FOR ELEMENTARY AND SECONDARY EDUCATION 30 (2005) [hereinafter EDUCATION UNIT].

98. Anker, *supra* note 94, at 356.

99. EDUCATION UNIT, *supra* note 97, at 30.

100. Anker, *supra* note 94, at 358.

101. *Id.*

102. *Id.*

103. CITIZENS BUDGET COMM’N, CAN NEW YORK GET AN A IN SCHOOL FINANCE REFORM? 4-6 (Nov. 2004), at http://www.cbcny.org/CBC_School_Finance_Reform_11-04.pdf [hereinafter CBC REPORT].

than the state school revenues of \$35 billion, or \$12,770 per student.¹⁰⁴ The federal government contributes less than ten percent of the funding for the New York City school system; the State contributes approximately 55.5 percent, and the rest comes from local funding sources, including property taxes.¹⁰⁵ The tax effort in New York City, however, is lower than the statewide average.¹⁰⁶ New York State requires localities to contribute to payment for Medicaid, a high figure in New York City, which, coupled with the local tax effort, brings the City well above the statewide average.¹⁰⁷

Moreover, children in New York City attend the largest school system in the country, which serves a population of 1.1 million students, in approximately 1,100 schools.¹⁰⁸ Over half of these schools are over fifty-five years old, and thirty-eight percent require substantial improvements.¹⁰⁹

The composition of the student body adds further to the uniqueness of the system.¹¹⁰ There are 180 languages spoken amongst the children of New York City, and one in every eleven students is a recent immigrant.¹¹¹ Approximately seventy-three percent of New York State's total minority student body attends a New York City public school.¹¹² Additionally, sixteen percent of City children are classified as having limited English proficiency, meaning that they scored below the fortieth percentile on language assessment tests.¹¹³ Nearly half of the students come from families receiving Aid to Families with Dependent Children, and seventy-three percent of students get free lunch, as compared to five percent in the rest of the State.¹¹⁴ Fifty-two percent of students in the City attend schools in which more than forty percent of their peers are poor, as compared with eleven percent of students outside of the Big Five Cities (Buffalo, New York, Rochester, Syracuse, and Yonkers).¹¹⁵

104. *Id.*

105. *Id.* The low federal contribution comes from the nation's historic reliance on local control of schools and the absence of a public education role for the federal government in the U.S. Constitution. *See* U.S. DEP'T OF EDUC., 10 FACTS ABOUT K-12 EDUCATION FINDING, (2005), at <http://www.ed.gov/about/overview/fed/10facts/index.html>.

106. CBC REPORT, *supra* note 103, at 4-6.

107. *Id.* New York City's combined school and Medicaid tax effort significantly exceeds the statewide average: \$16.70 per \$1,000 versus \$14.40 per \$1,000. *Id.*

108. Campaign for Fiscal Equity v. State, 719 N.Y.S.2d 475, 488 (Sup. Ct. 2001).

109. *Id.* at 505.

110. *Id.* at 489-90.

111. *Id.* at 490.

112. *Id.*

113. *Id.*

114. *Id.* School lunch is an indicator of low income. *Id.*

115. *See* Anker, *supra* note 94, at 350.

Students in the City are also at a disadvantage with respect to teachers. Approximately ten-to-fourteen percent of teachers in New York City are not certified, as compared to the state average of four percent.¹¹⁶ The concentration of uncertified and inexperienced teachers is disproportionately high in poorer districts.¹¹⁷ Facilities and instrumentalities are also potential barriers to adequate education. Textbooks are frequently out of date, libraries insufficient, and access to computers limited.¹¹⁸ Lastly, class sizes in New York City are especially large.¹¹⁹ As a result, teacher attention on each child is notably limited.¹²⁰

From an output perspective, only half of New York City ninth grade students graduate in four years.¹²¹ Thirty percent of ninth graders never graduate at all, nor do they get their general equivalency diploma (G.E.D.)¹²² Out of the students that do graduate and go on to the City University of New York, eighty percent require remedial help in one or more major subjects, with approximately half of those students requiring help in multiple subjects.¹²³

New York City children attend school in dilapidated buildings and are issued out-of-date textbooks and taught by inexperienced teachers, making it difficult to graduate.¹²⁴ This flawed system affects students' abilities to gain an adequate education.¹²⁵

E. New York's Road to Adequacy in Education

In February 2005, the Court of Appeals declared the New York school funding system, as it applies to New York City, invalid under the Education Article.¹²⁶ After several stages of litigation and legislation,

116. See Gosheff, *supra* note 12, at 899-900.

117. See Domanico, *supra* note 93. Teachers in New York City schools with high minority enrollments are on average less experienced and lower paid than teachers in schools with low minority enrollments. *Id.* This is unique to the New York City schools. Much of this allocation stems from the teachers' contract, which states that vacant positions must be "filled by the most senior qualified applicant." *Id.* The senior applicants tend to gravitate towards higher achieving districts in wealthier areas. *Id.*

118. Anker, *supra* note 94, at 352.

119. *Id.* at 351.

120. See Gosheff, *supra* note 12, at 901-02.

121. *Id.* at 902. "Only 50% of New York City Public School students who entered ninth grade in 1996, and who stayed in school, made it to twelfth grade in four years." *Id.* at n. 134.

122. *Id.*

123. *Id.*

124. *Id.*

125. See Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 909-15 (2003).

126. Gosheff, *supra* note 12, at 897-98.

Justice DeGrasse of the Supreme Court of New York, in *Campaign for Fiscal Equity, Inc. v. State of New York* (“*CFE V*”), declared that an annual increase of \$5.6 billion is necessary to provide the children of the New York City public schools with the education guaranteed by the New York Constitution.¹²⁷

New York’s road to *CFE V* followed the national trend.¹²⁸ In *Levittown Union Free School District v. Nyquist*, the court struck down both federal and state equity claims.¹²⁹ The court indicated that the Education Article only guaranteed a “sound basic education”, and absent a “gross and glaring inadequacy” they would refrain from declaring a system invalid.¹³⁰

R.E.F.I.T. v. Cuomo used the “sound basic education” language provided in *Levittown*, claiming that New York failed to provide a sound basic education under the Education Article because of unequal funding for minority students.¹³¹ The plaintiffs in *R.E.F.I.T.* failed because they brought an equity claim, already determined to be invalid under *Levittown*, and attempted to disguise it as an adequacy issue.¹³² The court did not take the opportunity to rule on adequacy in *R.E.F.I.T.*, leaving the door open for the *Campaign for Fiscal Equity v. State* line of cases.

F. Campaign for Fiscal Equity v. State: Adequacy in the New York City Public School System.

The plaintiffs, in *Campaign for Fiscal Equity v. State*, noting, the mistake in *R.E.F.I.T.*, brought two separate causes of action.¹³³ First, they claimed that the state violated the Education Article by utilizing a funding system which failed to provide a sound basic education to New York City students.¹³⁴ Second, the Campaign for Fiscal Equity asserted that New York State’s method of financing the schools violated Title VI of the Civil Rights Act of 1964 because of the disparate impact that the funding system has on minority students.¹³⁵ The New York State Constitution ensures that “[t]he Legislature shall provide for the maintenance and support of a

127. See *Campaign for Fiscal Equity, Inc., v. State*, No. 111070/93, slip op. at 4 (N.Y. Sup. Ct. Mar. 16, 2005), at <http://www.cfequity.org/compliance/degrassefinalorder031505.pdf>.

128. See Gosheff, *supra* note 12, at 898.

129. 439 N.E.2d 359, 365 (N.Y. 1982).

130. *Id.* at 369.

131. Reform Educ. Fin. Inequities Today (*R.E.F.I.T.*) v. Cuomo, 606 N.Y.S.2d 44 (App. Div. 1993), *order aff’d as modified*, 86 N.Y.2d 279, 283 (1995).

132. Gosheff, *supra* note 12, at 903.

133. *Id.*

134. *Id.*

135. *Id.*

system of free common schools, wherein all the children of this state may be educated.”¹³⁶ As interpreted in *Levittown*, this clause guarantees a sound basic education.¹³⁷

In 1995 the Court of Appeals, in the first Campaign for Fiscal Equity (“CFE”) case, set up a template to guide the district court in determining if the State violated its duty to provide a sound basic education to all children, and remanded the case.¹³⁸ The template defined a sound basic education as “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.”¹³⁹ The district court was inherited with the task of evaluating inputs and outputs to see if the New York City schools met the sound basic education standard.¹⁴⁰ The inputs required were:

- (1) “[M]inimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.”¹⁴¹
- (2) “[M]inimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn.”¹⁴²
- (3) “[M]inimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks.”¹⁴³

The Campaign for Fiscal Equity assisted in defining a sound basic education through a collaborative effort which utilized community forums that brought together urban, rural and suburban residents, policy makers, and school officials.¹⁴⁴ As a result of these forums, the CFE helped the court define the inputs necessary to provide a sound basic education, and determined that employment was an important goal of education.¹⁴⁵

Based on the inputs determined by the court, with the help of CFE and additional output information which included test scores and graduation rates, the district court determined that New York’s school funding system failed to provide the students of New York City with a sound basic

136. N.Y. CONST. art. XI, § 1.

137. Bd. of Educ., *Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 48 (1982).

138. *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 317 (1995) [hereinafter *CFE I*].

139. *Id.* at 316.

140. *Id.* at 317.

141. *Id.*

142. *Id.*

143. *Id.*

144. Michael A. Rebell, *Adequacy Litigations: A New Path to Equity*, in BRINGING EQUITY BACK 28-35 (Janice Petrovich and Amy Stuart Wells eds., 2004).

145. *Id.* at 31.

education.¹⁴⁶ The district court indicated that a sound basic education must provide not only the skills necessary to vote and serve on a jury, but also to obtain substantive employment, and that City students were not provided with these skills.¹⁴⁷ Furthermore, the court found a causal link between the funding of the schools and the deficiencies in the system by showing that the schools would improve if the State provided additional funding.¹⁴⁸

The Appellate Division in *CFE III* overturned the lower court's ruling and held that the Education Article requires only a "minimally adequate educational opportunity."¹⁴⁹ The Appellate Division further stated that the standards used by the trial court were too high to meet this minimal standard, and that the state funding system satisfied the constitutional minimum.¹⁵⁰ The *CFE III* court indicated that although education must take the future employment opportunities of students into account, it can only be mandated to the extent that students are able to live independently of public assistance, which they were at present.¹⁵¹ Moreover, the court stated that the facilities, instrumentalities, and teaching in the city system also satisfied the constitutional floor.¹⁵² The court noted that, had it found inadequacies in the system, the plaintiffs still failed to demonstrate a causal link between any such inadequacy and school funding.¹⁵³ The correct test of causation, according to the Appellate Division, was whether the current system deprived students of the opportunity to get a sound basic education, and not whether more money would help in attaining that goal.¹⁵⁴

In 2003, the Court of Appeals took on the task of deciding whether the trial court or the intermediate court determined the correct standard and

146. *Id.* at 32-37.

147. Campaign for Fiscal Equity, Inc. v. State, 719 N.Y.S.2d 475, 485 (Sup. Ct. 2001) [hereinafter *CFE II*]. The *CFE II* court further indicated that a high school level of education was necessary in order to complete civic duties and obtain employment.

148. *Id.* at 520.

149. Campaign for Fiscal Equity, Inc. v. State, 744 N.Y.S.2d 130, 134 (App. Div. 2002) [hereinafter *CFE III*].

150. *Id.*

151. *Id.* at 138-39. The court noted that an eighth-grade education was sufficient to achieve the goal of civic participation. The State submitted evidence that understanding jury charges requires a grade level of 8.3, and understanding newspaper articles on campaign and ballot issues requires a grade level ranging from 6.5 to 11.7. Plaintiffs' expert disagreed, but did not specify the level needed to complete these tasks. *Id.* at 138.

152. *Id.* at 140-43.

153. *Id.* at 138-39.

154. *Id.* at 135-39. The court further concluded that the problem was not a lack of sufficient opportunity to obtain a sound basic education, but rather that the socioeconomic problems that many students face hinder their ability to concentrate on their studies, and more funding will not address that. *Id.* at 144.

facts.¹⁵⁵ The Court of Appeals overturned the intermediate court and held that the students were not getting a sound basic education under the current funding system, pointing to the poor graduation rates as a strong indicator.¹⁵⁶ The Court of Appeals noted that employment is implicitly necessary to a productive citizenry, and that basic employment in today's society requires a full high school education.¹⁵⁷

Additionally, the Court of Appeals held that, although teaching and instrumentalities were inadequate, poor facilities did not rise to the level of inadequacy.¹⁵⁸ The court found a causal link by indicating a correlation between the present funding system and educational opportunities.¹⁵⁹ The court further ordered the State to ascertain the actual cost of providing a sound basic education in New York City and to ensure a system of accountability.¹⁶⁰

Despite the order of the Court of Appeals, the State Legislature failed to determine the cost of a sound basic education within the one year deadline.¹⁶¹ Thus, on August 3, 2004, the judiciary appointed a panel of three Judicial Referees to recommend a remedy by November 30, 2004.¹⁶²

The panel of Judicial Referees focused on what they found to be a strong correlation between adequacy of funding and the ability of a school district to fulfill the constitutional guarantee.¹⁶³ They determined that the City schools required a phased in, annual infusion of \$5.63 billion, to fix inadequacies and that \$9 billion more was necessary in a capital funding

155. Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 328-29 (N.Y. 2003) [hereinafter *CFE IV*].

156. *Id.* at 333-37. Of New York City-ninth grade students who do not transfer, only fifty percent graduate within four years, and thirty percent do not graduate or earn an equivalent degree by the age of twenty-one. *Id.* at 336.

157. *Id.* at 331.

158. *Id.* at 333-36. In all, the court found that the inputs in the New York City public schools are deficient in providing a sound basic education. *Id.* at 336.

159. *Id.* at 336. The court used the original definition of causation, and agreed that a causal link is present if the plaintiffs show "that increased funding can provide better teachers, facilities and instrumentalities of learning. . . . [T]his showing, together with evidence that such improved inputs yield better student performance," was sufficient to show causation. *Id.* (citing Campaign for Fiscal Equity v. State, 86 N.Y.2d 307, 319 (1995)).

160. *Id.* at 348.

161. Report and Recommendations of the Judicial Referees at 2, Campaign for Fiscal Equity, Inc. v. State, No. 111070/93 (N.Y. Sup. Ct. Nov. 30, 2004), <http://www.cfequity.org/compliance/RefereesFinalReport11.30.04.pdf>, [hereinafter Report of the Judicial Referees].

162. *Id.* at 2, 7.

163. CBC REPORT, *supra* note 103, at 6.

plan.¹⁶⁴ The Judicial Referees reiterated that the State bears the “ultimate responsibility for the conduct of its agents and the quality of education in New York City public schools.”¹⁶⁵ The Referees, however, left the question as to what extent the State could require the City to contribute to the burden as a matter for the Legislature.¹⁶⁶ They warned that the Legislature could not “thwart the implementation of this Court’s Order by being arbitrary or unreasonable in its allocation to the City of New York of a funding burden.”¹⁶⁷

Justice Leland DeGrasse approved the recommendations of the Judicial Referees in *CFE V.*¹⁶⁸ He did not address whether the city should be responsible in part for the burden of payment and again deferred to the Legislature on this issue.¹⁶⁹

Twelve years have passed since the initial filing of *CFE v. State* in 1993.¹⁷⁰ In the coming months, the legislature will begin the task of allocating funds for school finance reform. Time will show whether years of litigation will result in improved education in New York City.

PART II: IMPLEMENTATION OF SCHOOL FUNDING REFORM IN NEW YORK: WHO FOOTS THE BILL, AND IS THAT ENOUGH?

A. Introduction

For over forty years, the legislative and judicial branches of both the federal and state governments have been looking for a means of reforming troubled education financing systems.¹⁷¹ Though recent methods for invalidating these systems have been similar, the implementation of educational reform has taken several different courses across the nation, with varying results.¹⁷²

As New York begins to reform its education funding system to provide a sound basic education to City students, it may look to the relative success of other states’ techniques to measure its own potential success.¹⁷³ The

164. *Id.*

165. Report of the Judicial Referees, *supra* note 161, § IV ¶ 1.

166. *Id.* § 2, ¶ 6.

167. *Id.* § IV, ¶ 87.

168. Campaign for Fiscal Equity, Inc. v. State, No. 111070/93 (N.Y. Sup. Ct. Mar.16, 2005), <http://www.cfequity.org/compliance/degrassefinalorder031505.pdf>.

169. *Id.*

170. See Gosheff, *supra* note 12, at 904.

171. See generally Gosheff, *supra* note 12.

172. See *supra* notes 40-93 and accompanying text.

173. *Id.*

difficulty of achieving successful reform is twofold. First, the legislature must determine who will pay for the sound basic education, a hotly contested issue. Second, the State must determine how to go about implementing the reforms.¹⁷⁴

New York City is at a crossroads for education finance reform. While *CFE V* indicates promise for reform, there also exists a potential for failure. Justice DeGrasse's opinion, as well as the opinion of the Judicial Referees, failed to stipulate who was to pay the daunting figure of \$5.6 billion per year.¹⁷⁵ The only guidance they provided was that the City may be responsible for a reasonable portion of the expenses and that the State may not overburden the City to the point where it cannot provide the funds.¹⁷⁶ The court did not give any indication what it considered a reasonable amount.¹⁷⁷

B. Support For a Larger Local Contribution

Members of the State government, including Governor Pataki, believe that New York City should be responsible for a significant portion (approximately forty percent) of the sound basic education funds.¹⁷⁸ These proponents of a large local contribution point to the "maintenance of effort" problem. Such a problem occurs when the City uses state aid to supplant rather than supplement local funding by failing to spend as much on education out of its own funds as it did the year before.¹⁷⁹ Supporters of local contribution contend that a history of maintenance of effort problems have, at least partially, caused the degradation of the City school system, and thus, the local government should be forced to help fix it.¹⁸⁰ The City also has limited tax support for education.¹⁸¹

Moreover, proponents of a local contribution argue that if state aid to education is generally increased, it will be done at the expense of other important state programs and wealthier school districts.¹⁸² If the State narrows the funding gap with a reallocation of state aid and/or a revision of

174. *See infra* notes 214-50 and accompanying text.

175. *See supra* notes 163-69 and accompanying text.

176. *See supra* notes 163-69 and accompanying text.

177. *See supra* notes 163-69 and accompanying text.

178. Michael Cooper & David M. Herszenhorn, *supra* note 7.

179. Anker, *supra* note 94, at 373. The maintenance of effort problem leads to distorted state aid formulas. *See id.*

180. *See id.*

181. *Id.* (citing GEN. ACCOUNTING OFFICE, SCHOOL FINANCE: STATE EFFORTS TO REDUCE FUNDING GAPS BETWEEN POOR AND WEALTHY DISTRICTS 233 (1997)).

182. *See* Campaign for Fiscal Equity, Inc. v. State, 86 N.Y.2d 307, 343 (1995) (Simons, J., dissenting in part).

the state aid formula for New York City, it will be at the expense of other, more successful school districts. Such action will force wealthier districts to increase local taxes to make up the difference.¹⁸³ Advocates of local contribution argue that the aforementioned consequences will have an unreasonable effect on the rest of the State, given New York City's history of reducing its municipal appropriations for education when provided with additional aid.¹⁸⁴

Justice Simons, in his dissent in *CFE I*, articulated the argument for local government contribution.¹⁸⁵ He noted:

Moreover, there is serious doubt that plaintiffs can establish that any claimed deficiency in the State funding scheme has caused a deprivation of educational opportunity to City students. These claims against the State are presented at a time when New York City is reducing its funding to the City School District when measured both in terms of the dollars appropriated and the percentage of its municipal budget allocated to education (*see*, Chancellor's Budget Estimate, 1995-1996, *op. cit.*, at 14). And these reductions have occurred even though the City is among municipalities having the lowest residential property tax rate for school purposes in the State and devotes the lowest percentage of its tax revenue to education. The Chancellor of the City School District has stated that the City contributes approximately 20% of its revenues to education, whereas the percentage contributed to education by other localities in the State is almost twice as much (*see*, Chancellor's Budget Estimate, 1995-1996, *op. cit.*, at 14). Based upon this evidence, a court could justifiably conclude as a matter of law that the shortcomings in the City schools are caused by the City's failure to adequately fund City schools, not from any default by the State of its constitutional duty.¹⁸⁶

C. Support for a Large or Total State Contribution

Local officials, such as Mayor Bloomberg and the school commissioner, Joel Klein, insist that providing a sound basic education is the role of state government, that the State should pay for the entire amount, and that any effort by the City to contribute will result in the loss of other programs that support children as well as public safety.¹⁸⁷ Proponents of full state

183. *See id.*

184. *See id.*

185. *See id.* at 341.

186. *Id.* *But see* Anker, *supra* note 94, at 374 (noting that the Legislature set up the education system and that if maintenance of effort is a problem, "the Legislature should pass a meaningful maintenance of effort law").

187. *See* Cooper & Herszenhorn, *supra* note 7. Chancellor Joel Klein focused on one footnote in the Report of the Judicial Referees, which noted that the city already has a high

funding blame the state share system and the heavy Medicaid burden on the City for causing the funding failure.¹⁸⁸ Such arguments indicate that the share system is flawed because it only takes into account the enrollment figures and does not consider the disproportionately large number of special needs children in the City.¹⁸⁹ They insist that a formulaic number, which does not consider the unique factors present, cannot adequately provide the necessary aid in a given year.¹⁹⁰ Proponents of full state funding also note that the State is ultimately responsible for overseeing the school districts and boards of education within, and thus are ultimately the ones who must bear the fiscal responsibility.¹⁹¹

To assist in the implementation of *CFE V*, the Citizen's Budget Commission ("CBC") conducted an analysis to determine who should be responsible for footing the bill for a sound basic education. Under the CBC's analysis the State should be responsible for the full \$5.6 billion for five reasons.¹⁹² First, increased state funding is consistent with long-term national trends that recognize the merits of greater amounts of state funding.¹⁹³ As Justice DeGrasse and the Judicial Referees noted, sufficient funding is directly correlated to providing a sound basic education.¹⁹⁴ Second, New York State provides less funding as a whole to its localities for education than other states; it provides 50.6 percent of the total cost of education in New York City, and forty-nine percent throughout the rest of the State.¹⁹⁵ Third, larger state shares of funding correlate with a lower disparity in spending among districts.¹⁹⁶ New York State ranks twenty-fourth in the nation in disparity between wealthy and poor districts.¹⁹⁷

Fourth, state taxes in New York are relatively low, while local taxes are

tax burden and will have to cut programs if it needs to spend more to support the position that the State should contribute fully. *Id.* (citing *Report of Judicial Referees, supra* note 161, at n.73).

188. See CBC REPORT, *supra* note 103, at 10-11 (pointing to the \$4.3 billion the City paid to the state in mandated aid for Medicaid as a reason why the City is unable to fund a sound basic education).

189. See Anker, *supra* note 94, at 356-59.

190. *Id.*

191. *Id.*

192. See CBC REPORT, *supra* note 103, at 9-12.

193. *Id.* at 9-10.

194. See *supra* notes 163-69 and accompanying text.

195. See CBC REPORT, *supra* note 103, at 10. New York ranks thirty-fourth in the nation for percentage of state aid to school districts. *Id.*

196. *Id.*

197. *Id.* According to the CBC Report, there is a negative correlation between the degree of disparity and the spending provided by the state, though the CBC noted that this correlation is far from perfect, indicating that other factors may come into play as well. *Id.*

171 percent higher than the national average.¹⁹⁸ New York State requires local governments to pay a significant share of expenses related to Medicaid and public assistance,¹⁹⁹ which accounts for twenty-five percent of the difference between New York's local tax burden and the national average.²⁰⁰ In fiscal year 2004, New York City paid \$4.3 billion in mandated aid to the State for Medicaid, an amount that would have covered much of the sound basic education cost.²⁰¹ The CBC further concluded that adding to the already high local tax burden is likely to force cuts in services other than education or force high tax increases which will harm economic vitality in the City.²⁰²

Fifth, the CBC explained that statewide funding is consistent with principles of public finance and thus the State should bear the burden.²⁰³ The public finance argument states that education costs should be borne by the broadest instrumentality possible.²⁰⁴ It relies on the fact that Americans are highly mobile, and may work anywhere in the country.²⁰⁵ Furthermore, participation in the political process spans more than local government.²⁰⁶ The CBC argued that while this may make it seem as if the burden falls on the federal government to pay for educational reform, federalism concerns are likely to prevent an increase in federal contribution and as such the State is the next logical choice.²⁰⁷

The CBC concluded that there are ways for the state to raise the funds necessary, and that it was responsible for doing so.²⁰⁸ It provided suggestions for increased state funding which included eliminating educational inefficiencies through reduction of misallocated aid, better use of teacher time, consolidation of smaller districts, and a cap on administrative expenses.²⁰⁹ The CBC also suggested implementing

198. *Id.* at 10-11.

199. *Id.* at 11.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* at 12.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*; *see also supra* note 105 and accompanying text.

208. *See CBC REPORT, supra* note 103, at 32.

209. *Id.* A uniform local tax effort involves the State setting a "target per pupil expenditure" to provide the average student with a sound basic education. *Id.* The State then sets a local tax rate "sufficient to yield a target local share of the target expenditures for a district with an average tax base." *Id.* Next, the State calculates the "mandated expenditure requirement for each district using the average per pupil figure and adjusting for the characteristics of students and the local cost of living." *Id.* Lastly, the State makes an

Governor Pataki's plan to increase gambling revenues and restructure existing taxes.²¹⁰

D. Judicial Intervention in Education Reform: Helpful Ally or Violation of Separation of Powers?

Though most opponents and proponents of *CFE V* argue over who shall foot the bill, others, including Justice Simmons, purport that it is not the role of the judiciary to compel any change in the state aid formula and that such action "encroaches on the Legislature's power to order State priorities and allocate the State's limited resources."²¹¹ Supporters of this view called for an appeal to the *CFE V* decision, which Governor Pataki filed.²¹² The State, in *CFE V*, cited the New York Constitution, Article VII, section 7 which provides: "No money shall ever be paid out of the State treasury funds, or any other funds under its management, except in pursuant of an appropriation by law. . ." to support their argument that the judiciary is over-reaching its power in mandating that \$5.6 billion dollars be appropriated to New York City for education.²¹³ The Court of Appeals, in deeming the funding system unconstitutional, held that "it is the province of the Judicial branch to define and safeguard rights provided by the New York State Constitution, and order redress for violation of them."²¹⁴ Thus, the court held that the recommendations of the Judicial Referees did not

aid payment to each district "equal to the difference between its mandated expenditure requirement and its mandated minimum tax effort." *Id.* This shifts the funding from local property taxes to statewide revenues, and is quicker to achieve than full state funding. *Id.* at 8-9.

210. *See id.* at 32-33. The CBC Report indicated that expanded gambling could generate approximately \$2 billion annually for education, but that this increase should be restricted to destination casinos and promoted reasonably, to avoid a negative impact on low income citizens. The CBC Report further suggested enforcing the current sales tax on internet transactions and other exempt items. *Id.*

211. *See Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 343 (1995) (Simons, J., dissenting in part).

212. The decision was met with some resistance. *See Letter from Anthony D. Weiner, Charles B. Rangel, Jerrold Nadler, Major R. Owens, Jose E. Serrano, Carolyn Maloney, Joseph Crowley, Gregory W. Meeks, and Edolphus Towns, Members of Congress, to George Pataki, Governor, New York State* (Feb. 23, 2005) (requesting that the State refrain from appealing and work to improve the schools), available at <http://www.cfequity.org/02-24-05letter.htm> [hereinafter Letter to Governor Pataki].

213. **Motion Consolidation** at 3, *Campaign for Fiscal Equity, Inc. v. State*, No. 111070/93 (Sup. Ct. N.Y. Feb. 14, 2005), available at <http://www.courts.state.ny.us/whatsnew/pdf/CFE-2.pdf>.

214. *Campaign for Fiscal Equity v. State*, 100 N.Y.2d 893, 925 (2003); *see also, Klosterman v. Cuomo*, 61 N.Y.2d 525, 535 (2d Cir. 1984) (recognizing the distinction "between a court's imposition of its own policy determination upon its governmental partners and its mere declaration and enforcement of . . . rights").

violate the separation of powers doctrine and the argument was inconsistent with current law.²¹⁵

E. Schools for New York's Future Act

A fourth approach recently surfaced that combined the concerns of the supporters of total state funding and supporters of a large local contribution. On June 3, 2005, Assemblyman Steven Sanders, chairman of the New York State Assembly's Education Committee, introduced a bill known as the Schools for New York's Future Act (Future Act).²¹⁶ The proposed bill, authored in part by the CFE, set forth a formula for state and local contribution shares as well as accountability provisions.²¹⁷ The bill, if passed in the upcoming legislative session by the State Senate, could bring changes to New York City school children as early as the upcoming school year.²¹⁸

The proposed Future Act establishes a base funding level of approximately \$8000 per student for all schools in the State.²¹⁹ The entitlement for each school district is then calculated by multiplying the base amount by the district's average daily membership, and in doing so, weighting low income students, English language learners, and students with disabilities.²²⁰ The formula allows each student to qualify for one or more weighting category.²²¹ Calculations are adjusted each year based on

215. Campaign for Fiscal Equity v. State, 100 N.Y.2d 893, 925-31 (2003).

216. See Press Release, Campaign for Fiscal Equity, Assemblyman Sanders Introduces Schools for New York's Future Act for Passage in Current Legislative Session, at <http://www.cfequity.org/06-07-05sandersbill.htm> (June 7, 2005).

217. *Id.* The accountability provisions require all districts not meeting the eighty percent successful school district standard, including New York City, to develop a four year comprehensive sound basic education plan with annual updates to improve student performance and eliminate achievement gaps. The comprehensive plan would address needs in the quality of teaching and instructional leadership; appropriate class sizing; adequacy of school facilities; pre-kindergarten services; services to at risk students; instrumentalities of learning; parental involvement and responsibility; and the need for a safe orderly learning environment. The part of the plan which dealt specifically with teacher's issues addressed competitive pay scales, teacher recruitment and retention, equitable distribution of experienced teachers, and improvements of teaching quality. These annual reports required will be made available to all members of the public in district offices and on the internet. H.R. A8700 §1302(7), 2005-06 Gen. Assem., Reg. Sess. (N.Y. 2005).

218. *Id.*

219. See CAMPAIGN FOR FISCAL EQUITY, MAJOR PROVISIONS: SCHOOLS FOR NEW YORK'S FUTURE ACT, at <http://www.nysecb.org/news/050323schoolsfuture02.html> (Mar. 23, 2005).

220. *Id.*

221. *Id.* The total figure is then determined and multiplied by the Cost of Education Index developed through the New York Adequacy Study and by a sparsity factor to arrive at the Sound Basic Education amount for each district. *Id.*

population, and changes to state and local contributions are adjusted accordingly.²²²

The proportion of the sound basic education funding that should be paid by the State and by the locality are also determined by a formula under the Future Act.²²³ The figure is then adjusted to reflect poverty levels in the district. This local contribution is expected from all districts and is mandated for those that are not providing a sound basic education, including New York City. The five major cities, including New York City, and twenty other districts in New York, would be subject to the mandatory contribution requirement for the first year.

PART III: FULFILLING THE PROMISE OF *CFE V. STATE* IN NEW YORK CITY: POLITICS AND PUBLIC ENGAGEMENT

A. Introduction

Policy is not self-executing. As history shows, school finance reform is difficult to implement, even with laudable goals and well-intentioned judicial action.²²⁴ Thus, triumph in a system as unique and complex as the New York City public school system is sure to be an uphill battle.²²⁵ Successful narrowing of the achievement gap for New York City students requires a resolution of who should pay for a sound basic education coupled with public and political support.

While the State wants the City to contribute forty percent, City officials believe that the State should pay the entire \$5.6 billion.²²⁶ Governor Pataki has already expressed his plans to file an appeal, *CFE V*, rather than a proposal for school funding within the ninety-day period given by the court.²²⁷ If *CFE V* returns to the appeals process, the children of New York City will continue to be deprived of the funding the court determined as

222. *Id.*

223. *Id.* The contribution ratio is based on the average of the ratio of the district's property wealth per pupil to the statewide average property wealth per pupil and the ratio of the district's income per pupil to the statewide average income per pupil. "This determination would be made in accordance with the definition of a successful district, which was established by the Regents and endorsed by the court." *Id.*

224. See *supra* notes 40-93 and accompanying text.

225. See *supra* notes 94-125 and accompanying text for a discussion of the complexities of the New York City public schools.

226. See *supra* notes 178-210 and accompanying text.

227. See, e.g., Errol A. Cockfield Jr., *Now, It's a Math Problem. Legislators Hagggle Over Where to Get the Billions of Dollars Needed to Fund the City's School System*, NEWSDAY, Feb. 16, 2005, at A4; Greg Winter, *Judge Orders Billions in Aid to City Schools*, N.Y. TIMES, Feb. 15, 2005, at A1.

necessary to obtain a constitutionally guaranteed sound basic education.²²⁸

An appeal of *CFE V* is unlikely to overturn the holding on separation of powers grounds.²²⁹ Though Governor Pataki continues to claim that the case should be thrown out because the judiciary lacks the power to mandate the Legislature to allocate funds for education, the prior *CFE* cases have made it clear that the court has the jurisdiction to decide this case and to mandate appropriate remedies. Therefore, any such argument is likely to fail, and will only result in stagnation of education reform in New York City.

B. Grass Roots Support, Rather Than Polarity, Will Thwart Opposition to Reform

On appeal, the only further role the courts can play is to determine the eventual remedy and allocate the payment burden. The courts, however, are not the appropriate forum to produce a successful result. Polar or arbitrary answers to the payment question are unreasonable, impractical, and unlikely to further school finance reform. If the state becomes one hundred percent responsible for funding education, the City will be able to shirk responsibility for having misallocated funds in years past.²³⁰ If the Legislature or the courts accept a full state contribution as reasonable, then the State will be forced to reallocate funds away from successful districts, and/or increase taxes, while the city evades responsibility for poor management of State aid in the past.²³¹ An approach that takes money from suburban citizens and gives it to poor urban districts' citizens is likely to meet public opposition, as it did in New Jersey.²³² Acknowledging the concerns of suburban and wealthy district residents and appealing to their self-interests may thwart some of this opposition.²³³

The State, given its constitutional obligation to provide its citizens with a sound basic education, will be responsible for at least a portion of the annual \$5.6 billion. As such, residents outside of New York City will be at least partly responsible for the education of the children in the urban system. The best way to avoid suburban backlash is to show how a

228. See Letter to Governor Pataki, *supra* note 212 (requesting that the State refrain from appealing and work to improve the schools).

229. Any appeal is likely to be remanded to the trial court to determine the relevant standard of facts and eventual remedy, bringing the case to come full circle without having brought any relief for the children of New York City. See *supra* note 155.

230. See *supra* notes 179-80 and accompanying text.

231. See *supra* notes 179-80 and accompanying text.

232. See *supra* notes 52-53, 182-86 and accompanying text.

233. See *supra* notes 52-53, 182-86 and accompanying text.

reformed school finance system in New York can help protect and expand interests outside of New York City. As former Governor Cuomo noted, the wealthier districts will be hard-pressed to stand behind reforms that they feel have no bearing on them other than to raise their taxes.²³⁴

Acknowledging the concerns of suburban and wealthy district residents and avoiding a pure “Robin Hood” approach will appeal to residents of these districts without threatening their own self-interests. In prior suburban forums, discussions led the residents of such communities to understand the plight of urban citizens, encouraging them to work towards reform in urban areas. The significance of previous public engagement efforts, in the earlier stages of *CFE V*, and the importance of continuing this process are evident in an editorial published in an affluent suburban county newspaper:

This “public engagement process” is an exciting one. It includes hundreds of parents, teachers, administrators, advocates, and representatives of civic, religious, business, and labor groups from across the state exchanging ideas on critical issues, including how funding reform can dovetail with state Board of Regents’ effort to raise academic standards The plan . . . is to offer participants an opportunity to directly influence reform positions [CFE] will present to the court. That in itself is refreshing. After years of watching state officials . . . avoid this admittedly difficult but vital area of reform, it’s high time the fiscal inequalities of the education system were addressed. And the fact that the public isn’t being bypassed is heartening.²³⁵

Active community involvement in reform has been a major determinant of success in education adequacy cases.²³⁶ Advocates can improve public opinion through collaborative effort and by continuing the community dialogue process. Thus, the political process will dictate the result.

A large City contribution, such as the forty percent arbitrarily picked by Governor Pataki, is also unreasonable and unlikely to provide successful reform. If the legislature chooses to obtain forty percent of sound basic education funds from the City, there is likely to be public backlash as well. Such a requirement, as indicated by the CBC Report, will force the City to cut back on important programs.²³⁷ It also fails to consider that the City

234. See Anker, *supra* note 94, at 365. “[T]he public will not support the education of other people’s children unless it is in their self-interest—it raises economic productivity, decreases social disorientation and is much less expensive in the long term than the alternative.” *Id.*

235. Rebell, *supra* note 144, at 35.

236. *Id.*

237. See *supra* note 187-91 and accompanying text.

pays substantial funds to the State for programs such as Medicaid.²³⁸ Furthermore, a forty-percent local contribution is contrary to the court's order, which indicated that the state cannot thwart the implementation of reform by requiring an arbitrary or unreasonably high contribution from the City.²³⁹ Ultimately, the State is responsible for providing the sound basic education, and cannot evade this responsibility by placing a high burden on the local government.²⁴⁰ Putting almost half of the education burden on the locality, rather than with the State, is sure to meet opposition as unreasonable.

The State has various means for raising revenues to support a fairly large contribution to a sound basic education. As the CBC Report indicated, the State can raise the money through a reduction of inefficiencies in the education system, expanded gambling revenues, and improved enforcement of sales tax and taxes on professional services.²⁴¹ Of important note, however, is the possible public resistance toward the method of raising revenues for education through gambling. If the State does as promised, and promotes gambling at vacation-type casinos with responsible promotion, public concerns can be alleviated.²⁴² Furthermore, the New York State Lottery, a form of gambling, already contributes a large amount to education funding, providing a stable base for state aid.²⁴³

The real question, therefore, comes in determining what constitutes a reasonable contribution. Through the proposed Future Act, the collaborative Campaign for Fiscal Equity went a step further by setting out a formula to calculate local contribution.²⁴⁴ The Future Act also addressed concerns by promoting continued community engagement to determine the regional and local needs of school children.²⁴⁵ Since collaborative efforts by the Campaign for Fiscal Equity have been successful in defining a sound basic education, and in defining the skills education should provide, there is reason to believe that an effort by the CFE to determine a reasonable share will be appropriate and most likely to lead to successful implementation.²⁴⁶ The legislature should strongly consider adopting the

238. See CBC REPORT, *supra* note 103, at 11.

239. See *supra* notes 166-68 and accompanying text.

240. See *supra* notes 166-68 and accompanying text.

241. See *supra* notes 208-10 and accompanying text.

242. See CBC REPORT, *supra* note 103 at 17-18.

243. See H. CARL MCCALL, NEW YORK STATE OFFICE OF THE STATE COMPTROLLER, THE NEW YORK LOTTERY ROLE IN FINANCING EDUCATION (1998), available at <http://www.osc.state.ny.us/reports/schools/1998/4-98.htm#raiser> (last visited Nov. 8, 2005).

244. See *supra* notes 219-23 and accompanying text.

245. H.R. A8700, §1302(6), 2005 Gen. Assem., Reg. Sess. (N.Y. 2005).

246. See *supra* notes 144-45 and accompanying text.

Future Act, which is based on the recommendations of the CFE, to implement *CFE V*.

If *CFE V* returns to Justice DeGrasse on appeal, the court may be forced to assign a percentage of contribution by the State and local governments, thereby fueling the separation of powers debate.²⁴⁷ Judicial activism of this extent has in the past been met with significant opposition from the executive and legislative branches, and the public.²⁴⁸ Animosity toward judicial activism slowed implementation of the *Abbott* mandate in New Jersey, and halted education reform in West Virginia.²⁴⁹ Thus, for New York to determine contribution shares for state and local government that are reasonable enough to gain widespread support, additional public engagement is imperative. Such grassroots effort, such as that of the Campaign for Fiscal Equity, proved successful in implementation of school finance reform in Kentucky.²⁵⁰

B. Increased School Funding Without Increased Accountability is Not Enough

School finance reformers can also learn many lessons from the implementation of KERA.²⁵¹ It is at the implementation stage where school reforms rise and fall.²⁵² Therefore, reformers must be aware of the state and local governments' goals and the public's opinion.²⁵³ Barriers must be addressed rather than ignored, and barriers exist at the policy, administrative, and practice levels.²⁵⁴ Under KERA, a comprehensive approach which takes such factors into account, in addition to increased funding, helped make it one of the most successful school finance reform programs in recent history.

To ensure positive change, the legislature must consider how the money will be spent. Perhaps the most significant aspect of the Future Act is that it addresses accountability. The importance of accountability is twofold. First, money alone is unlikely to provide the reaching reform that City schools need to provide a sound basic education.²⁵⁵ Second, ensuring accountability is likely to ease the minds of some supporters of large local

247. *See supra* notes 211-15 and accompanying text.

248. *See, e.g.*, notes 68-79 and accompanying text.

249. *See, e.g.*, notes 68-79 and accompanying text.

250. *See supra* notes 81-93 and accompanying text.

251. *See supra* notes 81-93 and accompanying text.

252. *See supra* notes 81-93 and accompanying text.

253. *See supra* notes 81-93 and accompanying text.

254. *See supra* notes 81-93 and accompanying text.

255. *See* CBC REPORT, *supra* note 103, at 22.

contribution, who are concerned with abuse of state funding at the city level.²⁵⁶ In addressing the effective use of resources, the comprehensive sound basic education plan under the Future Act will identify barriers to implementation on an annual basis through an ongoing public engagement process. Involving members of the public at all levels would greatly increase the likelihood of success. The proposed Future Act would require the public engagement process to determine what the significant barriers are. Evidence suggests that increasing aid unaccompanied by substantive reforms will not produce the desired improvement.²⁵⁷

As the Citizen's Budget Commission noted in their report on New York City schools, there are several inefficient areas which, if corrected, could contribute significantly to providing a sound basic education for students both financially and academically.²⁵⁸ Furthermore, contractual provisions prevent administrators and principals from using increased numbers of teachers to reduce class size and improve education.²⁵⁹ As seen in Kentucky, great funding gains can be offset by a lack of change in efficiency and allocation, something New York needs to take into consideration in implementing the *CFE V* mandated reform.²⁶⁰

Therefore, the State must first use community dialogue and open collaborative efforts such as those initiated by the CFE to define a reasonable percentage of City contribution for sound basic education that the public and government can both support. In addressing public and administrative barriers to implementation, the State should be mindful of the concerns of both urban and suburban residents.

CONCLUSION

The State is in a position to raise the funds, and has a responsibility to its citizens to provide a sound basic education. It cannot simply place this burden on a locality such as New York City and claim that it should bear nearly half of the cost. The legislature must be reasonable in its allocation of education funding both from the State and local governments. As earlier rounds of *CFE V* have shown, community dialogue and collaboration between suburban and urban residents can help bring about change for children throughout New York.

Governor Pataki has stated that he wishes to appeal the decision in

256. See *supra* notes 178-81 and accompanying text.

257. See CBC REPORT, *supra* note 103, at 22.

258. See *supra* notes 209-11 and accompanying text.

259. See CBC REPORT, *supra* note 103, at 29-30.

260. See *supra* notes 91-93 and accompanying text.

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opposition to several Congressmen and members of the public. Additional appeals will only slow judicial efficiency, create costs for all parties, and create a barrier for learning in New York City. The next step in the CFE process is not in the courtroom, but in the public arena, ensuring that children across New York City are given the chance to succeed, beginning with a sound basic education.