

ARTICLE

SCHOOL FINANCE LITIGATION IN FLORIDA: A HISTORICAL ANALYSIS

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The Florida Supreme Court in *Florida Department of Education v. Glasser*,¹ recently decided the narrow constitutional issue of “whether a school district has constitutional authority to levy [nonvoted discretionary millage] in the absence of enabling legislation.”² This decision, however, touches upon other important constitutional issues affecting public school funding in Florida. This Article will review the history of school finance litigation in Florida, as well as the significance and history of the “education article”³ in Florida's Constitution. This Article will also discuss how these factors, as well as the *Glasser* decision, may impact any future school finance litigation in Florida.

I. HISTORICAL ANALYSIS OF THE EDUCATION ARTICLE

A. Focusing on the State Constitution Rather than the United States Constitution

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1. 622 So. 2d 944 (Fla. 1993).

2. *Id.* at 946.

3. FLA. CONST. art. IX, § 1. Article IX, § 1 of the Florida Constitution provides: “Adequate provision shall be made by law for a uniform system of free public schools”

There has been a significant amount of school finance reform litigation throughout the country during the past two decades. This litigation has focused, to a great extent, on disparities of funding among a state's school districts.⁴ Such disparities gave rise to the earliest school finance reform litigation including *San Antonio Independent School District v. Rodriguez*.⁵ The United States Supreme Court held in *San Antonio Independent School District* that the right to an education is not a fundamental right guaranteed by the United States Constitution.⁶ Thus, the focus of school finance reform litigation has been on state constitutional language contained in state education articles, state equal protection clauses, or both.⁷ Early school finance reform challenges which alleged violations of the state equal protection clause or a combination of such clauses and the state education articles resulted in inconsistent holdings with no apparent pattern to explain the mixed results.⁸ The role of state education articles in school finance litigation is the focus of more recent analysis.⁹

Several scholars, analyzing state education articles or clauses, have classified them into four categories based upon the level of duty imposed on the state legislature.¹⁰ These categories range from those which merely "provide for a system of free public schools,"

4. William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639, 1647-49 (1989) [hereinafter Thro, *Analysis of State Constitutional Provisions*]. For citations and analysis of the background of public school finance reform litigation, see *id.* at 1647-56.

5. 411 U.S. 1 (1973). Prior to *Rodriguez*, an equal protection challenge was brought in federal court regarding the 1968 "Millage Rollback Act," *Hargrave v. Kirk*, 313 F. Supp. 944 (M.D. Fla. 1970) only to be vacated on jurisdictional grounds. *Askew v. Hargrave*, 401 U.S. 476 (1971).

6. *Id.* at 35.

7. See Thro, *Analysis of State Constitutional Provisions*, *supra* note 4, at 1641-42. See *id.* at 1641-42 nn.12-14 for citations and an analysis of the cases interpreting state education and equal protection clauses.

8. *Id.* at 1641-43.

9. *Id.* at 1643-44.

10. *Id.* at 1661-70 & nn.102-40. Erica Grubb first developed this classification system. *Id.* at 1661 n.105. See Erica B. Grubb, *Breaking the Language Barrier: The Right to Bilingual Education*, 9 HARV. C.R.-C.L. L. REV. 52, 66-70 (1974).

Gershon Ratner developed the classification system used by Thro and discussed in this Article. Thro, *Analysis of State Constitutional Provisions*, *supra* note 4, at 1661-67 nn.105-06, 110, 118 & 123. See Gershon M. Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 TEX. L. REV. 777, 814-16 & nn.143-46 (1985).

Category I, to those which make education an important or paramount duty of the state, Category IV.¹¹ Included within that range are Category II clauses which impose some minimum standard of quality that the state system of education must provide and Category III clauses with “stronger and more specific education mandate[s] and purposive preambles.”¹²

One of the approaches used by courts in interpreting state education clauses is to examine the plain meaning of the constitutional language.¹³ In using the plain meaning approach, the language of the education clause is a major factor in the outcome of the litigation, because the language of the education clause defines the duty of the state legislature.¹⁴ Particularly, courts would examine the language of the education article and determine whether it imposes a specific standard or quality. The court would define the standard or quality then determine whether that standard has been met. If the standard has not been met, the court would determine whether school financing is a reason for this failure.¹⁵ This method could be used in future school finance litigation in Florida.

Florida's education article is classified as a Category II education clause¹⁶ requiring a uniform system of free public schools.¹⁷ One commentator notes that the word “uniform” standing alone “suggests only a certain sameness” but does not specify “a level of quality or use of resources.”¹⁸ The Florida Supreme Court's interpretation of the word “uniform” in article IX, section 1 is discussed in Part II of this Article.

11. Thro, *supra* note 4, at 1661 n.105.

12. Thro, *Analysis of State Constitutional Provisions*, *supra* note 4, at 1663, 1666 (footnotes omitted).

13. William E. Thro, *The Role of Language of the State Education Clauses in School Finance Litigation*, 79 Educ. L. Rep. (West) 19, 25 (1993) [hereinafter Thro, *Language of the State Education Clauses*] (citing John Dayton, *An Anatomy of School Funding Litigation*, 77 Educ. L. Rep. (West) 627, 643 (1993)).

14. *Id.* at 23. Commentators differ as to whether the plain meaning of a state's education clause will or should be a decisive factor in determining the outcome of a case. See *id.* at 28-31; cf. Dayton, *supra* note 13, at 642-43.

15. Thro, *Language of the State Education Clauses*, *supra* note 13, at 28.

16. *Id.* at 23 n.28.

17. *Id.* at 23-24. Thro notes that a typical Category II clause requires a “thorough and efficient system of public education.” *Id.* at 24 (footnote omitted). Florida requires a “uniform system of free public schools.” See *supra* note 3 for the pertinent text of article IX, § 1 of the Florida Constitution.

18. Thro, *Language of the State Education Clauses*, *supra* note 13, at 29.

Other methods of analyses used by courts in interpreting state education clauses include using a historical analysis of constitutional debates, evidence of the intent of the framers, a review of judicial interpretations of similar language, or a combination of these methods.¹⁹ As this Article explains, the history of article IX, section 1, the case law interpreting the constitutional provision, and the plain meaning of Florida's education article suggest that Florida's method of funding public schools will continue to withstand judicial scrutiny.²⁰

B. Early Versions of Florida's Education Article

Florida's education article remained virtually unchanged in the constitutions of 1838, 1861, and 1865, which took Florida from pre-statehood to post-civil war.²¹ However, the legislature greatly ex

19. Dayton, *supra* note 13, at 643. See Thro, *Language of the State Education Clauses*, *supra* note 13, at 31 and the text accompanying note 13.

20. See *infra* notes 21-116 and accompanying text.

21. See FLA. CONST. of 1838, art. X, §§ 1-2; FLA. CONST. of 1861, art. X, §§ 1-2; FLA. CONST. of 1865, art. X, §§ 1-2.

Article X of the 1838 constitution provided:

Section 1. The proceeds of all lands that have been, or may hereafter be, granted by the United States for the use of schools and seminary or seminaries of learning, shall be and remain a perpetual fund, the interest of which, together with all moneys derived from any other source applicable to the same object, shall be inviolably appropriated to the use of schools and seminaries of learning, respectively, and to no other purpose.

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

FLA. CONST. of 1838, art. X, §§ 1-2.

Article X of the 1861 constitution stated:

1. The proceeds of all lands that have been granted by the United States for the use of Schools and a Seminary of Seminaries of Learning, shall be and remain a perpetual fund, the interest of which, together with all moneys derived from any other source, applicable to the same object, shall be inviolably appropriated to the use of Schools and Seminaries of Learning respectively, and to no other purpose.

2. The General Assembly shall take such measures as may be necessary to preserve, from waste or damage, all land so granted and appropriated to the purpose of Education.

FLA. CONST. of 1861, art. X, §§ 1-2.

Article X of the 1865 constitution provided:

1. The proceeds of all lands for the use of Schools and a Seminary or Seminaries of Learning shall be and remain a perpetual fund, the interest of which,

panded the education article in 1868 from two to nine sections.²² Of great significance is that the 1868 constitution contained the first requirement for a system of public schools.²³

Specifically, article VIII, section 1 of the 1868 constitution made education the “paramount duty of the State.”²⁴ Under the four categories previously discussed,²⁵ this education clause is classifiable as a Category IV clause, imposing a great duty on the legislature. In addition to making education the “paramount duty” of the state, section 1 required “the State to make ample provision for the education of all children”²⁶ in Florida. The constitution also directed the legislature to provide a uniform system of common schools.²⁷ Thus, the requirement of uniformity began as a separate mandate in addition to the declaration that education was the paramount duty of the state.

The Florida Constitution of 1885, however, dropped the phrase “paramount duty” but retained the language “uniform system.”²⁸ This change is important because when there is a significant change in the language of the constitution, the Florida Supreme Court has presumed the change to be intentional and to have a different effect from the prior language.²⁹ The “uniform system” language remains

together with all monies accrued from any other source, applicable to the same object, shall be inviolably appropriated to the use of Schools and Seminaries of Learning, respectively, and to no other purpose.

2. The general Assembly shall take such measures as may be necessary to preserve from waste or damage all lands so granted and appropriated for the purpose of Education.

FLA. CONST. of 1865, art. X, §§ 1-2.

22. FLA. CONST. of 1868, art. VIII, §§ 1-9. Nonetheless, this Article focuses on §§ 1-2 of the education article.

23. TALBOT D'ALEMBERTE, *THE FLORIDA STATE CONSTITUTION: A REFERENCE GUIDE* 7 (1991). Article VIII, § 2 of the 1868 constitution stated: “The legislature shall provide a uniform system of common schools and a university, and shall provide for the liberal maintenance of the same. Instruction in them shall be free.”

24. FLA. CONST. of 1868, art. VIII, § 1. Section 1 provided: “It is the paramount duty of the State to make ample provision for the education of all the children residing within its borders, without distinction or preference.”

25. See *supra* notes 10-12 and accompanying text.

26. FLA. CONST. of 1868, art. VIII, § 1. See *supra* note 24 for the entire text of this section.

27. See *supra* note 23 for the text of article VIII, § 2 of the 1868 constitution.

28. Article XII, § 1 provides: “The Legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same.” FLA. CONST. of 1885, art. XII, § 1.

29. *State v. Creighton*, 469 So. 2d 735, 739 (Fla. 1985); *In re Advisory Opinion to*

in effect today. Thus, education was no longer declared to be the paramount duty of the state. However, the constitution continued to direct the legislature to provide for a uniform system of free public schools and to provide for its liberal maintenance.

C. Judicial Interpretation of the 1885 Constitution

In *State ex rel. Clark v. Henderson*,³⁰ the Florida Supreme Court interpreted article XII, section 1 of the 1885 constitution. The court held that the “uniform system” required free public schools to be “established upon principles that are of uniform operation throughout the state and that such system be liberally maintained.”³¹ The court also held that the uniform system must be liberally maintained by an efficient and economical administration of the funds derived from the various sources provided by law consistent with article XII.³² Thus, the court's interpretation of the uniform system under the 1885 constitution required a uniform operation throughout the state.

D. The Florida Constitution of 1968

The constitutional revision of 1968 brought substantial changes to Florida's constitution, with changes specifically made in section 1 of the education article.³³ Article IX, section 1 states:

Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.³⁴

This 1968 revision to article IX, section 1 added the language “insti-

the Governor, 112 So. 2d 843, 847 (Fla. 1959).

30. 188 So. 351 (Fla. 1939).

31. *Id.* at 352.

32. *Id.*

33. See MANNING J. DAUER ET AL., SHOULD FLORIDA ADOPT THE PROPOSED 1968 REVISION? 36 (1968) for an analysis of other changes to Florida's education article as well as the rest of the constitution. See also FLA. CONST. art. IX, § 1 (Draft of Proposed 1968 Constitution; submitted to voters for ratification at General Election of November 5, 1968) (on file at Florida State University, Strozier Library, in The Florida Collection).

34. FLA. CONST. art. IX, § 1.

tutions of higher learning and other public education programs.”³⁵ This provision also dropped the word “liberal” and moved the word “maintenance” so that it applies only to the new reference of “institutions of higher learning and other public education programs that the needs of the people may require,” not to the phrase “free public schools.”³⁶ This revision, however, received little attention by commentators.³⁷ Interestingly, the Florida Constitution Revision Commission recommended language which would have kept the word “maintenance” modifying the phrase “uniform system of free public schools.”³⁸ Nevertheless, the legislature placed on the ballot language in which the word “maintenance” modified only the latter part of the clause.³⁹

E. Attempted Revisions

A decade elapsed between the adoption of the 1968 constitution and the first meeting of the Constitution Revision Commission in 1978. During this time, the education article was the subject of much discussion.⁴⁰ The 1978 meeting resulted in a proposed revision of article IX, section 1 that was presented to the voters in November 1978.⁴¹ In addition, amendments concerning educational issues were

35. *Id.*

36. *Id.*

37. See DAUER, *supra* note 33, at 36; *cf.* Talbot D'Alemberte, Commentary, 26A FLA. STAT. ANN. 363 (West 1970) (noting that “[t]he new language [did] not include the phrase which provided for the ‘liberal maintenance’ of the schools”).

38. FLORIDA CONSTITUTION REVISION COMM'N, PROPOSAL OF THE EDUCATION & WELFARE COMMITTEE 1 (on file with Florida Department of State, Division of Archives, Series 720, carton 2, folder 14).

39. FLORIDA CONSTITUTION REVISION COMM'N, PROPOSED REVISED CONSTITUTION OF FLORIDA 50 (1966) (on file with Florida Supreme Court Library); FLORIDA CONSTITUTION REVISION COMM'N, PROPOSAL OF THE EDUCATION & WELFARE COMMITTEE 1 (on file with Florida Department of State, Division of Archives, Series 720, carton 2, folder 14). See also 1968 Fla. Laws ch. 68-124 (codified as amended at FLA. CONST. art. IX, § 1); Memorandum from the Joint Comm. on Style & Drafting 83 (Sept. 29, 1968) (suggesting this construction) (on file with Florida Supreme Court Library).

40. D'ALEMBERTE, *supra* note 23, at 15.

41. FLORIDA CONSTITUTION REVISION COMM'N OF 1977-78, PROPOSED REVISION OF THE FLORIDA CONSTITUTION 20 (1978) (on file with Florida Legislature Joint Legislative Management Committee, Division of Library Services).

The proposed § 1(b) read:

The primary purpose of elementary and secondary education in this state shall be to develop the ability of each student to read, communicate and compute and to provide an opportunity for vocational training. By general law, provision

drafted for article I, Florida's Declaration of Rights. The Declaration of Rights Committee approved an amendment to article I, section 2 providing: "Equality of educational opportunity is guaranteed to each person of this State under a uniform system of free public schools."⁴² The legislature temporarily passed this proposal, but it was eventually withdrawn.⁴³ Commissioner Leroy Collins submitted a proposal to eliminate section 1 of article IX and replace it with language "guarantee[ing] the right to an efficient and high quality education from the kindergarten to the secondary level."⁴⁴ The proposal also "guaranteed the rights of handicapped persons, including those handicapped by racial discrimination, to special education."⁴⁵ This proposal was also temporarily passed but eventually withdrawn.⁴⁶

One proposal which met with Commission approval and subsequently was placed on the November ballot set out the mission of public schools and also allowed provisions to be made for instruction for disadvantaged students.⁴⁷ In Commission discussions of this proposal, Commissioner Freddie Groomes addressed the need for an amendment to both Florida's Declaration of Rights and the education article.⁴⁸ Commissioner Groomes noted that when the Declaration of Rights Committee examined Florida's Declaration of Rights, it found that "education was conspicuously absent."⁴⁹ When asked by

may be made for special instruction to aid disadvantaged students with special learning needs.

Id.

42. Letter from Leroy Collins, Chairman, Declaration of Rights Committee, to James W. Kynes, Chairman, Education Committee (Oct. 31, 1977) (on file with Florida Department of State, Division of Archives, series 265, carton 7).

43. FLORIDA CONSTITUTION REVISION COMM'N, FINAL SUMMARY OF ACTION TAKEN ON ALL COMMISSION PROPOSALS 1 (1978) (known as proposal #26).

44. *Id.* at 39 (known as proposal #78).

45. *Id.*

46. *Id.*

47. *Id.* at 40 (known as proposal #187). See *supra* note 41 for the text of this proposal.

48. *Hearings on Constitution Revision of 1978 Before the Florida Constitution Revision Commission 3762-64* (1978) (statement of Comm'r Freddie L. Groomes) (on file with Florida Legislature Joint Legislative Management Committee, Division of Library Services) [hereinafter *1978 Florida Constitution Revision Commission Hearings*]. Commissioner Groomes noted: "Our Florida Constitution more or less provides that all natural persons do have the right to enjoy life, liberty, to pursue happiness, to be rewarded for industry, and to have the right to acquire, possess, and protect property. However, without an adequate education, these pursuits are virtually impossible." *Id.* at 3764-65.

49. *Id.*

Commissioner Dexter Douglas whether the proposal would impose new duties on the state and government, Commissioner Groomes responded: "Yes, I propose that this will provide a constitutional framework for us to accept as a basic right, provision for educational opportunity for all citizens."⁵⁰

Education was not included in the final proposed article I, section 2 entitled Basic Rights.⁵¹ The Commission transcripts reveal that members of the Constitution Revision Commission saw a need to expand upon the language in article IX, section 1.⁵² However, this proposed amendment was rejected by Florida's voters, as were all the proposals recommended by this Commission.⁵³

Florida previously had a Category IV standard,⁵⁴ naming education as the "paramount duty" of the state.⁵⁵ The current language requiring adequate provision by law for a "uniform system of free public schools" is a Category II clause and imposes a lower duty or priority for education.⁵⁶ Nonetheless, the voters in the November 1978 election rejected language which would have elevated Florida's education article to a Category III classification.

II. EARLY FLORIDA SCHOOL FUNDING CASES

Florida's method of funding public schools has been consistently upheld by the courts.⁵⁷ The focus of early challenges was whether the method of funding Florida's public schools violated the state equal protection clause or the uniformity requirement of article IX.⁵⁸ These cases followed the 1973 change in Florida's school funding

50. *Id.* at 3769. According to the transcript, Commissioner Groomes was referring to proposal #187 which, after an amendment proposed by Commissioner Nathaniel Reed, resulted in the proposed new § 1(b), which sets forth the primary purpose of public education. *Id.* at 3762, 3812-13; see *supra* note 41 for the text of proposal #187.

51. See FLA. CONST. art. I, § 2.

52. 1978 Florida Constitution Revision Commission Hearings, *supra* note 48, at 3765-69, 3812. See *supra* note 3 for the pertinent text of article IX, § 1.

53. D'ALEMBERTE, *supra* note 23, at 15. All proposals of the 1978 Constitution Revision Commission that were put on the ballot were defeated.

54. See *supra* notes 24-26 and accompanying text.

55. See FLA. CONST. of 1868, art. VIII, § 1. See *supra* text accompanying notes 10-12; see *supra* note 24 and accompanying text.

56. See *supra* text accompanying notes 10-12, 16-18.

57. See *infra* notes 89-116 and accompanying text.

58. See *infra* notes 89-109 and accompanying text. See also FLA. CONST. art. I, § 2; FLA. CONST. art. IX, § 1.

formula.

In 1973, the legislature replaced its earlier Minimum Foundation Program (MFP),⁵⁹ based on instructional units with the Florida Education Finance Program (FEFP).⁶⁰ The FEFP was based on the number of full-time students in each district.⁶¹ Just prior to the replacement of the MFP with the FEFP, the Florida Supreme Court held that the MFP met the “constitutional requirement of a uniform system of free public schools” as required by article IX, section 1.⁶² The court found that the MFP provided for a “uniform expenditure per teaching unit throughout the state regardless of the tax base of the various counties.”⁶³

During this time in which Florida replaced the MFP with the FEFP, school finance reform became a national issue due to the focus on funding equalization.⁶⁴ In 1971, the California Supreme Court, in *Serrano v. Priest*,⁶⁵ held California's state school finance system to be unconstitutional because of wide disparities in educational opportunities between property-poor and property-rich districts.⁶⁶ Hence, the *Serrano* decision played a major role in the development of reforms in education funding nationally.⁶⁷ It also impacted reforms in Florida's school funding system.⁶⁸

Governor Rubin Askew appointed The Governor's Citizens' Committee On Education, which submitted a report in 1973 making

59. The MFP was based on an instructional unit consisting of 27 students. “The number of instructional units [e.g., classrooms] . . . was based on the average daily attendance of students” in a particular school district. FLORIDA SENATE WAYS AND MEANS COMM., FINANCING FLORIDA'S PUBLIC SCHOOLS 5 (1979) (on file with Florida Department of Education, Office of Deputy Commissioner for Educational Planning, Budgeting, and Management) [hereinafter FLORIDA SENATE WAYS AND MEANS COMM.].

60. The FEFP uses “full-time equivalent student enrollment” for allocation of funds. *Id.* Hence, the basis for allocation of state funds changed from an instructional-unit basis to a per-pupil basis. *Id.*

61. *Id.* See ARTHUR O. WHITE, ONE HUNDRED YEARS OF STATE LEADERSHIP IN FLORIDA PUBLIC EDUCATION 166 (1979); see also 1973 Fla. Laws ch. 73-345 (codified as amended at FLA. STAT. § 236.012-.013 (1993)).

62. District Sch. Bd. of Lee County v. Askew, 278 So. 2d 272, 274 (Fla. 1973).

63. *Id.*

64. WHITE, *supra* note 61, at 166. National trends accelerated the pace of educational funding equalization in Florida. *Id.*

65. 487 P.2d 1241 (Cal. 1971).

66. *Id.* at 1244.

67. FLORIDA SENATE WAYS AND MEANS COMM., *supra* note 59, at 5.

68. See WHITE, *supra* note 61, at 166.

recommendations to improve education in Florida.⁶⁹ The Committee's philosophy was "more equity in the distribution of money to all school districts in Florida."⁷⁰ This analysis focused on whether Florida's system of financing schools would meet the *Serrano* criterion⁷¹ that a student's education should not be determined by the school district in which the student lived.⁷² The report concluded that Florida's school finance system met the *Serrano* criterion and that the formula should be retained, simplified, and modified to work in a more equitable way.⁷³

Most of the committee's recommendations were adopted by the 1973 Florida Legislature.⁷⁴ A 1978 report assessing the newly created FEFP concluded that the FEFP "greatly increased the equity of Florida's" method of funding public schools.⁷⁵ The FEFP accomplished this "by substantially equalizing per-pupil expenditures"⁷⁶ and incorporating other factors into the formula which had an equalizing result.

A. The Florida Education Finance Program

The intent of the FEFP was set out in the Florida Education Finance Act of 1973: "To guarantee to each student in the Florida public school system the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any similar student, notwithstanding geographic

69. FLORIDA SENATE WAYS AND MEANS COMM., *supra* note 59, at 4; GOVERNOR'S CITIZENS' COMM. ON EDUCATION, IMPROVING EDUCATION IN FLORIDA at i (1973) (on file with Florida Department of Education, Office of Deputy Commissioner for Educational Planning, Budgeting, and Management) [hereinafter GOVERNOR'S CITIZENS' COMM.]. See WHITE, *supra* note 61, at 166.

70. GOVERNOR'S CITIZENS' COMM., *supra* note 69, at 47.

71. See *supra* text accompanying notes 65-66.

72. *Serrano*, 487 P.2d at 1262. See FLORIDA SENATE WAYS AND MEANS COMM., *supra* note 59, at 3-5; GOVERNOR'S CITIZENS' COMM., *supra* note 69, at 85, 111-19.

73. FLORIDA SENATE WAYS AND MEANS COMM., *supra* note 59, at 5; see GOVERNOR'S CITIZENS' COMM., *supra* note 69, at 119.

74. FLORIDA SENATE WAYS AND MEANS COMM., *supra* note 59, at 5.

75. SELECT JOINT COMM. ON PUBLIC SCHOOLS, IMPROVING EDUCATION IN FLORIDA: A REASSESSMENT (1978). In an effort to obtain objectivity in the writing of this report, the legislature employed an independent consultant team. *Id.* at iv. This report also notes that the FEFP recognizes the differences in costs of educating children with different needs and making adjustments accordingly. *Id.* at 88-89.

76. *Id.* at 89.

differences and varying local economic factors.”⁷⁷ The sources of school funds which make up the FEFP are state funds and local funds raised through ad valorem taxes and fees.⁷⁸ Each year, the legislature determines the total amount of money to be spent per student for education.⁷⁹ The legislature also determines what percent of this amount is to come from state funds and what percent from county ad valorem taxes.⁸⁰ The county ad valorem component of the formula comes from two ad valorem levies, “required local effort,”⁸¹ and discretionary millage.⁸²

All school districts must levy required local effort⁸³ at a millage rate not to exceed that certified by the Commissioner of Education.⁸⁴ In addition to the required local effort millage levy, each school board may levy a nonvoted current operating discretionary millage.⁸⁵ This “discretionary millage” has been the focus of much of school finance litigation in Florida.⁸⁶

This litigation historically has been brought by so called “property-poor” school districts. School districts which have high property values are often labeled “property-rich” whereas school districts which have low property values are labeled “property-poor.”⁸⁷ The amount of discretionary tax money a school district will receive is directly related to the value of the property to be taxed.⁸⁸ School districts with high property values are therefore able to raise more discretionary revenue than those with low property values.

Three of the first cases brought in Florida under article IX after enactment of the new FEFP originated in Escambia County, a

77. COMM. SUBSTITUTES FOR H.R. 734, 1973 Fla. Laws ch. 73-345 (codified as amended at FLA. STAT. § 236.012(1) (1993)).

78. See generally chapter 236 of the Florida Statutes.

79. FLA. STAT. § 236.081(1)(b) (1993).

80. *Id.* § 236.081(4) (1993).

81. *Id.*

82. *Id.* § 236.25(1) (1993).

83. Required local effort is a minimum amount of nonvoted local ad valorem taxes.

84. FLA. STAT. § 236.081(4) (1993).

85. *Id.* § 236.25(1). Discretionary millage is an amount of nonvoted ad valorem taxes which may be levied by school districts in addition to required local effort. This amount is retained by the local school district and is not “equalized” among other school districts.

86. See *infra* notes 89-109 and accompanying text for discussion of this litigation.

87. Thro, *Analysis of State Constitutional Provisions*, *supra* note 4, at 1639 n.2.

88. The value of the property tax multiplied by the millage rate equals the amount of tax revenue the school districts receive.

“property-poor” school district. Two of the cases, *Penn v. Pensacola-Escambia Governmental Center Authority*⁸⁹ and *School Board of Escambia County v. State*,⁹⁰ were not challenges to the funding formula, but both included some issues concerning the constitutional requirement for a uniform system of free public schools. *Penn* concerned the issuance of certain revenue bonds which benefitted the capital needs of the school board.⁹¹ Despite the fact that county or city funds benefitted the capital needs of a school board, the Florida Supreme Court found no violation of the uniform system requirement of article IX, section 1 of the Florida Constitution.⁹² While *School Board of Escambia County* did not challenge the school funding formula,⁹³ it provided an opportunity for the Florida Supreme Court to define what a “uniform system” means under article IX, section 1. The court stated, “[b]y definition . . . a uniform system results when the constituent parts, although unequal in number, operate subject to a common plan or serve a common purpose.”⁹⁴ This interpretation of the education article of the 1968 constitution somewhat expanded the Florida Supreme Court's definition of “uniform system” in *State ex rel. Clark v. Henderson*, which interpreted the education article of the 1885 constitution.⁹⁵

The third case arising out of Escambia County, *Gindl v. Department of Education*,⁹⁶ was a direct challenge to a component of the FEFP. As discussed earlier,⁹⁷ one source of local funds used to finance public education is discretionary millage levied by the school boards to finance the operations of schools⁹⁸ and capital outlay needs.⁹⁹ In *Gindl*, the school board of Escambia County asserted that the levying of discretionary millage had a disequalizing effect in violation of the equal protection clauses of the federal and state

89. 311 So. 2d 97 (Fla. 1975).

90. 353 So. 2d 834 (Fla. 1977).

91. 311 So. 2d 97 (Fla. 1975).

92. *Id.* at 100.

93. 353 So. 2d 834 (Fla. 1977). This case concerned a special act providing for the enlargement of school board membership. *Id.*

94. *Id.* at 838.

95. 188 So. 351 (1939). *See supra* notes 30-32 and accompanying text.

96. 396 So. 2d 1105 (Fla. 1979).

97. *See supra* notes 83-85 and accompanying text.

98. FLA. STAT. § 236.25(1) (1993).

99. *Id.* § 236.25(2) (1993).

constitutions and the uniformity provision in article IX, section 1.¹⁰⁰ The plaintiffs asserted that the discretionary millage allowed property-rich districts to have more dollars to spend per pupil than property-poor districts, resulting in great disparities in the quality and extent of availability of educational opportunities.¹⁰¹ The Florida Supreme Court upheld the utilization of discretionary millage (referred to as leeway millage in the opinion) in the FEFP.¹⁰² The court found “the Florida education funding formula, in allowing leeway millage, does not violate the equal protection clause, and substantial equality of education is not prevented by the use of leeway millage.”¹⁰³ Thus, the court did not require equal funding but allowed some disparity among school districts to meet this “substantial equality standard.”¹⁰⁴

Many years passed¹⁰⁵ before another court challenge was brought under Article IX, section 1, challenging the use of discretionary millage in the school funding formula in *Christensen v. Graham*.¹⁰⁶ In the time between *Gindl* and *Christensen*, the number of school boards challenging the constitutionality of discretionary millage grew from one to twenty-two.¹⁰⁷ As in *Gindl*, the school boards in *Christensen* argued that the use of discretionary millage, both for operations and capital outlays or projects, resulted in a disparity of funding between property-rich and property-poor school districts.¹⁰⁸ Relying on *Gindl*, the *Christensen* trial court upheld the use of dis-

100. *Gindl*, 396 So. 2d at 1105.

101. *Id.* at 1106. While the opinion only addresses the equal protection claims, the complaint also raised article IX, § 1 issues.

102. *Id.* at 1106-07.

103. *Id.* at 1106.

104. *Id.* at 1106-07.

105. In a case not brought under the uniformity provision of article IX, a “property-rich” school district challenged a provision in the 1978-79 Appropriations Act guaranteeing a minimum increase of 7.25% in school funding for all counties except those having millage value per student of more than 20% over the statewide average. *Department of Educ. v. School Bd. of Collier County*, 394 So. 2d 1010, 1012-13 (Fla. 1981). The Florida Supreme Court found that the legislature was within its constitutional authority in providing these additional educational funds to those districts with lower millage-yields-per-student. *Id.* at 1013. The court noted that “[t]he legislature is not required to distribute educational funds to all school districts in equal mathematical proportion.” *Id.*

106. No. 86-1390 (Fla. 2d Cir. Ct. 1987).

107. The complaint in *Christensen* named 22 school districts as plaintiffs, while in *Gindl*, only one school district was a plaintiff. Plaintiff's Complaint at 1, *Christensen* (No. 86-1390); *Gindl*, 396 So. 2d at 1105.

108. Plaintiff's Complaint at 3, *Christensen*, No. 86-1390.

cretionary millage in the funding formula.¹⁰⁹ Thus, the *Christensen* court followed the supreme court's acceptance of some disparity among school districts in per-pupil funding. Uniformity, then, has not been interpreted by the Florida courts as requiring precisely equal per-pupil expenditures.

B. The Recent Cases

In the more recent case of *St. Johns County v. Northeast Florida Builders Ass'n, Inc.*,¹¹⁰ the Florida Supreme Court found that a county ordinance imposing an impact fee on new residential construction to be used for new school facilities did not conflict with the uniformity provision in article IX, section 1.¹¹¹ However, in an apparent retreat from some of the uniformity language in *St. Johns*, the Florida Supreme Court expressly stated in *Florida Department of Education v. Glasser*¹¹² that it was not required in *Glasser* or *St. Johns* to define a "uniform system of free public schools."¹¹³

In consistently upholding the school funding formula in article IX challenges, the Florida Supreme Court, in essence, has adopted the legislative term of "substantially equal" as used in the statutes.¹¹⁴ Justice Kogan's specially concurring opinion in *Glasser* summarized those early cases:

Florida law now is clear that the uniformity clause will not be construed as tightly restrictive, but merely as establishing a larger framework in which a broad degree of variation is possible . . . so long as no district suffers a disadvantage in the basic educational opportunities available to its students, as compared to the basic educational opportunities available to students of other Florida districts.¹¹⁵

This quotation concisely summarizes the court's approach to the

109. Partial Summary Judgment, *Christensen*, No. 86-1390. For the 1986-87 fiscal year, the funding formula capped discretionary millage at 1.5 mills for capital outlay and .819 mills for current operations. FLA. STAT. § 236.25 (Supp. 1986); 1986 Fla. Laws ch. 86-168.

110. 583 So. 2d 635 (Fla. 1991).

111. *Id.* at 641.

112. 622 So. 2d 944 (Fla. 1993).

113. *Id.* at 947.

114. FLA. STAT. § 236.012(1) (1993).

115. *Glasser*, 622 So. 2d at 950 (Kogan, J., specially concurring).

term “uniform system of free public schools.” Moreover, Justice Kogan's summary refers to “basic education opportunities” as the standard to which uniformity applies.¹¹⁶

III. FLORIDA DEPARTMENT OF EDUCATION v. GLASSER

The *Glasser* suit was originally filed by the school board of Sarasota County against the tax collector of Sarasota County.¹¹⁷ The school board challenged the validity of a state law involving an aspect of educational finance and an item of the Appropriations Act of 1991.¹¹⁸ The trial court declared section 236.25(1), Florida Statutes,¹¹⁹ and section 1, item 509 of chapter 91-193, Laws of Florida,¹²⁰ unconstitutional to the extent that each law limits the school board's authority to assess nonvoted discretionary millage within the ten mill limit prescribed by article VII, section 9.¹²¹ The trial court also found that both sections violated article III, section 12¹²² by attempt-

116. *Id.*

117. *Glasser v. Ford-Coates*, No. 91-3361-CA-01 (Fla. 12th Cir. Ct., Final Order dated June 27, 1991).

118. *See infra* notes 119-21.

119. FLA. STAT. § 236.25(1) (1989). This section provides:

In addition to the required local effort millage levy, each school board may levy a nonvoted current operating discretionary millage. The Legislature shall prescribe annually in the appropriations act the maximum amount of millage a district may levy. The millage rate prescribed shall exceed zero mills but shall not exceed the lesser of 1.6 mills or 25 percent of the millage which is required pursuant to s. 236.081(4)

Id.

120. 1991 Fla. Laws ch. 91-193, § 1, item 509. This provision provides: “The maximum nonvoted discretionary millage which may be levied pursuant to the provisions of s. 236.25(1), Florida Statutes, by district school boards in 1991-92 shall be 0.510 mills.”

Id.

121. *Glasser*, 622 So. 2d at 946. FLA. CONST. art. VII, § 9. Section 9 states in relevant part:

Section 9. Local taxes.—

(a) Counties, school districts, and municipalities *shall*, and special districts may, *be authorized by law* to levy ad valorem taxes . . . for their respective purposes,

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages[:]. . . for all school purposes, ten mills

Id. (emphasis added).

122. FLA. CONST. art. III, § 12. This provision states: “Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provi-

ing to inject substantive law in an appropriations bill and that item 509 also violated article III, section 6¹²³ by amending an existing substantive law by title only.¹²⁴ After the court entered its final order, the Department of Education moved to intervene, and the court made it a party-defendant.¹²⁵ The department appealed the trial court's order to the Second District Court of Appeal.¹²⁶

The Second District Court of Appeal affirmed the trial court's ruling.¹²⁷ However, the Second District Court's opinion went beyond that of the trial court. In addition to addressing article VII, section 9 and article IX, section 4 concerns, the Second District Court also addressed article IX, section 1, the section which requires a uniform system of free public schools.¹²⁸ The Sarasota school district is a "property-rich" district with relatively high property values. The effect of the trial court and Second District Court of Appeal's Orders, if upheld, would have been to enable the school district to levy more non-voted discretionary millage than that allowed by the legislature. This would have had a disequalizing effect on the statewide school finance scheme. As a result, Sarasota, and presumably other property-rich school districts, would be able to raise more discretionary dollars than property-poor districts. Citing *St. Johns*,¹²⁹ the Second District Court reasoned that its holding did not violate the requirement of article IX, section 1 requiring a uniform system of free public schools, despite the disequalizing effect of its result.¹³⁰

As discussed in Part II of this Article, property-poor school districts brought early school funding cases in Florida, complaining about the disequalizing effect discretionary millage had on the school funding scheme.¹³¹ The Second District Court's opinion essentially addressed the "flip-side" of these early cases in holding that

sions on no other subject." *Id.*

123. FLA. CONST. art. III, § 6. This section reads in pertinent part: "No law shall be revised or amended by reference to its title only." *Id.*

124. *Glasser v. Ford-Coates*, No. 91-3361-CA-01 (Fla. 12th Cir. Ct., Final Order dated June 27, 1991).

125. *Id.* at 7. Department of Education's Motion to Intervene, *Glasser* (No. 91-3361-CA-01). The parties stipulated to the department's intervention as a party-defendant, and the court's order on this motion was entered on July 16, 1991.

126. *Florida Dep't of Educ. v. Glasser*, 622 So. 2d 1003, 1004 (Fla. 2d DCA 1992).

127. *Id.*

128. *Id.* at 1009.

129. *See supra* notes 110-13 and accompanying text.

130. *Glasser*, 622 So. 2d at 1008-09.

131. *See supra* notes 57-116 and accompanying text.

the legislature *could not* limit the amount of discretionary millage within the ten mill cap,¹³² thereby enabling property-rich school districts to generate substantially more revenues than those districts with lower property values.

On appeal, the Florida Supreme Court reversed the Second District Court on all issues, and found that the legislation at issue was in harmony with all articles of the Florida Constitution.¹³³ The supreme court's decision rested upon its interpretation of article VII, section 9, a section which provides that school districts may be authorized by law to levy ad valorem taxes.¹³⁴

The Florida Supreme Court held that the phrase "shall . . . be authorized by law" is not self-executing and that legislative authorization is required to trigger this provision.¹³⁵ In addition, the supreme court expressly declined to address the school board's invitation¹³⁶ to define "a uniform system of free public schools" as found in article IX, section 1 of the Florida Constitution, leaving it to the legislature to define this constitutional provision.¹³⁷ While the court noted that in some future case it may be required to determine whether the legislature has provided a uniform system of free public schools,¹³⁸ in all actuality, the court has addressed and answered this very question in the past.¹³⁹

Despite the *Glasser* dicta which states that education is a basic right in a democracy, the history and language of article IX, section 1 casts doubt as to whether education would be construed as a basic right if that issue is brought directly before the court.¹⁴⁰ Justice Grimes' specially concurring opinion in *Glasser* emphasized that

132. *Glasser*, 622 So. 2d at 1009. See *supra* note 121 for a recitation of the relevant part of article VII, § 9 of the Florida Constitution.

133. *Glasser*, 622 So. 2d at 948-49.

134. See *supra* note 121 for text of article VII, § 9.

135. *Glasser*, 622 So. 2d at 946-47. The court also relied on article IX, § 4(b) of the Florida Constitution which provides in pertinent part: "The school board shall . . . determine the rate of school district taxes within the limits prescribed herein." *Id.* at 947.

136. *Id.* At oral argument on February 28, 1993, the school board invited the Florida Supreme Court to define "a uniform system of free public schools" as found in article IX, § 1.

137. *Id.* at 947.

138. *Id.*

139. See *supra* notes 30-32, 93-94, & 109 and accompanying text.

140. While the school board encouraged the court at oral argument to find that education is a fundamental right, that issue was not briefed by the parties and was not an issue before the court. See *supra* notes 16-56 and accompanying text.

although the Florida Constitution requires a uniform system of free public schools, "it stops short of declaring public education to be a fundamental right."¹⁴¹

IV. THE FUTURE OF SCHOOL FINANCE LITIGATION IN FLORIDA

Did *Glasser* open or close doors for future school finance litigation in Florida? Both the majority opinion and Justice Barkett's concurring opinion note that *Glasser* did not address the issue of what constitutes a "uniform system of free public schools."¹⁴² As Part II of this Article demonstrates, Florida's education funding formula withstood each challenge that alleged it violated article IX, section 1 requiring a "uniform system of free public schools."¹⁴³ It appears doubtful that uniformity or financial equity would be the primary focus of any future suit.¹⁴⁴ Moreover, Justice Barkett's concurring opinion recognized that what constitutes "adequate provision" for Florida's system of free public schools was not at issue in *Glasser*.¹⁴⁵

The trend in other states has been away from "uniformity" or "equality suits," which emphasize state equal protection clauses and equity of per pupil expenditures, to "adequacy" or "quality suits," which emphasize the state education clause and quality of education delivered.¹⁴⁶ Because of this trend, it is likely that any challenge to Florida's system of school funding in the near future would focus on what "adequate provision" means in article IX, section 1.

But can the issue of adequacy of education be addressed standing alone, or only in conjunction with the uniformity/equity issue? Significantly, in recent "adequacy" or "quality" suits in other states, the concepts of quality and financial equity are often closely intertwined.¹⁴⁷ Three examples of states in which such challenges which

141. *Glasser*, 622 So. 2d at 950 n.8 (Grimes, J., specially concurring).

142. *Id.* at 949.

143. See *supra* notes 57-116 and accompanying text.

144. *Glasser*, 622 So. 2d at 950. Justice Kogan's concurring opinion noted that "[t]he courts clearly are poorly equipped to deal with the finer nuances of providing for uniformity Of necessity, the Legislature must be given substantial leeway in determining how uniformity will be achieved; and the courts will intervene only where the Legislature clearly has failed to fulfill the constitution's mandate." *Id.* at 951 n.9 (Kogan, J., concurring).

145. *Id.* at 949 (Barkett, J., concurring).

146. Thro, *Language of the State Education Clauses*, *supra* note 13, at 21.

147. This Article will not attempt to analyze the many cases brought in the last two

were successful are Montana, Kentucky and Texas.¹⁴⁸

In an analysis of these three “quality” suits, one commentator noted that these three state supreme courts invalidated their school finance systems exclusively on their state's education clause.¹⁴⁹ The focus in these cases was not on equal dollars for each district, but on whether the quality of the schools in the poorest districts met the “constitutionally mandated norm” and, if it did not, “the finance system must be changed in order to bring these schools up to that norm.”¹⁵⁰

Methods of analysis used by courts in school finance suits focusing on a state's education article were discussed earlier in this Article.¹⁵¹ In using the plain meaning approach, a court asks four questions: Does the education article impose a duty on the state legislature? If so, does it impose a specific standard of quality? Does that state's school system meet that standard as defined by the

decades challenging state school finance systems. For a history of school finance cases nationally, see Thro, *Analysis of State Constitutional Provisions*, *supra* note 4; Jonathan Banks, *State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?*, 45 VAND. L. REV. 129 (1992); Dayton, *supra* note 13. The selected cases discussed in this Article are illustrative of cases in which both adequacy and equity issues were raised.

148. The Montana Supreme Court in *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 690 (Mont. 1989), found that disparities in funding affected the quality of education provided. The court focused on the education article rather than the equal protection clause and held that the spending disparities among the state's school districts translated into a denial of equality of educational opportunity. *Id.* Montana's constitution provides for “equality of educational opportunity.” MONT. CONST. art. X, § 1.

Kentucky's school finance system was challenged in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989). The Kentucky Supreme Court found that its state's school system was both inadequately funded and “fraught with inequities and inequalities.” *Id.* at 197. The court compared educational opportunities in rich districts versus educational opportunities in poor districts and found that students in poor districts received inadequate and inferior educational opportunities as compared to those offered in rich districts. *Id.* at 197-98. While focusing on the “great disparity” between poor and rich districts, the court found that the total local and state effort in education in Kentucky was inadequate and lacking in uniformity. *Id.* at 198.

Similarly, Texas' school finance system was challenged in *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989). In *Kirby*, evidence showed tremendous disparities in wealth among school districts in Texas which resulted in the court finding constitutionally impermissible disparities in educational opportunities. *Id.* at 392-93. The Texas education clause requires that the legislature provide for “the support and maintenance of an efficient system of public free schools.” TEX. CONST. art. VII, § 1.

149. Thro, *Language of the State Education Clauses*, *supra* note 13, at 25-27.

150. *Id.* at 21-22.

151. *See supra* notes 10-15, 19-20 and accompanying text.

court? If not, is it because of the school finance system? It is this last question which should be the key, yet courts often fail to directly address it.¹⁵² Even if courts find that the state's finance system affects educational opportunities available to school children, they sometimes continue to uphold the school finance system.

Despite finding that there is a direct correlation between a dis-

152. Two opinions which address this issue in which school finance systems were upheld are *Hornbeck v. Somerset County Bd. of Instruction*, 458 A.2d 758 (Md. 1983), and *Coalition for Equitable Sch. Funding, Inc. v. State*, 811 P.2d 116 (Or. 1991). In *Hornbeck*, the Court of Appeals of Maryland noted that the trial court did not find that the education provided by the schools in the various school districts was inadequate. 458 A.2d at 780. "Simply to show that the educational resources available in the poorer school districts are inferior to those in the rich districts does not mean that there is insufficient funding provided by the State's financing system for all students to obtain an adequate education." *Id.*

In *Coalition*, the Oregon Supreme Court held that the duty imposed by the legislature to provide a uniform system of common schools was not directly related to the financing of those schools. 811 P.2d at 121. Oregon's education clause is strikingly similar to Florida's education article. Oregon's education clause reads: "The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools." OR. CONST. art. VIII, § 3.

Looking to another constitutional provision specifically related to financing public schools (article XI, §§ 11(b) & (f), referred to as the "safety net" that recognizes the reliance on local property taxes) the *Coalition* court found that the constitutional requirement of a "uniform" system did not require uniform finances among school districts. 811 P.2d at 121. (Compare article VII, § 9 of the Florida Constitution, set out *supra* note 121, which authorizes school districts to levy millage as a source of funding public schools.) The court found that the Oregon Constitution recognizes that school districts may have disparate amounts to fund public schools, affecting the amount school children receive in per-pupil spending. *Id.* The court went on to say that the constitutional requirement for a uniform system of common schools was not a "dead letter," implying that uniform referred to something other than funding. *Id.* Thus, the court focused its analysis of the education article on educational quality and only indirectly addressed funding issues. William E. Thro, *The Implications of Coalition for Equitable School Funding v. State for the Future of Public School Finance Reform Litigation*, 69 Educ. L. Rep. (West) 1009, 1016 (1991).

A recent case in which a school finance system was held to be unconstitutional that addressed the question is *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993). The Tennessee Supreme Court noted that there was a direct correlation between dollars expended and the quality of education a student receives, with funds available per pupil ranging from \$1,823 to \$3,669 among districts. *Id.* at 144. The court did not determine the precise level of education mandated by the Tennessee Constitution but held that the plaintiffs were entitled to relief under the equal protection provisions of the state constitution. *Id.* at 152. The court characterized the essential issues of the case as quality and equality in education rather than equality of funding. *Id.* at 156. The court concluded that the record supported a finding that the educational disparities in educational opportunities available to public school students were caused principally by the statutory funding scheme and violated the state's constitutional guarantee of equal protection. *Id.*

trict's level of funding and the educational opportunities available to school children, the Georgia Supreme Court in *McDaniel v. Thomas*¹⁵³ upheld a challenge to that state's school finance system. The challenge was based on both the state's education article and its equal protection clause.¹⁵⁴ The Georgia education article provides, "[t]he provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia."¹⁵⁵ The court made a historical analysis of the education clause and determined that the Georgia Constitution did not obligate the state to equalize educational opportunities.¹⁵⁶ The court deferred to the state legislature to "give content" to the word "adequate" in the Georgia Constitution.¹⁵⁷ The court concluded that although the plaintiff's evidence showed serious disparities in educational opportunities and that more needed to be done to equalize these opportunities, the court looked to the legislature for the solution.¹⁵⁸

Moreover, in a recent case upholding a state school finance system,¹⁵⁹ the Minnesota Supreme Court used a somewhat different approach. In *Skeen v. Minnesota*,¹⁶⁰ the challenge focused not on adequacy but on claims of relative harm caused by the availability of fewer resources in low-wealth districts than in higher-wealth districts.¹⁶¹ Minnesota's education article contains a "uniformity" provision similar to Florida's; but unlike Florida's, Minnesota's provision also contains a requirement that the legislature fund a thorough and efficient school system.¹⁶² The plaintiffs conceded they were receiving an adequate education.¹⁶³ The court found that the system pro-

153. 285 S.E.2d 156 (Ga. 1981).

154. *Id.* at 166, 168.

155. GA. CONST. art. VIII, § 1.

156. *McDaniel*, 285 S.E.2d at 164.

157. *Id.* at 165.

158. *Id.* at 168.

159. *Skeen v. Minnesota*, 505 N.W.2d 299 (Minn. 1993).

160. *Id.*

161. *Id.* at 302.

162. Article XIII of the Minnesota Constitution provides:

Uniform system of public schools. Section 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

MINN. CONST. art. XIII, § 1.

163. *Skeen*, 505 N.W. 2d at 309.

vides uniform funding to each student in an amount sufficient to generate an adequate level of education, thereby satisfying the requirement for a general and uniform system of education.¹⁶⁴ Once the baseline of adequacy and uniformity had been established, the court refused to strike down the financing of such a system “unless the resulting disparities dilute the adequacy of the constitutional entitlement to a ‘general and uniform system’ of education.”¹⁶⁵

V. CONCLUSION

The preceding discussion illustrates that even in the cases focusing on adequacy/quality of education, there is great emphasis and interrelationship between that concept and the concept of financial equity/uniformity. This interrelationship will be significant in any future school finance litigation in Florida in that any adequacy/quality challenge would be brought in the wake of unsuccessful financial equity challenges.¹⁶⁶ Moreover, there are problems inherent in basing school finance challenges on the concept of adequacy. There appears to be little consensus as to how to define adequacy.¹⁶⁷ School finance experts disagree as to whether equity challenges should be abandoned by focusing on adequacy.¹⁶⁸

Finally, if the Florida Supreme Court uses the “plain meaning” method of analysis in any future adequacy/quality suit it will have to define what level of duty is imposed on the legislature by the provision “adequate provision shall be made by law for a uniform system of free public schools.”¹⁶⁹ The court will examine the lan

164. *Id.* at 320.

165. *Id.* at 315 (citing MINN. CONST. art. XIII, § 1).

166. Dicta in the *Glasser* opinion suggests that the Florida Supreme Court would tolerate more disparity. Justice Barkett's concurring opinion noted that a community cannot be faulted for attempting to raise the funds necessary to improve educational opportunities. Florida Dep't of Educ. v. Glasser, 622 So. 2d 944, 949 (Fla. 1993) (Barkett, J., concurring). Justice Harding's concurring opinion encouraged the legislature to consider the wisdom of passing enabling legislation to permit those counties wishing to do so to impose taxes for the betterment of education. *Id.* at 951 (Harding, J., concurring). Justice Kogan concurs with Justice Harding on this issue. *Id.* (Kogan, J., concurring). This author finds these comments troublesome in that financial equity has been such a priority in school finance reform in Florida. See *supra* text accompanying notes 59-86.

167. Charles Mahtesian, *The Quagmire of Education Finance*, GOVERNING, Sept. 1993, at 43, 45.

168. *Id.* at 46.

169. FLA. CONST. art. IX, § 1. Note that in discussing uniformity, the court twice has referred to “basic educational opportunities.” *Glasser*, 622 So. 2d at 949-50 (Kogan,

guage of this provision to determine whether it imposes a specific standard or quality. The court will then need to address whether Florida's school system meets that standard and, if not, whether it is because of the school finance system. Florida's case law, which upholds all equity challenges as well as its constitutional history, may prove to be substantial obstacles in any future challenges to the adequacy of Florida's school finance system.

J., specially concurring) (citing *St. Johns County v. Northeast Fla. Builders Ass'n, Inc.*, 583 So. 2d 635, 641 (Fla. 1991)).

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