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Note

Providing an Escape for Inner-City Children: Creating a Federal Remedy for Educational Ills of Poor Urban Schools

Amy J. Schmitz

*These are innocent children, after all. They have done nothing wrong.*¹
—Johnathan Kozol

INTRODUCTION

Children in impoverished, urban areas attend dangerous and decrepit schools, where they receive low quality education which fails to prepare them for meaningful participation in the community.² Many states, however, provide no legislative or judicial remedy for these children, who desperately need vocational and educational skills to enable them to escape from the deprivation of their urban landscape.

Meanwhile, federal officials speak of the importance of education³ because of its key role in creating a productive citizenry and in ensuring the nation's strength in the global marketplace.⁴ Despite such rhetoric, the federal government has failed to set binding national educational standards⁵ and its financial contributions to education have decreased.⁶ With no federal at-

1. JOHNATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* 40 (1991).

2. *See generally id.* (describing deep inequalities and inadequacies of poor inner-city students' education).

3. *See THE NATIONAL COMM'N ON EXCELLENCE IN EDUCATION, A NATION AT RISK* (1983) (espousing federal concern for education). The National Commission on Excellence in Education announced that "[t]he Federal Government has the primary responsibility to identify the national interest in education," and "help fund and support efforts to protect and promote that interest." *Id.* at 33.

4. Julie Kosterlitz, *Schoolhouse Equality*, *NAT'L J.*, July 21, 1990, at 1768-69 (quoting one commentator who stressed a lack of binding national standards and the "growing consensus that we need nationwide goals").

5. *Id.*

6. Michael Winerip, *In the Inner City, a Hungry Scramble for a Few Choice Classroom Seats*, *N.Y. TIMES*, Sept. 8, 1993, at B13; Deborah A. Verstegen, *Financing Education Reform: Where Did All the Money Go?*, 19 *J.*

tention to inner-city educational problems, the futures of urban children⁷—and that of our nation—are in jeopardy.⁸

This Note creates a conceptual framework for a federal judicial remedy which would enable the urban poor to attain the quality education they need to lift themselves from the cycle of poverty. Although federal courts may not currently view school funding challenges favorably,⁹ with political shifts in the United States Supreme Court and the continuing decline in the quality of inner-city education, federal courts may nonetheless entertain school finance disputes in the future. This Note's proposal, which federal precedent supports, will provide a compelling argument for poor urban students. In the meantime, the proposal provides a conceptual framework which state courts can uniformly apply in addressing the unique situation of inner-city schools. This Note presents the framework as a federal proposal because only a federal remedy can *fully* meet the needs of the inner-city students by creating a national mandate which would ensure quality education for all urban students.¹⁰

This Note begins by outlining the particularly egregious educational situation in poor urban areas, and explains why such areas lack sufficient funding, and therefore offer the lowest quality education.¹¹ This Note then describes how school dis-

EDUC. FIN. 1, 3, 12 (1993) (further explaining how federal government has dramatically cut education funding, thereby hampering education reform).

7. Tamara Henry & William M. Welch, *Host of Problems Often Displace Learning in Poverty-Plagued Schools*, L.A. TIMES, Dec. 1, 1991, at B5 (stating "[a]t stake is the future of these children"); see also THE NATIONAL COMM'N ON EXCELLENCE IN EDUCATION, *supra* note 3, at 7 (explaining that those without proper education "will be effectively disenfranchised, not simply from the material rewards that accompany competent performance, but also from the chance to participate fully in our national life").

8. THE NATIONAL COMM'N ON EXCELLENCE IN EDUCATION, *supra* note 3, at 5-7; see also Lynn A. Stout, *Some Thoughts on Poverty and Failure in the Market for Children's Human Capital*, 81 GEO. L.J. 1945 (1993) (arguing that educational and broader investment, in our nation's children, is essential to our nation's well-being).

9. Given the current composition of the United States Supreme Court it is doubtful that a federal challenge of school funding inequities would prevail at this time. It is necessary, however, to create a conceptual framework for a federal argument for the inner-city schools, in order to encourage political and social leaders to reconceptualize the plight of the urban poor in terms which demand a federal remedy.

10. See Brenna Bridget Mahoney, *Children at Risk: The Inequality of Urban Education*, 9 N.Y.L. SCH. J. HUM. RTS. 161, 211-15 (1991) (arguing for establishment of federal standards as preferable method of addressing inequality of urban education).

11. All decision making by top school officials rests on the "conventional wisdom" that increased funding improves educational quality. *Abbott v. Burke*,

tricts have attacked educational funding disparities on both federal and state levels, explaining why the federal courts have not provided a remedy and why state remedies have been inadequate in addressing the educational plight of inner-city school children. This Note next proposes that the issue ultimately return to the federal courts on the novel equal protection approach of *Plyler v. Doe*,¹² and demonstrates how the United States Supreme Court in *San Antonio Independent School District v. Rodriguez*¹³ did not foreclose such a proposal. This Note concludes by describing how the equal protection proposal would apply in order to prevent the continued marginalization of the urban underclass.

I. WHY URBAN EDUCATION IS INADEQUATE AND UNEQUAL

A. THE URBAN EDUCATIONAL CRISIS

The National Education Goals Panel recently released its third annual "National Education Goals Report,"¹⁴ which concluded that "never before has the need for comprehensive education reform . . . been so critical to the future of our country."¹⁵ Literacy rates remain the same as they were a century ago,¹⁶

575 A.2d 359, 406 (N.J. 1990). The bottom line is that "[s]taff ratios, breadth of course offerings, teacher experience and qualifications, and availability of equipment make a real difference in educational opportunity," and these contributors to school quality all cost money. *Id.* In *SAVAGE INEQUALITIES*, Kozol criticizes those who attempt to justify educational inequalities by claiming that there is no evidence that increased funding improves educational outcomes. Kozol, *supra* note 1, at 177.

12. 457 U.S. 202, *reh'g denied*, 458 U.S. 1131 (1982).

13. 411 U.S. 1 (1973).

14. *Report Says Progress on Education Goals is Wholly Inadequate*, U.S. NEWSWIRE, Sept. 30, 1993, available in LEXIS, Nexis Library, USNWR File [hereinafter *Education Goals*]. The National Education Goals Panel is a body of 14 state and federal officials created in 1990 to set goals and monitor educational progress. *Id.*

15. *Id.* (U.S. Secretary of Education Richard Riley stating the report's results).

16. Young adults have more difficulty with basic skills such as using a map, understanding the newspaper or applying basic math concepts than their counterparts of seven years ago. *Id.* Only forty million Americans possess the literacy skills necessary to sign their names or "read the expiration date on a driver's license." Bob Herbert, *In America; On Spelling Kat*, N.Y. TIMES, Sept. 12, 1993, § 4, at 19. One reporter asked a sixteen-year-old New Yorker why officials closed his school, and the child replied "bestos," proceeding to spell his perception of asbestos "B-E-S-T-O-S." *Id.*

and urban children face a multitude of barriers which make learning nearly impossible.¹⁷

Education is failing throughout the United States—in both rural and urban areas.¹⁸ This Note, however, focuses on urban schools because the problems associated with concentrated poverty in central cities¹⁹ are qualitatively different from those of rural schools.²⁰ As one commentator stressed after visiting American public schools, his deepest feeling “was simply the impression that [the] urban schools were, by and large, extraordinarily unhappy places.”²¹

The worst educational conditions exist in poor, inner-city schools,²² and this situation has been steadily declining.²³ The children in these urban schools achieve lower levels of academic performance than children in other areas.²⁴ A study of sixth-graders at over a thousand inner-city schools, for example, reported that “all but a handful had average reading scores more than a year below the national average.”²⁵ These poor educational outcomes in the inner-city schools result from the lack of

17. U.S. GEN. ACCOUNTING OFFICE, *THE URBAN UNDERCLASS: DISTURBING PROBLEMS DEMANDING ATTENTION* (1990) [hereinafter *URBAN UNDERCLASS*]; see also Henry & Welch, *supra* note 7, at B5 (describing how disadvantaged children confront so many adversities that adequate education is unattainable for those who really want to learn).

18. See Peter B. Edelman, *Symposium, Toward a Comprehensive Anti-poverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1699-1700, 1735 (1993) (analyzing poverty in general and noting unemployment and low educational/vocational skills of those in rural areas).

19. See *URBAN UNDERCLASS*, *supra* note 17, at 6 (describing growing concentration of poverty in central city areas and grave problems which persist in these urban areas); William L. Taylor, *The Continuing Struggle for Equal Educational Opportunity*, 71 N.C. L. REV. 1693, 1702 (1993) (stressing the intensification of poverty in urban areas).

20. See generally WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (1987) (emphasizing the particularly egregious situation in the poor urban areas).

21. KOZOL, *supra* note 1, at 4-5. Kozol focused his book entirely on the inequality and inadequacy of poor, urban schools. *Id.*

22. ALLAN C. ORNSTEIN & DANIEL U. LEVINE, *AN INTRODUCTION TO THE FOUNDATIONS OF EDUCATION* 251-53 (3d ed. 1984); see also Mahoney, *supra* note 10, at 161 (arguing that education in poor urban areas is of low quality).

23. See Winerip, *supra* note 6, at B13 (stating that the situation in inner-city schools has declined over the years and describing how many parents strive to secure seats for their children in special satellite schools).

24. 136 Cong. Rec. 14991, 14992 (1990) (discussing the Urban Schools of America Act, § 3183).

25. ORNSTEIN & LEVINE, *supra* note 22, at 368. In Chicago, the 10 schools with the lowest average ACT scores (between 8.5 and 9.8) are located in the poor, inner-city areas while the schools with the highest averages (between 23.3 and 21.8) are in the suburban communities. Julius Menacker, Ed. D., *Poverty*

qualified teachers,²⁶ the absence of needed educational programs,²⁷ and the existence of decrepit,²⁸ dangerous,²⁹ and overcrowded facilities.³⁰

Obstacles to a quality education are not only present in the schools themselves,³¹ but they also persist in the neighborhoods and family conditions of poor urban children.³² With concentrated poverty in the inner-city comes drug abuse, hunger, poor health care, and unstable family situations.³³ Violence also cre-

as a *Suspect Class in Public Education Equal Protection Suits*, 54 EDUC. L. REP. 1085, 1091 (1989).

26. Student-to-teacher ratios are much higher in the urban districts. See, e.g., *Abbott v. Burke*, 575 A.2d 359, 399 (N.J. 1990) (stating that in New Jersey, ratios are 61 teachers per 1000 students in urban schools and 68 teachers per 1000 students in suburban schools). The scarce teachers in the poor, urban districts tend to be the lower paid and less qualified. *Id.* at 399; see also Herbert, *supra* note 16, at 20 (describing the situation in Los Angeles where schools "are so short of qualified teachers that administrators are practically dragging substitutes in off the street").

27. Again, using the New Jersey example, courses offered in computer sciences, natural sciences, and foreign languages are barely existent in the poor urban districts while they thrive in other areas. *Abbott*, 575 A.2d at 395-97; see also Kosterlitz, *supra* note 4, at 1770 (describing tangible differences between suburban and urban New Jersey schools e.g., 1 computer for every 8 students in suburban school but only 1 for every 58 students in inner-city school).

28. See Kozol, *supra* note 1, at 14 (describing inner-city school in East Saint Louis as a "decrepit hulk"); see also Reform Educ. Fin. Inequities Today (R.E.F.I.T.) v. Cuomo, 578 N.Y.S.2d 969, 972 (N.Y. App. Div. 1991) (describing urban New York school which "crowds 40% of its 9,500 students into rapidly deteriorating portable classrooms"), *aff'd*, 606 N.Y.S.2d 44 (N.Y. 1993).

29. For example in New York, schools were unable to open on time this fall because of asbestos danger. Susan Chira, *Schools Open Soon (With Luck); to More Trouble Than Usual*, N.Y. TIMES, Sept. 5, 1993, § 4, at 5.

30. See, e.g., *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 521 (Mass. 1993) (describing over-crowded classrooms in urban Massachusetts schools); *Abbott*, 575 A.2d at 397 (describing inner-city schools where students eat lunch in boiler room or first floor corridor, and teachers hold remedial classes in former bathroom and other classes in converted coal bin).

31. Increased school funding will not renew the inner-cities and cure all social ills. It will, however, give the innocent children who reside in these areas the essential tools of education to aid them in their escape from the cycle of poverty.

32. See generally Edelman, *supra* note 18, at 1736 (describing many problems associated with concentrated poverty—crime, violence, drug abuse, few role models, etc.); Henry & Welch, *supra* note 7, at 5 (describing how "valuable teaching time" must be used for instruction on "needs more basic than education: decent meals, clean clothes, a pair of shoes, a responsible adult").

33. See NATIONAL COMM'N ON CHILDREN, BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES 181-84 (1991) (describing grave social problems in poor urban areas and finding that children starting life in most adverse conditions, who have most need for quality education, receive worst education).

ates a significant barrier to quality education in city schools where "just getting children to school is a victory."³⁴ These conditions further contribute to grave discipline problems³⁵ and to high drop-out rates.³⁶

While economic class explains many of the problems facing city schools,³⁷ those concentrated in urban areas also tend to be racial minorities.³⁸ Racial strife and shortages of bilingual services add to the many educational disadvantages which minority students face in the urban schools.³⁹ Regardless of their racial background, however, urban disadvantaged children become part of the decaying landscape of the inner-city.⁴⁰ Most tragic is that the state denies them the only leverage which could lift

34. Henry & Welch, *supra* note 7, at 5. Violent crime in the inner-cities increased by 1,076,870 incidents (128%) between 1972 and 1991. U.S. DEPT OF JUSTICE, CRIME REPORTS FOR THE UNITED STATES 58 (1992), *cited in* Edelman, *supra* note 18, at 1699 n.8; *see also* James A. Maloney, Comment, *Constitutional Problems Surrounding the Implementation of "Anti-Gang" Regulations in the Public Schools*, 75 MARQ. L. REV. 179, 179-82 (1991) (describing violent presence of gangs in urban areas and stressing grave problems that gangs create for public education).

35. *See, e.g., Education Goals, supra* note 14 (reporting that majority of 10th graders have difficulty learning due to misbehavior of other students); Henry & Welch, *supra* note 7, at 6 (quoting one teacher who lamented: "[i]t does take away from what you teach the kids because you're so busy trying to be a mother and a father and teach them and everything").

36. Dropout rates are the highest among students in poor urban schools: for example, from 1987 to 1989, the rate was 6.2% in central cities, 3.7% in suburbs, and 4% in rural areas. Henry & Welch, *supra* note 7, at 7. Dropout rates in Chicago and Detroit have been as high as 40% in recent years. NATIONAL COMM'N ON CHILDREN, *supra* note 33, at 180.

37. Edelman, *supra* note 18, at 1740-41 (describing the situation of concentrated poverty and how it greatly affects minorities, but emphasizing that the underlying problem is one of class).

38. For example, the poor, urban school population of Chicago is 88% minority. Menacker, *supra* note 25, at 1090; *see also* Sheff v. O'Neill, 609 A.2d 1072, 1074 (Conn. Super. Ct. 1992) (poor urban schools of Hartford alleging racial and economic segregation where minority students comprised 90% of urban school population).

39. *See, Reform Educ. Fin. Inequities Today (R.E.F.I.T.)* 578 N.Y.S.2d at 972 (stating that in one New York school district in early 1990's, 1000 students needed special services for limited English proficiency).

40. E. Douglass Williams & Richard H. Sander, *The Prospects for "Putting America to Work" in the Inner City*, 81 GEO. L.J. 2003, 2003 (1993). In 1956, the Governor's Commission on the Los Angeles Riots described the situation of the urban poor in Los Angeles as a "spiral of failure" due to inadequate education. CALIFORNIA GOVERNOR'S COMM'N ON THE LOS ANGELES RIOTS, VIOLENCE IN THE CITY—AN END OR A BEGINNING? 5-6 (1965), *cited in* Williams & Sander, *supra*. The spiral of poverty for the urban poor persists with more severity than ever before. Williams & Sander, *supra* at 2003; *see also* MICHAEL J. DEAR & JENNIFER R. WOLCH, LANDSCAPES OF DESPAIR (1987) (describing service dependency of inner-city poor); Jacob A. Riis, *The Children of the Poor, in THE POOR IN*

them from the impoverished underclass—an adequate, equal education.⁴¹

B. POOR URBAN CHILDREN RECEIVE THE LOWEST QUALITY EDUCATION BECAUSE THEY RECEIVE THE LEAST FUNDING

School funding relies heavily on local government revenues, particularly local property taxes.⁴² Property-rich districts⁴³ can tax at low rates and yield high levels of revenue while property-poor districts would have to impose much higher tax rates in order to raise equivalent revenues. The residents of poor districts,⁴⁴ however, are especially unwilling and unable to pay higher taxes⁴⁵ and their schools are therefore unable to generate sufficient funds to provide for quality education.⁴⁶ As a result, school finance inadequacies arise most often in these situations of “municipal overburden.”⁴⁷

GREAT CITIES 86 (Arno Press Inc. eds., 1971) (describing cycle of poverty which trapped children in 1800s and continues to hold them hostage).

41. See Edelman, *supra* note 18, at 1723, 1737 (describing how unending cycle of poverty entraps poor inner-city children because they are unable to attain quality education, which would enable them to escape poverty). As Martin Luther King, Jr. said, “it’s a cruel jest to say to a bootless man that he should lift himself by his own bootstrap.” Stephen Loffredo, *Poverty, Democracy and Constitutional Law*, 141 U. PA. L. REV. 1277 (1993) (quoting Martin Luther King, Jr.).

42. In Oregon, for example, local revenues accounted for 78% of school funding in the middle 1970s. *Olsen v. State*, 554 P.2d 139, 140 (Or. 1976). Texas’s school finance scheme derived 42% of its funding from local revenue in 1989. *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 392 (Tex. 1989) (*Edgewood I*).

43. This Note uses the term “property-rich” to refer to districts in which the property is more valuable and “property-poor” districts are those in which the property is much less valuable.

44. See *Edgewood I*, 777 S.W.2d at 392 (describing how school spending inadequacies plagued poor districts in which property values were 700 times lower than in wealthier areas).

45. See *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 78 (Wash. 1978). Washington’s school financing system relied on local, voter-approved special excess levies; therefore poor, urban districts were unable to raise sufficient school funds because local tax initiatives often failed. *Id.*

46. See *Skeen v. State*, 505 N.W.2d 299, 304 n.5 (Minn. 1993) (describing how poor districts would have to levy taxes at three to five times higher rate than wealthier districts to obtain equivalent amount of funds); *Fair Sch. Fin. Council, Inc. v. State*, 746 P.2d 1135, 1138 (Okl. 1987) (explaining how property poor districts levied taxes at the highest rates allowable by law and were unable to raise revenue equal to that raised by property rich districts taxing at lower rates).

47. The term “municipal overburden” refers to the plight of inner-city school districts in which scarce tax revenues barely cover the high costs of ur-

Because huge disparities often exist between inner-city districts and the districts in the rest of the state, the vast majority of school finance cases involve urban schools⁴⁸ which are unable to raise sufficient funds to provide students with an adequate or equal education.⁴⁹ New Jersey's wealthier school districts, for example, spent forty percent more per pupil than its poor, urban school districts in 1989.⁵⁰ Indeed, as compared with rural schools and especially with suburban schools, inner-city schools suffer unique problems.⁵¹ The confluence of exploding classroom populations, poverty, high crime rates,⁵² and more expensive government services creates a singularly high demand for local tax revenues,⁵³ leaving little money available for educa-

ban governmental services, and little money is left for education. *Robinson v. Cahill*, 355 A.2d 129, 138 (N.J. 1976).

48. Courts have heard only two cases challenging the constitutionality of funding disparities which strictly affect rural schools. See *McDaniel v. Thomas*, 285 S.E.2d 156, 173 (Ga. 1981); *Tennessee Small Sch. Sys. v. McWhorter*, 851 S.W.2d 139, 144 (Tenn. 1993). Rural schools suffer due to lack of taxable industry, low property values, and little state aid for equalization. *Id.* Nonetheless, rural districts escape the burdens of the higher costs and the extreme social problems experienced by inner-city school districts. See *supra* notes 22-41 and accompanying text.

49. See *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (en banc); *Serrano v. Priest*, 557 P.2d 929 (Cal.) (en banc) (naming students in Los Angeles as plaintiffs), *cert. denied*, 432 U.S. 907 (1977); *Sheff v. O'Neill*, 609 A.2d 1072, 1074 (Conn. Super. Ct. 1992) (alleging harm to inner-city Hartford students through racial and economic segregation, and denial of equal education due to school financing system); *Hornbeck v. Sommerset County Bd. of Educ.*, 458 A.2d 758, 764-65 (Md. 1983) (naming school district of Baltimore City as one of primary plaintiffs); *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 518-21 (Mass. 1993) (naming districts from both cities and smaller towns as plaintiffs but identifying inner-city schools as experiencing the most difficulties); *Abbott v. Burke*, 575 A.2d 359, 380 (N.J. 1990) (naming districts in Newark, Trenton, and Jersey City with lowest expenditures per student as plaintiffs); *Reform Educ. Fin. Inequities Today (R.E.F.I.T.) v. Cuomo*, 578 N.Y.S.2d 969, 969 (N.Y. App. Div. 1991) (naming districts in New York City, Buffalo, Rochester, and Syracuse as lead plaintiffs for class); *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980) (naming urban plaintiff class); *Danson v. Casey*, 399 A.2d 360 (Pa. 1979) (naming Philadelphia students as leading plaintiffs); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978) (naming Seattle as plaintiff).

50. *Abbott*, 575 A.2d at 383; see also *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 392 (Tex. 1989). Among Texas school districts, expenditures per pupil ranged from \$2,112 to \$19,333, with poor urban districts at the greatest disadvantage. *Id.*

51. See Paul E. Peterson, *The Urban Underclass and the Poverty Paradox*, in *THE URBAN UNDERCLASS* 3, 3 (Christopher Jencks & Paul E. Peterson eds., 1991) (describing the unique plight of the urban underclass and emphasizing that the most dangerous levels of poverty infect the central cities).

52. See *supra* notes 30, 32-35 and accompanying text.

53. *Hornbeck*, 458 A.2d at 764-67.

tion.⁵⁴ This funding shortage particularly devastates inner-city schools that often serve more students with special needs than do other schools.⁵⁵

II. PAST APPROACHES TO REMEDY SCHOOL FINANCE INEQUITIES

A. FEDERAL JUDICIAL TREATMENT

Federal courts analyze legislative distinctions in the educational arena under the Equal Protection Clause of the Fourteenth Amendment.⁵⁶ Under traditional equal protection analysis, like that employed by the United States Supreme Court in *San Antonio Independent School District v. Rodriguez*,⁵⁷ courts view factors in isolation to determine whether the legislative distinction limits a "fundamental constitutional right" or involves a "suspect" classification.⁵⁸ If the distinction implicates such a classification or interest, courts apply strict scrutiny which requires the state to prove a compelling governmental purpose that justifies the discrimination.⁵⁹ If the legislation involves no suspect classification or fundamental right, courts apply rational basis review, upholding distinctions rationally related to a legitimate state purpose.⁶⁰ Federal courts, such as the Supreme Court in *Plyler v. Doe*,⁶¹ also employ a third standard, "intermediate" or "heightened" scrutiny,⁶² when specific circumstances create injustice but do not fit neatly in the "two-tiered" equal protection model.⁶³ Under heightened

54. See *id.* at 764 (explaining how "municipal overburden" severely limits funds available for quality education); *Abbott*, 575 A.2d at 383 (describing how poor urban districts with high percentages of minorities must shoulder a higher tax burden, yet have little to spend on education).

55. See *Abbott v. Burke*, 575 A.2d 359, 383 (N.J. 1990) (demonstrating how inner-city students have greater needs due to higher crime rates, language barriers, broken families, etc., but the city schools have the least money to spend); see also *Board of Educ. v. Walter*, 390 N.E.2d 813, 827-28 (Ohio 1979) (Locker, J., dissenting), *cert. denied*, 444 U.S. 1015 (1980). Justice Locker, dissenting from the judgment upholding Ohio's school finance system, stressed the particular educational problems associated with urban malaise (cramped facilities, discipline problems, etc.). *Id.*

56. 3 RONALD D. ROTUNDA & JOHN E. NOWAK, *TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE* § 18.45 (2d ed. 1992).

57. 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973).

58. 3 ROTUNDA & NOWAK, *supra* note 56, § 18.3, at 15-16.

59. *Id.*

60. *Id.* at 14, 27.

61. 457 U.S. 202, *reh'g denied*, 458 U.S. 1131 (1982).

62. 3 ROTUNDA & NOWAK, *supra* note 56, § 18.3, at 16-19.

63. *Id.* at 16.

scrutiny, courts uphold a legislative distinction only if it is substantially related to an important government interest.⁶⁴

1. *San Antonio Independent School District v. Rodriguez*:⁶⁵
Traditional Federal Equal Protection Analysis

The United States Supreme Court has only addressed the issue of school funding disparities once, in *San Antonio Independent School District v. Rodriguez*.⁶⁶ The plaintiffs in *Rodriguez* claimed that Texas's unequal public education financing scheme violated the Equal Protection Clause of the Fourteenth Amendment under strict scrutiny review.⁶⁷ The Court rejected the equal protection claim,⁶⁸ holding that education is not a fundamental interest⁶⁹ and refusing to recognize a suspect class based on wealth alone.⁷⁰ With no fundamental interest or suspect classification involved, the Supreme Court upheld Texas's school financing system under rational basis review.⁷¹

a. Education as a Fundamental Interest

The *Rodriguez* Court viewed education as a very important state prerogative.⁷² Such a conclusion flows naturally from education's essential function in a democratic society.⁷³ The unanimous Court in *Brown v. Board of Education*⁷⁴ clearly stated that "education is perhaps the most important function of state and local governments . . . [and] it . . . is a right which must be made available to all on equal terms."⁷⁵

64. *Id.* at 17.

65. 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973).

66. See 3 ROTUNDA & NOWAK, *supra* note 56, § 18.45, at 511.

67. *Rodriguez*, 411 U.S. at 4-6.

68. *Id.* at 55. The Court found that the Texas schools adequately educated students and the primary distinguishing attributes of wealthier schools were "lower pupil-teacher ratios and higher salary schedules." *Id.* at 36-37, 46.

69. *Id.* at 33-37.

70. *Id.* at 32-33.

71. *Id.* at 44-55. The Court found that unequal funding bore a rational relationship to the legitimate state purpose of promoting local control over tax dollars spent in the individual school districts and allowing citizens to devote more money to the education of their own children. *Id.* at 49-50.

72. See *id.* at 30.

73. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986) (describing education as necessary for "inculcation [of] fundamental values necessary to the maintenance of a democratic political system") (quoting *Amback v. Norwick*, 441 U.S. 68, 76-77 (1979)); *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (presenting State's argument that education is essential "to prepare citizens to participate effectively and intelligently in our open political system").

74. 347 U.S. 483 (1954).

75. *Id.* at 493.

The *Rodriguez* Court found, however, that education is not a "fundamental interest" that triggers strict scrutiny equal protection analysis,⁷⁶ because the Federal Constitution does not expressly provide for a right to education.⁷⁷ Nevertheless, the Court did not "foreclose the possibility 'that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either [the right to speak or the right to vote].'"⁷⁸ The Supreme Court therefore acknowledged the existence of a minimal level of education to which all Americans are entitled.⁷⁹

b. Poverty as a Suspect Class

According to the Supreme Court's theory of suspect class analysis announced in *United States v. Carolene Products Co.*,⁸⁰ discrimination creates a suspect classification when the unequal treatment restricts the political process by inflicting a burden on "discrete and insular minorities" which lack the political power to bring about the repeal of harmful legislation.⁸¹ The Court in *Rodriguez* thus held that *wealth* alone does not create a suspect

76. *Rodriguez*, 411 U.S. at 33-35. *But see generally* Mahoney, *supra* note 10 (arguing that education should be a fundamental interest under the Constitution because it is essential for meaningful exercise of other constitutional rights such as freedom of expression).

77. *Rodriguez*, 411 U.S. at 33-35.

78. *Papasan v. Allain*, 478 U.S. 265, 284 (1986) (quoting *Rodriguez*, 411 U.S. at 36-37). The *Rodriguez* Court, like the *Papasan* Court, did not determine whether there is a right to a minimally adequate education under the United States Constitution because it found that Texas provided "adequate" education. *Rodriguez*, 411 U.S. at 36-37.

79. *See Rodriguez*, 411 U.S. at 36-37. The Court has never defined a right to a minimally adequate education, and therefore the issue remains unsettled.

80. 304 U.S. 144 (1938).

81. *Id.* at 152-53 n.4; *see also* Lea Brilmayer, *Carolene, Conflicts, and the Fate of the "Insider-Outsider,"* 134 U. PA. L. REV. 1291, 1291-98 (1986) (describing the democracy-centered theory of equal protection review).

The Supreme Court recently stressed again the democratic underpinnings of the Equal Protection Clause in *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990). In *Austin*, the Court applied strict scrutiny analysis to an Equal Protection challenge to a Michigan statute which prohibited corporations, but not unincorporated associations or media corporations, from using general corporate funds in support of or opposition to candidates in election for state office. *Id.* at 666, 668. The Court upheld the prohibition on political expenditures because of the substantial state interest in preventing concentrated wealth from wielding disproportionate political power. *Id.* at 659-60. The *Austin* Court therefore provided protection for the disadvantaged from the disproportionate power of the wealthy. *See id.* at 668; *see also* Loffredo, *supra* note 41, at 1285-86, 1371-87 (arguing that *Austin* teaches that wealth-based distribution of political power is invalid, therefore heightened scrutiny should apply to wealth-based classification).

classification because the poor as a general category do not comprise a "discrete and insular minority."⁸²

The *Rodriguez* Court did not address the question of whether discrimination "against any definable category of 'poor' people" could claim suspect class protection for purposes of challenging school funding disparities.⁸³ The plaintiffs in *Rodriguez* provided no "definitive description of the classifying facts or delineation of the disfavored class."⁸⁴ The Court, therefore, seemed to *invite* a case in which the complaining impoverished class could define their particular plight in identifiable terms beyond simply family wealth and educational expenditures.⁸⁵

2. *Plyler v. Doe*:⁸⁶ A Novel Approach to Federal Equal Protection Review When Education Is at Stake

Ten years after the *Rodriguez* decision, the Supreme Court protected the right to education⁸⁷ of illegal aliens in *Plyler v. Doe*.⁸⁸ In *Plyler*, illegal aliens challenged a Texas statute that authorized school districts to deny enrollment and withhold state funds for the education of children not "legally admitted" into the United States.⁸⁹ Although the Court found that education is not a "fundamental right"⁹⁰ and illegal aliens are not a "suspect class,"⁹¹ the Court applied heightened scrutiny under the Equal Protection Clause⁹² and held unconstitutional the denial of free education to aliens.⁹³

82. *Rodriguez*, 411 U.S. at 24-27.

83. *Id.* at 25.

84. *Id.* at 19. The plaintiffs brought the action on behalf of "poor" school children residing in school districts with a low property tax base. *Id.* at 5.

85. *See id.* at 19-20.

86. 457 U.S. 202, *reh'g denied*, 458 U.S. 1131 (1982).

87. *Id.* at 230. *But see* *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450 (1988). In *Kadrmas*, the Court upheld a bus user fee applying rational basis equal protection review because the fee did not effect a denial of education and did not harm a definable class of poor. *Id.* at 458-59. The Court also relied on the fact that a school board could waive the transportation fee for indigent children. *Id.* at 460.

88. 457 U.S. at 205.

89. *Id.*

90. *Id.* at 223 (citing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S.1, 35 (1973)).

91. *Id.* at 219 n.19.

92. Instead of applying the rational basis review applied in *Rodriguez*, the *Plyler* court applied heightened scrutiny—whether the discrimination "furthers some substantial goal of the State." *Id.* at 224.

93. *Plyler*, 457 U.S. at 230. The Court found that the alleged purposes of protecting Texas from an influx of illegal aliens, and of shielding the state from higher educational costs were not substantial state goals which warranted de-

The Court reasoned that although education is not a *fundamental right*, it plays a *fundamental role* in our society.⁹⁴ Denying public education to illegal aliens would “impose[] a lifetime hardship on a discrete class of children not accountable for their disabling status.”⁹⁵ Justice Brennan concluded, in the opinion of the Court, that the state had an overriding interest in preventing the creation of an illiterate underclass which would increase the “problems and costs of unemployment, welfare, and crime.”⁹⁶ Justice Blackmun concurred, clarifying that the “complete denial” of education effectuated by the Texas statute rendered it unconstitutional.⁹⁷ Nonetheless, like Justice Brennan, he based his reasoning in the prevention of “permanent class distinctions.”⁹⁸

Moreover, although the *Plyler* Court did not view illegal aliens as a suspect class, it focused on the importance of eliminating state-created obstacles to social or political participation for a particular group.⁹⁹ The Court granted the illegal aliens special constitutional protection not only because of the importance of education, but also because denial of education would marginalize them from political participation if they later became United States citizens.¹⁰⁰ The Court therefore acknowledged the vital importance of education for children peculiarly disadvantaged.

Plyler represents a novel approach to federal equal protection analysis that escapes the rigid confines of traditional “two-tiered” equal protection review.¹⁰¹ The *Plyler* Court chose not to

nial of education to illegal aliens. *Id.* at 228-29. The denial of education therefore failed to withstand heightened scrutiny because it did not further a “substantial state interest.” *Id.* at 230.

94. *Id.* at 221.

95. *Id.* at 223.

96. *Id.* at 230. The Court stated that the Equal Protection Clause stands for “the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.” *Id.* at 222.

97. *Id.* at 235 (Blackmun, J., concurring) (distinguishing *Rodriguez*).

98. *Plyler*, 457 U.S. at 234 (Blackmun, J., concurring). Blackmun stressed that denial of education is unconstitutional because it places one group at “a permanent and insurmountable competitive disadvantage.” *Id.* Justice Powell also concurred with Justice Brennan’s plurality opinion, distinguishing *Plyler* from *Rodriguez* because *Plyler* involved a complete denial of education that “threaten[ed] the creation of an underclass of future citizens.” *Id.* at 239, 239 n.3 (Powell, J., concurring).

99. *Id.* at 230.

100. *Id.* at 229-30.

101. See *supra* notes 57-60 and accompanying text (describing the two-tiered equal protection analysis which requires a finding of a *fundamental interest* or a *suspect classification* in order to apply strict scrutiny); see also *infra*

examine the right denied and the status of the complainants in isolation in order to find a "fundamental interest" or a "suspect classification" as required under the two-tiered approach. The Court instead examined the confluence of the children's peculiar disadvantage due to their status and the importance of education to minimize those disadvantages, thus justifying application of heightened scrutiny to the discrimination.¹⁰²

B. STATE COURT TREATMENT OF THE SCHOOL FINANCE ISSUE

1. School Finance Since *Rodriguez*: A State Court Issue

Dissatisfaction with funding inequities has become more prevalent after the decision in *San Antonio Independent School District v. Rodriguez*; schools in twenty-eight states have challenged their states' funding systems since 1972.¹⁰³ The *Rodriguez* decision did not foreclose all possible federal theories for

notes 160-162 and accompanying text (explaining that state courts also tend to approach equal protection review in same traditional manner).

102. "[T]hese cases demonstrate the wisdom of rejecting a rigidified approach to equal protection analysis." *Plyler*, 457 U.S. at 231 (Marshall, J., concurring) (supporting Justice Brennan's opinion, but writing separately to emphasize that class-based denial of public education contravenes the Equal Protection Clause, and thereby disagreeing with the majority in *Rodriguez*).

103. *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90 (Ark. 1983); *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (en banc); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1977) (en banc), *cert. denied*, 432 U.S. 907 (1977); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982); *Sheff v. O'Neill*, 609 A.2d 1072 (Conn. Super. Ct. 1992); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981); *Idaho Schools for Equal Educ. Opp. v. Evans*, 850 P.2d 724 (Idaho 1993); *Blase v. State*, 302 N.E.2d 46 (Ill. 1973); *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); *Hornbeck v. Somers County Bd. of Educ.*, 458 A.2d 758 (Md. 1983); *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); *Milliken v. Green*, 203 N.W.2d 457 (Mich. 1972), *vacated*, 212 N.W.2d 711 (Mich. 1973); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993); *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989), *amended*, 784 P.2d 412 (Mont. 1990); *Gould v. Orr*, 506 N.W.2d 349 (Neb. 1993); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Reform Educ. Financing Inequity Today (R.E.F.I.T) v. Cuomo*, 578 N.Y.S.2d 969 (N.Y. App. Div. 1991); *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432 (N.C. App.), *review denied*, 361 S.E.2d 71 (N.C. 1987); *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); *Fair Sch. Fin. Council, Inc. v. State*, 746 P.2d 1135 (Okl. 1987); *Coalition for Equitable Sch. Funding, Inc. v. State*, 811 P.2d 116 (Or. 1991) (en banc); *Danson v. Casey*, 399 A.2d 360 (Pa. 1979); *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988); *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989), *vacated in part*, 804 S.W.2d 491 (Tex. 1991); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978); *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979); *Pauley v. Kelly*, 324 S.E.2d 128 (W. Va. 1984); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980), *cert. denied sub nom.*, 449 U.S. 824 (1980).

recovery¹⁰⁴ and plaintiff school districts represent distinct factual situations.¹⁰⁵ Nonetheless, these districts have not argued their cases in federal courts because of the *Rodriguez* plaintiffs' failure to obtain a remedy under traditional equal protection analysis.¹⁰⁶ Plaintiffs thus challenge school finance disparities primarily on state constitutional grounds.¹⁰⁷

2. The States' Insufficient Treatment of School Funding Disparities in the Impoverished Inner-Cities

Poor school districts challenge their states' school finance systems under two theories: state equal protection and the education provisions of the state constitutions.¹⁰⁸ Despite these possible theories for recovery, many state courts have provided no remedy to plaintiff districts.¹⁰⁹ Other courts which have confronted the school funding issue have applied ad hoc analysis and have ordered noncomprehensive remedies.¹¹⁰ Consequently, state courts hearing school finance disparities cases

104. See *supra* notes 94-102 and accompanying text (explaining *Plyler* Court's novel approach to equal protection review when right to education is at stake); see also *supra* notes 83-85 and accompanying text (explaining how *Rodriguez* decision seemed to invite constitutional challenge by plaintiff school districts which could delineate their status in identifiable terms beyond simply family wealth).

105. See *supra* notes 22-30 and accompanying text (stressing increasing educational deficiencies of inner-city schools).

106. See *supra* notes 66-71 and accompanying text (explaining *Rodriguez* rejection of equal protection claim).

107. States may provide greater constitutional protection under their constitutions and most state constitutions provide for a right to education; therefore poor school districts called on state courts to remedy the school funding disparities. John F. Watson, *The Cause, Effect and Constitutional Consequence of Unequal Funding: Public Education in Illinois*, 26 J. MARSHALL L. REV. 399, 410-12 (1993).

108. *Id.* at 410.

109. *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973) (en banc) (upholding disparate funding systems); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005 (Colo. 1982) (en banc) (same); *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981) (same); *Thompson v. Engelking*, 537 P.2d 635 (Idaho 1975) (same); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993) (en banc) (same); *Gould v. Orr*, 506 N.W.2d 349 (Neb. 1993) (same); *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432 (N.C. App.), *review denied*, 361 S.E.2d 71 (N.C. 1987) (same); *Fair Sch. Fin. Council, Inc. v. State*, 746 P.2d 1135 (Okla. 1978) (same); *Coalition for Equitable Sch. Funding, Inc. v. State*, 811 P.2d 116 (Or. 1991) (en banc) (same); *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988) (same); see also *infra* note 111 (citing additional cases in which states upheld particularly disparate funding systems which burdened poor inner-city school districts).

110. See *infra* notes 112-115 and accompanying text (describing noncomprehensive remedies); notes 131-136 and accompanying text (demonstrating ad hoc analysis).

have not responded to the educational ills of impoverished, urban students.

a. Failure to Provide Any Remedy or to Create an Adequate Remedy for Inner-city Students

Many courts have upheld their states' inequitable school funding schemes,¹¹¹ and those courts which have held their states' financing systems unconstitutional¹¹² have ordered varied, uncertain, and often inadequate remedies.¹¹³ Due to political and jurisprudential concerns, even courts which have acknowledged the existence of glaring funding disparities in poor, urban school districts¹¹⁴ have been reluctant to order any remedy or to grant progressive remedies.¹¹⁵

Impoverished urban school children in New York, for example, face a bleak situation.¹¹⁶ Students cannot achieve their

111. See, e.g., *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758 (Md. 1983); *Reform Educ. Fin. Inequities Today (R.E.F.I.T.) v. Cuomo*, 578 N.Y.S.2d 969 (N.Y. App. Div. 1991); *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979), cert. denied, 444 U.S. 1015 (1980); *Danson v. Casey*, 399 A.2d 360 (Pa. 1979); *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989). These cases upheld school finance systems in cases involving poor urban plaintiffs who received inadequate or unequal education.

112. See, e.g., *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (en banc); *Serrano v. Priest*, 557 P.2d 929 (Cal.) (en banc) *Serrano v. Priest*, cert. denied 432 U.S. 907 (1977); *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977); *Sheff v. O'Neill*, 609 A.2d 1072 (Conn. Super. Ct. 1992); *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973); *Robinson v. Cahill*, 355 A.2d 129 (N.J. 1976) (per curiam); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989), 804 S.W.2d 491 (Tex. 1991). These cases held school funding systems unconstitutional but failed to provide adequate remedies—as evidenced by the cases' return to the courts and multiple challenges to school funding schemes in these states.

113. See Note, *Unfulfilled Promises: School Finance Remedies and State Courts*, 104 HARV. L. REV. 1072 (1991) [hereinafter *Unfulfilled Promises*] (describing myriad of problems associated with devising school finance remedies and finding that many state courts have failed to provide victorious plaintiffs with adequate remedies).

114. See, e.g., *Hornbeck*, 458 A.2d at 764-65. The *Hornbeck* court cited plaintiffs' complaint describing the particular educational disadvantages of impoverished children in the poor, urban districts and discussing the problems associated with "municipal overburden." *Id.*; see also *R.E.F.I.T.*, 578 N.Y.S.2d at 972 (acknowledging funding disparities of 100 to 1 between rich and poor districts, focusing on urban poor as receiving lowest quality education).

115. See *Hornbeck*, 458 A.2d at 790 (upholding highly disparate funding system in order to give deference to state legislature and local school districts); *R.E.F.I.T.*, 578 N.Y.S.2d at 976 (stating that educational funding problems of the inner-cities must be left for legislature to solve).

116. *R.E.F.I.T.*, 578 N.Y.S.2d at 972; see also *supra* note 28 (describing overcrowded and decrepit portable classrooms where some urban New York chil-

proper grade levels due to poor educational facilities and lack of special services for the many high-risk students who reside in these areas.¹¹⁷ In *Reform Education Finance Inequities Today v. Cuomo*,¹¹⁸ however, poor school districts lost their constitutional challenge to the state's school funding system.¹¹⁹ The Superior Court of New York conceded that New York's funding system was inadequate,¹²⁰ and stressed the problems of the urban poor who "need a special supportive educational effort in order to give them the chance to succeed as citizens and workers."¹²¹ Despite the court's rhetoric, however, it upheld the funding scheme, relying upon New York precedent¹²² and deference to the state legislature.¹²³

Most state courts which have taken the initiative to strike their states' school finance systems have then assumed passive roles in implementing remedies¹²⁴ due to jurisprudential concerns.¹²⁵ Even when courts have boldly defined their state's constitutional right to education,¹²⁶ legislative deadlock¹²⁷ has

dren must attend school); Kozol, *supra* note 1, at 83-132 (devoting an entire chapter to "Savage Inequalities" of public schools in poor urban New York and stressing that nowhere is denial of tools for success "more explicit or more absolute than in the public schools of New York City").

117. *R.E.F.I.T.*, 578 N.Y.S.2d at 971-73.

118. *Id.* at 969.

119. *Id.* at 976.

120. *Id.* at 972.

121. *Id.* at 975. The court went on to lament that legislative initiatives regarding "the urgent need for reform fall on deaf ears." *Id.* at 974.

122. *Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359 (N.Y.), *appeal dismissed*, 459 U.S. 1138 (1982) (dismissing challenge of school finance disparities which were less pronounced than those of 1991).

123. *R.E.F.I.T.*, 578 N.Y.S.2d at 976.

124. *See McDuffy v. Secretary of Exec. Office of Educ.*, 615 N.E.2d 516, 554-56 (Mass. 1993). The *McDuffy* court held the state's school funding system unconstitutional and listed guidelines which the legislature *should* consider when drafting a new financing system. *Id.* at 554. The court explicitly stated, however, that the Massachusetts legislature has discretion to define the precise educational duty of the schools and to devise a funding plan which complies with the "constitutional mandate"—without giving the term substantive meaning. *Id.* at 555-56; *see also Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 399 (Tex. 1989) (stating that it is not court's duty to "instruct the legislature as to the specifics of the legislation it should enact" but that court must decide "the nature of the constitutional mandate and whether that mandate has been met").

125. *See Unfulfilled Promises*, *supra* note 113, at 1082-85 (explaining that many courts refrain from ordering explicit remedies in school finance cases because of separation of powers and judicial deference to legislative decisions).

126. *See Abbott v. Burke*, 575 A.2d 359, 408-11 (N.J. 1990) (defining remedy in fairly concrete terms and ordering that school funding could not depend on districts' taxing abilities).

failed to provide the judicially mandated remedy.¹²⁸ When courts refuse to confront or fail to remedy discriminatory funding schemes, students have no recourse to remedy their lack of quality education.

b. Lack of Uniformity in State Constitutional Analysis

Courts often rely on state constitutional education provisions in striking down unequal financing schemes,¹²⁹ claiming that the particular language of that constitution requires a minimum threshold of adequate or equal education.¹³⁰ In reality, however, the particular wording of a state's constitutional provision does not control the outcome in such situations.¹³¹ The resulting ad hoc analysis in state courts prevents the establishment of uniformity or regularity.

In both New Jersey¹³² and Ohio,¹³³ for example, impoverished urban school districts challenged the states' funding

127. See *Unfulfilled Promises*, supra note 113, at 1078-79 (explaining how legislatures fail to provide adequate remedies due to political power of wealthier constituents and citizens' unwillingness to pay higher taxes to help raise needed funds); see also Herbert, supra note 16 (describing situation in Michigan where legislature has repealed the entire financing system but has not been able to devise alternative plan).

128. See *Abbott v. Burke*, 575 A.2d 359, 363-65 (N.J. 1990) (explaining that New Jersey Supreme Court had found state's school funding scheme unconstitutional in *Robinson v. Cahill*, 351 A.2d 713 (N.J. 1975); then holding, in *Abbott*, legislature's amended financing scheme unconstitutional as applied to poor urban school districts); Jerry Gray, *Ruling Puts New Jersey at Center of School-Financing Issue in U.S.*, N.Y. TIMES, Sept. 2, 1993, at A14 (reporting that in unpublished opinion, Superior Court in New Jersey recently held state's school finance plan unconstitutional for fourth time in 20 years); see also Lawrence O. Picus & Linda Hertert, *Three Strikes and You're Out: Texas School Finance After Edgewood III*, 18 J. EDUC. FINANCE 366 (1993) (explaining how Texas courts found its state's school financing unconstitutional for third time and once again state legislature must attempt to remedy inequity).

129. See generally Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS. 307 (1991) (explaining methods of attack under state constitutional education provisions); William E. Thro, Note, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639 (1989) (again describing state courts' analysis of education provisions of state constitutions).

130. See, e.g., *Dupree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90, 93 (Ark. 1983) (finding that education provision requires "equal educational opportunity"); *Robinson v. Cahill*, 303 A.2d 273, 294 (N.J. 1973) (holding that education clause requires substantial equality in educational outcome).

131. See Johnathon Banks, Note, *State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?*, 45 VAND. L. REV. 129, 153 (1992) (arguing that outcomes of school finance cases are unpredictable and do not coincide with wording of individual education articles).

132. *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990).

schemes under identical constitutional provisions requiring "thorough and efficient" school systems.¹³⁴ The Ohio Supreme Court upheld its state's funding system and found that the "thorough and efficient" mandate granted the legislature nearly unbridled discretion in formulating a school funding scheme.¹³⁵ In contrast, the New Jersey Supreme Court interpreted "thorough and efficient" to require "equal educational opportunity" and held that its funding system violated this constitutional edict.¹³⁶

c. Failure to Address the Plight of Poor Urban Schools

Inner-city students face the most egregious economic and social problems¹³⁷ and have the greatest need for educational opportunities to help them escape the cycle of poverty,¹³⁸ yet they receive the lowest quality education.¹³⁹ Most state courts, however, analyze school funding disparities with a generalized approach under state constitutional education provisions,¹⁴⁰ and fail to identify the particular plight of the poor, urban student. Moreover, strict adherence to traditional equal protection review prevents the courts from acknowledging these students' unique circumstances.

i. Review under state constitutions' education requirements

McDuffy v. Secretary of Education,¹⁴¹ exemplifies a state court decision that analyzed school finance disparities on a statewide basis under the education provision of the state constitution, thus failing to respond directly to the deficiencies of the inner-city schools.¹⁴² In *McDuffy*, the trial court described

133. *Board of Educ. v. Walter*, 390 N.E.2d 813 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980).

134. *Abbott*, 575 A.2d at 363 n.1; *Walter*, 390 N.E.2d at 815.

135. *Walter*, 390 N.E.2d at 825.

136. *Robinson*, 303 A.2d at 294, 298.

137. *See supra* notes 32-40 and accompanying text (describing crime, violence, racial strife, and poor family conditions in impoverished central city areas).

138. *See supra* note 41 and accompanying text (stressing importance of quality education to enable children in concentrated poverty areas to break cycle of poverty).

139. *See supra* notes 44-47, 51-55, and accompanying text (describing that as compared with all other schools, inner-city schools have highest costs and least funds to cover those costs).

140. *See supra* notes 129-130 and accompanying text.

141. 615 N.E.2d 516 (Mass. 1993).

142. *Id.*

the inadequacies of Massachusetts' schools, focusing on overcrowded classes,¹⁴³ unsafe buildings,¹⁴⁴ and other conditions associated with poor inner-city schools.¹⁴⁵ The reviewing court held the financing scheme unconstitutional¹⁴⁶ but failed to directly address the fact that the worst educational situations existed in the urban areas.¹⁴⁷ The court ordered a weak, generalized remedy which ignored inner-city problems such as municipal overburden¹⁴⁸ and granted wide discretion to the Massachusetts legislature to define the state constitutional requirements.¹⁴⁹

In contrast, the New Jersey Supreme Court in *Abbott v. Burke*,¹⁵⁰ the *only* state court to take a bold position under its state constitution,¹⁵¹ ordered a progressive remedy that confronted the unique disadvantages of the urban poor.¹⁵² Because poor urban children did not receive "equal educational opportunities" as compared to children in the rest of the state, the court held the state's funding system unconstitutional only as applied to the poor, inner-city districts.¹⁵³ The court then ordered the legislature to reform school financing in order to provide each poor, urban district with "a budget per pupil that [was] approximately equal to the average of the richer suburban districts . . .

143. *Id.* at 521.

144. *Id.* at 521 n.13.

145. *Id.* at 521. The court describes the inadequacies of the "typical" impoverished schools in terms of urban problems. *Id.* at 520-21, 521 n.13. For example, one school provided "inadequate services" for the 43 homeless children in its system, another school could not meet the guidance needs of "its unusually diverse population and large percentage of at-risk students." *Id.*

146. *Id.* at 519. The plaintiffs in *McDuffy* did not argue for equalized educational spending, but did claim that all students are entitled to an *adequate* education. *Id.* at 522.

147. The court described the plaintiffs' schools as located in "towns and cities," and made no specific references to the urban plight. *Id.* at 519-20. The court also failed to view the issue in terms of equal protection, and relied entirely on the education article of the state's constitution. *Id.* at 519.

148. The *McDuffy* court merely listed some guidelines for the legislature to consider when devising a financing scheme which would provide all students with an "adequate" education. *Id.* at 554-56.

149. *See supra* note 124 (describing *McDuffy* court's reluctance to order a definite remedy due to its deference to the state legislature).

150. 575 A.2d 359 (N.J. 1990).

151. The *Abbott* court decided the issue under the education article of the state's constitution, although the reasoning seems to encompass an equal protection theme that all should receive equal treatment—an equitable standard of education. *Abbott*, 575 A.2d at 408-410.

152. *Id.*

153. *Id.*

and [was] sufficient to address their special needs.”¹⁵⁴ Despite the court’s progressive holding, however, the New Jersey legislature has failed to fulfill the court’s mandate.¹⁵⁵

ii. Review under traditional equal protection analysis

Courts fail to address the plight of the urban poor not only through analysis of school finance cases under the state constitutions’ education clauses, but also through strict adherence to traditional equal protection review.¹⁵⁶ While some courts ignore¹⁵⁷ or do not reach the issue¹⁵⁸ of equal protection in cases regarding school funding inequities, those courts that focus on equal protection as the basis for decision¹⁵⁹ generally adhere to

154. *Id.* at 409. The court found that school funding must not rely on local taxing and required that financing remain stable from year to year. *Id.* at 408; see also Gray, *supra* note 128, at A14. Most recently, the Superior Court of New Jersey found that the urban (also the poorest) school districts in New Jersey received 5% more state funds than the other districts, and held that this was not sufficient. *Abbott*, 575 A.2d at 408. Using a complicated formula, the judge found that the state must provide at least 24% more aid to the poorest districts in order to comply with constitutional mandates. *Id.*

155. See *supra* note 128 (describing several constitutional challenges to New Jersey’s financing scheme and reporting that inner-city districts have recently launched another constitutional attack on continuing inadequacies).

156. The one exception was the unanimous court in *Washakie County School District No. 1 v. Herschler*, 606 P.2d 310, 333-34 (Wyo. 1980), which took a novel approach similar to that followed by the United States Supreme Court in *Plyler v. Doe*, 457 U.S. 202, *reh’g denied*, 458 U.S. 1131 (1982); see *supra* text accompanying notes 101-102 (describing equal protection analysis employed by the Court in *Plyler* which examined interest affected in conjunction with disadvantages of complaining class). This was a more aggressive position in that most courts either did not address the suspect classification issue or found wealth not to be suspect. The *Herschler* court did not view wealth independently for suspect class analysis, but examined wealth in terms of its effect on education. 606 P.2d at 333-34. It found wealth to be a suspect classification “especially” because it affected a fundamental interest. *Id.* at 334. The court, therefore, focused on the reality that classifications based on wealth which affect quality of education are especially devastating for poor children.

157. See *Blase v. State*, 302 N.E.2d 46 (Ill. 1973); *Abbott*, 575 A.2d at 359; *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (*Edgewood I*); *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (*Edgewood II*).

158. *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 555 (Mass. 1993) (concluding that Massachusetts’s constitution imposes enforceable duty on state to provide education for all children).

159. See *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (en banc); (*Serrano I*), 557 P.2d 929 (Cal.) (en banc) *Serrano v. Priest*, *cert. denied*, 432 U.S. 907 (1977) (*Serrano II*) (holding school financing system unconstitutional under the state equal protection clause).

the traditional approach,¹⁶⁰ under which courts view factors in isolation¹⁶¹ to decide whether education is a fundamental interest or whether wealth is a suspect class.¹⁶²

Courts that are willing to invalidate their states' school funding schemes generally find education to be a fundamental interest¹⁶³ due to its inclusion in their state's constitution.¹⁶⁴ In finding education to be a fundamental interest, however, courts do not address the urban poor as a unique group.¹⁶⁵ Unfortunately, state courts have also failed to address the unique combination of urban poverty and inferior education through suspect

160. See, e.g., *Serrano II*, 557 P.2d at 951 (determining initially that education is fundamental interest and wealth is suspect classification under state constitution).

161. See *supra* text accompanying notes 57-60 (describing traditional approach which United States Supreme Court followed in *Rodriguez*).

162. See *supra* text accompanying notes 57-60. Still other courts apply a rational basis standard and hold unequal funding schemes unconstitutional under state equal protection analysis without reaching the issues of whether education is a fundamental right or wealth is a suspect class. See *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152-56 (Tenn. 1993). The defendants argued that the need for local control of education provided a rational basis for the unequal funding. *Id.* at 154. The court held this argument invalid because funding equalization does not harm local control, and poor districts actually gain more local control over education when they have sufficient funds. *Id.* at 155. Affirming the lower court's rationale, the Tennessee Supreme Court held the school funding disparities unconstitutional under equal protection rational basis review. *Id.*

163. A court that is willing to invalidate a school financing system generally holds education to be a fundamental interest under its state constitution. See, e.g., *Horton v. Meskill*, 376 A.2d 359, 373-75 (Conn. 1977) (finding education to be fundamental interest and holding state school financing systems unconstitutional); *Pauley v. Kelly*, 255 S.E.2d 859, 878-79 (W.Va. 1979) (same); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 333-37 (Wyo. 1980) (same).

164. Almost all state constitutions have specific constitutional provisions for a right to education. *McUsic, supra* note 129, at 311. Thus applying the Supreme Court's analysis on a state level, state courts often find education to be a fundamental right. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33-34 (1973) (stating fundamental interests are those rights implicitly or explicitly provided for in Constitution). States also stress the importance of education to the future of the nation. See, e.g., *McDuffy v. Secretary of the Executive Office of Educ.*, 615 N.E.2d 516, 535-37 (Mass. 1993) (outlining history of Massachusetts' constitutional provision for education and describing framers' strong belief that education was "integral to the very existence of a republican government").

165. See *supra* note 140-149 and accompanying text (describing how a court viewed educational deficiencies in general terms under education clause of state constitution).

class analysis,¹⁶⁶ because courts again view factors in isolation.¹⁶⁷

Federal courts have not addressed the school finance issue since *San Antonio Independent School District v. Rodriguez*, and many state courts have failed to provide a remedy for poor inner-city children who do not receive a quality education.¹⁶⁸ Among state courts which have confronted the problem, there has been a great lack of uniformity and a failure to recognize the particularly deep-rooted travails affecting students in the poor urban schools.¹⁶⁹ The lack of action in either state legislatures or courts has left many inner-city children without sufficient educational opportunities.¹⁷⁰ Without a comprehensive federal remedy, these children have no recourse.

III. PROPOSAL FOR A FEDERAL REMEDY—A CONCEPTUAL FRAMEWORK WHICH ADDRESSES THE PLIGHT OF POOR URBAN SCHOOLS

Because impoverished, urban school children have been unable to attain an adequate remedy at the state level,¹⁷¹ the school funding issue should ultimately return to the federal courts with a focus on the particular plight of the urban poor. Over twenty years have passed since *San Antonio Independent*

166. See, e.g., *Skeen v. State*, 505 N.W.2d 299, 301-02 (Minn. 1993) (finding education to be fundamental right but holding wealth not suspect class because there was no proof of history of unequal treatment or lack of political power among plaintiff districts).

167. See *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1017-19 (Colo. 1982) (en banc); *McDaniel v. Thomas*, 285 S.E.2d 156, 167 (Ga. 1981); *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758, 786-87 (Md. 1983); *Kukor v. Grover*, 436 N.W.2d 568, 578-79 (Wis. 1989) (analyzing poverty in isolation and finding that wealth is not suspect class); cf. *Serrano II*, 557 P.2d 929, 951 (Cal. 1977) (en banc) (viewing wealth in isolation but finding it to create suspect classification alone). But see *Herchler*, 606 P.2d at 334 (analyzing effect inadequate education has on impoverished children in deciding that wealth is suspect classification).

168. See *supra* note 109 and accompanying text.

169. See *supra* notes 113, 131 and accompanying text; and text accompanying note 140.

170. See *supra* notes 116-123 and accompanying text (describing situation in New York where judicial and legislative inaction has left inner-city students with meaningless educations).

171. See *supra* notes 109, 111 and accompanying text (describing how courts have failed to provide remedy in many states, causing lack of uniformity in educational opportunities available in public schools throughout nation).

School District v. Rodriguez,¹⁷² and the educational situation in the inner-cities has declined considerably.¹⁷³ Although the federal courts are not currently receptive to school finance claims, only a federal remedy can ensure quality education for the urban disadvantaged and thereby provide an escape for these innocent children.¹⁷⁴ At minimum, inner-city students should challenge school finance inequities in state courts under the novel equal protection approach of *Plyler v. Doe*¹⁷⁵ in order to address their unique situation and create support for an approach which could ultimately prevail on the federal level.¹⁷⁶

A. THE EQUAL PROTECTION CLAUSE SHOULD APPLY TO
INVALIDATE DISPARATE FUNDING SCHEMES WHICH
DENY EQUAL EDUCATIONAL OPPORTUNITIES FOR
POOR URBAN STUDENTS

Poor urban school districts should present their unique situation of school funding disparities,¹⁷⁷ coupled with pronounced educational needs,¹⁷⁸ on the theory of *Plyler*. This proposal demands that courts apply heightened scrutiny under state and federal equal protection analysis when confronting discrimination against the inner-city poor in their quality of education. Because the government has a substantial interest in training children to be useful participants in a democratic society, the courts would hold the discrimination unconstitutional.

172. See *supra* notes 65-71 and accompanying text (explaining reasoning and holding of *Rodriguez*).

173. See Kozol, *supra* note 1, at 223 (stating that in 1991, "[i]n San Antonio, where Demetrio Rodriguez brought his suit against the state in 1968, the children of the poor still go to separate and unequal schools").

174. See *supra* part II.B. (describing inability of state courts to create uniform and adequate remedy for urban poor).

175. 457 U.S. 202, 216-24 (1982).

176. See *infra* part III.B. (explaining how federal precedent supports approach).

177. See *supra* notes 48-50 and accompanying text (describing great funding disparities between rich and poor districts); notes 51-55 and accompanying text (explaining effects of *municipal overburden* and focusing on resulting lack of school funding in poor urban school districts).

178. See *supra* part I.A. (describing special needs of children who live in concentrated poverty areas, and explaining need for education to help children escape cycle of poverty).

1. Why Heightened Scrutiny Is Appropriate for Poor Urban Students per *Plyler*

Although the United States Supreme Court has not declared poverty¹⁷⁹ a suspect class,¹⁸⁰ poor urban students constitute a *definable* group of poor within *Plyler* because of their unique social, economic, and political situation.¹⁸¹ Moreover, although the *Plyler* Court did not find that Hispanic illegal aliens comprise a suspect class,¹⁸² it nonetheless applied heightened scrutiny to their denial of education because the discrimination created "special disabilities upon groups disfavored by virtue of circumstances beyond their control."¹⁸³ The Court stressed the special circumstances of *children* born into an underclass and found that to punish them—essentially for their birth—would produce a result contrary to "fundamental conceptions of justice."¹⁸⁴

Similarly, poor urban students should enjoy special constitutional protection from the denial of a meaningful education because disparate school funding unfairly discriminates against them and burdens them with a great competitive disadvantage.¹⁸⁵ Inequitable financing discriminates against inner-city students simply because they live in concentrated poverty areas, which is a situation beyond the children's control. Indeed the unequal contest among students caused by disparate financing resembles a "tainted sports event," fixed for the urban poor to

179. *But see* Menacker, *supra* note 25, at 1093-98 (arguing that poverty should be considered suspect classification for federal equal protection review). This Note's proposal differs from Dr. Menacker's in that it does not argue that poverty alone is a suspect class. Instead, this Note shows that the urban poor comprise a definable category of poor who suffer distinct disadvantages, and because discrimination in educational quality amplifies those disadvantages, the discrimination should be treated with heightened scrutiny.

180. *Supra* note 70 and accompanying text; *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33-34, *reh'g denied*, 411 U.S. 959 (1973).

181. *See supra* Part I.A. (describing social, economic, and educational disadvantages of inner-city students).

182. *Plyler v. Doe*, 457 U.S. 202, 202 (1982); *see also supra* notes 91, 99-100 and accompanying text (explaining the *Plyler* decisions' treatment of suspect class analysis).

183. *Plyler*, 457 U.S. at 217 n.14.

184. *Id.* at 219-20.

185. *See supra* note 121 and accompanying text (describing *R.E.F.I.T.* court's acknowledgement that poor urban students need special educational support in order to compete with students from wealthier areas, yet disadvantaged children receive inadequate and unequal education).

lose.¹⁸⁶ Most tragically, these children cannot replay the game.¹⁸⁷

Although the Supreme Court in *Plyler* stated that education does not rise to the level of a fundamental right under the federal constitution,¹⁸⁸ the Court applied heightened scrutiny to the illegal aliens' denial of education because education plays a fundamental role in a democratic society,¹⁸⁹ and because denying education would marginalize these children from all political and economic participation in society.¹⁹⁰ Whereas *Plyler* involved *complete* denial of free education,¹⁹¹ states do not entirely deny education to urban poor. Nevertheless, inner-city children receive blatantly defective schooling which in many circumstances creates a *functional denial* of education.¹⁹²

Moreover, the *Plyler* Court focused on the *creation of a discrete underclass* as the primary reason that denial of education to illegal aliens was unconstitutional.¹⁹³ Defective urban education perpetuates the same political and economic marginalization in the inner-city¹⁹⁴ that the Court feared complete denial of education would cause among the illegal aliens in *Plyler*. The inability of the impoverished urban citizens to bring about the repeal of disparate funding systems through the state legislatures provides a compelling example of their lack of political power.¹⁹⁵ Their marginalization becomes greatly amplified because poor urban children receive the lowest quality educa-

186. See Kozol, *supra* note 1, at 180 (using metaphor of "tainted sports event").

187. See *id.* (stressing "terrible finality" of unequal education due to inability to replay one's childhood).

188. *Plyler*, 457 U.S. at 221; see *supra* note 90 and accompanying text.

189. See *supra* note 94 and accompanying text.

190. See *supra* notes 95-96 and accompanying text.

191. See *supra* note 98 and accompanying text (describing concurrences by Justices Powell and Blackmun which explain that *Plyler* involves complete denial of education).

192. See *supra* notes 22-23, 26-30, and accompanying text (describing egregious situations in many urban schools).

193. *Supra* notes 96-98 and accompanying text.

194. See *supra* notes 40-41 and accompanying text (describing cycle of poverty which infects urban underclass).

195. See Kosterlitz, *supra* note 4, at 1769-70 (explaining difficulty of passing funding equalization legislation because wealthy exert more influence than those most disadvantaged by status quo); *supra* notes 115-123, 127 and accompanying text (describing legislative deadlock which forecloses educational improvement for urban poor, especially when courts will not provide remedy).

tion,¹⁹⁶ denying them the educational and vocational skills necessary for meaningful participation in society.¹⁹⁷

Because the urban poor suffer unique disadvantages and because education is essential to prevent the groups' continued marginalization, courts should apply heightened scrutiny to funding discrimination. Independently, the urban poor do not constitute a suspect class, and education is not a fundamental interest. When, however, a state exacerbates the particular disadvantages of urban poverty by allowing discrimination in the quality of education¹⁹⁸ available to the inner-city poor, equal protection demands heightened scrutiny.¹⁹⁹

2. Disparate Funding of Poor Inner-City Schools Does Not Serve a "Substantial Goal"²⁰⁰ and Therefore Fails to Survive Heightened Scrutiny

As in *Rodriguez*,²⁰¹ states often claim that increased local control over education provides a "legitimate"²⁰² or "substantial"²⁰³ state interest which flows from disparate funding because such financing mechanisms allow residents of each district to determine the level of local taxes that they will devote to their schools.²⁰⁴ The argument for local control does not pro-

196. See *supra* notes 22-23 and accompanying text (noting educational crisis which falls most heavily on urban poor).

197. The court in *Abbott v. Burke* described the urban poor as "doubly mistreated: first, by the accident of their environment and, second, by the disadvantage added by an inadequate education." 575 A.2d 359, 403 (N.J. 1990).

198. See *supra* notes 42-50 and accompanying text (explaining that this discrimination in educational quality is due to unequal and inadequate funding).

199. See *supra* note 102 and accompanying text. Courts should apply heightened scrutiny, as it was applied to the illegal aliens in *Plyler*, when the state places an underclass at an extreme disadvantage for reasons beyond their control.

200. See *supra* notes 92-93 and accompanying text (describing heightened scrutiny analysis per *Plyler* which requires court to find that discriminatory law furthers "substantial state goal" in order for court to uphold it).

201. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 48-55, *reh'g denied*, 411 U.S. 959 (1973); see *supra* note 71. The argument for local control withstood *rational basis* equal protection review of the "adequate" school financing system in *Rodriguez* but the argument would be too weak to withstand *heightened scrutiny*, especially when applied to the many inner-city schools which are *inadequate*.

202. See *supra* note 162 (presenting state argument that local control is "legitimate" state interest).

203. See *Serrano v. Priest*, 557 P.2d 929, 953 (Cal.) (en banc), *cert. denied*, 432 U.S. 907 (1977) (rejecting state's argument for local control as "substantial" state interest under strict scrutiny equal protection review).

204. See *supra* note 42 and accompanying text (stating that states base school funding primarily on local property taxes).

vide even a legitimate state interest in the case of poor urban districts,²⁰⁵ because these districts with exaggerated needs lack sufficient funds to have any meaningful control.²⁰⁶ Local control therefore fails to provide a "substantial state goal" to satisfy heightened scrutiny analysis of discrimination in the education of urban poor. At the least, to the extent *Plyler* offers scrutiny which balances competing interests,²⁰⁷ the goal of local control would fail to supersede the overriding state interest in educating children for participation in a democratic society and in providing the urban poor with skills necessary to aid them in their escape from the urban underclass.

The *Plyler* Court espoused the government's overriding interest in preventing *illegal aliens* from becoming a marginalized underclass.²⁰⁸ The federal government, therefore, has an even greater interest in aiding *American citizens* in breaking away from government assistance and becoming productive members of society.²⁰⁹ As the Supreme Court stated in *Plyler*, "[i]t is difficult to understand precisely what the State hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime."²¹⁰ The federal interest in providing an adequate education in order to prevent the persistence of the urban underclass would therefore prevail over the goal of local control, and discriminatory school funding would be held unconstitutional.

205. Many states no longer adhere to this argument. See, e.g., *supra* note 162 (describing Tennessee case in which local control did not provide a rational basis for equal protection review of a disparate funding scheme).

206. See *supra* notes 44-45 (describing how impoverished districts cannot generate sufficient funds for rudimentary education, let alone needed services); see also *Rodriguez*, 411 U.S. 1, at 83, 84 (Marshall, J., dissenting) (exclaiming: "[i]t is an inescapable fact that if one district has more funds available per pupil than another district, the former will have greater choice in educational planning than will the latter").

207. See *supra* notes 93, 96, and accompanying text (explaining how in applying heightened scrutiny, the Court "balanced" state interest involved with hardship suffered by complainants).

208. *Plyler v. Doe*, 457 U.S. 202, 230, *reh'g denied*, 458 U.S. 1131 (1982) (stating that federal interest in providing illegal aliens with education was to prevent them from adding to "problems and costs of unemployment, welfare, and crime"); see also *supra* note 96 and accompanying text.

209. See Henry & Welch, *supra* note 7, at 7. Poor educational programming in the inner-cities costs states billions of dollars. *Id.* For example, high school dropouts (with the largest percentage of dropouts in the central city) "cost America \$240 billion in lost earnings and forgone taxes over their lifetimes." *Id.*

210. *Plyler*, 457 U.S. at 230.

B. CONSISTENCY WITH PRE-EXISTING CASE LAW

As described above, this Note's proposal fits neatly within the holding of *Plyler v. Doe*.²¹¹ Other federal precedents, like *San Antonio Independent School District v. Rodriguez*,²¹² support, or at least do not foreclose, this Note's proposal. Indeed, the proposal benefits from the United States Supreme Court's repeated espousals confirming the importance of education,²¹³ and from the Court's democratic theory of the Equal Protection Clause first announced in *Carolene Products*.²¹⁴

Although the equal protection proposal advanced in this Note may appear to conflict with *Rodriguez*,²¹⁵ upon closer analysis the decision allows for the proposal. *Rodriguez* left unanswered whether the Constitution provides a right to some minimum threshold of education.²¹⁶ The Supreme Court would have the opportunity to address this issue through a federal constitutional challenge to disparate financing schemes in poor urban schools, because many of these schools fail to offer a minimally adequate education.²¹⁷

An equal protection challenge based on the *Plyler* theory would also comply with the *Rodriguez* analysis because impoverished, urban children comprise a "definable category of 'poor' people."²¹⁸ The *Rodriguez* plaintiffs provided no "definitive description" or "delineation" of their class.²¹⁹ They simply represented a general, amorphous pool of poor persons. Indeed, the *Rodriguez* Court seemed to invite an equal protection challenge to a discriminatory school funding scheme which burdens a definable group of poor.²²⁰

The urban poor comprise a distinguishable category of poor who suffer particular disadvantages which impoverished per-

211. See *supra* part III.A.

212. 411 U.S. 1 (1973).

213. See *supra* notes 74-75 and accompanying text (explaining the Court's view in *Brown v. Board of Educ.* that all are entitled to education "on equal terms").

214. See *supra* notes 80-81 and accompanying text.

215. See *supra* notes 66-71 and accompanying text (explaining why the *Rodriguez* plaintiffs did not obtain a federal remedy).

216. See *supra* notes 78-79 and accompanying text.

217. See, e.g., *Reform Educ. Fin. Inequities Today (R.E.F.I.T.) v. Cuomo*, 578 N.Y.S.2d 969, 973 (N.Y. App. Div. 1991) (presenting plaintiffs' argument that many urban districts offer inadequate educational opportunities but state court fails to identify "minimum standard" with which each school must comply).

218. *Rodriguez*, 411 U.S. at 25; see *supra* note 83 and accompanying text.

219. *Rodriguez*, 411 U.S. at 19; see *supra* note 84 and accompanying text.

220. See *supra* note 85 and accompanying text.

sons elsewhere do not experience.²²¹ Uniquely urban problems of violence, ethnic strife, and overcrowded classrooms require expensive special services for inner-city students.²²² Low funding levels make it nearly impossible to pay for such programs, let alone provide for basic education.²²³ To further add to the urban educational malaise, municipal overburden soaks up local property tax funds, leaving little money for basic educational needs.²²⁴ These factors converge to create the distinguishable condition of the impoverished inner-city students.

Above all, the argument for the urban poor rests on the purpose of the Equal Protection Clause "to work nothing less than the abolition of all caste-based and invidious class-based legislation."²²⁵ Disparate school funding systems are "caste-based." Low-quality education compounds other disadvantages of the inner-city children, and excludes them from political and economic participation.

The United States Supreme Court confirmed that the basis of the Equal Protection Clause lies in protecting the politically powerless from those who have disproportionate influence.²²⁶ The urban poor lack political power as evidenced by their inability to eliminate disparate funding systems.²²⁷ Moreover, the scant power they have retained will disappear if disparate funding prevents inner-city children from gaining the educational skills they need to become political contenders.

Educational disparities aside, the urban poor find competing politically with the wealthy very difficult.²²⁸ The state must offer quality education in the inner-cities to diminish one disad-

221. See *supra* part I.A. (describing how central city schools offer lowest quality education, negatively affecting children most in need of education to help them escape from deteriorating urban landscape).

222. See *supra* notes 30, 32-34 and accompanying text (describing bleak situation inner-city students face).

223. See *supra* notes 44-47 and accompanying text (explaining how funding systems based on local property taxes cause disparities, and how usually impoverished areas of central cities are those most unable to raise sufficient funds).

224. See *supra* notes 47, 51-55 and accompanying text.

225. *Plyler v. Doe*, 457 U.S. 202, 213 (1982).

226. See *supra* notes 80-81 and accompanying text.

227. See *supra* notes 121, 127-128 and accompanying text (noting inability of inner-city poor to cause repeal of inequitable financing schemes).

228. The Supreme Court has acknowledged that the wealthy wield disproportionate political power over the poor. See *supra* note 81 (explaining Supreme Court holding in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), recognizing overwhelming political influence of wealthy and upholding constraints on political speech in order to contain this disproportionate power).

vantage of urban poverty, and provide one area in which the urban poor can begin on equal footing with the rest of society.²²⁹ As the Court announced: "all persons similarly circumstanced shall be treated alike."²³⁰ The underlying purpose of the Equal Protection Clause and past federal precedents thus bolster the argument for the inner-city poor.

C. APPLICATION OF THE PROPOSAL TO ENSURE A UNIFORM REMEDY FOR ALL POOR INNER-CITY STUDENTS

The equal protection proposal per *Plyler* would best address the plight of the inner-city poor if applied on a federal level. Uniform application of the proposal on a state level, however, could provide remedies sensitive to the unique disadvantages of urban students and create a basis for an ultimate federal remedy. Many issues surround determining the most appropriate remedy to ensure a meaningful education for the urban poor, and a complete discussion of these issues would transcend this Note's scope.²³¹ The key aspect of an ultimate federal remedy, however, lies in the creation of a uniform, national mandate that states provide all children, including impoverished inner-city students, with a meaningful public education.²³²

A comprehensive remedy first requires that the courts hold disparate and inadequate school funding systems unconstitutional as applied to poor urban students.²³³ Next, like the New Jersey Supreme Court in *Abbott v. Burke*,²³⁴ courts could require state legislatures to provide adequate funding for impoverished, inner-city districts—funding which is not dependent on local property taxes.²³⁵ Also essential for a full remedy is that

229. See *supra* note 186 and accompanying text (comparing disparate funding systems with "tainted sports event"). States could help remedy the "tainted sports event" with equalized funding.

230. F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

231. See *supra* note 113, 115, 124-125 and accompanying text (describing problems that state courts have encountered in devising remedies, including separation of powers concerns). A full discussion of federal court remedies for school finance reform involves a myriad of political issues and ventures beyond the scope of this Note.

232. State officials could delineate exactly what comprises a "meaningful education," using objective criteria. Meanwhile, the federal government could establish performance goals and require the states to show improvement in order to receive federal funding.

233. See *supra* part III.A. (explaining how plaintiff school districts should challenge school funding disparities under *Plyler* theory).

234. See *supra* notes 150-154 and accompanying text.

235. See *supra* part I.B. (describing how school funding based on local property taxes results in low-quality education for inner-city children).

states adjust financing levels for the higher costs of the inner-city²³⁶ and ensure sufficient funding to provide urban children with needed services.²³⁷ Courts could reserve to state legislatures the power to devise plans appropriate for their states, which comply with the courts' mandate.²³⁸ Although the current Supreme Court may not welcome school finance challenges, ultimately this Note's proposal could provide a federal remedy for inner-city students which would create awareness and involvement on a national level. Courts' initiatives would force the federal government to supplement their rhetoric²³⁹ with real action for the future of impoverished urban children. These children can no longer patiently await an "ultimate 'political' solution sometime in the indefinite future while, in the meantime, [they] unjustifiably receive inferior educations that 'may affect their hearts and minds in a way unlikely ever to be undone.'"²⁴⁰

CONCLUSION

The inner-city poor suffer the ills of their decaying urban landscape while states fail to provide them with quality education which would aid them in their escape from the cycle of poverty. Federal courts have not addressed the school finance issue since *San Antonio Independent School District v. Rodriguez* in 1973, although *Rodriguez* clearly did not foreclose a federal remedy. Moreover, state courts have either refused to confront the issue or have failed to provide comprehensive, uniform remedies for the inner-city poor. The time is ripe for federal courts to require states to provide urban children with a quality education so that they "might be able somehow to soar up above the hopelessness, the clouds of smoke and sense of degradation all around them."²⁴¹

236. See *supra* notes 51-55 and accompanying text (describing problems associated with municipal overburden and drain on tax revenues which occurs in central cities).

237. See *supra* part I.A. (describing heightened needs of urban poor due to social and economic decay of urban landscape).

238. See *supra* note 124 and accompanying text (describing how state courts have been comfortable with school financing remedies that leave details of the funding schemes to state legislatures).

239. See *supra* notes 3-6 and accompanying text (describing how federal government has criticized American education while decreasing federal education expenditures and failing to develop national standards).

240. *Rodriguez*, 411 U.S. at 70, 71-72 (Marshall, J., dissenting) (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954)).

241. Kozol, *supra* note 1, at 41.

Plyler v. Doe provides a conceptual framework for equal protection analysis at the state level, and ultimately at the federal level, that addresses the unique disadvantages of inner-city poor. Using the *Plyler* framework, courts should apply heightened scrutiny equal protection review to invalidate unequal and inadequate school funding schemes which discriminate against poor urban school children. This particular group of children requires heightened constitutional protection to assure them an education which would end their continued marginalization from meaningful economic and political participation in American society.

