THE ROLE OF AMERICAN INDIVIDUALISM IN THE CURRENT STATE OF PUBLIC SCHOOLS

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INTRODUCTION

It is an undisputed fact of life—the children of today will be the leaders of tomorrow. If these children are to successfully lead in the future, they must develop leadership skills. Are opportunities for such leadership development equally available to all, or are some children deprived of the indispensable tools necessary to fulfill their role as future leaders? Unfortunately, in the current public education system, some children are deprived of fulfilling their leadership potential.

This paper will posit American individualism, coupled with its historical and modern-day racism, has bred a nation of indifferent individuals who hide behind the rhetoric of private choice to justify blatant educational inequities, most notably exemplified in judicial decisions on public education and legislative actions. In exploring extreme American individualism, this paper will focus narrowly on elementary and secondary education, as well as the case law surrounding education funding.

The first part of this paper discusses past and present inequities in funding public education, with specific emphasis on Illinois. This paper argues conditions in Illinois have not improved despite the changes that have been made. The second part discusses the concept of a “judicial blindfold” – how a prevailing majority of the United States Supreme Court has closed its eyes to the immense damage certain individual private choices cause to society as a whole. This portion also examines how the Illinois Supreme Court has followed in the footsteps of the United States Supreme Court, as well as how the legislatures of several states have responded to the issue of educational inequality. The third part specifically explores how American individualism justifies willful blindness and indifference to blatant educational inequities. This paper proposes that a cultural shift is necessary to address these inequalities. The paper further advises that a shift may be accomplished through understanding the inherent connection between education and the liberty to participate in a democratic government, which is exemplified by Justice Kennedy’s liberal jurisprudence. This paper concludes with responses to an anticipated originalist critique; even though the founders regarded education as necessary for the realization
of a free and democratic government, the founders did not anticipate this characterization of education.

I. A LOOK AT THE STATE OF PUBLIC SCHOOLS IN AMERICA: THEN AND NOW

Illinois

In his book, Savage Inequalities: Children in America’s Schools, Jonathan Kozol recounts his personal observations from the 1980s of the vast disparities in the public school system between classes and races in East Saint Louis, Chicago, New York City, and Camden amongst other cities. In the first two chapters, Kozol described schools predominantly attended by Black and Hispanic children in East Saint Louis and Chicago, where systematic problems in each city impacted the local school districts. In Chicago, Kozol noted an aging teacher predicament, finding a two-to-one ratio of teachers older than sixty years of age compared to teachers younger than thirty years of age. Compounding the aging teacher dilemma, the school district’s low salary scale made it difficult to attract youthful teachers. Consequently, these circumstances forced the city to rely on low-paid and sometimes unreliable substitutes, who represented more than one-quarter of the teaching force. Worse yet, the local systematic problems also created a school supply shortage, such that in one Chicago school, a deficiency of

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3 Id. at 7, 23, 42.

4 Id. at 51.

5 Id.

6 Id. at 51-52.
beakers and Bunsen burners forced a chemistry class to substitute popcorn poppers for Bunsen burners and pieces of plastic soda bottles for laboratory dishes.\(^7\) Other examples of the effects of funding shortages ranged from the use of outdated textbooks and non-existent science laboratories to insufficient bathroom facilities with only two functioning facilities for 700 children.\(^8\) Alternatively, a nearby affluent, suburban school, where Black children constituted only 1.3% of the total school population,\(^9\) boasted superior laboratories, up-to-date technology, seven gymnasiums, and even an Olympic-sized pool.\(^10\)

The evident disparities between Chicago and neighboring suburban schools did not arise by happenstance. The parents of students who attended those more affluent, suburban districts consistently vetoed redistribution of school funding to the poorer districts by a ratio of nine-to-one.\(^11\) That sentiment was echoed by suburban legislators who characterized the poorer districts as “sinkhole[s]”; to further elaborate, Governor Thompson explained, “[w]e can’t keep throwing money into a black hole.”\(^12\) As a result of those legislative funding decisions, high schools in Chicago received at least $3,000 less for each student per year in comparison to the amounts received by affluent neighboring suburban public high schools in 1989.\(^13\) Kozol explained the discrepancy was due, at least in part, to the “arcane machinery” by which Illinois financed public education – property taxes.\(^14\)

Although local property taxes were offset by federal and state contributions, those supplemental contributions were insufficient to account for the local wealth disparities amongst the city and its suburbs.\(^15\) Cities’ limited tax revenues must also be diverted to meet non-educational needs that wealthy suburbs face on a more modest level.\(^16\) For example, police and fire department costs are greater in cities as a result of higher crime rates and more dilapidated housing.\(^17\) According to Kozol, total yearly spending in Illinois, accounting for all funding sources, ranged from $2,100 per student in the poorest districts to more than $10,000 per student

\(^{7}\) Id. at 52.  
\(^{8}\) Id. at 63.  
\(^{9}\) Id. at 66.  
\(^{10}\) Id. at 65.  
\(^{11}\) Id. at 67.  
\(^{12}\) Id. at 53.  
\(^{13}\) Id. at 54.  
\(^{14}\) Id.  
\(^{15}\) See id. at 55.  
\(^{16}\) Id. at 56.  
\(^{17}\) Id.
in the richest districts. Such funding inconsistencies translate to vast discrepancies in educational aptitudes; 27% of high school graduates read at an eighth-grade reading level or below, whereas many students who attended affluent suburban schools read at a twelfth-grade level by the time they were in seventh grade. Kozol estimated that “nearly half the kindergarten children in Chicago’s public schools [would] exit school as marginal illiterates.”

While there have been changes since Kozol wrote his book in the late 1980s, some conditions have remained the same. Educational disparities between districts persist due to Illinois’ continued overreliance on local property tax funding. Although the Illinois constitution places the “primary responsibility to finance public education” on the state, “the [s]tate pays only 36% of school expenses compared to the national average of 50%.” In 2010, Illinois was one of three states that received an failing grade for funding fairness in a report prepared by Forbes; more recently, in 2012, Illinois was ranked 48th in the nation for state funding of public schools. The per-pupil expenditure in predominantly minority districts was approximately half of the per pupil expenditure in predominantly White districts. For example, Northbrook School District, which was over 97% White and Asian, spent $15,706 per student annually, whereas Dolton School District, which was 97.6% Black, spent only $7,978 per student annually.

Not only have per pupil expenditure discrepancies remained, but the racial composition of failing public schools continues to mirror the statistics noted in Kozol’s book. As of 2004, in Illinois, “a [B]lack student [was forty times] more likely to attend a chronically failing public

18 Id. at 57.
19 See id. at 58.
20 Id. at 65.
21 Id. at 58.
22 See Rick Guzman, An Argument for a Return to Plessy v. Ferguson: Why Illinois Schools Should Reconsider the Doctrine of “Separate but Equal” Public Schools, 29 N. Ill. U. L. Rev. 149, 162 (2008). Despite its complexity, the Illinois school funding formula essentially sets a minimum pupil expenditure and then distributes General State Aid based on a three-tiered system, which considers the ability of a school district to pay, average daily attendance, and the poverty concentration of students within the district, to distribute state aid to the districts with the greatest need, although the formula does little to compensate for the overreliance on property taxes. Id.
23 ILL. CONST. art. X, § 1.
24 See Guzman, supra note 22, at 163.
26 Id.
27 See Guzman, supra note 22, at 162.
28 Id.
school than a white student” since a majority of the state’s worst schools are predominantly Black. Correspondingly, “[a] recent study by The Civil Rights Project at Harvard University ranked Illinois . . . ‘among the top four segregated states in the nation for [B]lack students.’”

In addition, current reading levels have hardly improved since the release of Kozol’s book; there are still enormous disparities amongst neighboring Illinois schools, such as between Aurora and Naperville. In Aurora, where 90% of the student body is Black or Hispanic, “fewer than [29% of its high school students] met the reading standards,” while “over 70% of the students met or exceeded the reading standards in Naperville’s predominantly White . . . high school.” Teachers in districts comparable to Naperville are paid 20% higher salaries than those in districts like Aurora, which provide substantial incentives and prove to be more attractive for attaining and retaining quality teachers. These phenomena are similar to those described by Kozol in the late 1980s. While Illinois schools may now possess more than two working facilities for 700 students and working Bunsen burners, equality in public education remains out of reach for some of the Illinois populace.

New Jersey

New Jersey’s public education system has also been criticized for the sustained disparate conditions its students experience. Kozol observed the public schools of Camden, East Orange, and Jersey City, which faced, much like urban schools in Illinois, teacher and supply shortages in some districts, disparate conditions between neighboring public schools, and the effect of overreliance on local property taxes for educational funding.

The difficulties Illinois faced in attracting and retaining quality teachers was also a
predicament in some New Jersey public schools.\textsuperscript{38} The principal of Pyne Point Junior High School simply explained that “[s]alaries are far too low[,] . . . teachers have to work two jobs to pay the rent.”\textsuperscript{39} The same public schools with teacher shortages also lacked basic supplies.\textsuperscript{40} In Camden, Kozol noted half of the students had no textbooks.\textsuperscript{41} In Pyne Point Junior High, the typing teacher utilized “battered-looking” typewriters “that should have been thrown out ten years [prior]” for computer instruction\textsuperscript{42} and science classrooms in some districts contained neither laboratory stations nor proper instruments – students utilized plastic cocktail glasses for makeshift beakers.\textsuperscript{43} Additionally, similar to Illinois, some New Jersey public school facilities were rundown exposed plaster remnants where ceiling tiles were once located and school yards littered with various forms of refuse, including hypodermic needles discarded by nearby medical labs.\textsuperscript{44}

According to Kozol, the deplorable conditions in some New Jersey public schools were nonexistent in neighboring districts.\textsuperscript{45} Compare, for instance, the East Orange High School, with 2,000 students, 99\% of whom were Black, which had four physical education teachers and no track field, to the nearby Montclair High School, which had two recreation fields, four gyms, a dance room, a wrestling room, a weight room with a universal gym, tennis courts, a track, indoor areas for fencing, and, not to mention, thirteen full-time physical education teachers for its 1,900 students.\textsuperscript{46} When per-pupil spending was compared, another nearby district, Millburn, spent $1,500 more per student than East Orange.\textsuperscript{47} These inequalities were a result of New Jersey’s educational funding method.\textsuperscript{48}

Despite new legislation aimed to address these disparities, little has changed for the

\textsuperscript{38} \textit{Id.} at 141.
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} \textit{Id.}
\textsuperscript{41} \textit{Id.} at 138, 141.
\textsuperscript{42} \textit{Id.} at 138-39.
\textsuperscript{43} \textit{Id.} at 139.
\textsuperscript{44} \textit{Id.} at 139-40.
\textsuperscript{45} \textit{Id.} at 157.
\textsuperscript{46} \textit{Id.}
\textsuperscript{47} \textit{Id.}
\textsuperscript{48} See N.J. DEP’T OF EDUC., \textit{Education Funding Report}, 54 (Feb. 23, 2012), http://www.nj.gov/education/stateaid/1213/report.pdf (“Before [the amount of State aid provided to the district] . . . can be calculated, the district’s “Local Fair Share” must be determined; Local Fair Share is the Department’s estimate of the district’s ability to raise local levy based on the district’s equalized property and income wealth. A district’s Adequacy Budget, less its Local Fair Share, is the amount of State aid due the district.”).
underfunded New Jersey public schools.49 Introduced in 2012, the Urban Hope Act “represented the first major departure in how state policy and programs deal with [thirty-one] low-income school districts.”50 The legislation enabled up to four public-private schools to be built and run by nonprofit organizations appointed by school boards.51 The Act’s effectiveness was quickly challenged; ultimately, further budget cuts for poor school districts were presented before the New Jersey Budget Committee.52

II. JUDICIAL BLINDFOLD AND LEGISLATIVE RESPONSES

Judicial Blindfold

Decisions by the U.S. Supreme Court in conjunction with some state supreme courts have either circumvented or abstained from the issue of educational inequities. Case law from the United States Supreme Court and the Illinois Supreme Court illustrates such judicial inaction.

U.S. Supreme Court

The Supreme Court in Plessy v. Ferguson promulgated the long-standing doctrine of separate but equal,53 which remained in force until Brown v. Board of Education.54 In Brown, the Supreme Court recognized the importance of educational equality:

[E]ducation is perhaps the most important function of state and local governments. . . . It is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship. . . . In these


50 Id.

51 Id.


53 Plessy v. Ferguson, 163 U.S. 537 (1896) (holding that separate facilities for Blacks and Whites satisfied the Fourteenth Amendment so long as those facilities were also equal).

days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right[.] which must be made available to all on equal terms.\textsuperscript{55}

Nineteen years later, the Supreme Court had another opportunity to remove barriers, specifically wealth-based barriers, to equal educational opportunities in \textit{San Antonio Independent School District v. Rodriguez}.\textsuperscript{56} The Court, however, rejected plaintiffs’ claim under the Equal Protection Clause of the Fourteenth Amendment and upheld the Texas system of financing public education even though it was largely responsible for substantial inter-district disparities stemming from the differences in the amounts of money collected through local property taxation.\textsuperscript{57} In so holding, the Court determined the poor were not a suspect class\textsuperscript{58} and education was not a fundamental right entitled to strict scrutiny review.\textsuperscript{59}

The Court’s holding in \textit{San Antonio Independent School District} also questioned the assumption that the “poorest families are . . . clustered in the poorest property districts.”\textsuperscript{60} To rebut that assumption, the Court cited only one report from Connecticut\textsuperscript{61} and ignored evidence to the contrary.\textsuperscript{62} “Indeed, there is reason to believe that the poorest families are not necessarily clustered in the poorest property districts. A recent and exhaustive study of school districts in Connecticut concluded that [i]t is clearly incorrect . . . to contend that the 'poor' live in 'poor' districts.”\textsuperscript{63} That reasoning begs the question: where exactly do the poor live? The Court circumvented the logical connection between wealth and environment – poor individuals usually cannot afford to live in an affluent district and will, therefore, most likely, live in a poor

\begin{footnotesize}
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\item Id. at 493 (emphasis added).
\item See id. at 15, 54-55.
\item Id. at 22-25 (Appellees failed to demonstrate the system operated to the “peculiar disadvantage of any class definable as indignant, or a composed of persons whose incomes are beneath any designated poverty level, . . . [to address] the fact that . . . lack of personal resources has not occasioned an absolute deprivation of the desired benefit[.] . . . [and to define any] . . . of the traditional indicia of suspectness.”).
\item Id. at 35-40 (noting “[e]ducation . . . [was] not among the rights afforded explicit protection in the Federal Constitution,” and the absolute denial of a federal government benefit was not at stake but a system providing a relatively worse public benefit was the basis).
\item Id. at 23.
\item Id. at 22-23; see also Guzman, \textit{supra} note 22, at 174 (noting the astounding nature of the majority’s sweeping generalization based on a single uncorroborated study from Connecticut).
\item See Kimberly Jenkins Robinson, \textit{The Case for a Collaborative Enforcement Model for a Federal Right to Education}, 40 U.C. Davis L. Rev. 1653, 1655-56 (2007) (citing several studies which show that low income and minority school children attend inferior schools relative to their more affluent and white counterparts).
\item \textit{San Antonio Indep. Sch. Dist.}, 411 U.S. at 23 (emphasis in original).
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Consequently, according to Justice Marshall, the majority ignored Brown’s earlier mandate – to make education available on equal terms. In his dissent, Justice Marshall noted:

Appellees do not now seek the best education Texas might provide. They do seek, however, an end to state discrimination resulting from the unequal distribution of taxable district property wealth that directly impairs the ability of some districts to provide the same educational opportunity that other districts can provide with the same or even substantially less tax effort. The issue is, in other words, one of discrimination that affects the quality of education which Texas has chosen to provide its children.

Nine years later in Plyler v. Doe, the Supreme Court invalidated a Texas law which effectively denied the right of education to undocumented children. In light of the total deprivation of education at issue, the Doe Court focused on the effect the Texas law would have on children of illegal immigrants. The Court considered the harm of decreased literacy, individual advancement, and self-sufficiency, as well as the social, economic, intellectual, and psychological effects the law would have on the students.

The Court’s reasoning in Plyler should also apply to a system of education that produces, essentially, the same harmful effects through grossly unequal education stemming from unequal funding. Due to the Supreme Court’s arguable abstention from addressing educational inequities, the issue became the states’ responsibility.

Illinois Supreme Court

In line with the aforementioned jurisprudence of the United States Supreme Court, the Supreme Court of Illinois held there was no constitutional guarantee of educational equality in Committee for Educational Rights v. Edgar. In Edgar, the plaintiffs alleged “under the present financing scheme, vast differences in educational resources and opportunities exist among the state’s school districts as a result of differences in local taxable property wealth[.]” and

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64 See Robinson, supra note 63, at 1655-56.
66 Id. at 115-16 (Marshall, J., dissenting).
68 Id. at 222-24.
69 Id.
70 Guzman, supra note 22, at 176-77 (evidence showed that entire classes of children are functionally illiterate or more than 90% non-proficient).
72 Id. at 1182.
challenged Illinois’ education funding under the state constitution’s equal protection clause. In its opinion, the court examined various provisions on education in the Illinois Constitution.

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. . . . The State has the primary responsibility for financing the system of public education.

To rationalize its holding in light of the language of the Illinois Constitution, the majority explained the constitutional language merely states it was the “goal” of the state to provide the best possible education, which does not equate to a constitutional guarantee of educational equality in the state of Illinois.

Interestingly, the court failed to note the modifier immediately preceding “goal” in the state Constitution: “fundamental.” When phrased as it is found in the state constitution – “A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities” – the language mandates educational development be pursued methodically. Other states have found state constitution provisions describing educational development as a fundamental goal raises the status of education to that of a fundamental right, based on even less stringent language in their respective Constitutions. The Edgar court also held that the “high quality” language used in the Illinois Constitution did not provide a principled basis for judicial standardization and, therefore, the task of defining high quality education was not a judicial function. As dissenting Justice Freeman noted, however, interpretation of the law is the province of the judiciary. Nevertheless, the Illinois Supreme Court left the Illinois Legislature to define “high quality education.” Since education has been placed within the

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73 Id.
74 Id. at 1183.
75 I.L.L. CONST. art. X, § 1.
76 Edgar, 672 N.E.2d at 1187 (“[T]his court reviewed [the legislative history] . . . and held that the final sentence of section [one] ‘was intended only to express a goal or objective, and not to state a specific command.’”).
77 See id.
78 I.L.L. CONST. art. X, § 1 (emphasis added).
79 See, e.g., N.H. CONST. pt. II, art. 83; see also Claremont Sch. Dist. v. Governor, 703 A.2d 1353, 1358 (N.H. 1997) (“[f]irst and foremost is the fact that our State Constitution specifically charges the legislature with the duty to provide public education. This fact alone is sufficient in our view to accord fundamental right status to the beneficiaries of the duty.”).
80 Edgar, 672 N.E.2d at 1191.
81 Id. at 1193.
82 See id. at 1207 (Freeman, J., concurring in part and dissenting in part).
83 See id. at 1193.
purview of states legislatures, each state has unsurprisingly defined its duty differently.\textsuperscript{84}

\textit{Legislative Responses}

Since the United States Supreme Court determined education was not a fundamental right,\textsuperscript{85} subsequent state legislative responses to improve educational equality in their respective states have varied.

\textbf{Illinois}

The Illinois Legislature has continued its overreliance on property taxes, despite overwhelming evidence that the system perpetuates the disparities between the highest- and lowest-poverty districts,\textsuperscript{86} consequently, Illinois sustains the worst achievement gap between poor and wealthy students in the nation.\textsuperscript{87} Specifically, the state uses a foundational formula to determine how much the state will contribute to each district to afford every student a “high quality” education.\textsuperscript{88} Originally, the “high quality” education level was set arbitrarily; now, the level is tied to real performance standards on the Illinois SAT.\textsuperscript{89} Despite improvements, the system has yet to properly supply Blacks and other minority students with an adequate education, let alone a “high quality” education.\textsuperscript{90}

\textbf{New Jersey}

Unlike the Illinois Supreme Court, the Supreme Court of New Jersey in \textit{Robinson v. Cahill} held the New Jersey Legislature’s system of financing public education violated the state’s constitutional guarantee of a “thorough and efficient” education due to the great disparity in per-pupil spending.\textsuperscript{91} The New Jersey Legislature, however, refused to comply with the

\textsuperscript{84} See Appendix II for constitutional language used by each state to provide for education.
\textsuperscript{85} \textit{San Antonio Indep. Sch. Dist.}, 411 U.S. at 35.
\textsuperscript{86} Guzman, \textit{supra} note 22, at 162.
\textsuperscript{87} Id.
\textsuperscript{89} Id.
\textsuperscript{90} See Guzman, \textit{supra} note 222, at 160.
\textsuperscript{91} Robinson v. Cahill, 303 A.2d 273, 297-98 (N.J. 1973).
court’s order until, after numerous legal challenges, the court closed the schools.92 The legislature’s reluctant compliance resulted in the passage of the Public School Education Act of 1975.93 That legislation was challenged with a later series of litigation in Abbott v. Burke.94 Specifically, plaintiffs alleged the Act did not sufficiently ameliorate the disparities between poor and wealthy districts.95 During the legislature’s multiple attempts to obey the court’s ruling to equalize funding, Abbott returned to the New Jersey Supreme Court twelve times.96 In its twelfth decision, the court approved various additional programs for the Abbott districts; the legislature complied with the court order to achieve parity.97 The aforementioned Urban Hope Act was also designed to equalize public school funding across districts.98 The effectiveness of that legislation has yet to be determined.

New York

In 2007, New York passed the Education Budget and Reform Act of 2007 that doled out more aid to public schools in poorer districts.99 Financial aid provided from 2007 through 2009 assisted schools by providing additional assistance to struggling students, reducing class sizes, and expanding programs that made school more engaging.100 Due to the budget crisis, however, these funds were frozen and the governor proposed an additional $1.4 billion in cuts to education funding, which would bring poor public schools back to their original funding levels.101

Texas

In recent years, Texas’ state sponsorship of public education has ranged from 33% to 45% while local property tax sponsorship has remained relatively constant around 45%, with the remaining amounts coming from federal sources, which demonstrates a significant continued

94 Id. at 454-56.
95 Id.
96 Ryan, supra note 92, at 459-61.
97 Id. at 461.
100 Id.
101 Id.
reliance on property taxes.\textsuperscript{102} The state has seen numerous attempts at reform, one of which proposed to use funds from the state’s education foundation to assist local districts that were unable to generate the minimum prescribed funding amount through property taxes.\textsuperscript{103} Critics contend this is not an effective equalization plan because it forces wealthy districts to send money to poorer districts without impartial state oversight.\textsuperscript{104}

Kentucky

Other state legislatures, for example, Kentucky’s, have followed their respective state supreme courts’ directives. The Kentucky Legislature enacted a sweeping and thorough reform package after the Supreme Court of Kentucky held that the state’s entire system of funding was unconstitutional and commanded the Kentucky Legislature to “re-create and re-establish a system.”\textsuperscript{105} The newly reformed package, the Kentucky Education Reform Act, “both increased expenditures overall and reduced spending disparities.”\textsuperscript{106} As a result, state funding increased by 34\%,\textsuperscript{107} and “the range between high- and low-spending districts dropped by 27\%.”\textsuperscript{108} The Act was “hailed as the ‘nation’s most comprehensive experiment in educational reform.’”\textsuperscript{109} The plaintiffs, who brought the lawsuit prompting reform, were from predominantly White, rural districts.\textsuperscript{110} Significantly, plaintiffs from White, rural districts tend to be more successful in bringing forth litigation that results in successful educational reform than plaintiffs from predominantly minority districts.\textsuperscript{111}

Vermont

In\textit{ Brigham v. State}, the Supreme Court of Vermont held that revenue disparities created by state reliance on local property taxes deprived children of their constitutional right to equal

\textsuperscript{102} TEXAS TAXPAYERS AND RESEARCH ASSOCIATION, AN INTRODUCTION TO SCHOOL FINANCE IN TEXAS (2012), available at \url{http://www.ttara.org/files/document/file-4f1732f763446.pdf}.


\textsuperscript{104} Id.

\textsuperscript{105} Id. \hfill \textit{See Rose v. Council for Better Educ. Inc.,} 790 S.W.2d 186, 214 (Ky. 1989).

\textsuperscript{106} Ryan, supra note 92, at 466.

\textsuperscript{107} Id.

\textsuperscript{108} Id.

\textsuperscript{109} Id.

\textsuperscript{110} Id.

\textsuperscript{111} Id. (detailing evidence tending to show that legislative responses to court orders when minority districts win are more obstinate than when non-minority districts with similar challenges win).
Four months after that decision, the Vermont Legislature enacted a bill creating a statewide reserve from property taxes for schools, which gave Vermont a mechanism to reallocate locally generated funds from wealthy districts to other districts. This “Robin Hood” approach generated widespread debate and opposition from taxpayers in wealthy districts. Legislation to end inequitable educational funding has been characterized as a “foot-dragging, half-hearted, two-faced effort, accompanied by much hemming and hawing, whimpering and whining, and winking and nodding.” This type of characterization is frequently employed by the public in its open and fierce opposition to the proposed plan of devoting additional resources to public schools attended primarily by minority children.

III. THE NEED FOR A CULTURAL SHIFT

The Role of American Individualism in the Current State of American Public Schools

The beauty of American individualism can be found in the U.S. Supreme Court’s protection of minority rights through its recognition of implicit Constitutional rights, such as the right to privacy and the right to raise one’s children as one sees fit. American culture, however, does not always cultivate societal harmony. Alexis Henri de Tocqueville described that concept in his book Democracy in America. He portrayed American individualism as

[a] mature and calm feeling, which disposes each member of the community to sever himself from the mass of his fellows and to draw apart with his family and friends, so that after he has thus formed a little circle of his own, he willingly

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113 Ryan, supra note 92, at 467-68.
114 Id. at 468.
116 Ryan, supra note 92, at 471.
leaves society at large to itself.\textsuperscript{119}

American individualism underlies the discourse of public school funding. As previously mentioned, the beauty of collectivism is the willingness to overlook one’s individual needs for the collective’s so that societal harmony may prevail. Society, unfortunately, does not embrace this ideal; the White majority has severed itself from its fellow creatures, leaving the rest of society to fend for itself.\textsuperscript{120} An example of such a cultural void is illustrated with the current divide found in Illinois public schools.\textsuperscript{121} American individualism lacks an explanation for the majority’s open and fierce rejection of attempts to equalize funding for all public schools,\textsuperscript{122} especially given the potential for great improvement in education quality for minority students. As previously mentioned, attempts at reform have either been met by a blind judiciary\textsuperscript{123} or legislative recalcitrance.\textsuperscript{124} When state legislatures institute change to benefit predominantly Black or Hispanic school districts, public outrage frequently pours from predominantly White districts.\textsuperscript{125}

W.E.B. Du Bois’ characterization of the White identity in his book, \textit{Souls of White Folk}, written over a hundred years ago, rings true even in today’s continuing battle over educational equality:

\begin{quote}
Being [W]hite means . . . having the power to reduce some realities to abstractions; to reduce some lives to statistics; to reduce some communities to worlds that are pervasively “different” and that intrude on “our” world only to the extent that they are at times geographically, or politically, proximate to our destinations. It means having the power to isolate and ignore.\textsuperscript{126}
\end{quote}

Du Bois’ proposes an unnervingly accurate description of judicial and legislative responses to inequality within educational institutions. How else may the obstinate reaction to equalizing education be explained? Of course, many would take offense to the suggestion that they are racist, but willful indifference is just as destructive. When individuals blur inequities by repeating rhetoric about private choice, they hide behind the notion that racism no longer exists

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\item[ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA: VOLUME 2, 98 (Phillips Bradley et al. eds., Henry Reeve trans., New York: Alfred A. Knopf, 1945) (1840).]
\item[Id.]
\item[Guzman, supra note 22, at 155-57 (noting that Illinois is one of the most segregated states in the nation).]
\item[Ryan, supra note 92, at 472-73.]
\item[Guzman, supra note 22, at 120.]
\item[See Ryan, supra note 92, at 457.]
\item[See id. at 467-68.]
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and placate themselves with the idea that they have nothing against racial minorities. By doing so, members of the White majority have transformed from active civil rights advocates, who made great strides toward equality, to “passive people of goodwill who think they do no harm.” There is still an unyielding barrier, or “glass ceiling,” evidenced by various sociological studies—

[Ninety-seven percent of the senior managers of Fortune 1000 industrial and Fortune 500 companies are white; 95 to 97% are male. . . . African American men with professional degrees earn 79% of the amount earned by white males who hold the same degrees and are in the same job categories.]

In general, the income of America’s White citizens averages approximately double that of America’s Black citizens; in addition, White citizens are two times more likely than Black citizens to live in a family with an income exceeding $50,000. Due to this income disparity, “public schools remain largely, involuntarily racially segregated.”

Research suggests individualism is correlated to negative racial attitudes and behavior, including a lack of empathy and discounting effects of racial discrimination. That notion explains the unending battle surrounding the creation of equal educational opportunities for minority students in America today. The idea that the current state of education cannot be attributed to any one individual, but instead is the result of private choice, is contradicted by both the history and present-day reality of American racism. Public schools in America are indeed the result of historical racial prejudice sanctioned by the state, coupled with modern day willful indifference, which is fostered by the “canon of ‘colorblindness’” and “the ethos of ‘individual choice.’” There is abundant evidence demonstrating inadequate funding results in inadequate education, which places all students in a position where they may not succeed and reach their

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127 See Hayman, supra note 115, at 674; Sharon Elizabeth Rush, Sharing Space: Why Racial Goodwill Isn’t Enough, 32 Conn. L. Rev. 1, 19 (1999) (discussing the identity of white people with goodwill, who advocate for color-blindness and reject affirmative action because in their view, racial equality already exists).

128 Rush, supra note 127, at 19.


130 See Hayman, supra note 115, at 678.

131 Rush, supra note 127, at 21 (emphasis added).

132 Hayman, supra note 115, at 674; see also PAUL M. SNIDERMAN & MICHAEL G. HAGEN, RACE AND INEQUALITY: A STUDY IN AMERICAN VALUES 107, 112 (1985).

133 Hayman, supra note 115, at 674.

134 Id.

135 See, e.g., Kozol, supra note 2.
full potential. Thus, many minority students in America are educated merely so that they remain in the same social status into which they were born. With such a state of affairs, the current public education system is arguably reminiscent of a time in American history when the some believed that Blacks should only receive vocational education.

Collectivism is the Way Forward

A cultural shift is necessary. Society must recognize the damage that willful indifference and blindness can cause to minority students who are denied equal educational opportunities. Knowledge of racism is insufficient; deliberate steps must be taken to acknowledge and overcome the practical effects of racism so society as a whole can benefit. Minority students are not the only victims of educational inequality. While de jure segregation is now prohibited and purposeful racism is no longer the norm, students often encounter the same segregation as preceding generations. These students, who come of age in homogenous schools, are likely to perpetuate the same evil previous generations faced, as younger generations emerge as the leaders of tomorrow. “Racism’ is perpetuated, in a sense, by its own long-standing tradition . . . [I]nauthentic attempts to resolve the dissonance may actually be the entrenchment of racist beliefs.” Consequently, American society is plagued with a never-ending cycle.

This predicament, however, is not insurmountable. Indeed, evidence suggests racism can be unlearned. If racism can be unlearned, the requisite cultural shift is possible and equal opportunities will be available for all students, regardless of race or ethnicity.


139 See, e.g., Ryan, supra note 92, at 473 (studies show that 82% of whites assumed school finance reform would benefit only minorities).

140 See Hayman, supra note 115, at 669-70.

141 Id.

142 Id.

143 Id. at 670.
Justice Kennedy’s Liberal Jurisprudence as a Means of Achieving Collectivism

A cultural shift may be achieved in the same manner in which cultural shifts are often achieved: through the judiciary. The U.S. Supreme Court’s awareness of the effects of educational inequity was demonstrated in landmark decisions which have shaped the nation’s ideology in many respects. Justice Kennedy’s opinions on liberty interests, especially those regarding free speech, are enlightening. His approach is relevant, as it recognizes that such freedoms inevitably depend upon an educated public. Many state constitutions have already recognized the connection between education and the liberty to participate in our democratic government. As previously demonstrated in parts I and II, students in predominantly minority districts have not received, historically or presently, the education necessary to properly equip them to participate in a democratic government. Consequently, there can be no true marketplace of ideas if a substantial number of citizens – in this case, minorities – lack the requisite tools to exercise their free speech right.

Justice Kennedy’s position on liberty is influenced by egalitarian philosophers, such as John Stuart Mill. Mill remarked upon the importance of the freedom of speech: “[F]reedom

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144 Hayman, supra note 115, at 728 (explaining Supreme Court decisions “send a powerful normative message about the behaviors that are constitutionally acceptable and socially appropriate”).
147 See, e.g., CAL. CONST. art. IX § 1 (provides that “a general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people”); TEX. CONST. art. VII, § 1 (provides that “a general diffusion of knowledge [is] essential to the preservation of the rights and liberties of the people”); ARK. CONST. art. 14, § 1 (provides that “intelligence and virtue [are] the safeguards of liberty and the bulwark of a free and good government”); MO. CONST. art. IX, § 1(a) (provides that “a general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people”); IDAHO CONST. art. IX, § 1 (provides that “the stability of a republican form of government depend[s] mainly upon the intelligence of the people”); N.D. CONST. art. VIII, § 1 (provides that “a high degree of intelligence . . . on the part of every voter in a government by the people [is] necessary in order to insure the continuance of that government and the prosperity and happiness of the people”); IND. CONST. art. 8, § 1 (provides that “knowledge and learning, generally diffused throughout a community, [is] essential to the preservation of a free government”); S.D. CONST. art VIII, § 1 (provides that “the stability of a republican form of government depend[s] on the . . . intelligence of the people”); MINN. CONST., art. XIII, § 1 (provides that “the stability of a republican form of government depend[s] mainly upon the intelligence of the people”); R.I. CONST. art. XII, § 1 (provides also that “the diffusion of knowledge, as well as of virtue among the people, [is] essential to the preservation of their rights and liberties”); N.H. CONST. pt. second, art. 83 (provides that “knowledge and learning, [is] essential to the preservation of a free government”); ME. CONST. art. VIII, Pt. 1, § 1 (provides that “a general diffusion of the advantages of education [is] essential to the preservation of the rights and liberties of the people”).
of opinion, and freedom of the expression of opinion’ is necessary ‘to the mental well-being of mankind (on which all their other well-being depends).’” Justice Kennedy’s subscription to this ideology helps explain his opinions in cases such as Citizens United v. Federal Election Commission, Simon & Schuster, Inc. v. Members of N.Y. Crime Victims Board, and Hill v. Colorado, which all demonstrate his aversion to interfering with an individual’s constitutional right of expression. Justice Kennedy’s liberal jurisprudence aims at protecting human dignity and remedying the inability of a person to reach his or her potential. Educational inequity presents precisely the problem that Justice Kennedy’s jurisprudence has sought to limit: “Kennedy’s conception of dignity . . . [emphasizes] enabling people to . . . pursue their own constitutional visions.” Students deprived of an adequate education will struggle to make this pursuit.

Moreover, the essence of a democratic system is the ability of citizens to critique their government. A true democratic system is unattainable if only some are prepared to participate by receiving a proper education. Similarly, an educational funding mechanism that results in disparate opportunities between the affluent and non-affluent, such as the type employed in Illinois, does not provide the foundation for students to reach their potential and fully participate in the democratic process. Application of a liberal jurisprudence, which specifically emphasizes the value of human dignity, is necessary to remedy the aforementioned situation.

149 Id. at 8 (quoting J.S. Mill, On Liberty (1859)).
150 Citizens United v. Fed. Election Comm., 558 U.S. 310, 339 (Justice Kennedy detailed the importance of speech in a democratic government, stating “Speech is an essential mechanism of democracy . . . . The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”).
151 Simon & Schuster, Inc. v. Members of the N.Y. Crime Victims Bd., 502 U.S. 105, 123-25 (1991) (Justice Kennedy wrote a concurring opinion supporting the court’s holding that a New York law designed to prevent criminals from profiting from the publication of memoirs about their crimes was unconstitutional. According to him, it was “unnecessary and incorrect” to ask whether the challenged law was justified by any compelling state interest because “the sole question is, or ought to be, whether the restriction is in fact content based,” . . . and if the answer was “yes,” the law could not be constitutionally sustained.).
153 See Kelso, supra note 148.
154 Knowles, supra note 152, at 43.
155 Id.
156 Citizens United, 558 U.S. at 339.
157 Knowles, supra note 152, at 42-43.
158 Id. at 43.
As soon as society realizes equal educational opportunities are necessary for a better government, a better populace, a better democracy – in essence, a better collective – the aforementioned cultural shift will have begun.

Responses

Naturally, the first response to the position of this paper is increasing funding does not necessarily result in better schools and better student performance. Indeed, one Pennsylvania school district epitomizes this position.\(^{159}\) The Chester Upland School District is one of the poorest school districts in Pennsylvania and receives 70% of its budget from the state.\(^{160}\) Program cuts, staff furloughs, and claims of mismanagement are recurrent within this district.\(^{161}\) A report from Education Secretary Ronald Tomalis found the “school district's fiscal records [] in ‘complete disarray,’” and officials there cannot be trusted to spend . . . state subsidies on essential items.”\(^{162}\) In January, 2012, a federal judge ordered the state to provide the district $3.2 million to cover payrolls and bills for a month.\(^{163}\) Secretary Tomalis’ report describes an “almost irretrievably broken system of managing district finances and personnel, including a payroll with 54 questionable or unverified employees” and by example discusses a consultant who “‘could not recall another school district whose business office was in such poor shape in terms of lack of documentation, internal controls and infrastructure.’”\(^{164}\)

No doubt, proper management is essential if the results anticipated by this article are to be achieved, but the funds to be managed must be available in the first place. It has already been established that wealthier districts look remarkably better, have more facilities and personnel, and provide significantly more opportunities for its students, than schools in poorer districts.\(^{165}\) Indeed, where funding for poorer school districts was increased through legislative action or state


\(^{160}\) See Matheson, supra note 159.

\(^{161}\) See Hardy, supra note 159.

\(^{162}\) Matheson, supra note 159.

\(^{163}\) Hardy, supra note 159.

\(^{164}\) Matheson, supra note 159.

\(^{165}\) *Id.*
reform, there were significant positive results in those schools.\textsuperscript{166} It is essentially like any other business venture – capital investment is essential to creating a quality product, as are people who can properly manage. The case of Chester Upland School District is a sad one, but it illuminates the necessity of proper management. Even the above-cited sources note that the issue with the school district is the “almost irretrievably broken system of managing finances and personnel.”\textsuperscript{167} Accountability issues must be part of the discussion of funding equity.

There is also the originalist response to the position posited by this article. An originalist might assert the framers of the Constitution did not include a “right” to education. It is important to remember, however, the framers were themselves educated and staunch supporters of education and liberty.\textsuperscript{168} “[B]efore the adoption of the Constitution, the Confederate Congress exercised the power to subsidize local public education, the effect of which was the proliferation of schools.”\textsuperscript{169} Clearly, there was a tradition of high regard for education.\textsuperscript{170} “Historical research reveals that George Washington, James Madison, and Thomas Jefferson made the wide dissemination of education one of their foremost concerns; they considered an educated populace essential to the survival and health of the fledgling republic.”\textsuperscript{171} Among the three, Thomas Jefferson was most known for his love of education;\textsuperscript{172} he believed that a democratic government could only be maintained if there was pervasive access to education.\textsuperscript{173}

The notion that education should not be considered a liberty interest conflicts with state constitutional provisions on education. As previously noted, most state constitutions contain provisions with language extolling the importance of education for a democratic government.\textsuperscript{174} Since education was deemed essential by the framers of our federal Constitution, it is inconsistent to justify educational inequity – and by extension, inadequate education for minority students – under the premise that the framers did not anticipate it as a liberty interest.\textsuperscript{175} Originalist courts should view educational funding inequities as a barrier to the training of

\begin{itemize}
\item \textsuperscript{166} See Gottfred, supra note 100.
\item \textsuperscript{167} See Matheson, supra note 159.
\item \textsuperscript{168} See Bitensky, supra note 146, at 627-28.
\item \textsuperscript{169} Id. at 627.
\item \textsuperscript{170} Id.
\item \textsuperscript{172} Bitensky, supra note 146, at 628.
\item \textsuperscript{173} Id.; see also Bourgin, supra note 171, at 133-34.
\item \textsuperscript{174} Id.
\item \textsuperscript{175} Bitensky, supra note 146, at 628; See also Bourgin, supra note 172, at 133-34.
\end{itemize}
potential contributors to the marketplace of ideas. Recognizing the inherent connection between adequate education and the right to free speech will “ensure fulfillment of the right.”

Likewise, there is a Tenth Amendment concern here as well. The argument is that it is essential to safeguard from federal regulation an area that has traditionally been under state control – education. It is however notable that the role of the federal government in education has expanded in the past few decades; for example, the passing of the National Defense Education Act of 1958, the Civil Rights Act of 1964, the Elementary and Secondary Education Act of 1965, and most recently, the No Child Left Behind Act have all been promulgated with the objective of closing the achievement gap between economically and racially advantaged and disadvantaged school children. These laws demonstrate an acknowledgment of the fact that states need encouragement from the federal government in facilitating a more universal and equal form of education. Particularly because the vestiges of past state discrimination in the area of education, coupled with adamant refusal of the majority populace to recognize the racism in the current system, has perpetuated the status quo. If education is eventually elevated to a fundamental right as advocated in this paper, it follows that the method in which public schools are currently being funded, i.e. via local property taxes, is unconstitutional based on its discriminatory effect on minorities. The solution proffered will not take education out of the state’s control, but instead provide the federal government with more freedom to do what it has attempted to all along; that is, prevent invidious discrimination in schools, provide money to be spent on raising up the lowest performing members of the state’s public school system, and ensure that all children are given the opportunity to reach their highest potential. Despite the apparent tension between this notion and the Tenth Amendment, this is a workable solution under the Constitution given the “truism” that the Tenth Amendment does not affirmatively limit any authority delegated to the federal government by the Constitution.

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176 Bitensky, supra note 146, at 626.
178 Id.
179 Id.
180 Id.
183 See Pendell, supra note 177, at 543.
184 Id.
CONCLUSION

Change is needed in the current public education system; it must be multifaceted, stemming from the judiciary, the legislature, and a majority of the populace. Once there is recognition that quality education is inherently connected to the exercise of free speech, society will assume a collectivist approach. Such an approach is the only way to repair the damage that private choice and individualism has caused education. As previously noted, there can be no true marketplace of ideas unless all citizens are given an opportunity to contribute. It is high time we overcame these anti-democratic barriers and ensure that all students have the opportunity to reach their full potential and become the leaders of tomorrow.
Appendix I

The table below shows the average ranking of each state in 2008 with regard to state sponsorship of education as opposed to local funding, with number “1” representing the most sponsorship. \(^{185}\)

<table>
<thead>
<tr>
<th>State</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>19</td>
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<tr>
<td>Alaska</td>
<td>3</td>
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<tr>
<td>Arizona</td>
<td>36</td>
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<tr>
<td>Arkansas</td>
<td>28</td>
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<tr>
<td>California</td>
<td>10</td>
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<tr>
<td>Colorado</td>
<td>43</td>
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<tr>
<td>Connecticut</td>
<td>15</td>
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<tr>
<td>Delaware</td>
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<td>Florida</td>
<td>42</td>
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<tr>
<td>Georgia</td>
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<tr>
<td>Hawaii</td>
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<td>Idaho</td>
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<td>Illinois</td>
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<td>Indiana</td>
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<tr>
<td>Iowa</td>
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<tr>
<td>Kansas</td>
<td>11</td>
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<tr>
<td>Kentucky</td>
<td>25</td>
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<tr>
<td>Louisiana</td>
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<tr>
<td>Maine</td>
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<tr>
<td>Maryland</td>
<td>16</td>
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<tr>
<td>Massachusetts</td>
<td>17</td>
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</table>

<table>
<thead>
<tr>
<th>State</th>
<th>Percentage</th>
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</thead>
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<td>Michigan</td>
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<tr>
<td>Minnesota</td>
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<tr>
<td>Mississippi</td>
<td>37</td>
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<tr>
<td>Missouri</td>
<td>48</td>
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<tr>
<td>Montana</td>
<td>29</td>
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<tr>
<td>Nebraska</td>
<td>46</td>
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<tr>
<td>Nevada</td>
<td>50</td>
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<tr>
<td>New Hampshire</td>
<td>35</td>
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<tr>
<td>New Jersey</td>
<td>9</td>
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<tr>
<td>New Mexico</td>
<td>8</td>
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<tr>
<td>New York</td>
<td>6</td>
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<tr>
<td>North Carolina</td>
<td>27</td>
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<tr>
<td>North Dakota</td>
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<tr>
<td>Ohio</td>
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<td>Oklahoma</td>
<td>39</td>
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<td>Oregon</td>
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<tr>
<td>Pennsylvania</td>
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<td>Rhode Island</td>
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<tr>
<td>South Carolina</td>
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<td>South Dakota</td>
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<tr>
<td>Tennessee</td>
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<td>Texas</td>
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<tr>
<td>Utah</td>
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<tr>
<td>Vermont</td>
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<tr>
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<td>Washington</td>
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<tr>
<td>West Virginia</td>
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<tr>
<td>Wisconsin</td>
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<tr>
<td>Wyoming</td>
<td>4</td>
</tr>
</tbody>
</table>
Appendix II

Below is a table showing the constitutional language used by the states to provide for education:

<table>
<thead>
<tr>
<th>State</th>
<th>Constitutional Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Establishment and operation of schools. ALA. CONST. art. XIV, § 256</td>
</tr>
<tr>
<td>Alaska</td>
<td>System of public schools open to all children of the State. ALASKA CONST. art. VII, § 1</td>
</tr>
<tr>
<td>Arizona</td>
<td>General and uniform public school system. ARIZ. CONST. art. XI § 1</td>
</tr>
<tr>
<td>Arkansas</td>
<td>General, suitable, and efficient system of free public schools ARK. CONST. Art. 14, § 1</td>
</tr>
<tr>
<td>California</td>
<td>System of common schools by which a free school shall be kept up and supported CAL. CONST. Art. IX, § 5</td>
</tr>
<tr>
<td>Colorado</td>
<td>Thorough and uniform system of free public schools throughout the state. COLO. CONST. Art. IX, § 2</td>
</tr>
<tr>
<td>Connecticut</td>
<td>There shall always be free public elementary and secondary schools in the state. CONN. CONST. art. VIII, § 1</td>
</tr>
<tr>
<td>Delaware</td>
<td>General and efficient system of free public schools. DEL. CONST. art X, § 1</td>
</tr>
<tr>
<td>Florida</td>
<td>Uniform, efficient, safe, secure, and high quality system of free public schools. FLA. CONST. art IX, § 1</td>
</tr>
<tr>
<td>Georgia</td>
<td>Adequate public education for the citizens. GA. CONST. art VIII, § 1</td>
</tr>
<tr>
<td>Hawaii</td>
<td>System of public schools free from sectarian control HAW. CONST. art X, § 1</td>
</tr>
<tr>
<td>Idaho</td>
<td>General, uniform, and thorough system of public, free common schools. IDAHO CONST. art IX, § 1</td>
</tr>
<tr>
<td>Illinois</td>
<td>Efficient system of high quality public educational institutions and services. ILL. CONST. art X, § 1</td>
</tr>
<tr>
<td>Indiana</td>
<td>A general and uniform system of common schools. IND. CONST. art VIII, § 1</td>
</tr>
<tr>
<td>State</td>
<td>Provision</td>
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<td>------------</td>
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</tr>
<tr>
<td>Kansas</td>
<td>Intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools. KAN. CONST. art. VI, § 1</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Efficient system of common schools throughout the State. KY. CONST. § 183</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Provide for the education of the people of the state and shall establish and maintain a public educational system. LA. CONST. art. VIII, § 1</td>
</tr>
<tr>
<td>Maine</td>
<td>Suitable provision, at their…expense, for the support and maintenance of public schools. ME. CONST. art. VIII, pt 1, § 1</td>
</tr>
<tr>
<td>Maryland</td>
<td>Thorough and efficient system of free public schools. MD. CONST. art. VIII, § 1</td>
</tr>
<tr>
<td>Michigan</td>
<td>System of free public elementary and secondary schools as defined by law. MICH. CONST. art. VIII, § 2</td>
</tr>
<tr>
<td>Minnesota</td>
<td>A general and uniform system of public schools…[and] a thorough and efficient system of public schools throughout the state. MINN. CONST. art XIII, § 1</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Provide for the establishment, maintenance, and support of free public schools. MISS. CONST. art. VIII, § 201</td>
</tr>
<tr>
<td>Missouri</td>
<td>Free public schools for the gratuitous instruction of all persons in this state. MO. CONST. art. IX, § 1(a)</td>
</tr>
<tr>
<td>Montana</td>
<td>System of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person. MONT. CONST. art X, § 1</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Free instruction in the common schools of this state. NEB. CONST. art. VII, § 1</td>
</tr>
<tr>
<td>New Mexico</td>
<td>A uniform system of free public schools. NM. CONST. art. XII, § 1</td>
</tr>
<tr>
<td>Nevada</td>
<td>Uniform system of common schools. NEV. CONST. art. XI, § 2</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Cherish the interest of literature and the sciences, and all seminaries and public schools. N.H. CONST. pt. II, art. 83</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Thorough and efficient system of free public schools. N.J. CONST. art. VIII, § 4</td>
</tr>
<tr>
<td>New York</td>
<td>System of free common schools wherein all the children may be educated. N.Y.</td>
</tr>
<tr>
<td>State</td>
<td>Description</td>
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<tr>
<td>-------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>North Carolina</td>
<td>A general and uniform system of free public schools. N.C. CONST. art. IX, § 2</td>
</tr>
<tr>
<td>North Dakota</td>
<td>System of public schools free from sectarian control. N.D. CONST. art. VIII, § 1</td>
</tr>
<tr>
<td>Ohio</td>
<td>Provision shall be made by law for the organization, administration and control of the public school system of the state. OHIO CONST. art. VI, § 3</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>System of free public schools wherein all the children of the State may be educated. OKLA. CONST. art. I, § 5</td>
</tr>
<tr>
<td>Oregon</td>
<td>Uniform and general system of Common schools. OR. CONST. art. VIII, § 3</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Thorough and efficient system of public education. PA. CONST. art. III, § 14</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Promote public schools…and adopt all means… deem[ed] necessary and proper to secure to the people the advantages and opportunities of education. R.I. CONST. art. XII, § 1</td>
</tr>
<tr>
<td>South Carolina</td>
<td>System of free public schools. S.C. CONST. art. XI, § 3</td>
</tr>
<tr>
<td>South Dakota</td>
<td>A general and uniform system of public schools. S.D. CONST. art. VIII, § 1</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Maintenance, support and eligibility standards of a system of free public schools. TENN. CONST. art. XI, § 12</td>
</tr>
<tr>
<td>Texas</td>
<td>Efficient system of public free schools. TEX. CONST. art. VII, § 1</td>
</tr>
<tr>
<td>Utah</td>
<td>A public education system, which shall be open to all children of the state. UTAH CONST. art. X, § 1</td>
</tr>
<tr>
<td>Virginia</td>
<td>System of free public elementary and secondary schools for all children of school age…and shall seek to ensure that an educational program of high quality is established and continually maintained. VA. CONST. art. VIII, § 1</td>
</tr>
<tr>
<td>Washington</td>
<td>General and uniform system of public schools. WASH. CONST. art. IX, § 2</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Thorough and efficient system of free schools. W. VA. CONST. art. XII, § 1</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Establishment of district schools, which shall be as nearly uniform as</td>
</tr>
<tr>
<td>State</td>
<td>Provision</td>
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<tr>
<td>Wisconsin</td>
<td>WIS. CONST. art. X, § 3</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Complete and uniform system of public instruction. WYO. CONST. art. VII, § 1</td>
</tr>
</tbody>
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