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Matthew H. Joseph

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AN ADEQUATE EDUCATION FOR ALL MARYLAND'S CHILDREN: MORALLY RIGHT, ECONOMICALLY NECESSARY, AND CONSTITUTIONALLY REQUIRED

SUSAN P. LEVITON*
MATTHEW H. JOSEPH**

Thousands of children from low-income families are not being adequately educated in Maryland. This unfortunate situation is resulting in a tremendous loss of human potential and capital, as well as creating an ever-increasing danger of complete class stratification. The emergence of a permanent underclass is inconsistent with any ideal of equality of opportunity and attacks the very foundation of our democracy.

Marylanders cannot ignore this deepening crisis. Welfare dependency and incarceration of huge numbers of poor illiterates are draining the State's limited fiscal reserves, while crime and blight are spreading across political, social, and economic boundaries. The State can no longer afford to neglect such a large and growing segment of the population. The vitality of the State's economy is increasingly dependant on training every available individual for skilled employment. Economic competition is fierce and increasingly international, and properly trained workers are becoming scarcer. And as the population grows older, a smaller pool of workers will ultimately support an increasing number of retirees.

The need for educational reform in Maryland is great. Such change inevitably bears a price tag that residents must either agree to pay now or face the twenty-first century with a diminished potential for prosperity. At the present time, the State's success at educating low-income children falls below a realistic standard of what is both needed and required. These children—and their parents—have limited political influence over state expenditures and educa-

* Associate Professor, University of Maryland School of Law. B.A., 1969; J.D., 1972, University of Maryland. Ms. Leviton has participated extensively in representing children in special education proceedings and in the Juvenile Court and has written on and lobbied for the rights of children.

tional activities. As such, the need for judicial intervention is greater. If the political process fails, courts must rise to the call and protect the constitutional right of all Maryland children to an adequate and appropriate education.

This Article describes the educational plight of low-income children and explores the political, social, moral, and economic costs of miseducation. It then analyzes the State’s constitutional obligation to correct the problem and establish an effective public school system for all children. Finally, this Article outlines the process by which Maryland’s current education system can be held accountable, improved, and brought into constitutional compliance.

I. Successfully Educating Low-Income Children

Certain identifiable groups of students are failing in school at disproportionately high rates. At various times during the last twenty-five years, educators have labeled these students “underachievers,” “low performers,” “disadvantaged,” “culturally deprived,” “educationally handicapped,” and most recently, “at-risk.” Poverty is the best indicator of “at-risk” status. Nationally, poor children are three times more likely to drop out of high school than nonpoor students, and twice as likely to be low academic achievers. Moreover, the longer a child lives in poverty, the stronger the correlation is to academic problems. In addition, surrounding an impoverished child exclusively with other low-income

1. See Bruce C. Bowers, Meeting the Needs of At-Risk Students, Res. Roundup, vol. 1, no. 1 (National Association of Elementary School Principals, Alexandria, Va.) Fall 1990. The terms used to define this population often symbolize the strategies used to address the problem. See Aaron M. Pallas, Who Is at Risk? Definitions, Demographics & Decisions, in Overcoming Risk: An Annotated Bibliography of Publications 1 (Wendy Schwartz & Craig Howley eds., 1991) (suggesting that the changing emphasis on themes such as cultural deprivation, educational disadvantages, problems of youth, and at-risk children have brought about different approaches to problems in education).

2. See Kenneth Hoyt, The Changing Work Force Part II, Wis. Vocational Educator, May 1989, at 1. Poverty is closely associated with a number of other characteristics traditionally linked to poor school achievement. For example, a poor child is more likely to be homeless, a member of a minority group, grow up in a single-parent family, and suffer from malnutrition, lead poisoning, or drug or alcohol exposure. John I. Goodlad, Common Schools for the Common Meal: Reconciling Self-Interest with the Common Good, in Access to Knowledge—An Agenda for Our Nations Schools 1, 4 (John I. Goodlad & Pamela Keating eds., 1990) [hereinafter Access].

3. Hoyt, supra note 2, at 1.

4. See Martin E. Orland, Demographics of Disadvantage: Intensity of Childhood Poverty & Its Relationship to Educational Achievement, in Access, supra note 2, at 43, 46.

5. Id. at 50 (“For each year of student poverty, the likelihood of falling behind in grade level increases by two percent.”).
students in school will have a negative impact on that child's education.6

The State's own studies reveal the extraordinarily tight correlation between poverty and low achievement among Maryland school children.7 Indeed, no other factor more accurately predicts educational performance than poverty.8

Despite the tremendous failure at educating low-income children, these students are fully capable of matching the academic success of wealthier students.9 In fact, some schools with low-income children are already succeeding,10 and proven programs exist that can be readily implemented on a large scale.11 Most promising are early intervention programs that serve to prevent younger children from experiencing academic failure and dropping out.12 The earlier a program intervenes, the better the results;13 and researchers have developed dramatically successful pre-school,14 kindergarten,15 and

6. Id. at 46. Thus, a low-income child who attends a school with predominantly middle-class students will generally receive a better education than a similar child who attends a school exclusively with students of the same economic background. Id.

7. Memorandum from Lois A. Martin to Donald Hutchinson, Chair, and Members of the Governor's Commission on School Funding 10 (Aug. 26, 1993) (on file with authors).

8. MARYLAND STATE DEPARTMENT OF EDUCATION, THE RELATIONSHIP OF SCHOOL PERFORMANCE CHARACTERISTICS TO SCHOOL PERFORMANCE (manuscript at 5, on file with authors).

9. See Robert E. Slavin et al., Preventing Early School Failure: What Works?, EDUC. LEADERSHIP, Dec. 1992/Jan. 1993, at 10 ("[A] growing body of evidence refutes the proposition that school failure is inevitable for any but the most retarded children."); James M. McPartland & Robert E. Slavin, Policy Perspectives, Increasing Achievement of At-Risk Students at Each Grade Level (U.S. Dept. of Education, Washington, D.C.), July 1990, at 7 ("Against this depressing and often told story is mounting evidence that almost every child can be successfully taught to read in the early grades, and the same is almost certainly true of other basic skills.").


11. See id. at 795 ("Successful schools do have important characteristics in common. These characteristics are capable of being replicated.").


14. See, e.g., Slavin et al., supra note 9, at 12 (highlighting three effective programs for infants from birth to age three); MARYLAND STATE DEPARTMENT OF EDUCATION, URBAN & SUPPLEMENTARY PROGRAMS—THE EFFECTIVENESS OF PRESCHOOL EDUCATION 4, 6 (1993) (prepared as part of the 1983 Joint Chairmen's Report, Maryland General Assembly) (describing successful preschool programs for three and four year olds).
elementary school programs, including Head Start,\textsuperscript{16} Success For All,\textsuperscript{17} Reading Recovery,\textsuperscript{18} the Comer Model,\textsuperscript{19} the Accelerated School Program,\textsuperscript{20} and others.\textsuperscript{21} These programs have helped low-income students complete their elementary education at a standard matching the national norms or better. Other programs have successfully targeted poor middle and high school students,\textsuperscript{22} although

\begin{itemize}
  \item[15.] McPartland \& Slavin, \textit{supra} note 9, at 9 (finding impressive results from full-day kindergarten programs).
  \item[16.] Head Start is a federal program created by legislation under President Johnson’s War on Poverty. See Sally Reed \& R. Craig Sautter, \textit{Children of Poverty}, \textit{The Status of 12 Million Young Americans}, \textit{Phi Delta Kappa}, June 1990, at K1, K7 (highlighting the increased employment, graduate, and college attendance rates of students attending one Head Start program).
  \item[17.] Success For All, developed by The Johns Hopkins University, involves one-on-one instruction by certified teachers, as well as specialized curricula and home visits. Henry M. Levin, \textit{Financing the Education of At-Risk Students}, \textit{Edu. Evaluation \& Pol’y Analysis}, Spring 1989, at 47, 55; Slavin et al., \textit{supra} note 9, at 12 (indicating that Success For All has had “substantial positive effects on reading performance . . ., reductions in retentions and special education placements”).
  \item[18.] Reading Recovery, originally developed in New Zealand, focuses intensely on the reading skills of first graders. Levin, \textit{supra} note 17, at 55. Teachers must complete a year-long training program, and students with the lowest level of achievement are given 30 minutes of one-on-one tutoring daily. Gay Su Pinnell, \textit{Success for Low Achievers Through Reading Recovery}, \textit{Edu. Leadership}, Sept. 1990, at 17, 18.
  \item[19.] The Comer Model, which focuses on family support and the mental health of the child, has shown remarkable success in increasing standardized test scores. James P. Comer, \textit{Home, School \& Academic Learning}, \textit{in Access}, \textit{supra} note 2, at 23.
  \item[20.] The Accelerated School Program aims to bring students up to grade level on a short-term basis rather than remediating them indefinitely. Donna Harrington-Lueker, \textit{Where More is Better}, \textit{Executive Educator}, June 1992, at 24, 25-26. Parental involvement is a key component of the program, which has shown some results at a moderate cost. Accelerated Schools claim to focus on the strengths of students rather than their weaknesses and to make education a relevant part of their lives and cultures. \textit{Id.} at 25.
  \item[21.] Tutoring has proven to be one of the most effective techniques for helping students succeed in school. For example, the Prevention of Learning Disabilities program, which provides tutoring for first and second graders, has shown results in reading and perception skills. The Wallach Tutoring Program, which uses paraprofessionals as tutors, has also improved students’ reading skills. Barbara Wasik \& Robert E. Slavin, \textit{Preventing Early Reading Failure with One-on-One Tutoring: A Best Evidence Synthesis} 17-20 (1990) (published by Center for Research on Effective Schooling for Disadvantaged Students, The Johns Hopkins University).
  \item[22.] Numerous studies have commented generally on the inadequacies of the nation’s middle schools and recommended changes. See, \textit{e.g.}, \textit{Carnegie Council on Adolescent Development, Turning Points, Preparing American Youth for the Twenty-First Century} 8 (June 1989) [hereinafter \textit{Carnegie}] (executive summary) (“Middle grade schools . . .are potentially society’s most powerful force to recapture millions of youth adrift, and help every young person thrive during early adolescence. Yet all too often these schools exacerbate the problems of young adolescents.”). For high school students, many promising dropout prevention programs exist. See McPartland \& Slavin, \textit{supra} note 9, at 18 (discussing the Boston Compact, which uses job and college opportunities to encourage school attendance, and the I Have a Dream Foundation, which pays college expenses for qualifying students). In addition, apprenticeship programs, com-
the longer students are undereducated, the more expensive and difficult it is to bring them up to national standards.23

In general, studies show that at-risk children benefit from structured programs with high expectations.24 Programs that keep students with their peers, rather than pulling them out into separate classrooms, are also more effective.25 Integration not only prevents stigmatization, but it also enables at-risk children to work with more able children and exposes them to the challenges of a more rigorous academic program.26 Furthermore, individual attention is valuable whenever possible, whether in the form of smaller schools27 or computer assisted instruction.28 Finally, programs that address non-educational barriers to academic success—for example, inadequate family involvement29 and insufficient health care30—have received

mon in Germany and Sweden, offer great potential for improving the school-to-work transition for the 50% of American youth who do not go to college. See Donna Harrington-Lueker, Muscle Won’t Make It, EXECUTIVE EDUCATOR, Sept. 1991, at 34 (arguing that apprenticeship programs are necessary to stay competitive with the European workforce).

23. Slavin et al., supra note 9, at 3 ("Trying to remediate reading failure later on is very difficult, because by then students who have failed are likely to be unmotivated, to have poor self-concepts as learners, to be anxious about reading and to hate it.").

24. See Bowers, supra note 1, at 1 ("At-risk students need to be maximally engaged in an educational program that is carefully structured to meet their individual needs, and they must be taught by people who firmly believe that these children will succeed. These seem to be the core requisites for a successful program serving at-risk children.").


26. See generally id. at 148 (urging “careful procedures” to help at-risk students adapt to their regular classes). One example of integration is cooperative learning, where students of different achievement levels are placed in small groups and required to work together. McPartland & Slavin, supra note 9, at 10-11.

27. See RICHARDSON ET AL., supra note 25, at 145 ("In order to create [a proper learning] environment, some one person needs to care for the school life and personal growth of each student .... Given this requirement, it is easy to see why a small school .... would more easily create this environment than a large one .... "). See also Aaron M. Pallas et al., The High Costs of High Standards—School Reform & Dropouts, URBAN EDUC., Apr. 1987, at 103, 107 (for general support of individualized instructional programs).

28. Although computer instruction can be a useful program, cost is high relative to its results. See Nancy A. Madden & Robert E. Slavin, Effective Pullout Programs for Students at Risk, in EFFECTIVE PROGRAMS FOR STUDENTS AT RISK 68 (Atlyn & Bacon eds., 1989) ("Overall, results for the computer assisted instruction program, (CAI) .... are well-established and positive, though in the best-controlled studies they are usually modest in magnitude .... Since the costs of CAI can be very high .... this approach can be compared to adult tutoring, which tends to have larger effects." (citations omitted)). Id. at 12.

29. There is a growing sense that schools must work more closely with families of poor children because it is often the families that have created a substantial part of academic failure. See James A. Banks, Citizenship Education for a Pluralistic Democratic Society, SOC. STUD., Sept.-Oct. 1990, at 210, 211.
increased focus.

Unfortunately, even for the very successful interventions, the significance of favorable results diminishes each year after students leave the programs. There is no magic pill that permanently cures at-risk students of their academic weaknesses. Although the intensity of the services can be greatly reduced over time, even the best pre-school or kindergarten program must be followed by continued intervention. Nevertheless, the existence of these programs is proof that at-risk children can be helped and that we at least know what to do to begin to help.

II. THE UNDEREDUCATION OF LOW-INCOME CHILDREN

[T]o those who need the best our education system has to offer, we give the least. The least well-trained teachers. The lowest-level curriculum. The oldest books. The least instructional time. Our lowest expectations. Less, indeed, of everything that we believe makes a difference.

Despite the existence of proven instruction techniques and intervention programs, most schools continue to use ineffective and even counterproductive approaches. For example, children identified as underperforming are often stigmatized and suffer from the lowered expectations of their teachers, who themselves are frequently unprepared to deal with the specific needs of these children.

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30. Reed & Sautter, supra note 16, at 7 ("[T]here is growing public support for offering a wider array of social and health services in the schools.").

31. Gullo, supra note 13, at 32; McPartland & Slavin, supra note 9, at 8 ("[W]hile there are strong effects on the language and I.Q. scores of disadvantaged children immediately after the preschool experience, these effects diminish each subsequent year until they are undetected by the second or third grade.").

32. Slavin et al., supra note 9, at 14 ("[F]or the great majority of students . . ., we believe that intensive intervention will only be needed for a brief period, primarily one-on-one tutoring in first grade. After these students are well launched in reading, they still need high-quality instruction and other services in the later elementary grades to continue to build on their strong base.").

33. See id. at 6 ("It is clear that attendance at a high-quality preschool program has long-term benefits for children, but it is equally clear that in itself preschool experience is not enough to prevent early school failure."); McPartland & Slavin, supra note 9, at 9 ("As with preschool, full-day kindergarten may start students off with good language skills and promote school readiness, but it is not a sufficient intervention by itself.").


35. Pallas, supra note 1, at 8 (recognizing "the pernicious effects of publicly classifying children, as teachers . . . may change their expectations and behaviors to conform with stereotypes associated with these classifications"). See also Chapter 1 Commission, supra note 34, at 46 ("Our low expectations are consigning [poor children] to lives without the knowledge and skills they need to exist anywhere but on the margin of our society and consigning the rest of us to forever bear the burden of their support.").
quently the least qualified and experienced in their districts. Schools often force at-risk children to repeat a grade, despite clear evidence of the educational harm of this practice. Furthermore, as early as elementary school, teachers and administrators place at-risk children in classes with other low achievers—a technique called tracking or ability grouping—where they tend to fall further behind other students. Academically troubled children who are also from poor families are provided with often-ineffectual compensatory services. Students who continue to fail are placed in segregated

36. Linda Darling-Hammond & Joslyn Green, Teacher Quality & Equality, in Access, supra note 2, at 237, 239 (“Perhaps the single greatest source of educational inequity is this disparity in the availability and distribution of highly qualified teachers.”). One of the few incentives offered to the more senior and high quality teachers is an assignment to a more middle-class school and classroom. Id. at 243. Meanwhile, new and inexperienced teachers are assigned to the toughest schools and classrooms. Id. at 243-44. See also Comment, Children at Risk: The Inequality of Urban Education, 9 N.Y.L. SCH. J. HUM. RTS. 161, 169 (1991) (“[T]eachers in the urban districts tend to be the least experienced, as well as the lowest paid. The student/teacher ratios and the education level of teachers are far superior in the suburban districts.” (footnote omitted)).

37. McPartland & Slavin, supra note 9, at 3 (“[M]any urban school systems routinely hold back 15 or 20 percent of students at each grade level, and by grade 10, up to 60 percent of students in these schools have been retained at least once.”).

38. Grade retention is a thoroughly disproved strategy. The common practice of holding back kindergartners for another, prefirst grade has no long-term benefits. Slavin et al., supra note 9, at 8. In fact, retained students are much more likely to drop out of school than similar nonretained students. Id.

39. See, e.g., Goodlad, supra note 2, at 14 (“Children in the lowest groups rarely are moved to the highest groups; the disparity between the attainment of the highest and lowest groups grows greater over time.”); McPartland & Slavin, supra note 9, at 5 (“Over time, tracking may also have a cumulative effect that actually widens the achievement gap between students in the top and bottom levels.”). See also Jeannie Oakes & Martin Lipton, Tracking & Ability Grouping: A Structural Barrier to Access & Achievement, in Access, supra note 2, at 187, 189 (finding that poor, black, and Hispanic children are disproportionately assigned to lower tracks).

40. Most of the present interventions are funded with federal money for disadvantaged and underperforming students, called Chapter 1. Lorin W. Anderson & Leonard O. Pellicer, Synthesis of Research on Compensatory & Remedial Educ., EDUC. LEADERSHIP, Sept. 1990, at 10, 11. In general, Chapter 1 has proven to yield limited benefits, and what little effect does exist disappears after third grade. Slavin et al., supra note 9, at 3; Levin, supra note 17, at 47-48. One group of prominent educators has proposed a fundamentally altered Chapter 1 program based on emphasis on advanced skills, greater flexibility at the local level, stress on whole-school reform, and accountability for results. Chapter 1 Commission, supra note 34, at 47. Yet, even if the money were properly spent, the amount of federal funds allocated to the program is too low to cover all at-risk students. Levin, supra note 17, at 47. Nationally, only 50% of Chapter 1-eligible students receive services. Reed & Sautter, supra note 16, at 8.

Finally, Chapter 1 is premised on two false assumptions: (1) districts have an equal amount of money for basic education, and (2) the federal money can merely supplement local funds. Chapter 1 Commission, supra note 34, at 48. “The reality is that millions of disadvantaged students live in property-poor urban and rural areas that cannot generate sufficient dollars for education even where citizens tax themselves highly.” Id.
special education classes or schools, where they usually remain indefinitely. In sum, these techniques are triply ineffective because they are used only after a student's school failure has significantly progressed; they do little or nothing to help the student catch up; and in fact, they often result in further slippage.

Yet if schools decided to use the effective programs described above, most schools would lack the financial resources to provide the programs for every low-income child. Virtually every proven strategy entails substantial increased costs above the amount that a district normally spends on students who are not at-risk. However, low-income students, despite their need for additional services, are more likely to attend the schools with the least money to spend. These schools are often in cities with shrinking tax bases.

41. McPartland & Slavin, supra note 9, at 5-6 ("[I]ndividuals designated for special education usually remain in that status throughout their school tenure, and this, in turn, severely limits their future educational and occupational opportunities."). The number of students classified as learning disabled (LD) has doubled over the past 15 years, "even though the numbers of students classified with physical disabilities or mental retardation in special education have not substantially changed." Id. Consequently, students who "receive the costly special education services via the LD designation may not benefit, since research fails to document any sizeable improvements in learning outcomes for these students." Id. at 6.

42. One study noted: "Ability grouping and grade retention are examples of organizational strategies that have the unintended consequence of reinforcing patterns of failure in school. A vicious cycle exists in schools, whereby early patterns of poor academic performance track students into educational environments that perpetuate their low achievement." Pallas, supra note 1, at 19.

43. In Maryland, for example, local school districts must supplement state funds to provide an adequate standard of education, a responsibility poorer districts simply cannot fulfill. See Elizabeth C. Derrrig [sic], Comment, Judicial Intervention in Public Education, 20 U. BALT. L. REV. 429, 440-44 (1991).

44. See generally Board of Educ. v. Nyquist, 408 N.Y.S.2d 606, 634 (1978) ("Effective programs to remedy or alleviate the problems of severe underachievement and failure cost much more money per pupil than the regular educational program because they require substantial numbers of additional personnel.").

45. See Darling-Hammond & Green, supra note 36, at 239 ("Because the distribution of teacher quality is skewed toward those students who attend affluent, well-endowed schools, poor and minority students are chronically and disproportionately exposed to teachers with less training and experience."). See also Derrrig [sic], supra note 43, at 443-44 (noting that the less affluent district of Baltimore City provides below average financing to its schools).

46. DEPARTMENT OF FISCAL RESOURCES FOR REGION IV CONFERENCE, AMERICAN SOCIETY FOR PUBLIC ADMINISTRATORS, MARYLAND FISCAL DATA app. at 3 (Sept. 24, 1992). For example, Baltimore City's population shrunk 6.5% from 1980 to 1990, and its employment level fell 5.6% from 1981 to 1991. Correspondingly, the city's property tax base declined by 6.4% from 1970 to 1993 (projected), and its net taxable income shrank from 1990 to 1991 for the first time. Id. at 3-4. At the same time, its tax effort significantly exceeds that of other jurisdictions. Id. at 4-6. With a statewide average of 100, the tax
The failure to provide schools with the resources needed to implement effective programs is shortsighted. The high cost of improvement programs is justified by an overall cost savings, both for the school district, which needs fewer remedial services in the long run, and society, which gains more productive citizens and avoids welfare dependency and criminal activity. Thus, money spent on proven strategies and high quality programs is a sound investment. Indeed, failing to spend the money now is likely to result in tremendous political, economic, and social costs in the future.

III. POLITICAL, SOCIAL, AND MORAL COSTS

A dream has pervaded this country for over two-hundred years. A dream that is etched in our culture and in our national conscience. A dream that any American child could, through hard work and dedication, rise to the top and succeed in building a better life for himself and his children.... We are now in danger of losing that dream. For if you do not possess the basic skills required to survive in today's world, then you cannot get into the system, you cannot get a job, you cannot succeed, and you will spend a lifetime on the outside looking in.

The often-cited American rags-to-riches story is meant to be more than a fantasy. It is an important part of our ethos that even the poorest child can achieve the "American Dream" with its attendant economic success. In theory, every child is supposed to have an equal opportunity to achieve the Dream. Education is the critical means by which less-advantaged children can climb the economic ladder. The fact that poor children do not have access to the same
quality of instruction as their more well-off peers threatens to shatter this ideal of equal opportunity.\textsuperscript{51} The growing disparity in education threatens to undermine and destroy not only the democratic concepts of fairness and equal opportunity,\textsuperscript{52} but may also create a permanent and isolated caste of undereducated, underskilled, and underemployed citizens.\textsuperscript{53} This caste would pose an ever-growing threat of political radicalism and violent explosiveness.\textsuperscript{54} The growing sense of isolation and victimization can only be diffused by providing real economic opportunity, which for young people starts with educational opportunity.

This issue can have great impact on the nature of our democracy.\textsuperscript{55} Our founding fathers recognized that an educated populace is needed for a democracy to survive.\textsuperscript{56} Indeed, education is necessary for a person to be an effective and responsible citizen.\textsuperscript{57} After all, today’s low-income students will soon constitute a large portion of the country’s voters.\textsuperscript{58}

IV. Economic Costs

The change our country is undergoing as it moves from a manufacturing, mineral and industrial economy to a service and technological economy has resulted in three altered characteristics of American labor that are extremely signifi-
cant for education. First, business and industry can no longer absorb even a portion of the growing pool of unschooled, untrained, cheap, unskilled labor that formed the backbone of the American labor force in the past. Second, the failure of the schools to educate a large segment of the population has created a financial liability in terms of lost wages, lost taxes, incarceration, rehabilitation, welfare and delinquency which costs many times more than the cost of education. . . . Third, the private sector is already experiencing problems in acquiring the skilled labor necessary for the competitiveness and even the survival of American technology-oriented business and industry. It is anticipated that this shortage of skilled labor will become much more extensive and critical in the years ahead.\textsuperscript{59}

Education—long a moral, social, and political need—is now inextricably bound to the economic future of this country and this State. There is a grave risk that without substantial educational reform, the standard of living in the United States will decrease. Our children will enjoy less prosperity than we do.

The chronic undereducation of low-income children poses a particularly severe risk. Undereducation results in increased welfare dependency, drug use, participation in illegal activities, and incarceration.\textsuperscript{60} Society pays for welfare, police, prisons, and courts, in addition to the economic and personal costs of the crimes committed and opportunities lost. Maryland is paying large and ever-increasing sums of money to support the welfare or jail expenses of adults who started life as poorly educated children in low-income families.\textsuperscript{61}

At a broader level, the economic costs are even greater, because the disenfranchised are not contributing positively to the economy, lacking both the education and skills to do so. Future trends indicate that not only is education becoming an increasingly important

\textsuperscript{59} Jose A. Cardenas, Political Limits to an Education of Value: The Role of the State, in \textit{ACCESS}, supra note 2, at 278.

\textsuperscript{60} The large majority of inmates in the nation’s prisons are high school dropouts. \textit{MARYLAND’S CHALLENGE: A REPORT OF THE COMMISSION FOR STUDENTS AT RISK} 5 (Jan. 1990) [hereinafter AT-RISK COMMISSION]. In Maryland, 93% of 17,000 inmates were found to be functionally illiterate and 80% were high school dropouts. \textit{Id.}

\textsuperscript{61} \textit{Compare} William D. Schaefer, \textit{MARYLAND STATE BUDGET}, I-977, II-57, II-210 (fiscal year 1994) and William D. Schaefer, \textit{MARYLAND STATE BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 1989}, I-945, II-41, II-186 (Jan. 20, 1988). During the five-year period from 1987 to 1992, expenditures for Aid to Families with Dependent Children (AFDC) increased from $254 million to $336 million. \textit{Id.} Medical Assistance increased from $828 million to $1.9 billion. \textit{Id.} Money spent on corrections increased from $196 million to $364 million. \textit{Id.}
job requirement, but that the country will also need the skilled involvement of every citizen if it is to maintain its competitive position in the global economy.  

A. The Economic Need for Improved Education in the Twenty-First Century

In the past, well-paying, secure jobs were available for a sizeable fraction of high school dropouts in this country. The manufacturing sector provided opportunities for unskilled workers to attain middle-class incomes and enjoy relative prosperity. Those days are largely over. Foreign competition decreased American heavy industry in the 1970s and 1980s, significantly reducing the total number of manual labor jobs. The American economy now relies for much of its economic growth on service industries, which require of employees increased skills and sophistication.

As the global economy continues to evolve and expand, foreign countries are progressing beyond the scientific and technological capabilities of the United States. This deficiency is evidenced by the fact that the United States has the lowest rate of productivity

62. As one article summarized:
High dropout rates, low test scores, and poor academic performance of a group that will become a larger and larger portion of the school population mean that more of the future labor force will be undereducated for available jobs. Here we refer not only to managerial, professional, and technical jobs, but to even the lower level service jobs that are increasingly dominating job growth in the U.S. economy. Clerical workers, cashiers, and salesclerks all need basic skills in oral and written communications, the acquisition of which is hardly guaranteed in the schooling of the disadvantaged.

Levin, supra note 17, at 51 (citations omitted).

63. See Banks, supra note 29, at 211 ("Our schools were designed for a different population at a time when immigrant and poor youths did not need to be literate or have basic job skills and become self-supporting citizens.").

64. See Dole, supra note 49, at 2 ("The assembly line jobs that once required only hand-eye coordination are headed the way of the dinosaurs. The same job now requires the ability to read complex manuals, analyze data, organize information and make judgments.").

65. Hoyt, supra note 2, at 16 (stating that "more than 70 percent of America's goods-producing industries [are] now subject to foreign competition").

66. See Roselyn Frank, School Restructuring: Impact on Attitudes, Advocacy & Educational Opportunities for Gifted & Talented Students, in CHALLENGES IN GIFTED EDUCATION—DEVELOPING POTENTIAL & INVESTING IN KNOWLEDGE FOR THE TWENTY-FIRST CENTURY 57, 58 (1992) (emphasizing increased demands placed on workers in today's "high-tech settings").

67. See E.R. Carlisle, Educating for the Future, PLANNING & CHANGING, Fall 1988, at 131, 132 (noting that in one ranking involving 13 industrial nations, the best United States students placed ninth in physics, eleventh in chemistry, and thirteenth in biology).
growth in the industrialized world. Economic progress depends on the improved efficiency of American workers, which in turn must be built on better-educated citizens with strengthened work skills. Indeed, the vast majority of jobs in the new service economy demand higher levels of expertise than was required by previously common jobs, particularly those in the sciences, engineering, and mathematics. The average new job in the early twenty-first century will require an education estimated to be one-and-a-half years beyond high school education. Even the military, historically an employer of the last resort, no longer takes high school dropouts.

Students who drop out of high school, fail to finish high school with decent skills, or choose not to pursue post-secondary educations will find themselves increasingly left out of the American economic mainstream. They will experience higher unemployment rates and lower earnings potential. These missed professional opportunities for those who have been undereducated will translate, on a national level, into lost economic output and lost tax revenue totalling in the billions of dollars.

68. Id. at 135 (citing ROBERT Z. LAWRENCE, CAN AMERICA COMPETE? (The Brookings Institution) (1984)).
69. See id. at 134 (noting that "[t]he source of technological change, which spurs productivity growth, is a highly trained workforce").
70. See id. ("It is technological innovation that ultimately enhances machine efficiency, and hence the productivity of the labor using it.").
71. Id. "High skill jobs are expected to be in greatest demand: over one half in engineering, computer specialties, and the health professional occupations." Id. at 131.
72. AT-RISK COMMISSION, supra note 60, at 6 ("Projections ... estimate that in 10 years, new jobs will require workers whose median level of education includes at least a year and a half of college—not to be the boss, just to hold a job." (citation omitted)). See also Dole, supra note 49, at 2 ("[O]ver half the jobs in our economy will soon require education beyond high school.").
73. Paul Sloan, Chooser Army Skips over Troubled Teens, CHI. TRIB., July 18, 1993, at 1 (noting that the military almost always insists that recruits be high school graduates).
74. See Levin, supra note 17, at 51 (stating that students who fail to finish high school successfully will be unable to either "work productively in available jobs or to benefit from employer training"); Banks, supra note 29, at 210 ("It is very difficult for youth who drop out of school or who experience academic failure to become effective and productive citizens in a post-industrial, knowledge-focused society."); Comer, supra note 19, at 26 ("Never before in the history of the world has academic or formal education been so necessary for individuals to meet basic human needs.").
75. See THE REPORT OF THE GOVERNOR'S COMMISSION ON SCHOOL PERFORMANCE I (Aug. 1989) [hereinafter GOVERNOR'S COMMISSION].
76. Levin, supra note 17, at 53 (estimating that the nation's male dropouts aged 25 to 34 have cost $237 billion in lost economic output). The country will also lose employment taxes if American businesses move abroad in response to the difficulty of meeting employment needs locally.
B. Demographics of the Changing Workforce

Just as the American economy requires an increasingly high level of skill from its workers, students who have disproportionately failed to acquire these important skills in schools are becoming a dramatically growing part of the workforce. Americans can ignore these children only by risking their own prosperity, as these children will either become the backbone of the national economy or prove to be the deadweight that sinks the country's economic ship. By 2020, an estimated twenty-seven percent of all children will be living in poverty. While the proportion of children at risk of school failure is now estimated at almost thirty percent of the student population, dramatic increases are predicted.

Economic reliance on disadvantaged children is also likely to rise, as a result of a second demographic shift: the aging of the American population. As the work force ages, there will be fewer young people available to support a large retired community. Social Security and many other pension systems rely on the continued contributions of current workers to support those no longer working. These demographic trends strongly suggest that neither the national nor the state economy will be able to rely exclusively on a young middle-class population to meet their labor needs in the twenty-first century. Each child who drops out of high school will be one more person unable to contribute effectively to the prosperity of the United States. The threat of these children dragging down the economy is growing and is of increasing concern to the American people.

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77. Id. at 48. This figure increased from 16% to nearly 20% between 1969 and 1990. Reed & Sautter, supra note 16, at 3. Children are now the poorest segment of the American population. Id. The number of children living with only one parent is expected to rise from 16 million in 1984 to more than 21 million by 2020. Levin, supra note 17, at 48. The number of children exposed to drugs or abused or neglected has increased substantially in recent years and is likely to continue to rise as well. Reed & Sautter, supra note 16, at 6.

78. Betty F. Williams, Changing Demographics: Challenges for Educators, INTERVENTION IN SCH. & CLINIC, Jan. 1992, at 157. By some estimates, 25%—or 7 million children—are currently extremely vulnerable, and an equal number are moderately at risk of school failure. CARNEGIE, supra note 22, at 8. Not only is the proportion of these students expected to increase, but the intensity of disadvantage is expected to grow as well. Levin, supra note 17, at 49.

79. See AT-RISK COMMISSION, supra note 60, at 6. See also GOVERNOR'S COMMISSION, supra note 75, at 1 (discussing the projected shortfall of workers).

80. See Louis Harris, The Public Takes Reform to Heart, AGENDA, Winter 1992, at 15 (noting the public perception that America’s ability to compete abroad correlates to the quality of education at home). Eighty-one percent of those polled said that the failure to educate poor and minority children would have a "major effect" on the ability of the
America's poor children is not only immoral; it is 'just plain stupid.' 

V. THE RIGHT TO AN ADEQUATE, SUBSTANTIALLY EQUAL EDUCATION

In Maryland, the failure to educate impoverished children is not "just plain stupid;" it is unconstitutional. The State's Constitution maintains that "[t]he General Assembly . . . shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance." This language requires the State to provide every child with an adequate education and equal educational opportunity.

The Court of Appeals has never explicitly defined "thorough and efficient," the Education Clause's most important phrase. In addition, the framers who drafted the language in 1867 never specifically discussed their intended meaning of these words. This leaves four critical tools available to analyze the requirements of a "thorough and efficient" education. First, and most importantly,
the language "thorough and efficient" carried certain definitive meanings and implications for the framers and their contemporaries.\textsuperscript{86} Second, the historical context in which the clause was adopted provides insight into the intent of the framers. Third, the interpretations of the words by the state legislature and its delegated agency, the Maryland State Board of Education, are illustrative.\textsuperscript{87} Finally, the experiences of other states that adopted similar or identical language, both before and after 1867, provide important points of comparison and information,\textsuperscript{88} particularly because the Maryland drafter knowingly selected language already used in three other state constitutions.\textsuperscript{89}

Today, virtually every state constitution contains an education clause, making comparisons inevitable.\textsuperscript{90} Maryland's language requiring a "thorough and efficient" education is similar to language

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86. Molly McUsic, \textit{The Use of Education Clauses in School Finance Reform Litigation}, 28 \textit{Harv. J. on Legis.} 307, 308 n.3 (noting that "the text itself must play a primary role" and one should examine the "common and ordinary meaning" of the education language). \\
87. \textit{Norris}, 172 Md. at 676, 192 A. at 535 ("In aid of an inquiry into the true meaning of the language used, weight may also be given to long-continued contemporaneous construction by officials charged with the administration of the government, and especially by the Legislature."). \\
88. Because reliance on state constitutions for enforcement of basic rights is a relatively new phenomenon, there are comparatively few decisions on many constitutional phrases. Thus, a state court may have little precedent on which to base its interpretation. Judicial interpretations of similar language in other state constitutions are therefore particularly instructive. Paul Czech, \textit{Education & the School Financing Problem: Has New Jersey Found the Answer?}, 1 \textit{Temp. Pol. & Civ. Rts. L. Rev.} 149, 158 (1992) (calling this phenomenon "horizontal federalism"). Indeed, failure to consult with other states' interpretations can result in inconsistencies and illegitimacy. See William E. Thro, \textit{The Third Wave: The Impact of the Montana, Kentucky & Texas Decisions on the Future of Public School Finance Reform Litigation}, 19 \textit{J.L. & Educ.} 219, 248 (1990). The author stated: [R]endering a different interpretation of nearly identical education clause language could undermine the legitimacy of the court's decision. . . . [T]he average citizen is not apt to understand why a thorough and efficient education clause is grounds for school finance reform in a neighboring state, but has no effect in his state. \\
\textit{Id.}

89. Ohio, Minnesota, and West Virginia each had adopted "thorough and efficient" language prior to 1867. The drafter at the 1867 Convention knew of the prior attempts of other states to frame constitutional language on public schools. Brief of Appellants at 32, Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 458 A.2d 758 (1983) (No. 81-93) [hereinafter Appellants' Brief] (noting that the Education Committee "studied in detail the education provisions in all the existing state constitutions"). \\
90. McUsic, \textit{supra} note 86, at 311. New states admitted to the union were required to include a state educational obligation in their constitutions. Lawrence C. Pierce, \textit{School Finance}, 67 \textit{Or. L. Rev.} 31, 35 (1988).
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found in 12 other states.\textsuperscript{91} State-funding-equity suits based on the “thorough and efficient,” “thorough” or “efficient” language have proven to be extraordinarily successful in recent years, providing four of the five most current major victories for education reform.\textsuperscript{92}

\section*{A. History of “Thorough and Efficient”}

Educational reform was one of the great social and political movements of the nineteenth century.\textsuperscript{93} For Thomas Jefferson, an educated people was essential for a self-governing democracy.\textsuperscript{94}

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\textsuperscript{91} Five states have “thorough and efficient” language: Minnesota, MINN. CONST. art. VIII, § 1 (“The legislature shall make such provision by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.”); New Jersey, N.J. CONST. art. VIII, § 4 (amended 1875) (“The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the state between the ages of five and eighteen.”); Ohio, the first state to adopt the “thorough and efficient” language, OHIO CONST. art. VI, § 2 (“The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state.”); Pennsylvania, PA. CONST. art. III, § 14 (“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”); and West Virginia, W. VA. CONST. art. XII, § 1 (“The legislature shall provide, by general law, for a thorough and efficient system of free schools.”).

Five others have “efficient” without “thorough”: Arkansas, ARK. CONST. art. 14, § 1 (“[T]he State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.”); Delaware, DEL. CONST. art. X, § 1 (“The General Assembly shall provide for the establishment and maintenance of a general and efficient system of the free public schools.”); Kentucky, KY. CONST., § 183 (“The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.”); Illinois, ILL. CONST. art. X, § 1 (“The state shall provide for an efficient system of high quality public educational institutions and services.”); and Texas, TEX. CONST. art. III, § 1 (“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”).

Two use “thorough” without “efficient”: Colorado, COLO. CONST. art. XI, § 2 (“The General Assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools.”); and Idaho, IDAHO CONST. art. IX, § 1 (“[I]t shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.”).


\textsuperscript{93} LAWRENCE A. CREMIN, \textit{American Education, The National Experience, 1783-1876}, at 103 (1980) (“No theme was so universally articulated during the early decades of the Republic as the need of a self-governing people for universal education.”).

\textsuperscript{94} THOMAS JEFFERSON, \textit{Democracy 137} (Saul K. Padover ed., 1939) [hereinafter \textit{Democracy}] (“If a nation expects to be ignorant and free, in a state of civilization, it
For Horace Mann, education created a unified citizenry out of the many different groups in the United States.\(^95\) Equally important, a school of political economics arose based on Adam Smith’s *Wealth of Nations*.\(^96\) These writers advocated universal education as a means of enhancing the American economy and reducing crime and unemployment.\(^97\) Jefferson, Mann, and the political economists fought for the creation of state-funded “common schools” in which poor children could receive the same quality of education as their wealthier peers.\(^98\) They also maintained that all children had a right to education.\(^99\)

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expects what never was and never will be.”); Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786) (“Let our countrymen know . . . that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance.”); *JEFFERSON—PUBLIC & PRIVATE PAPERS* 39 (1990) (stating Jefferson’s belief that education of the people was a means to prevent tyranny). Many others took up Jefferson’s cause after his death. CREMIN, supra note 93, at 104.

95. *THE REPUBLIC & THE SCHOOLS, HORACE MAN ON THE EDUCATION OF FREE MEN* 8 (Lawrence A. Cremin ed., 1957) [hereinafter MANN] (Mann feared the “destructive possibilities of religious, political, and class discord.”).


97. See, e.g., STEPHEN SIMPSON, *THE WORKING MAN’S MANUAL: A NEW THEORY OF POLITICAL ECONOMY, ON THE PRINCIPLE OF PRODUCTION AND THE SOURCE OF WEALTH* 199 (1831) (“Nothing is so essentially connected with the wealth of nations, and the happiness of the people, . . . as the proper cultivation, expansion, and discipline of the popular mind.”).

Mann shared the political economists’ belief in the connection between education and wealth. MANN, supra note 95, at 61 (“An educated people is a more industrious and productive people.”). He also said:

[A]ny community, whether national or state, that ventures to organize a government, or to administer a government already organized, without making provision for the free education of all its children, dares the certain vengeance of Heaven; and, in the squalid forms of poverty and destitution, in the scourges of violence and misrule, in the heart-destroying corruption of licentiousness and debauchery, and in the political profligacy and legalized perfidy, in all the blended and mutually aggravated crimes of civilization and of barbarism, will be sure to feel the terrible retributions of its delinquency.

*Id.* at 76.

98. There was great unity among the reformers, despite somewhat different philosophical underpinnings. As Mann said, “The moralist . . . takes up the argument of the economist. He demonstrates that vice and crime are not only prodigals and spendthrifts of their own, but defrauders and plunderers of the means of others.” MANN, supra note 95, at 61.

99. CREMIN, supra note 93, at 132 (citing Simpson’s “proposal for a ‘general system of popular education’, reaching beyond the mere attainment of reading and writing as a matter of right in common schools”); MANN, supra note 95, at 63 (“I believe in the existence of a great, immutable principle of natural law . . . which proves the *absolute right* of every human being that comes into the world to an education.”).
Based on these philosophies, Maryland's education reformers pursued change in the early and mid-1800s despite virulent resistance. While some districts had established successful public schools, others had "made practically no headway in the education of children." The antireformers, principally wealthy property and slave owners, who dominated the state legislature viewed education as a threat to the social order. Only after the Civil War severely damaged the political and economic power of the slave owners were reformers able to pass a constitutional amendment that established an educational entitlement for every child in Maryland. The 1864 education clause called for "an uniform system of free public schools" and specifically required the hiring of a state superintendent of schools who would have wide authority to improve the quality of education in the State.

100. See William S. Myers, The Maryland Constitution of 1864, at 85 (1901) ("[N]umerous attempts had been made at the various sessions of the Legislature to inaugurate some sort of general education system, but for one reason or another these attempts had always resulted in failure."); James W. Harry, The Maryland Constitution of 1851, at 64 (1902) (unpublished dissertation) (noting the legislature’s rejection of an amendment that would have authorized it to create "a uniform system of public schools throughout the State, adequately endowed to educate every white child within its limits.").

101. See also Basil Sollers, Secondary Education in the State of Maryland, in History of Education in Maryland 39. Of 100,000 white children between the ages of eight and ten, half were not enrolled in any school. William Hunter Shannon, Public Education in Maryland (1823-1868) With Special Emphasis Upon the 1860s, at 46 (1964) (unpublished dissertation, University of Maryland). Even in Baltimore City, which had the highest quality schools in the State, "large numbers of children [were] receiving no instruction." Id. at 84.

102. Shannon, supra note 101, at 19-21 (noting the General Assembly’s hesitancy to "set up centers of enlightenment that might lead to questions concerning the social and economic basis for the state’s economy.").

103. See also Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 622, 458 A.2d 758, 771 (1983) ("It was not until the adoption of the Maryland Constitution of 1864 that a statewide system of free public schools was established in this State.").

104. Myers, supra note 100, at 85 (1901).

105. Id. at 85-86. The 1864 language adopted the main concepts reformers had unsuccessfully tried to include in the 1851 Constitution. Harry, supra note 100, at 65.
The State's first superintendent, Libertas Van Bokkelin, quickly moved to establish a highly centralized system of public schools,\textsuperscript{106} financed primarily by the state government.\textsuperscript{107} Although he made dramatic headway,\textsuperscript{108} resistance was significant.\textsuperscript{109} Some citizens disliked the additional state tax used to pay for the schools,\textsuperscript{110} while others resented the centralized nature of the system.\textsuperscript{111} The old pro-Confederate forces, previously relegated to the political backwaters of the State, began reasserting themselves and mobilizing the anti-Union, anti-Yankee forces.\textsuperscript{112} These forces coalesced at the 1867 Constitutional Convention for the purpose, among others, of dismantling the state-controlled system of free public schools.\textsuperscript{113} Ultimately, however, they largely failed.

A new education clause adopted in 1867 represented a compromise between reformers and antireformers; yet it was a compromise that heavily favored the reformers. Although the antireformers were able to excise the 1864 requirement of a state-run system,\textsuperscript{114}

\begin{enumerate}
\item[106.] Sollers, supra note 101, at 66-67 (describing uniform practices of discipline and testing). The State Superintendent set the school calendar, established a uniform statewide curriculum, determined which textbooks would be used, and instituted a teacher certification process. He also hired district heads to implement his plan on the local level. 1864 Debates, supra note 100, at 1218.
\item[107.] Most local districts were either too poor to pay for free public schools or simply refused to do so. L.E. Blauch, The First Uniform School System of Maryland, 1865-68, 26Md. Hist. Mag. 205, 214-16 (1931). Indeed, only two districts—Alleghany and Baltimore—opted for local taxes. Id. at 211.
\item[108.] Shannon, supra note 101, at 228-29. The new State Superintendent moved quickly to expand the number of primary, grammar, and high schools and put in place statewide systems of excellence, which resulted in significant increases in educational quality. Id. at 261. He proposed compulsory school attendance and upgrading standards of professional competence of teachers. Id. at 268.
\item[109.] Amy C. Crewe, No Backward Step Was Taken, Highlights in the History of the Public Elementary Schools in Baltimore County 35 (1949) ("It was a courageous ideal, but, involving as it did an attempt to establish at one leap a system more elaborate than any other State in the Union was supporting at that time, it ran into difficulties almost immediately.").
\item[110.] Blauch, supra note 107, at 213.
\item[111.] Id. at 225; Shannon, supra note 101, at 327. Wishing to be exempt from the state mandates, Baltimore City challenged the State Superintendent in court but lost. Blauch, supra note 107, at 218.
\item[112.] Shannon, supra note 101, at 240 (from a report from Calvert County) ("The demagogue dreaded the free school which encouraged free thought and inspired individual initiative. The sectionalist considered the schools nothing more than the spawn of Yankeedom. The aristocrat looked upon public education as detrimental to the contentment of the poor."). Although politically weakened, the property owners still greatly feared an expanded educational system. Id.
\item[113.] Id.
\item[114.] The new clause no longer required that the system be "uniform" and took out the requirement that a state superintendent be hired who would then hire the local su-
they were unable to mandate a locally run system or eliminate the State's ultimate responsibility for education. Instead, the convention adopted the "thorough and efficient" language, which maintained the State's commitment, adding a qualitative component to the constitutional mandate.

The various uses of the two words before, during, and after the convention prove that "thorough" and "efficient" each imply concepts of adequacy and effectiveness. Webster's dictionary defined "efficient" in 1864 as "causing effects; producing results; actively operative; not inactive, slack or incapable; characterized by energetic and useful activity." An 1815 synonym for "thorough" was "complete," and an 1872 dictionary defined "thorough" as "complete; full; perfect." The delegates to the 1851 convention repeatedly used "efficient" to describe an adequate education system. The unsuccessful education clause proposed by reformers in 1851 read, "It shall be the duty of the Legislature . . . to provide for the establishment of efficient common schools, adequate to the education of every white child of this State." Horace Mann described his visionary common school, which provided adequate education for all children, as "efficient." He

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115. Antireformers wanted a dissolution of the entire system and reestablishment of total local control. 

116. There was little debate about the import of the phrase. 

117. Noah Webster, An American Dictionary of the English Language 430 (1864) (quoted in Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tex. 1989)). Another contemporary dictionary said that "efficient" meant "causing effects; that makes the effects to be what it is." Latnam, A Dictionary of the English Language (London, 1872) (quoted in Appellants' Brief, supra note 89, at 26 n.11).


119. Latnam, supra note 117.

120. Delegate McHenry declared, "There is no system of police comparable to that furnished by an efficient common school education, which trains up the children of a community to be good citizens." 1851 Debates, supra note 100, at 813. One delegate summed up the thinking of many of his colleagues in saying, "If it was the last word he had to say, he would say, let us have an efficient system of education." Id. at 810 (quoting Delegate Fiery). Delegate Fiery refused to consider spending another dollar on physical improvements in the State until the State developed a "uniform and efficient system of education for every child." Id.

121. Blauch, supra note 101, at 175.

122. Cremin, supra note 93, at 137. He said:
used "thorough" to describe the education parents looked for in public schools, but could only find in the high quality private institutions.\textsuperscript{123} Abraham Flexner and Frank Bachman, in their 1916 analysis of education in Maryland, repeatedly used "efficient" to describe their ideal system.\textsuperscript{124}

Thus, in using these words, the delegates intended to mandate an adequate system of education throughout the State.\textsuperscript{125} If they had meant anything else, they would not have used such strongly qualitative language. The major change from the 1864 clause to the 1867 version was to give the legislature greater freedom to design the structure of the State's education system without a requirement of full state centralization.

\textbf{B. The Hornbeck Decision}

In 1979, several Maryland school districts sued the State, claiming that the educational finance system violated the federal and state

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\textsuperscript{123} The use of "efficient" did not mean that the drafters wanted an "inexpensive" or "cheap" system as some have argued. Rather, the concerns delegates expressed over the high cost of the outgoing system were based on their goal of establishing a system of schools that produced educated students without excessive waste. Thus, the emphasis was on spending money wisely, not refusing to spend it at all. \textit{See} Appellants' Brief, \textit{supra} note 89, at 35-36.
The complaint alleged that because of the insufficiency of school funds caused by the State's discriminatory, unequal and inadequate school financing system, the plaintiff school boards were unable to meet their constitutional obligations under state and federal equal protection guarantees or under the "thorough and efficient" clause of § 1 of Article VIII of the Maryland Constitution.

The plaintiffs argued that the State was constitutionally required to ensure equality of funding for each child in the State, relying heavily on the equal protection clauses of both the federal and state constitutions. In order to determine whether the State violated the equal protection clauses, the Court of Appeals applied the rational basis test. First, it found that the State's desire for local control was a legitimate governmental objective. Second, it established that reliance on local taxation was a reasonable means to encourage the goal of local control. Finally, the court explained that the financial disparities, which were at the heart of the plaintiffs' complaint, were simply the inevitable side effects of the State's legitimate reliance on local taxation.

For the purpose of determining the meaning of "thorough and efficient," the Hornbeck decision is only indirectly helpful. For instance, the opinion does not define the precise requirements of the education clause. Indeed, because the plaintiffs provided no evidence that their schools were not providing an adequate educa-

126. See Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 607, 458 A.2d 758, 764 (1983). The plaintiffs were the Boards of Education of Somerset, Caroline, and St. Mary's Counties and the School Commissioners of Baltimore City; taxpayers; students; parents; public officials; and school superintendents. Id. The defendants were the Comptroller of the Treasury, the State Superintendent of Schools, and Montgomery County by intervention. Id. at 607-08, 458 A.2d at 764.

127. Id. at 611, 458 A.2d at 776. The complaint asserted that "poor children in the plaintiff school districts require extra educational assistance to overcome learning disadvantages but receive less as a result of the State's discriminatory public school financing system." Id. at 610, 458 A.2d at 765.

128. Id. at 610, 458 A.2d at 765.

129. Id. at 611, 458 A.2d at 776. This test was defined in San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1, 55 (1972) ("The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest.").

130. Hornbeck, 295 Md. at 657, 458 A.2d at 790.

131. Id.

132. Id. at 654, 458 A.2d at 788 ("We think the legislative objective of preserving and promoting local control over education is both a legitimate state interest and one to which the present financing system is reasonably related.").
tion, the court did not need to define "thorough and efficient" or determine whether any school failed to meet that constitutional standard.

Nevertheless, the Hornbeck dicta generally hints at the meaning of the education clause. For example, the court commented that "the trial court did not find that the schools in any district failed to provide an adequate education measured by contemporary standards," implying that such a finding would have established a constitutional violation. The court also described the mandate of Article VIII's "thorough and efficient" language as requiring no more than a "basic or adequate education," even though it provided no indication of what a "basic or adequate" education entailed. The full meaning of "thorough and efficient," however, remained unresolved by the decision.

C. What Quality of Education is "Thorough and Efficient?"

The vision of the Maryland reformers who framed the "thorough and efficient" language parallel the national reformers and therefore entailed an educational system that served political, social, and economic goals. First, the reformers expected schools to provide students with the skills needed to vote intelligently and to

134. Id. at 639, 458 A.2d at 780. The court stated: No evidentiary showing was made in the present case—indeed no allegation was even advanced—that these qualitative standards were not being met in any school district, or that the standards failed to make provision for an adequate education, or that the State's school financing scheme did not provide all school districts with the means essential to provide the basic education contemplated by § 1 of Art. VIII of the 1967 Constitution.

135. See McUsic, supra note 86, at 327 (stating that the court was not required to define a minimum standard of education because the plaintiffs failed to argue inadequacy).

136. Hornbeck, 295 Md. at 639, 458 A.2d at 780. The court wrote, "Simply to show that the educational resources available in the poorer school districts are inferior to those in the rich districts does not mean that there is insufficient funding provided by the State's financing system for all students to obtain an adequate education." Id. The defendants' brief emphasized this point. Appellants' Brief, supra note 89, at 16 ("Although the trial court's opinion focused on financial disparities, it did not find that any student, or group of students in Maryland was denied the opportunity to receive an adequate education."). The defendants also stated, "The Plaintiffs did not establish any 'contemporary educational standards' with which any subdivision does not comply." Id. at 24.

137. Hornbeck, 295 Md. at 632, 458 A.2d at 776 ("To conclude that a 'thorough and efficient' system under § 1 means a full, complete and effective educational system throughout the State, as the trial judge held, is not to require a statewide system which provides more than a basic or adequate education to the State's children.").

138. See generally supra notes 100-105 and accompanying text (for underlying philosophies of reformers).
participate fully in the American democracy. The mere ability to read the names in a voting booth would fall far short of the desired level of skills needed to understand the issues involved in an election and to remain reasonably involved between elections. Second, the reformers’ ideal placed responsibility on schools to provide enough exposure to American culture and values to bring a heterogeneous group of students under a common philosophical umbrella. This goal required children to learn about the history and culture of the United States and its people. Finally, the reformers expected schools to provide all of Maryland’s children with the skills needed to compete economically with people throughout the State and with those from other states. Today, this would include the language, mathematic, and scientific skills necessary to obtain a job in the service- and technology-based economy. Anything less than a high school education would irreparably hurt the chances of a person attempting to enter the economic mainstream.

Putting these political, social, and economic pieces together, a “thorough and efficient” education includes the basics, but should extend far beyond the “three Rs” in both rigor and scope. A system that produces barely literate graduates cannot possibly satisfy the “thorough and efficient” or “basic or adequate” requirements—nor can a system in which thousands of students fail to graduate at all.

Judicial opinions from other states with similar constitutional language strongly confirm this requirement of a comprehensive education. The courts in West Virginia and New Jersey—states with “thorough and efficient” education clauses—established rigorous and broad constitutional standards that cover the ability of students

139. Id.
140. Ratner, supra note 10, at 782-83 (describing the necessary political skills as including literacy and ability to write).
141. See supra notes 100-105 and accompanying text.
142. See, e.g., Ratner, supra note 10, at 787-88 n.30 (stating that courts have found a twelfth-grade education to be the absolute minimum required). A twelfth-grade level of reading ability is needed to read and understand most newspapers. Id. at 788 n.30.
143. As Horace Mann summarized:

[Under] a republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge;—such an education as teaches the individual the great laws of bodily health; as qualifies for the fulfillment [sic] of parental duties; as is indispensable for the civil functions of a witness or a juror; as is necessary for the voter in municipal affairs; and finally, for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great republic.

Mann, supra note 95, at 63.
to succeed economically, socially, politically, and morally. For example, in *Abbott v. Burke,* the high court in New Jersey described the breadth of the constitutional mandate as it was to be understood in that state:

Thorough and efficient means more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one’s role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.

The court therefore ruled that the New Jersey school system could not limit course offerings to basic skills and still meet the constitutional mandate.

The West Virginia Supreme Court of Appeals subsequently explored and defined “the words ‘thorough,’ ‘efficient’ and ‘education’ to ascertain the boundaries of the legislature’s constitutional mandate.” In *Pauley v. Kelly,* the court declared that a “thorough and efficient” system of schools must “develop[] as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and [do] so economically.” The court further maintained that the constitutional provision “command[s] that the education system be absolutely complete, attentive to every detail, extending beyond ordinary parameters.” In conclusion, the court found that “the Thorough and Efficient Clause requires the development of certain high quality educational standards, and that

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145. *Id.* at 397-98 (“If absolute equality were the constitutional mandate, and ‘basic skills’ sufficient to achieve that mandate, there would be little short of a revolution in the suburban districts when parents learned that basic skills is what their children were entitled to, limited to, and no more.”).
146. *Id.* at 398. A subsequent historical analysis of the education clause revealed that the framers had rejected language without a qualitative standard and instead had added the “thorough and efficient” language. F. Clinton Broden, Note, *Litigating State Constitutional Rights to an Adequate Education & the Remedy of State Operated School Districts,* 42 RUTGERS L. REV. 779, 782-83 (1990) (stating that this “strongly suggests that the intent was not simply to guarantee a free education but an effective one as well”).
149. *Id.* at 877.
150. *Id.* at 874. The court said that “[l]exically ... the words have not changed [from 1815 to 1976].” *Id.* It added that the system “must produce results without waste.” *Id.*
it is in part by these quality standards that the existing educational system must be tested.\textsuperscript{151}

Courts in Arkansas,\textsuperscript{152} Idaho,\textsuperscript{153} Montana,\textsuperscript{154} and Texas\textsuperscript{155} have also defined standards that are comprehensive. Indeed, of the states with "thorough and/or efficient" language, no court has conclusively rejected the requirement of a high-quality education. Even courts in Colorado,\textsuperscript{156} Illinois,\textsuperscript{157} Minnesota,\textsuperscript{158} Ohio,\textsuperscript{159} and Vir-

\textsuperscript{151} Id. at 878.

\textsuperscript{152} In 1983, Arkansas's highest court declared:

The evidence offered may have shown that the appellee districts offered the bare rudiments of educational opportunities, but we are in genuine doubt that they were proved to be suitable and efficient. However, even were the complaining districts shown to meet the bare requirements of educational offerings, that is not what the constitution demands.


\textsuperscript{153} The Supreme Court of Idaho stated that "'[t]here is, at least in the context of our present society, more inherent in a thorough system of education than instruction in the three 'R's.'" Thompson v. Engelking, 537 P.2d 635, 648 (Idaho 1975).

\textsuperscript{154} In a 1930 decision, the Supreme Court of Montana asked "'[w]hat, then, constitutes a 'thorough' system of education in our public schools?" McNair v. School Dist. No. 1, 288 P. 188, 190 (Mont. 1930). The answer:

[T]he solemn mandate of the Constitution is not discharged by the mere training of the mind; mentality without physical well-being does not make for good citizenship—the good citizen, the man or woman who is of the greatest value to the state, is the one whose every faculty is developed and alert . . . . Education may be particularly directed to either mental, moral, or physical powers or faculties, but in its broadest and best sense it embraces them all.

Id. (citation omitted). The McNair court's definition also included a vocational training component: "The common schools are doorways opening into chambers of science, art, and the learned professions, as well as fields of industrial and commercial activities." Id. at 191.

\textsuperscript{155} The Texas Supreme Court has interpreted the requirement of efficiency to include a decent quality education for every child. See Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tex. 1989). The court rejected the notion that "efficient" meant "'economical,' 'inexpensive' or 'cheap,'" and instead referred back to old dictionary definitions. Id. The court also determined that "'[e]fficient' conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste." Id. (citations omitted).

\textsuperscript{156} Until 1983, the state's highest court had never considered the import of Colorado's education clause. See Lujan v. Colorado St. Bd. of Educ., 649 P.2d 1005, 1024-25 (Colo. 1982). Without "any historical background to glean guidance regarding the intention of the framers," the court could only speculatively talk in negatives. Id. In its holding, the court rejected the notion that a "thorough and uniform system requires equal expenditures within the districts." Id. Although a dissenting justice warned that the majority was holding that "the constitutional standard is satisfied if the state insures that some unspecified minimum of educational opportunity is available in each school district," there is no explicit affirmative declaration by the court of the actual standard. Id. at 1041 (Lohr, J., dissenting). Consequently, Judge Lohr's concern appears to be unfounded.

\textsuperscript{157} The state's highest court has been reluctant to elaborate on the meaning of the language, other than to reiterate the description already included in the constitution
ginia, which have wavered somewhat in their declarations, tend to be conscious of the importance of a quality education.

That every child should receive a "good common school education." People ex rel. Leighty v. Young, 139 N.E. 894, 895 (Ill. 1923). See also People ex rel. Russell v. Graham, 134 N.E. 57, 60 (Ill. 1922) (reiterating the "good common school education" language as a constitutional element of "thorough and efficient").

158. There is little judicial interpretation of the educational requirement in Minnesota. In 1913, the highest court declared that "[t]he object is to insure a regular method throughout the state whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." Board of Educ. v. Moore, 17 Minn. 391, 394 (1871).

159. The overwhelming evidence indicated that the Ohio education clause established a rigorous constitutional mandate for a high quality of education throughout the state. See 2 REPORT OF THE DEBATES & PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF OHIO 1850-51, at 13-17 (1851) (J.V. Smith, official reporter) [hereinafter OHIO DEBATES]. For the most part, Ohio courts have correctly followed this historical purpose. In 1923, the state Supreme Court recognized that "the sovereign people made it mandatory upon the General Assembly to secure not merely a system of common schools, but a system thorough and efficient throughout the state." Miller v. Korns, 140 N.E. 773, 776 (Ohio 1923). Other states' courts, in examining the Ohio record, have also found the education clause to establish a high standard. As West Virginia's highest court said, "The tenor of the discussion . . . by those advocating the entire education section as it was finally adopted, leaves no doubt that excellence was the goal, rather than mediocrity." Pauley v. Kelly, 255 S.E.2d 859, 867 (W. Va. 1979).

In its most recent interpretation of the education clause, Ohio's highest court did not directly refute this high standard. In Board of Education v. Walter, the court apparently implied that as long as a school had enough funds to instruct students in basic academic subjects, and thereby met the legislative standards, it met the constitutional standards. See Board of Educ. v. Walter, 390 N.E.2d 813, 825-26 (Ohio 1979), cert. denied, 444 U.S. 1015 (1980). The court commented that although financial hardships resulted in school closings, the instructional year for students did not fall below 182 days, the length mandated by law. Id. This decision indicated only that a system bereft of certain basics cannot be thorough and efficient; it does not necessarily indicate that a system with those basics and nothing else would necessarily be thorough and efficient.

160. In 1963, Virginia's highest court declared that the constitutional language did not even require the state to have public schools at all. See County Sch. Bd. v. Griffin, 133 S.E.2d 565, 573 (Va. 1963). In Griffin, pro-segregationists were permitted to close schools to avoid racial integration without violating the constitution. Id. This finding sharply conflicted with the court's own prior holdings. In 1959, under similar circumstances, the court had stated that "the state constitutional provision requires the State to 'maintain an efficient system of free public schools throughout the State.'" Harrison v. Day, 106 S.E.2d 636, 646 (Va. 1959). The court therefore concluded that "the State must support such public schools in the State as are necessary to an efficient system." Id. (quoting VA. CONST. of 1869, art. XI, § 129). The notion that a non-existent school system could be "efficient" strictly contradicts that finding.

161. In addition, although courts in Pennsylvania and Kentucky have made only vague comments about the qualitative nature of the educational mandate, these comments evidence a high value placed on education. Pennsylvania's highest court has said that failure to provide every child with a "basic, adequate or minimum education" would be unconstitutional. Danson v. Casey, 399 A.2d 360, 365 (Pa. 1979). The court, however, has never affirmatively defined the constitutional standard beyond asserting that "'thorough and efficient' must not be narrowly construed." Id. at 366. Kentucky's court declared that the state was constitutionally required to "provide funding which is sufficient
The board responsible for carrying out Maryland's educational mandate has also described the State's education obligation in broad and rigorous terms. The Maryland State Board of Education (MSBE or the Board), which is given broad authority over education by the General Assembly, has asserted that the "mission of public education is to enable all students to grow intellectually, personally and socially, to become responsible citizens and to enjoy a productive life." The Board expects the state to "provide each student the opportunity to graduate able to participate in an increasingly competitive world economy and job market, function as a responsible citizen in a democratic society, and achieve a personally fulfilling life."

The Maryland Department of Education has also established explicit criteria that it expects every school and school district to reach by 1995. As part of the Maryland School Performance Program (MSPP), students must meet certain "satisfactory" standards described as "realistic and rigorous level[s] of achievement indicating proficiency in meeting the needs of students." These standards are comprehensive.

Overwhelming evidence suggests that Maryland's education mandate, as embedded in the "thorough and efficient" clause, is to provide an education that enables all students to become effective citizens, workers, and members of society.

D. Does "Thorough and Efficient" Require Equal Educational Opportunity?

Constitutional drafters in 1864 were gravely concerned with the State's uneven quality of public education. Their concern pro-
vided the original driving force behind Maryland's constitutional amendment regarding education. Public schools in a number of counties, particularly those with limited financial resources, were severely limited in scope and resources.\(^{169}\) Everywhere, poor, rural, and black children lacked the same access to schools as their wealthier peers.\(^{170}\) The schools in Baltimore City were relatively strong,\(^{171}\) and one of the primary goals of educational reforms in the mid-1800s was to improve schools in other counties to the level of quality of schools in the city.\(^{172}\) Taking a cue from drafters, the first State Superintendent moved forcefully to make an adequate quality education available to every child in Maryland.\(^{173}\)

Although the drafters changed the language of Maryland's education clause from "uniform" to "thorough and efficient," there is no evidence that they wished to ignore the State's concern about

\(^{169}\) Without significant financial help from the state, each district was virtually left to its own to establish schools. Shannon, \textit{supra} note 101, at 19 ("Outside of modest financial aid, the state did not in any way regulate or supervise the county schools."). Many of the poorer, more rural counties lacked the money to do an adequate job. Sollers, \textit{supra} note 101, at 50.

\(^{170}\) At the 1851 Constitutional Convention there was a strong desire to erase great educational disparities both geographically and socioeconomically. See Blauch, \textit{supra} note 101, at 179, 187-88 (quoting one delegate whose proposal sought to "spread the opportunities and advantages of education in the various parts of the country, and among the different orders of the people"). \textit{See also} 1851 \textit{DEBATES}, \textit{supra} note 100, at 805 ("[W]e are desirous to have a general system, where the children of the poor may have the full benefit of it; where all classes (rich and poor) may meet upon a common platform, and receive the blessing designed."). These problems had not been eradicated by the 1864 Convention, at which even delegates from Baltimore City, on whose monetary shoulder an enhanced system would surely be financed, spoke strongly in favor of a new clause. 1864 \textit{DEBATES}, \textit{supra} note 100, at 1225-26. The majority of the 1864 delegates rejected several attempts to explicitly exclude black children from the constitutional mandate. Shannon, \textit{supra} note 101, at 224-25.

\(^{171}\) "On the eve of the Civil War, Baltimore had set an example in education that matched the record of any city in the North and surpassed that of most southern cities." Shannon, \textit{supra} note 101, at 101. It had pioneered educating young girls, forming one of the east coast's first female high schools. \textit{Id.} at 63. It had also established a "floating school" to train sailors, which served as a model for similar schools in other cities. \textit{Id.} at 79-83.

\(^{172}\) \textit{See generally} \textit{supra} notes 168-171.

\(^{173}\) As the state superintendent said in his first report to the state legislature:

Why not rank also with those that provide universal education, not the education which halts before the door of the primary school, but marches on; takes the poorest youth, whom God has endowed with intellect, nurtures that intellect, gives it the benefit of the best culture and exhibits the pure benevolence of Republicanism, which by bestowing equal privileges upon all, gradually levels up the humble to an equality with those who enjoy all the benefits of wealth and social position.

inequality in education opportunity. The antireformers objected to a state-run system where the schools operated in a uniform fashion. Nevertheless, the inclusion of "thorough" in the clause indicates a continued desire to end wide disparities in educational outcomes, even though each district might achieve that goal in its own unique way.

The constitutional language does not require that every school be identical in structure, appearance, or operation. Nor does it prevent some schools from offering services that other districts cannot or do not wish to provide. The education clause, however, does require all schools to provide students with an education that enables them to compete for jobs in the State. At-risk students who fail to receive the quality of education being provided to the vast majority of others are inevitably unable to compete for jobs with their better-educated peers. When this happens, it cannot be said that the students are receiving a "thorough and efficient" education.

The Hornbeck court apparently implied that a constitutional system could exist where a few students receive a "Chevrolet" education, while all other students receive a "Cadillac" education, as long as the "Chevrolet" version constituted a "basic public school education." Yet it is impossible—and illusory—to define a "basic public school education" without any reference point at all. To illustrate, in a state where very few students attend secondary school, a high school education might be constitutionally optional. But where a certain quality and scope of education is standard across the state, students who fail to receive that type of education are placed at an unconstitutional disadvantage. Consequently, the "thorough and efficient" clause does mandate some degree of equality of educational opportunity within Maryland. That equality need not be exact, but it must be such that students at the lower end are not shut out of mainstream opportunities.

Courts from other states have unanimously found "thorough and efficient," or similar language, to require a component of equal-

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174. 1864 Debates, supra note 100, at 1221.
175. See Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 639, 458 A.2d 758, 780 (1983) (holding that "education need not be 'equal' in the sense of mathematical uniformity").
176. Id.
177. See Hornbeck, 295 Md. at 632, 458 A.2d at 776-77 ("[A]t most, the legislature is commanded by § 1 to establish such a system, effective in all school districts, as will provide the State's youth with a basic public school education. To the extent that § 1 encompasses any equality component, it is so limited.").
As in Maryland, the drafters in those states were motivated by the desire to make education accessible to all students, in particular the impoverished and minorities. In New Jersey, for example, the high court emphatically stated, "[W]e do not doubt that an equal educational opportunity for children was precisely in mind [when the delegates approved the education clause in 1875]. The mandate that there be maintained and supported 'a thorough and efficient system . . .' can have no other import." The Supreme Court of Kentucky similarly stated:

Each child, *every child*, in this Commonwealth must be provided with an equal opportunity to have an adequate education. Equality is the key word here. The children of the poor and the children of the rich, the children who live in the poor districts and the children who live in the rich districts must be given the same opportunity and access to an adequate education.

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178. Courts in Arkansas, Idaho, and Pennsylvania have also found the education clause to mandate substantial equality of opportunity. *See* Dupree v. Alma School Dist., 651 S.W.2d 90, 93 (Ark. 1983); Thompson v. Engelking, 537 P.2d 635, 637 (Idaho 1975); Danson v. Casey, 382 A.2d 1298, 1242 (Pa. Commw. Ct. 1979), *aff'd*, 399 A.2d 360 (Pa. 1979). In Ohio, a "thorough and efficient" state, the court has never addressed the equality aspect of the state's education article. However, historical analysis reveals that equal opportunity was a principal thrust of the reformers who created the original "thorough and efficient" articles. *Ohio Debates, supra* note 159, at 14-15.

Some courts have even found that equality of opportunity also requires equality of educational finances. *See, e.g.*, Rose v. Council of Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989) (holding that "the great disparity and inadequacy . . . of financial effort throughout the State made the Kentucky educational system inefficient, and thus a violation of the Kentucky Constitution"); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 397 (Tex. 1989) (holding that "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds"); Abbott v. Burke, 575 A.2d 359, 403 (N.J. 1990). Although Maryland rejected that notion in *Hornbeck*, the broader idea of equal opportunity in education has not necessarily been rejected. Indeed, equality of opportunity may require a state to go beyond equality of finances, because a district with many disadvantaged children may need *additional* money to provide the same opportunity as wealthier districts can for nondisadvantaged students.

179. Robinson v. Cahill, 303 A.2d 273, 294 (N.J.), *cert. denied*, 414 U.S. 976 (1973). The court examined the disparities in the state's system again in 1985 and stated that: [T]he thorough and efficient education issues call for proofs that, after comparing the education received by children in property-poor districts to that offered in the property-rich districts, it appears that the disadvantaged children will not be able to compete in, and contribute to, the society entered by the relatively advantaged children.

*Abbott*, 495 A.2d at 390. In a 1990 extension of the *Abbott* case, the court stated that "[a] thorough and efficient education requires such level of education as will enable all students to function as citizens and workers in the same society." *Id.* at 403.

180. *Rose*, 790 S.W.2d at 211. The court found a strict notion of equality imbedded in the "efficient" language, saying, "Common schools shall provide equal educational op-
It is clear that equal educational opportunity does not exist where one group of students is receiving a significantly poorer education than others. To provide opportunity for these children, the State must provide the programs that have proven effective for at-risk students, even if those programs cost additional money. As the court in New Jersey proclaimed, achieving a thorough and efficient education for disadvantaged children "necessarily means that in poor urban districts something more must be added to the regular education in order to achieve the command of the Constitution." A system that does the opposite—spends more money on wealthy students than low-income children—violates the constitutional command.

In a state educational finance system that depends heavily on local funding (for example, property taxes), poor districts are unable to raise as much money as wealthier ones. As a result, poor districts are unable to provide intensive services to low-income students. Without such services, these students cannot and do not receive a "thorough and efficient" education. Thus, a state school system that fails to implement effective programs for poorly performing low-income students because of heavy reliance on local funding is unconstitutional.

opportunities to all Kentucky children, regardless of place of residence or economic independence." Id. at 212-13. In Texas, the high court expressed a similar finding, saying that "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." Edgewood Indep. Sch. Dist., 777 S.W.2d at 397. The court also added, "It is apparent from the historical record that those who drafted and ratified [the education clause] never contemplated the possibility that such gross inequalities could exist within an 'efficient system.'" Id. at 395 (footnote and citation omitted).

182. This is true in Maryland. See ROBERT E. SLAVIN, FUNDING INEQUITIES AMONG MARYLAND SCHOOL DISTRICTS: WHAT DO THEY MEAN IN PRACTICE? 7-8 (1991) ("The districts on the low end of per-pupil funding are also disproportionately represented among the lowest in student performance."). See also Joel S. Berke & Judy G. Sinkin, Developing a 'Thorough and Efficient' School Finance System: Alternatives for Implementing Robinson v. Cahill, 3 J.L. & EDUC. 337, 352 (1974) (stating that such a backward system would be "inefficient" and therefore unconstitutional).

184. SLAVIN, supra note 182, at 25.
185. See Berke & Sinkin, supra note 182, at 350-52 (stating that reliance on local funding results in unequal educational opportunity).
E. How Much Discretion Does the State Have?

The words "thorough" and "efficient" require interpretation and elaboration to become working standards by which a specific education system can be judged for constitutionality. Often the drafters of constitutional language purposefully use language that is able to bend and adjust to the changing needs of society.\(^\text{186}\) As the Maryland Court of Appeals explained:

The meaning of the Constitution is not restricted to the meaning of particular words employed as they were understood at the time of its adoption. . . . [The framers] could not, of course, foresee what changes were to come, so they wisely did not attempt to define what they meant by education. They left that to be interpreted in the light of conditions at any given time when such a question should arise.\(^\text{187}\)

Following a line of precedent, the Hornbeck court recognized that the standards required by the education clause were not completely fixed by the drafters, but changed according to "contemporary educational standards."\(^\text{188}\) Courts in other states have agreed unanimously,\(^\text{189}\) adding to the educational mandates services not common 100 years ago, but considered necessary in modern

186. Norris v. Mayor of Baltimore, 172 Md. 667, 675, 192 A. 531, 535 (1937). The court stated:

[W]hile the principles of the constitution are unchangeable, in interpreting the language by which they are expressed, it will be given a meaning which will permit the application of those principles to changes in the economic, social, and political life of the people, which the framers did not and could not foresee.

Id.

187. Clauss v. Board of Educ., 181 Md. 513, 523, 30 A.2d 779, 783 (1943). Pursuant to this reasoning, the Court found that heating and transportation were necessary elements of an education, although they were not considered as such in 1867. Id. This language echoed the court’s 1897 statement that “[t]he specific components of a thorough and efficient system are for the legislature to prescribe from time to time, depending on changing circumstances.” Hooper v. New, 85 Md. 565, 580 (1897).


189. In Pennsylvania, the high court said, "The very essence of this section is to enable successive legislatures to adopt a changing program to keep abreast of educational advances.” Danson v. Casey, 399 A.2d 360, 366 (Pa. 1979) (quoting Malone v. Hayden, 197 A. 344, 352 (Pa. 1938)). The court added, "More than forty years ago, this Court recognized that because educational philosophy and needs change constantly, the words ‘thorough and efficient’ must not be narrowly construed.” Id. at 366.

See also Robinson v. Cahill, 305 A.2d 273, 295 (N.J. 1973), cert. denied, 414 U.S. 976 (1973) (“The Constitution’s guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market.”); People ex rel. Leighty v. Young, 139
Courts have often viewed the legislature as the more appropriate body to add flesh to the vague constitutional skeleton of education clauses and keep their mandates consistent with the changing times. However, courts have not given complete freedom to state legislatures, insisting that legislative interpretations be bound by the purpose and values imbedded in the constitutional educational clauses themselves. The Hornbeck court clearly distinguished between the state government's educational standards and those required by the constitution, recognizing the possibility that the state-defined standards might not live up to the constitutional requirements.

State high courts are obligated to interpret their states' constitutions and to judge whether a mandate is being put into effect. Without judicial intervention, citizens cannot enforce their constitu-

N.E. 894, 896 (Ill. 1923) (emphasizing that legislative discretion is to be "bound to conform to the popular understanding of what constitutes a common school education").

In summarizing the cases from around the country, the high court in West Virginia has stated that "[t]he debates and cases often mention that ingredients of a thorough and efficient education system are changeable, and most adapt to conditions its beneficiaries need meet." Pauley v. Kelly, 255 S.E.2d 859, 876 (W. Va. 1979).

Finally, the Idaho high court rejected an explicit statement by a convention delegate defining education as the "three R's" and said that more was required "in the context of present society." Thompson v. Engelking, 537 P.2d 635, 648 (Idaho 1975). Delegate Parker had stated, "The duty of the state . . . is simply the teaching of the children of the community the three R's—to learn to read, to write, and the rules of arithmetic, and the duty of the state ends right there." Id. The high court, however, noted that "today, Parker's statement cannot be given its literal meaning. There is, at least in the context of our present society, more inherent in a thorough system of education than instruction in the three 'R's.'" Id.

190. Indeed, modern children may need a host of additional skills that would have been utterly unnecessary when the constitutional language was initially implemented. See Burgdorf & Bersoff, supra note 84, at 53, 54 ("The development of public school education from the 17th century to the present is largely an evolution from the narrow concept of education as 'reading, writing and arithmetic,' to the broader notion that education should encompass such diverse subjects as chemistry, home economics, driver's training, foreign languages, and gym classes.").

191. See Hubsch, supra note 57, at 115 ("The single most difficult issue facing advocates of educational entitlement is state judicial deference to the education scheme adopted by the state legislature in response to the constitutional mandate.").

192. See, e.g., Harrison v. Day, 106 S.E.2d 636, 646 (Va. 1959) ("[T]he General Assembly may determine [for itself] what is an 'efficient system,' but it cannot impair or disregard constitutional requirements.").

193. Hornbeck v. Somerset County Bd. of Educ., 295 Md. 597, 639, 458 A.2d 758, 780 (1983) ("No evidentiary showing was made in the present case . . . that [the State's] qualitative standards were not being met in any school district, or that the standards failed to make provision for an adequate education.").

194. Ratner, supra note 10, at 816 ("In interpreting state constitutions and laws, the state supreme courts are the ultimate arbiters. Thus, the state courts are free to inter-
tional rights against intrusions or neglect by the other governmental branches. This is especially true with respect to those who have a limited voice in the legislature. While the precise definition of "thorough and efficient" must change over time, the phrase will become meaningless if it is fully subject to the whim of whomever dominates the legislature.

Certainly, the delegates at the 1867 Constitutional Convention sought to provide more flexibility to the state legislature as to the structure of Maryland's public school system. Indeed, they removed the explicit educational structure mandated by the 1864 education clause. Yet, the new language obligated the State to set up a system of "thorough and efficient" public education: instituting a statewide system of adequate quality, providing equal opportunity, and producing effective citizens and contributing members of society. Had the drafters wished to give complete freedom to the legislature, they would have omitted an education clause altogether or taken out the "thorough and efficient" language that demands adequate standards throughout the state. As a delegate to the Ohio constitutional convention of 1850-51—where the "thorough and efficient" language originated—said, "[i]f we should leave everything to the legislature, why not adjourn this convention sine die, at once?"

F. Is Effort Alone Enough?

A key issue is whether the State can defend its educational record simply by pointing to its various attempts to improve education across the state and, in particular, its attempt to help low-income students perform at a higher level. The case for requiring results instead of effort alone is strong. The "thorough and efficient" language established a qualitative mandate that focused on results without excusing well-intentioned but ultimately inadequate and ineffective state efforts. Indeed, by definition such a system would not be "efficient," as it would cost money without producing results.

195. Hornbeck, 295 Md. at 626, 458 A.2d 773-74 ("[I]t was the intention of the Convention delegates in adopting the new education article to leave implementation of the details of the public school system to legislative determination.").
196. See supra notes 114-116 and accompanying text.
197. See supra notes 116-121 and accompanying text.
198. See supra note 91.
199. Ohio Debates, supra note 159, at 11.
On the other hand, the State cannot be expected to do the impossible. For example, because many severely mentally disabled children cannot attend college, the State cannot be expected to provide college-preparatory courses to every such child. Nevertheless, the State cannot rely on stereotypical or erroneous impressions of students' abilities. The State's obligation must be based on what state-of-the-art research indicates about the capabilities of each child. For example, until the 1960s, many handicapped students were viewed as uneducable and were excluded from the nation's public schools. Only after research and experience demonstrated that all children could learn—including the severely disabled—did courts find a state obligation to provide public education, as well as additional special programs and services.

If evidence existed that low-income students were unable to learn or achieve the level of skills of wealthier children, no constitutional violation would occur when those children failed to do well in school. Research, however, has revealed numerous programs and educational strategies that, when properly implemented, allow at-risk students to achieve up to national norms.

These programs cost significantly more than regular programs and are therefore impossible to implement in many local districts that badly need them. Yet high cost is not an excuse for the State's failure to fund and implement necessary programs for at-risk students. The framers determined the appropriate balance between educational quality and state finances when they drafted the "thorough and efficient" language, which the citizens of the state then approved. Had the framers wanted to limit the State's financial

200. Ratner, supra note 10, at 779 ("What duties the principles of 'thorough and efficient' education . . . impose on school districts must be determined in light of the contemporary state of educational knowledge.").

201. See Burgdorf & Bersoff, supra note 84, at 54-55. One million kids were excluded, and three million were not provided with special services. Id. at 54.

202. Marcia P. Burgdorf & Robert Burgdorf, Jr., A History of Unequal Treatment: The Qualifications of Handicapped Persons as a "Suspect Class" Under the Equal Protection Clause, 15 SANTA CLARA L. REV. 855, 876 (1975). The authors stated: "The major factual consideration underlying the successful lawsuits seeking education for handicapped children was the development of a comprehensive body of professional expertise supporting the premise that all handicapped persons can learn, develop and benefit from appropriate educational programs." Id.

203. Some researchers have claimed that schools cannot compensate for a student's weak educational background. See Ratner, supra note 10, at 794-95 n.50, 796-800 (summarizing and then rejecting the theories of these researchers).

204. See id. at 796-804 (discussing characteristics of effective schools and three cities in which such schools have succeeded).
commitment, they could have adopted language similar to Alabama's constitution:

It is the policy of the State of Alabama to foster and promote the education of its citizens in a manner and extent consistent with available resources, and the willingness and the ability of the student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense. 205

Maryland has not taken such an approach, and Maryland's education clause should not be diluted to reflect such an approach.

The Hornbeck decision did include one statement referring to effort: "[E]ducation need not be 'equal' in the sense of mathematical uniformity, so long as efforts are made, as here, to minimize the impact of undeniable and inevitable demographic and environmental disadvantages on any given child." 206 However, the court's statement refers to the plaintiffs' claim of "mathematical uniformity" of finances, not the overall effort of State money and oversight, the result of which must be an adequate education which gives every child a reasonable chance to compete for typical jobs in the changing state economy.

G. Does "Thorough and Efficient" Require Local Control?

Under the Hornbeck court's equal protection analysis, local taxation and the resulting financial disparities were justified as a rational means of achieving the legitimate state purpose of local control. 207 The court correctly noted that local control was an important goal for many delegates at the 1867 convention and provided the underlying rationale behind changing the system from "uniform" to "thorough and efficient." 208 In Pennsylvania, where delegates also rejected a "uniform" system, the high court also found local control to justify reliance on local taxation. 209

Nevertheless, the Hornbeck opinion did not imply that local control was constitutionally mandated. Indeed, the antireformers in

206. Hornbeck, 295 Md. at 639, 458 A.2d at 780.
207. See id. at 656, 458 A.2d at 789 (holding that Maryland's system of school financing complies with rational basis test).
208. Id. at 624-28, 458 A.2d at 772-75.
209. Danson v. Casey, 399 A.2d 360, 367 (Pa. 1979) ("[T]he framers endorsed the concept of local control to meet diverse local needs and took notice of the right of local communities to utilize local tax revenues to expand education programs subsidized by the state.").
1867 failed to establish local control as a constitutional requirement. \(^{210}\) Efforts by Baltimore City delegates to have Baltimore's school system declared constitutionally independent were rebuffed. \(^{211}\) Section 2 of Article VIII even gave the state legislature the authority to continue the centralized system if it so chose. \(^{212}\) The very passage of a new education clause affirmed the desire for continued state involvement, as complete elimination of an education clause would have been the most obvious method to end state involvement and permanently establish local control. \(^{213}\) Instead, the "thorough and efficient" language that was adopted placed the burden to create a public school system firmly on the State, rather than local counties. \(^{214}\) In states with similar constitutional language, courts have unanimously affirmed this state obligation, even though local districts have assumed significant responsibility within the state education system. \(^{215}\)

\(^{210}\) See Md. Const. art. VIII (1867).

\(^{211}\) See 1867 Debates, supra note 115, at 256.

\(^{212}\) Md. Const. art. VIII, § 2 ("The System of Public Schools, as now constituted, shall remain in force until the end of the said first Session of the General Assembly, and shall expire; except so far as adopted, or continued by the General Assembly.") (emphasis added).

\(^{213}\) See Shannon, supra note 101, at 329-30 (describing the goal of the 1867 Convention delegates to establish an organized public school system).

\(^{214}\) See Md. Const. art. VIII, § 1. The burden was mandatory, using the word "shall." See Hubsch, supra note 57, at 97 ("The term 'shall' expresses a mandatory duty.").

\(^{215}\) Pauley v. Kelly, 255 S.E.2d 859, 869 (W. Va. 1979) (noting that states whose constitutions contain a "thorough and efficient" clause "all have found the clause to make education a state, rather than local, responsibility"); Rose v. Council of Better Educ., Inc., 790 S.W.2d 186, 211 (Ky. 1989) (finding that the constitution's education "obligation cannot be shifted to local counties and local school districts"); People ex rel. Leighty v. Young, 139 N.E. 894, 896 (Ill. 1923) ("The constitutional provision is a mandate to the legislature"); Board of Educ. v. Houghton, 233 N.W. 834, 835-36 (Minn. 1930) (quoting Associated Sch. v. School Dist., 142 N.W. 325, 326-27 (1913)) ("The maintenance of public schools is not a matter of local but of state concern. . . . To what reasonable extent powers shall be conferred upon local school districts is for legislative determination."); Abbott v. Burke, 575 A.2d 359, 369 (N.J. 1990) ("The State's obligation to attain that minimum is absolute—any district that fails must be compelled to comply."); Miller v. Korns, 140 N.E. 773, 776 (Ohio 1923) (stating that the constitutional language "calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but state-wide [sic]"); Board of Supervisors v. Cox, 156 S.E. 755, 759 (Va. 1931) (finding that the education language imposed a "mandatory duty" upon the state); Kuhn v. Board of Educ., 4 W. Va. 499, 509 (1871) (stating that the "thorough and efficient" language in the West Virginia constitution made it "obligatory upon the legislature to provide for the support of such schools . . ., thus placing in the hands of the legislature, for that purpose, plenary, if not absolute, power"). California Teachers Ass'n v. Huff, 5 Cal. App. 1513, 1521 n.5 (1992) ("Education and the operation of the public school system are matters of statewide rather than
In summary, the State, in implementing its obligation to create and maintain a "thorough and efficient system of Free Public Schools,"\(^{216}\) may choose to grant considerable discretion to local districts.\(^{217}\) Nevertheless, "[a]lthough the state may assign wide prerogatives to local school districts . . . , it is the individual state that is responsible for the quantity and quality of education in that particular state."\(^{218}\) Therefore, "each state faces the responsibility for providing the necessary funds for implementation and operation."\(^{219}\)

Although the political climate of 1867 resulted in the disbanding of the state-run system, the dissolution of the state board of education, and the firing of the state superintendent,\(^{220}\) within five years the General Assembly had recreated the state board and had given it extremely broad powers.\(^{221}\) The State continued to enforce rules concerning curriculum, length of school year and day, teacher certification, record-keeping and annual inspections over every high school.\(^{222}\) However, political resistance resulted in inadequate funding of the state department of education.\(^{223}\) An influential 1916 study noted this lack of funding as the single most important cause of Maryland's educational shortcomings.\(^{224}\) Lacking signifi-

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218. Id.
219. Id. at 278.
220. See 1868 Md. Laws Ch. 407, tit. 1, ch. 1, § 1, which did not contain a provision for a state board of education or a state superintendent. Also, the law established a separate system for Baltimore City. Id. at § 7.
221. 1872 Md. Laws Ch. 377, ch. 1, § 1 ("Educational matters affecting the State and the general care and supervision of public education shall be entitled to a State Board of Education."). Almost immediately, the Court of Appeals found the law to give the State Board "visitorial power of the most comprehensive character. . . . [S]uch power is, in its nature, summary and exclusive." Wiley v. Board of County Sch. Comm'r, 51 Md. 400-01, 406 (1879). That finding was affirmed in Board of Educ. v. Hubbard, 305 Md. 774, 790, 506 A.2d 625, 633 (1986) (stating that the State Board's "paramount role . . . in interpreting the public education law sets it apart from most administrative agencies").
222. Appellees' Brief at 51; Flexner & Bachman, supra note 124, at 13, 18, 26.
223. Flexner & Bachman, supra note 124, at xvii ("[I]n general, politics and personal considerations impair the vigor, independence, thoroughness, and efficiency of the school system.").
224. Id. at xv, 25 (stating that the State Superintendent had inadequate resources to do his job); id. at 13 (criticizing the power split over teacher credentials between the State Board, the State Superintendent, and the county superintendents).
cant state involvement, schools had poor instruction,\textsuperscript{225} poorly trained teachers,\textsuperscript{226} inconsistent quality,\textsuperscript{227} irregular enrollment and attendance,\textsuperscript{228} weak outcomes,\textsuperscript{229} and poor overall quality.\textsuperscript{230} Local county politicians refused to adequately fund public schools, forcing the state legislature to intervene through special bills mandating local contributions.\textsuperscript{231} One report in the 1916 study claimed that increased state involvement was the only possibility to supply the proper consistency of quality throughout Maryland: "If the matter were left to county and districts, the disparity in educational opportunity would be intolerable. The state's contribution must therefore be employed to equalize conditions.\textsuperscript{232}"

From that point on, state involvement accelerated and widespread improvement ensued. Today, Maryland has codified a host of educational decisions including teacher credentials,\textsuperscript{233} minimum salaries,\textsuperscript{234} graduation requirements,\textsuperscript{235} general curriculum outlines,\textsuperscript{236} student suspension rules,\textsuperscript{237} school missions,\textsuperscript{238} minimum length of school day and school year,\textsuperscript{239} and holiday schedules.\textsuperscript{240} In addition, the State Superintendent has authority to stay any local school board decision.\textsuperscript{241}

\begin{itemize}
  \item \textsuperscript{225} Id. at 106-07 (criticizing the instruction as stressing too much memorization).
  \item \textsuperscript{226} Id. (finding that many teachers did not know the material they were teaching). The report criticized the lack of consistency on teacher credentials, noting that "the widest possible variation in the training of teachers doing the same grade of work." \textit{Id. at} 58.
  \item \textsuperscript{227} Id. at 116 ("Instruction in the colored schools is . . . distinctly inferior to that in the white schools.").
  \item \textsuperscript{228} Id. at 84. Despite progress, many students were not enrolled in elementary school, and even more were not in high school. \textit{Id.} Average daily attendance stood at only 47.1\% in 1914. \textit{Id. at} 94.
  \item \textsuperscript{229} Id. at 85 (commenting that the State ranked 23rd in literacy rates); \textit{id.} (stating that the dropout rate was "deplorably bad"). Many children were overage for their grade in school. \textit{Id. at} 90.
  \item \textsuperscript{230} Id. at xvi.
  \item \textsuperscript{231} Id. at 36-37.
  \item \textsuperscript{232} Id. at 135; \textit{id. at} 65 (stating the need for a central agency to manage teacher certification).
  \item \textsuperscript{233} Md. \textsc{Regs. Code} tit. 13A, § 12 (1989).
  \item \textsuperscript{234} Md. \textsc{Code Ann., Educ.} § 6-301 (1989).
  \item \textsuperscript{235} Md. \textsc{Regs. Code} tit. 13A, §§ 03.01.03, 03.02.03 (1989).
  \item \textsuperscript{236} Md. \textsc{Code Ann., Educ.} §§ 7-407 to -411 (1989) (providing for physical education, safety education, driving education, and alcohol abuse programs in the school system); Md. \textsc{Regs. Code} tit. 13A, § 04.07-04-18 (1989 & 1991) (providing for programs in arts, physical education, science, math, and other areas of study).
  \item \textsuperscript{237} Md. \textsc{Code Ann., Educ.} § 7-304 (1989).
  \item \textsuperscript{238} Md. \textsc{Regs. Code} tit. 13A, §§ 03.01.01, 03.02.01A (1989).
  \item \textsuperscript{239} Md. \textsc{Code Ann., Educ.} § 7-103(a)(1) (1989).
  \item \textsuperscript{240} Id. § 7-103(c).
  \item \textsuperscript{241} Md. \textsc{Regs. Code} tit. 13A, § 01.02.01B (1989).
\end{itemize}
Local control of schools is a valuable feature of a state school system because local control invites local involvement, concern, and support. State involvement is important as well, not only because it is constitutionally mandated, but also because it is needed to create an adequate system across the state. A careful balance is the best strategy: the State establishes required outcomes and ensures adequate resources, local districts implement programs, and then the State monitors schools and school systems to ensure they are producing results.

This balance falls apart when a school or school district is unable or unwilling to fulfill the educational obligation delegated to it by the State. If a district lacks the money to create a "thorough and efficient" system, the State must provide the additional money and see that it is spent on effective programs. If a county lacks the ability to manage a "thorough and efficient" system, then the State must step in and require specific changes or assert direct control over specific failing schools. In either case, the principle of local control must give way to the State's paramount constitutional obligation to guarantee an adequate quality education for every child.

H. Constitutional Conclusions

We are left with several critical and unavoidable conclusions. Adoption of the "thorough and efficient" language mandated the establishment and maintenance of an adequate quality system of free public schools with considerable equality of educational opportunity throughout Maryland. Schools must provide students with the abilities and skills needed to become effective citizens, voters, workers, parents, and supporters of the arts. The required level of ability and nature of the skills change over time, according to the demands of the workplace and competition from outside the State. In response, the state legislature can design any system it deems appropriate, provided that the system produces people with the skills and abilities demanded by the constitution. The State may delegate authority and the financial burden of schools to local districts, but it may not relieve itself of the duty to do whatever is nec-

242. See CREMIN, supra note 93, at 138; FLEXNER & BACHMAN, supra note 124, at 65.
243. See FLEXNER & BACHMAN, supra note 124, at 8:

Public education in America has developed most satisfactorily in those states in which a judicious combination of state and local authority has been effected. The reason is plain. The influence of the state makes for unity of design and uniformity of standards; local initiative ensures the interest, effort, pride, and sacrifice of the community to which the school belongs.

Id.
necessary to establish and maintain a statewide system of "thorough and efficient" schools for all children, even if it means assuming increased financial or operational responsibility.

VI. EDUCATION IN MARYLAND

In summary, the need for an adequate education for the State's low-income children is rooted not only in social, political, and economic needs, but also in a constitutional mandate which has existed since 1867. That low-income children are not currently receiving an adequate education in Maryland is clear. The State in recent years has implemented several programs to improve the quality of education, particularly in the lowest achieving schools. The State is also considering additional efforts, some of which are in formal proposal form. Despite these efforts, the question remains whether the State has properly identified its constitutional shortfalls and is taking the necessary steps to correct the deficit with all reasonable speed.

A. Has the State Fully Identified the Scope of Its Constitutional Violation?

1. Current State Efforts.—Although existing measures already reveal widespread educational inadequacy for poor children in Maryland, the State has expanded and focused its assessments of educational outcomes through annual evaluations of every school and school district. This four-year-old effort, called the Maryland School Performance (MSP) program, measures schools and districts according to thirteen measures, including high school dropout rates and passing rates for state-prepared high school tests in reading, writing, mathematics, and citizenship.

   Schools and districts must achieve certain standards in each category in order to be deemed "satisfactory," which the State defines as "a realistic and rigorous level of achievement indicating proficiency in meeting the needs of students." A satisfactory dropout rate can be as high as three percent in one year (or about twelve percent over the four years of high school). The State established different passing rates for each of its four high school tests and also stated that, by the end of eleventh grade, ninety percent of

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244. See supra notes 7-8 and accompanying text.
246. Id. at 7.
247. Id.
248. Id.
students should have passed all four.\textsuperscript{249}

In MSP’s 1992 report, the state school system as a whole failed to achieve a satisfactory level in six areas.\textsuperscript{250} In the district evaluations, only two school systems were rated satisfactory or better in all thirteen areas (Carroll and Howard counties), while one district failed in eleven (Baltimore City).\textsuperscript{251}

2. Proposed Additions.—The State plans to add measures to its MSP annual reports. Starting in 1993, MSP will evaluate the percentage of graduates “who have completed minimum course requirements that would qualify them for admissions to the University of Maryland System, . . . who have completed an approved occupational program, and . . . who have completed both university and occupational requirements.”\textsuperscript{252} The State has also developed special tests, called the Maryland School Performance Assessment Program (MSPAP), to measure students’ knowledge in mathematics, reading, science, language usage, and social studies.\textsuperscript{253} Students are tested in third, fifth, and eighth grade.\textsuperscript{254} The State plans to incorporate the results from the MSPAP testing into MSP.\textsuperscript{255} Finally, a new high school level test is also being contemplated. A task force has recommended a group of content-based and skill-based tests that students would need to pass in order to graduate.\textsuperscript{256}

3. Analysis.—The initial MSP program falls far short of defining a constitutionally adequate program. The sole achievement indicators, the high school tests, require only a ninth-grade ability to

\textsuperscript{249} Id.

\textsuperscript{250} Id. at 10. The six areas were: the percent of first time takers passing the functional tests in mathematics and citizenship, the percent of eleventh graders not having passed the math and citizenship tests, the attendance rate for seventh through twelfth graders, and the dropout rate. Id.

\textsuperscript{251} Id. at 12-56.

\textsuperscript{252} Id. at 3, 7.

\textsuperscript{253} Executive Summary, Statewide Testing Programs in Maryland 4 (on file with authors).

\textsuperscript{254} Id.

\textsuperscript{255} Telephone Interview with Robert E. Gabrys, Assistant Superintendent for School Performance, Maryland State Department of Education (Apr. 1, 1993) [hereinafter Gabrys April Interview].

\textsuperscript{256} See OUTCOMES-BASED GRADUATION REQUIREMENTS TASK FORCE, MARYLAND STATE DEPARTMENT OF EDUCATION, REPORT ON PERFORMANCE-BASED GRADUATION REQUIREMENTS AND PERFORMANCE-BASED EDUCATION 1-2, 5 (Sept. 1993). The report recommends full implementation of the content tests by the 1996-97 school year and of the skill tests by the 1998-99 school year. Id. at 7-8. It is not clear yet how or if the MSP program will incorporate the high school tests.
Moreover, the program accepts a twelve percent dropout rate over four years and requires that only ninety percent of students pass all four tests. Thus, the State would rate a school “satisfactory” where as many as twenty-one percent of students fail to achieve even a ninth-grade education. This standard falls far short of the requirement that all students acquire the skills needed to compete in the modern economy. Indeed, it fails to live up to the MSP program’s own stated objective of providing “each student the opportunity to graduate able to participate in an increasingly competitive world economy and job market, function as a responsible citizen in a democratic society, and achieve a personally fulfilling life.”

Introduction of the high school graduation test may address this problem if the test is sufficiently rigorous and if the State requires a sufficiently high passing rate. Even so, the State cannot wait three-to-five years, as currently planned, for full implementation of these tests to address the needs of students for whom current measures already reveal severe educational deficits.

Indeed, even under the enhanced MSP program, the measures fail to contain the full breadth of educational skills inherent in an adequate education. As courts in West Virginia and Kentucky have defined the elements of a “thorough and/or efficient” education, they have included several areas that Maryland’s program do not fully address, including writing, art, music, and physical and mental well-being. In Pauley v. Kelly, the West Virginia high court interpreted a “thorough and efficient” education as encompassing eight areas:

1. literacy; 2. ability to add, subtract, multiply and divide numbers; 3. knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; 4. self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work—to know his or her options; 5. work-training and advanced academic training as the child may intelli-

257. Telephone Interview with Robert E. Gabrys, Assistant Superintendent for School Performance, Maryland State Department of Education (Feb. 8, 1993) [hereinafter Gabrys February Interview].

258. A 3% annual dropout rate translates mathematically into a 12% four-year dropout rate. If 88% of the students graduate and 90% of graduates pass all four functional tests, only 79.2% of total students have graduated and passed all four tests.

259. MSP 1992, supra note 164, at iii.

gently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theater, literature and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.\textsuperscript{261}

In Kentucky, the supreme court defined an "efficient" education as containing seven components:

(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.\textsuperscript{262}

These two lists highlight five essential features of any constitutional definition of "thorough and efficient." First, the definition must include the basic subjects: reading, writing, math, science, and social studies. Second, it must contain the political, historical, and community skills needed to become an effective citizen and voter. Third, it must measure appreciation of the arts and culture. Fourth, it must include physical and mental well-being. Finally, the definition must look to the actual future success of high school graduates in college or the workplace.

Thus, while MSP constitutes a good beginning, it currently lacks full constitutional breadth. Expected additions will bring the definition closer to compliance. Nevertheless, more changes will be needed to bring the State's definition fully within the scope of "thorough and efficient."

\textsuperscript{261} Id. at 877.
\textsuperscript{262} Rose v. Council for Better Educ., 790 S.W.2d 186, 212 (Ky. 1989).
B. Is the State Providing Enough Financial Resources to Allow Schools To Provide an Adequate Education?

While money is not necessarily the salvation of schools, it is clear that money, if used properly, can make a major educational difference for low-income children. Indeed, every truly successful program for low-income students has utilized resources significantly greater than required for other students. Because the State bears the ultimate responsibility of ensuring an adequate education, Maryland must verify that each failing school has sufficient resources to implement effective programs for every low-income child. Having now determined what an adequate education is, the State is obligated to ensure that every school has the resources needed to achieve adequacy for every child.

1. Current State Efforts.—Maryland has several funding programs for education. The largest program, called Basic Current Expenses, attempts to provide a foundation level of funding for every student. The foundation level is based on an average of past spending across the state. The State provides money to help districts reach seventy-five percent of that foundation level, taking into account the relative wealth of the districts. Other programs, including retirement pay, transportation, construction, and special education, do not consider district wealth and indeed often provide more money per student to wealthier districts. The State provides additional money for each poor child in a district, with extra money

263. Pallas, supra note 1, at 21 ("If schools do not have available the right resources, all the restructuring in the world is unlikely to make much of a difference.").

There is a major dispute as to the relationship between funding and quality in education. McUsic, supra note 86, at 316. Some researchers claim that the two are unrelated. See Eric A. Hanushek, When School Finance "Reform" May Not Be Good Policy, 28 Harv. J. Legis. 423, 438 (1991) (arguing that studies on the correlation between funding and education are inconclusive). Some problems that exist in education are largely independent of funding. Id. at 454. Yet the success of certain expensive interventions proves that money can make a difference. Moreover, the absence of cost-neutral but equally effective programs indicated that bringing at-risk children into the educational mainstream will cost money in the short term, although long term savings will return the investment many times over. As one researcher said: "Throwing money at the problems will not suffice. But large sums of money are required to support ideas of promise." Goodlad, supra note 2, at 4. See also Slavin, supra note 182, at 26 ("Money itself will not solve all the problems, but it is equally true that any interventions that have a reasonable chance to solve problems will cost money.").


265. Id. at 11.
going to districts with concentrated poverty.266

2. Proposed Changes.—One modification to the funding system recently proposed by the State Superintendent would recalculate the foundation at the average spending of three successful districts that have limited at-risk populations.267 In other words, the State Superintendent indicated that a school needs this amount of money per non-at-risk student to achieve adequacy. The State would help districts reach that new, higher level, considering the capacity of a district to pay. Extra money would go to schools with poor children, on a $500 per student basis.268 Larger grants would be available on an competitive basis for schools with concentrated poverty.269 Additional money would also go to children of limited English proficiency and those who are in special education.270 The proposal would require a substantial increase in state support for education.271

3. Analysis.—Current state funding efforts fall far short of constitutional requirements in both concept and practice. The State’s support for public education is too low. While Maryland is the seventh wealthiest state in the Union, the State’s support for education ranks 41st.272 The State’s funding is not based on an actual determination of what a school needs to educate a child adequately. Past spending justifies current spending.273 As a result, local districts must rely extensively on local wealth, which means that the very schools that need extra resources—those in low-income areas—have

266. See id.
267. NANCY S. GRASMICK, PRELIMINARY PROPOSALS FOR THE GOVERNOR’S COMMISSION ON SCHOOL FUNDING 1 (Sept. 29, 1993) (on file with the authors).
268. Id. at 2.
269. Id.
270. Id.
271. See id. at 1.
273. JOINT STUDY GROUP ON EDUCATION & LOCAL GOVERNMENT, DEPARTMENT OF FISCAL RESOURCES, FINAL REPORT 14 (Oct. 29, 1991). The report stated:
As currently structured, the determination of the minimum per pupil funding level is based on the historical level of spending within the local school systems.
It has not been determined what constitutes a basic level of education, and what it should cost to provide this level of service. As a proxy, state aid relies on 75 percent of allowable “basic costs” as a representation of need. As a result, education funding in Maryland is essentially divorced from standards of quality and need—spending is driven by spending.
Id.
the least to spend.\textsuperscript{274} Funding disparities between the wealthy and poor school districts have widened and are projected to continue to widen.\textsuperscript{275} Research has shown that in Maryland there is a "definite correlation" between per-pupil expenditures and student performance among the districts.\textsuperscript{276}

The State Superintendent's proposed recalculation of the base level of funding represents a significant improvement. However, the $500-per-student increase for low-income students is insufficiently large, and the competitive grant program would penalize students in schools whose applications are not chosen. For districts with large populations of disabled students, the extra amount provided for special education would also be inadequate.

Also, neither the State's current funding system nor the proposed new one provides incentives to schools and districts to promote improvement. Personnel at failing schools suffer no consequences. Staff whose efforts result in dramatically improved student performance receive no benefits. This lack of true accountability contrasts sharply with the system in Kentucky, where staffs are rewarded with salary bonuses when their schools exceed improvement expectations.\textsuperscript{277}

\textbf{C. Is the State Adequately Addressing the Programmatic Problems of Poorly Performing Schools and School Districts?}

Some schools and school districts already manifest educational shortfalls; others will demonstrate deficits under the MSP program and its proposed enhancements. The failure of a particular school may result most directly from local decisions and inadequacies; however, the State bears the constitutional obligation to correct the problem regardless of fault.

\textbf{1. Current State Efforts.—}Under the State's MSP program, schools failing to meet standards in any category must develop and

\textsuperscript{274} \textit{At-Risk Commission, supra} note 60, at 8 ("With little or no exposure to such developmental enrichments as trips, camps, museums, libraries and stimulating home environments, poor youth coming from impoverished backgrounds, have the most to gain from their school experience; yet they are more likely to attend schools with poor resources.").

\textsuperscript{275} \textit{See Joint Expenditure Study Group on Education & Human Resources, Department of Fiscal Resources, Education Pre-Kindergarten Through Grade 12, Follow Up 30 (Aug. 7, 1991).}

\textsuperscript{276} \textit{Slavin, supra} note 182, at 9. One district—Worcester County—has disadvantaged students, but also has the money needed to improve student performance. \textit{Id.} at 10.

\textsuperscript{277} \textit{See A Guide to the Kentucky Education Reform Act of 1990, Legislative Research Commission (prepared by Miller et al.) (Apr. 1990) [hereinafter Kentucky Act].}
implement school improvement plans.278 The plans are designed and put into effect without state comment, involvement or monitoring.279 For twenty-eight schools evaluated as being among the worst in the state, Maryland implemented the Challenge Schools program.280 These schools receive additional funds and agree to participate in an improvement process.281 The State and local superintendents must "agree on a person who is to serve as principal in each Challenge School."282 These principals assemble School Improvement Teams "from among teachers, public agencies, parents, school community, students, and the school system or area offices."283 Based on local superintendent recommendations, the State also assembles an external On-Site Review Team to evaluate the school and submit a written report.284 The School Improvement Team, along with a state consultant, then "write[s] and sign[s]-off on [a] School Improvement Plan with outcomes, milestones, timelines, plan evaluation, and budget information."285 The Maryland State Department of Education reviews the plan, and it is then implemented.286

2. Proposed Additions.—The State recently proposed an intervention process by which chronically underperforming schools might be "reconstituted" under state oversight.287 Schools would qualify if, based on a subsection of MSP results from this past school year, they fail to achieve a satisfactory level in any one standard and their overall average under all measures is both unsatisfactory and declining.288 Other schools will qualify if, based on this current school year's results, they fail to achieve a satisfactory level in any

281. Id. at 11. The local superintendent selects the schools from a list of eligible schools prepared by the State. Id. The State provided a total of $9 million for the 28 schools. Gabrys April Interview, supra note 255.
283. Id.
284. Id. at 11-12.
285. Id. at 12.
286. Id.
288. Id. at 1493 (§ 13A.01.04.07A(1) of the proposed regulations).
one standard and have an overall average that "does not show substantial and sustained improvement through implementation of its school improvement plan." The average used in the calculation includes the existing high school test scores for first-time takers, the dropout rate, and achievement rates in the new MSPAP tests in reading, math, social studies, and science for third, fifth and eighth graders. To achieve an acceptable mark in this last category, seventy percent of students must score "level 3," a standard which is undefined in the proposed regulation.

Reconstitution can entail a change in administration, staff, organization, or instructional program. A third party might also takeover the school under contract. Although the school district submits the original plan for reconstitution, the State Board must approve the plan and can adopt its own plan instead.

The reconstitution process is part of a larger accreditation process that the State has yet to fully define or propose. Under current thinking, the State plans to categorize each school every three years, in a program entitled the School Performance Review System. However, most schools will still not be required to do anything more than implement school improvement plans prepared under the school's own guidance and without state oversight.

3. Analysis.—As with the assessment process, the State's intervention efforts constitute a solid beginning which still falls short of what is required. Numerous vital details are missing from the reconstitution proposal, such as how much "substantial and sustained" progress a school must make to avoid reconstitution. The further below standards a school is, the greater the expected level of improvement should be. The State should explicitly formulate this sliding scale of improvement so that schools know what the expectations are. There must be true accountability for failure. Under the reconstitution proposal, staff at reconstituted schools might only face transfer to other schools, according to a process established by their collective bargaining agreements.

289. Id. (§ 13A.01.04.07A(2) of the proposed regulations).
290. Id. at 1493 (§§ 13A.01.04.04E and 13A.01.04.07B of the proposed regulations).
291. Id. at 1495 (§ 13A.01.04.04E of the proposed regulations).
292. Id. at 1492 (§ 13A.01.04.02B(6)(a) of the proposed regulations).
293. Id. (§ 13A.01.04.02B(6)(b) of the proposed regulations).
294. Id. at 1493 (§ 13A.01.04.07D of the proposed regulations).
295. Gabrys September Interview, supra note 279.
296. School Performance, supra note 278.
The State also needs some independent information on each school if it is meaningfully to approve, reject, or modify a reconstitution plan proposed by the local district. The very barriers which have resulted in inadequate education may also result in incomplete plans or improper implementation. Therefore, the State must examine the adequacy of a school’s resources (e.g., finances) and programmatic structure (e.g., teachers, administration, instructional methodologies and materials, and school policies and structure).

Once a school or school district demonstrates its inadequacy, either according to the regular MSP reports or the subset used for reconstitution, state involvement is needed in the development, implementation, and monitoring of school improvement efforts. A structure similar to the Challenge Grant process is needed, but in every school needing improvement. As part of the intervention, the State should also place state educators inside the failing schools to monitor improvement, assess needs, and recommend changes to the State Board. In Kentucky, so-called Distinguished Kentucky Educators are placed in failing schools with extraordinary powers to assess the needs of the school and make changes.297

Also, the State must pressure schools and school districts to use educational strategies and programs proven by research to be effective. The more a school is failing, the greater its choices should be restricted to a list of successful programs.

Finally, the State needs an equivalent of the Challenge Grant program for entire districts which are failing state standards. Currently, there is no attempt to address district-wide problems, which greatly hinder the ability of an individual school to improve. Indeed, at least one district—Baltimore City—has an alarmingly high percentage of failing schools and may need special assistance.298 Baltimore City may present a special problem because of its relatively large number and concentration of low-income children, its inability to provide additional financing, its chronic lack of resources, the history of ineffective educational management, the particularly low educational outcomes present in city schools, and the grievous threat posed to the fabric of the entire state by the problem.299 The State must determine whether the city schools have ad-

297. See Kentucky Act, supra note 277.
298. Telephone Interview with Kathleen Rosenberger, Coordinator of the MSP Team, Maryland State Department of Education (Sept. 27, 1993).
299. SLAVIN, supra note 182, at 25. The report states:
There is no denying that Baltimore City is in a category all of its own. Baltimore City students score worse than students in every other district on nearly
equate financial support for basic programs, which special support for low-income children is intended to supplement. If not, the State must make up the difference. The State must ensure that effective programs are adopted while holding schools accountable for achieving results.

VII. Conclusion

The State must take action to correct the unconstitutionally poor quality of education being received by low-income students. While the State deserves credit for taking significant steps in the proper direction, Maryland must enhance its effort to address fully and swiftly the constitutional violations that currently exist. The reform engineered by Kentucky in wake of its landmark court decision serves as an excellent model from which Maryland can pattern its own reform.

First, the State must add to the breadth and rigor of the MSP standards. The State's new graduation test must reflect the type of education needed by workers in the new century. The passing rate every test at every grade level. Baltimore City has far higher needs for special education. Its attendance rates are far lower than in any other district, and its retention and dropout rates are far higher. It is the only district with a large proportion of first graders who did not attend kindergarten. It offers among the lowest salaries in the State, receives far fewer applications for each teaching position, and must make offers to a far higher proportion of its applicants than any other district. It is the only district which is unable to fill a significant number of openings. In almost every category of expenditure, Baltimore City is among the lowest, from librarians and library books to computers to supplementary personnel of all kinds (except special education, where it has far more staff than any other district).

Id. In almost any indicator of quality, Baltimore City Public Schools (BCPS) ranks last among the State's twenty-four school systems. Mark Bomster, City's Schools Rank Last, Vow Renewed Effort, THE SUN (Baltimore), Nov. 17, 1992, at 1B, 4B. Last year, it failed all of the State's standards, and this year it passed only two of thirteen. Id. The dropout rate was substandard, and a high percent of high school graduates were unprepared for college or employment. School Performance Report, THE SUN (Baltimore), Nov. 18, 1992, at C8-9, C9. Only 29.4% of graduates met the course requirements for the University of Maryland System, and only 19.7% had completed a state approved occupational program. MSP 1992, supra note 164, at 17. The city's tax base is shrinking. MARYLAND FISCAL DATA app. at 3 (Sept. 24, 1992) (prepared by Department of Fiscal Resources for Region IV Conference, American Society for Public Administrators). The city's population shrank 6.5% from 1980 to 1990. Id. City employment fell 5.6% from 1981 to 1991. Id. The city's property tax base declined by 6.4% from 1970 to 1993 (projected), and its net taxable income shrank from 1990 to 1991 for the first time. Id. at 3-4. Meanwhile, its tax effort significantly exceeds that of other jurisdictions. Id. at 4-6. With a statewide average of 100, the tax effort in Baltimore City averaged 161 from 1988 to 1990. Id. The rest of the State's effort was 81, while that of the four large counties around the city was 101. Id.
should be as close to 100 percent of children as reasonably possible. Second, the State should establish explicit improvement goals for schools based on the extent to which a school falls below satisfactory standards. The further below state standards, the more a school should be expected to improve. The State should also disaggregate data for low-income children and require improvement for these children according to a separate sliding scale.

Third, the State should, in cooperation with local districts, evaluate each school that is far below the standards or failing to meet improvement goals. The assessments should determine what barriers are blocking educational success, including inadequate resources, leadership, instructional staff, and curricular materials. Each school should be provided with adequate resources, taking into account the greater difficulty of teaching at-risk students. Fourth, school staff should be rewarded with salary bonuses for achieving success at meeting or exceeding improvement goals. In consistently failing schools, the State should place a consultant with the power to replace personnel and make any other necessary changes. Students should be permitted to transfer schools. Ultimately, the State should maintain direct involvement in schools not making adequate progress.

Fifth, the State should provide intensive help to schools currently failing under MSP standards of measurement. The Challenge Grant program should be expanded to all schools failing to educate a sizeable portion of its students. Additional resources should be provided based on an assessment of available resources, wealth of the district, severity of the educational problem, and the percent of students from low-income families. Sixth, the State should develop a district assistance program for a school system failing as a whole. Similar to the Challenge Grants program, the district program would provide additional resources, but require development of an improvement plan as a joint product of the State and district. Baltimore City Public Schools undoubtedly would constitute one of the first districts involved in such a program.

Finally, the State's funding must be based on the cost of educating a student, considering poverty and other factors that require additional programs to address. Then, the State should provide aid to districts according to the ability of a jurisdiction to pay through its own tax effort. Districts should be required to raise money according to their capacity, considering both wealth and the other financial burdens the jurisdiction bears.
Correcting the educational plight of low-income children is as important as it is difficult. There are a thousand political and practical reasons why educational reform in Maryland cannot happen as described above. Fortunately, the efforts of other states provide guidance to Maryland as it begins its own effort to end this problem, which not only violates the constitution but also threatens the political, social, and economic health of the State. Change will not come overnight. But to wait any longer than necessary and to not press for dramatic change now will leave the minds of thousands of children in darkness and cloud the future of Maryland.