

FILED

JUL 21 1994

NOEL K. DESSAINT
CLERK SUPREME COURT
BY *[Signature]*

SUPREME COURT OF ARIZONA
En Banc

ROOSEVELT ELEMENTARY SCHOOL)
DISTRICT NUMBER 66; SUPERIOR)
UNIFIED SCHOOL DISTRICT NUMBER)
15; ISAAC ELEMENTARY SCHOOL)
DISTRICT NUMBER 5; SAN CARLOS)
UNIFIED SCHOOL DISTRICT NUMBER)
20; EVANGELINA MIRANDA,)
individually and as a parent of)
Mariela and George Dorame, minor)
children, and MANUEL BUSTAMANTE,)
individually and as a parent of)
Gabrielle and Jack Bustamante,)
minor children, MARCO ANTONIO)
RAMIREZ, individually and as a)
parent of Elizabeth, Mark and)
Lydia Ramirez, on behalf of)
themselves and all others)
similarly situated,)

Plaintiffs/Appellants,)

v.)

C. DIANE BISHOP, Superintendent)
of Public Instruction, in her)
official capacity; STATE BOARD)
OF EDUCATION, STATE OF ARIZONA,)

Defendants/Appellees.)

Supreme Court
No. CV-93-0168-T/AP

Court of Appeals
X No. 1 CA-CV 92-504

Maricopa County
Superior Court
No. CV 91-10387

91-103087

O P I N I O N

Appeal from the Superior Court of Arizona
in Maricopa County

The Honorable Stanley Z. Goodfarb, Judge

REVERSED

Arizona Center for Law in the Public Interest
by Timothy M. Hogan and
David S. Baron

Phoenix

and

Tucson

Southern Arizona Legal Aid, Inc.

by William E. Morris

Tucson

Attorneys for Plaintiffs/Appellants

Grant Woods, Attorney General

Phoenix

by Anthony B. Ching, Assistant Attorney General
Attorneys for Defendants/Appellees

Thomas W. Pickrell

Phoenix

and

Lewis and Roca

Phoenix

by John P. Frank, David J. Cantelme,

Mary Ellen Simonson and Richard A. Halloran

Attorneys for Arizona School Boards Association, Inc.,
Amicus Curiae

M A R T O N E, Justice.

The question we decide today is whether a statutory financing scheme for public education that is itself the cause of gross disparities in school facilities complies with the "general and uniform" requirement of Article XI, § 1 of the Arizona Constitution. We hold that it does not.

This is an action brought by certain school districts and classes of parents against the Superintendent of Public Instruction and the State of Arizona seeking a declaration that the statutory scheme for financing public education in Arizona violates the Arizona Constitution. The districts moved for summary judgment. In opposition, the state argued that it was entitled to summary judgment against the districts and claimed the districts' complaint failed to state a claim upon which relief could be granted. At argument on the districts' motion, the state conceded that it did not controvert the districts' factual submission, and both sides

apparently agreed that the only issue before the court was whether the districts or the state were entitled to judgment as a matter of law. Even though the state had not filed a motion for summary judgment, the parties agreed at argument that the court was "to treat this matter as though cross-motions for summary judgment were before [it]." Judgment of September 18, 1992, at 2.

The court observed that the undisputed record showed enormous facility disparities among the various school districts and traced these disparities to the statutory scheme, which relies in large part on local property taxation for public school capital requirements. Nevertheless, the court concluded that, as a matter of law, no claim was stated under the Arizona Constitution. It denied the districts' motion for summary judgment and, in dismissing the districts' complaint, in effect granted the state's unasserted cross-motion for summary judgment.

The districts filed an appeal in the court of appeals and then filed a petition for an order transferring the case to this court. We transferred the case because the issues are of statewide importance, involve a claim that decisions of this court should be overruled or qualified, and require an interpretation of the Arizona Constitution. See Rule 19(a), Ariz. R. Civ. App. P. ~~We now reverse the judgment of the superior court and remand the case for entry of judgment in favor of the districts and against the state on the districts' claim for declaratory relief.~~

I. THE SETTING

We first describe the undisputed facts and then Arizona's statutory scheme for financing public education.

A. Facts

The quality of elementary and high school facilities in Arizona varies enormously from district to district. There are disparities in the number of schools, their condition, their age, and the quality of classrooms and equipment. Some districts have schoolhouses that are unsafe, unhealthy, and in violation of building, fire, and safety codes. Some districts use dirt lots for playgrounds. There are schools without libraries, science laboratories, computer rooms, art programs, gymnasiums, and auditoriums. But in other districts, there are schools with indoor swimming pools, a domed stadium, science laboratories, television studios, well stocked libraries, satellite dishes, and extensive computer systems.

The quality of a district's capital facilities is directly proportional to the value of real property within the district. There is wide disparity in assessed valuation per pupil among the school districts in Arizona. ~~Property-rich districts are not necessarily districts in which rich people live.~~ A district with much ~~taxable commercial property, or with a power plant within its~~ boundaries, is property-rich even though its residents may be lower income. For example, the assessed value of the Ruth Fisher Elementary School District approaches \$2 billion because the Palo Verde Nuclear Generating Station is located there. As a result,

Ruth Fisher Elementary School District has the greatest level of assessed valuation per pupil at \$5.8 million. School Management Information Data 1990, Arizona State University, College of Education 75 [hereinafter School Management] (based on selected data 1988/89). In contrast, the San Carlos Unified District has an assessed valuation per pupil of \$749. Id. There is scarcely any commercial property in the San Carlos district because it lies within Gila county, where only 4% of the land is available for commercial or individual use. Id. at 15.

A property-poor district with high tax rates may generate less revenue for the capital needs of the district than a property-rich district with low tax rates! For example, in 1989-90, the Roosevelt School District in south Phoenix had a composite tax rate¹ of \$4.37 per \$100 of assessed value, while the Ruth Fisher School District had a tax rate of \$.11 per \$100 of assessed value. Id. at 76.

Even if the commercial property in districts is comparable, demographic factors such as income and student population will cause disparities. For example, the Madison Elementary School District and the Roosevelt Elementary School District have similar distributions of commercial and residential property. But Madison is located in north central Phoenix and is largely middle income while Roosevelt is located in south Phoenix and is largely lower

¹ A composite tax rate is the sum of the primary and secondary tax rates, to be applied to each \$100 of assessed valuation. Primary taxes support schools and government needs; secondary taxes support Bond issues, override elections, and special districts. See School Management at 3.

income. Residential property values differ significantly, which is a cause of the large property value disparity: \$526 million for Madison compared to \$195 million for Roosevelt. Moreover, Roosevelt has more students. Thus, Madison's assessed value per pupil is \$130,778 while Roosevelt's assessed value per pupil is only \$18,293. School Management at 29; see also Affidavit of Sid Borchert at 4.

The Superintendent of Public Instruction admits that there is a "sense of . . . bareness about some of the facilities in the poorer districts, that they are minimal It is basically four walls, a roof, and classroom inside, and that's about the extent of it." Deposition of Diane Bishop, at 16. She acknowledges that the state budget is insufficient for the capital needs of many school districts, id. at 33-34, and that a district's property value largely determines its ability to construct new buildings and to buy computers and textbooks. Id. at 34. The Superintendent agrees that the quality of education a child receives in Arizona should not depend on whether the child lives in a wealthy or poor school district. Id. at 38. Indeed, the Superintendent "think[s] education is a state responsibility and that all children of the state have the same rights to education." Id.

B. The Statutory Scheme for Public School Financing

The Arizona education statutes reflect the complexity of the underlying system. See A.R.S. §§ 15-101 to -1901. The statutes assign tasks to the state and delegate others to the counties and local school districts. School districts, political subdivisions

of the state with geographic boundaries, are organized to administer, support and maintain public schools. A.R.S. § 15-101(15). The statutes accommodate pre-statehood districts, A.R.S. § 15-441(A), new districts, § 15-443, and allow for changes in district boundaries. § 15-460.

The financing scheme is particularly complex. See A.R.S. §§ 15-901 to -1241. [If lack of clarity alone were sufficient to strike these statutes down, this case would be less difficult.] We are fortunate, however, that the parties share a common understanding of how Arizona's public schools are financed.

The statutes create an educational funding formula. First, each district's base-level funding needs are determined by multiplying the number of students in the district by an arbitrary, state-wide dollar amount per pupil. A.R.S. § 15-943. The per-pupil amount appears to be unrelated to any minimum amount necessary for a basic education.²

The formula then determines the districts' share of the base level. The required contribution by a district is derived by multiplying the district's total assessed property value by an arbitrary dollar figure that each district is expected to collect from property taxes. A.R.S. § 15-971(D). If a district's required contribution falls short of the predetermined base level, the state

²The calculation is tremendously complicated. Even the student count is subject to weighing factors so the funding needs of special students are factored into the final count. However, we cannot find anything in the statutory scheme that addresses the actual cost of providing a basic education. Instead, the foundation amount for education appears to be derived from each district's 1979-1980 budget. See A.R.S. § 15-944.

7
makes up the difference. Id. If the district's expected contribution exceeds the base level, the district is not entitled to any state "equalization assistance." Id.

Finally, any funding in excess of the equalized level must be raised through bonded indebtedness by the individual districts. These bonds are subject to voter approval because they must be repaid by increased property taxes. "Since bonds are outside the funding formula, a district's ability to pass bonds is based purely on property wealth and taxpayer willingness." The Joint Legislative Budget Committee's Staff, K-12 Funding Formula Examples and Descriptions 11 (1993). The amount of bonded indebtedness that a district may incur, however, is limited by its total assessed property valuation. A.R.S. §15-1021.

Under the formula, the cost of public education is allocated as follows: the state (45%), local districts (45%), and the United States and counties collectively (10%). Ninety per cent of Arizona's school districts receive some equalization assistance. But the true amount of funding is based upon the value of a district's property and its ability and willingness to tax it. Each district must raise the arbitrary required contribution and must fund anything over the equalization base with added taxes. Property value is therefore crucial to a district's ability to fund its schools.

The system has a particularly profound effect on capital needs. ~~Although each district's equalization level includes a budgeted amount for capital improvements, a district may use most~~

~~of these funds for maintenance and operations if the budgeted maintenance and operations funds are inadequate.~~ See A.R.S. § 15-905(F). If a district repeatedly uses its capital funds for maintenance and operations, its facilities will deteriorate unless the district can generate revenue through bonding. Severe facilities deterioration is therefore likely to occur if the funding formula's equalization level is low and the district has low property value.³ Moreover, the funding system has different effects on individual school districts that inevitably emerge as disparities in capital facilities. Thus, the statutory effort at equalization, although well motivated, predictably fails.

II. THE STATE CONSTITUTIONAL ARGUMENTS

The districts launch two separate state constitutional arguments to support their claim that the Arizona school finance system is unconstitutional.

A. Equal Protection Argument

San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278 (1973), forecloses an argument based upon the federal

³The public school financing system is separated into two categories: the capital financing scheme and the maintenance and operations financing scheme. The districts' claim attacks the capital financing scheme exclusively. But we find that capital disparities are caused by the entire financing system, not just the capital side of the equation. Because districts have the power to use budgeted capital funds for maintenance and operations, the two sides are interrelated. Moreover, the districts must rely, to some extent, on property tax based funding for both capital and maintenance and operations. We find that the capital disparities here are simply the first symptoms of a system-wide problem. It would therefore be both artificial and ineffective for us to limit our review to capital financing.

equal protection clause. The Court held that, because education was nowhere to be found in the United States Constitution, it was not a fundamental right. Thus, the Court applied the rational basis test, and not the compelling state interest test, to judge the constitutionality of a state property tax based educational scheme.

Unlike the United States Constitution, education is the subject of an entire article of the Arizona Constitution. Ariz. Const. art. XI. From this, the districts argue that education is a fundamental right and the school finance system violates the state equal protection clause (the privileges or immunities clause) because it discriminates against children and denies them equal educational opportunities because of where they live.

The privileges or immunities clause of Arizona's Constitution provides:

No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

Ariz. Const. art. II, § 13.

The districts argue that the state has failed to show a compelling state interest to justify its reliance upon a largely property tax based school finance scheme. In response, the state claims that the districts' privileges and immunities argument is foreclosed by this court's decision in Shofstall v. Hollins, 110 Ariz. 88, 515 P.2d 590 (1973), which acknowledged education as a fundamental right but then upheld the then-existing school financing scheme using the rational basis test.

We agree with the districts that Shofstall is not dispositive. We do not understand how the rational basis test can be used when a fundamental right has been implicated. They seem to us to be mutually exclusive. If education is a fundamental right, the compelling state interest test (strict scrutiny) ought to apply. Kenyon v. Hammer, 142 Ariz. 69, 83, 688 P.2d 961, 975 (1984). On the other hand, if the rational basis test properly applies, education is not a fundamental right.

We need not, however, resolve this conundrum because where the constitution specifically addresses the particular subject at issue, we must address that specific provision first. Albright v. Oliver, ___ U.S. ___, ___, 114 S. Ct. 807, 813 (1994) ("Where a particular amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims.'" (quoting Graham V. Connor, 490 U.S. 386, 395, 109 S. Ct. 1865, 1871 (1989))) (emphasis added).⁴ We need not resort to the less specific provision unless the argument based upon the more specific fails. The districts' challenge focuses on the public school system. The education provisions of the constitution are more specific than the privileges and immunities provision. By relying on the specific rather than the general, we also avoid the difficult questions and uncharted territory that surround equal

⁴This principle promotes an important prudential purpose which would not be served by taking the "final step" advanced by the concurring opinion. Post, at 28.

protection and other governmental functions. See Rodriguez, 411 U.S. at 54, 93 S. Ct. at 1307. We therefore begin with those portions of our constitution that specifically address the field of education.

B. The Education Provisions of the Arizona Constitution

1. Historical Background

Arizona's approach to education, with roles shared among the state, counties, and school districts, predates our constitution. Territorial law established a territorial tax, a county tax, and a school district tax to support public education. Revised Statutes of the Territory of Arizona Title XX, chs. 14 and 15 (1887); Revised Statutes of the Territory of Arizona Title XIX, chs. 14 and 15 (1901).

Arizona's enabling act imposed certain conditions to its admission to the United States. Arizona was required to adopt a constitution with provisions "for the establishment and maintenance of a system of public schools which shall be open to all the children of said State" Act of June 20, 1910, ch. 310, § 20, 36 Stat. 557, 570 [hereinafter Act]. Federal lands were granted to the state "for the support of common schools." Act § 24 at 573. Section 25 made outright land grants for specific educational purposes. Excess granted land would become part of the permanent school fund of the state, the income from which could only be used for the maintenance of the common schools. The schools were to be forever under the exclusive control of the state, Act § 26 at 573, and a portion of the proceeds of the sale

of public lands by the United States after admission were to be paid to the state to create a fund, "the interest of which only shall be expended for the support of the common schools within said State." Act § 27 at 574.

Article XI of our constitution is the product of the conventioners' efforts to fulfill the promise of the enabling act and is largely the work of the convention's committee on education. The Records of the Arizona Constitutional Convention of 1910 1068 (John S. Goff, ed., 1991) [hereinafter Records]. The proposed drafts of the article, id. at 1064, 1069, as well as the discussion of the committee of the whole, id. at 523-38, 945-47, show that the conventioners satisfied the enabling act by adopting a basic structure for Arizona's educational system that resembled the territorial regime with which they were already familiar. Not surprisingly, the first legislature after statehood enacted an education title that provided for state taxing, county taxing, and taxing for capital improvements through school district bonded indebtedness. Revised Statutes of Arizona, Civil Code, §§ 2815-24, §§ 2864-65 (1913).

The conventioners believed that an educated citizenry was extraordinarily important to the new state. Early drafts of the education article began with "[a] general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people . . .," id. at 1069, and "[t]he stability of a Republican form of Government depending mainly on

1
the intelligence of the people” Id. at 1064.⁵ The conventioners believed these were more than mere words. By 1910, they had witnessed the most intense immigration in the history of America. They were keenly aware that education was responsible for preserving America’s unity while wave after wave of peoples arrived from other countries. As the heated debates about education as a requirement for voting show, the conventioners believed that a free society could not exist without educated participants. See Records at 564-69.

2. The Operative Provisions of Article XI

Article XI, § 1 of the Arizona Constitution provides as follows:

The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university . .

(Emphasis Added.) The article expressly addresses school finance. Section 8 establishes a permanent state school fund derived from a variety of sources, the income from which may be used “only for common and high school education in Arizona.” Under § 9, the apportionment under § 8 becomes part of a county school fund and the legislature “shall enact such laws as will provide for increasing the county fund sufficiently to maintain all the public schools of the county for a minimum term of six months in every

⁵These suggested clauses were rejected at the last minute. Some of the conventioners were concerned that the clauses sounded too much like “a good old fashioned Democratic speech.” Records at 523.

school year." Section 9 also provides that the laws of the state shall allow the cities and towns to maintain free high schools. Finally, § 10 provides:

The revenue for the maintenance of the respective State educational institutions shall be derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Enabling Act approved June 20, 1910, or other legislative enactment of the United States, for the use and benefit of the respective State educational institutions. In addition to such income the Legislature shall make such appropriations, to be met by taxation, as shall ensure the proper maintenance of all State educational institutions, and shall make such special appropriations as shall provide for their development and improvement.

From these provisions, the districts argue that the legislature must establish and maintain a general and uniform public school system and finance it by general and special appropriation. The districts do not quarrel with the proposition that the state may choose a financing scheme that relies in part on property taxation; but if it does so, it must ensure that by appropriation, or by the definition of district, the financing scheme is general and uniform in fact.

In response, the state argues that Arizona's public school system is not within the scope of art. XI, § 10 at all. It claims that funding a general and uniform school system is therefore not the state's responsibility but the responsibility of school districts. The state further asserts that, even if we were to hold that the state is responsible for such a system, "general and uniform" is formal and not substantive. Relying again on Shofstall, the state argues that as long as the framework of the system is general and uniform, the substance of that system need

not be.

3. The State's Responsibility

We first deal with the state's argument that the financing of public education in Arizona is the responsibility of school districts and not the state. We believe that this proposition is directly refuted by art. XI itself. We look in vain for any provision in the article that imposes any responsibility on school districts to fund public education. The only sources mentioned are the state and the counties. See §§ 8, 9, and 10. The enabling act imposed upon the state the responsibility to create and exclusively control a public school system. Moreover, art. XI, § 1 makes it quite clear that the legislature must enact laws that establish and maintain the public school system. Discretion is left to the legislature as to how it does so, but it must do so.

It is true that nothing in art. XI prohibits the legislature from delegating some of its authority to other political subdivisions of the state to help finance public education. But there is nothing in art. XI, § 1 that allows the state to delegate its responsibility under the constitution. Although the legislature may rely on school districts, counties and the state, the result must produce a general and uniform financing scheme. Because the duty under art. XI, § 1 is a state responsibility, it does not matter whether public schools are within the scope of art. XI, § 10.⁶

⁶The state argues that the "State educational institutions" referred to in § 10 do not include common schools or high schools.
(continued...)

4. The "General and Uniform" Clause

Shofstall acknowledged that art. XI, § 1 requires a general and uniform public school system, but then defined uniformity by reference to compliance with other sections of article XI. For example, § 6 requires the schools to be open at least 6 months each year for pupils between the ages of 6 and 21. Shofstall also defined uniformity by reference to statutes which set up a framework for required courses, teacher qualification and the like.

But Shofstall's reference to other sections of article XI renders most of § 1 meaningless and redundant. If § 1 has independent significance, and it must, how does compliance with § 6 satisfy § 1? And how can the substantive content of the meaning of the constitution (general and uniform) be defined by reference to statutes? Our reading of the constitution, the enabling act and the proceedings of the constitutional convention leads us to the conclusion that "general and uniform" means far more than framework.

But what then is a general and uniform public school system? After Rodriguez disposed of the federal equal protection argument,

*(...continued)

This is a possible interpretation when art. XI, the enabling act, and the minutes of the constitutional convention are compared and contrasted. However, the districts accurately point out that we have held, on two different occasions, that "State educational institutions" as appearing in art. XI, § 6 includes high schools. See Carpio v. Tucson High School Dist. No. 1, 111 Ariz. 127, 128, 524 P.2d 948, 949 (1974); Estate of Arizona Southwest Bank, 41 Ariz. 507, 512, 19 P.2d 1063, 1065 (1933). The clause in § 10 should therefore be read consistently with the clause in § 6. Nevertheless, the state's responsibility for funding undoubtedly springs from § 1.

school funding challenges occurred among the states under state constitutions. This was natural enough because, while education is absent from the federal constitution, it is present in state constitutions. Its presence not only formed the basis for state equal protection claims, but also independent claims under education provisions themselves. Because the language in each of the state constitutions varies, the holdings construing them are without unity.

Some have struck down their financing systems. Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90 (Ark. 1983); Serrano v. Priest, 557 P.2d 929 (Cal. 1976) (Serrano II), cert. denied, 432 U.S. 907, 97 S. Ct. 2951 (1977); Horton v. Meskill, 376 A.2d 359 (Conn. 1977); Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989); McDuffy v. Sec. of Exec. Off. of Educ., 615 N.E. 2d 516 (Mass. 1993); Helena Elementary Sch. Dist. No. 1 v. State, 769 P.2d 684 (Mont. 1989); Robinson v. Cahill, 303 A.2d 273 (N.J.), cert. denied, 414 U.S. 976, 94 S. Ct. 292 (1973); (Robinson I); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); Seattle Sch. Dist. v. State, 585 P.2d 71 (Wash. 1978); Pauley v. Kelley, 255 S.E. 2d 859 (W.Va. 1979); Washakie County School Dist. No.1 v. Herschler, 606 P.2d 310 (Wyo.), cert. denied, 449 U.S. 824, 101 S. Ct. 86 (1980).

Others have upheld their financing systems. Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (1982); McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981); Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); People ex rel. Jones v. Adams, 350 N.E.2d 767 (Ill. App. Ct.

1976); Knowles v. State Bd. of Educ., 547 P.2d 699 (Kan. 1976); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983); Milliken v. Green, 212 N.W.2d 711 (Mich. 1973); Skeen v. State of Minnesota, 505 N.W.2d 299 (Minn. 1993); Gould v. Orr, 506 N.W. 2d 349 (Neb. 1993); Bd. of Educ. Levittown v. Nyquist, 439 N.E.2d 359 (N.Y. 1982), appeal dismissed, 459 U.S. 1138-39, 1035 S. Ct. 775 (1993); Bd. of Educ. of Cincinnati v. Walter, 390 N.E.2d 813 (Ohio 1979), cert. denied, 444 U.S. 1015, 100 S. Ct. 665 (1980); Fair Sch. Finance Council of Okla. v. State, 746 P.2d 1135 (Okla. 1987); Olsen v. State, 554 P.2d 139 (Or. 1976); Danson v. Casey, 399 A.2d 360 (Pa. 1979); Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988); Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989).

In our effort to define "general and uniform," we distill two fundamental principles from these cases. First, units in "general and uniform" state systems need not be exactly the same, identical, or equal. Funding mechanisms that provide sufficient funds to educate children on substantially equal terms tend to satisfy the general and uniform requirement. School financing systems which themselves create gross disparities are not general and uniform.

The second principle relates to the tension that exists between the competing values of local control and statewide standards. As long as the statewide system provides an adequate⁷

⁷Although it seems intuitive that there is a relationship between the adequacy of education and the adequacy of capital facilities, the districts chose not to plead or prove such a relationship. The state claimed that this omission was fatal to the districts' case, but the districts argued that such a

(continued...)

education, and is not itself the cause of substantial disparities, local political subdivisions can go above and beyond the statewide system. Disparities caused by local control do not run afoul of the state constitution because there is nothing in art. XI that would prohibit a school district or a county from deciding for itself that it wants an educational system that is even better than the general and uniform system created by the state.

Local control in these matters is an important part of our culture. Thus, school houses, school districts, and counties will not always be the same because some districts may either attach greater importance to education or have more wherewithal to fund it. Nothing in our constitution prohibits this. Factors such as parental influence, family involvement, a free market economy, and housing patterns are beyond the reach of the "uniformity" required

⁷(...continued)

relationship, although intuitive, was not relevant to or essential to their claim.

We agree with the districts. Even if every student in every district were getting an adequate education, gross facility disparities caused by the state's chosen financing scheme would violate the uniformity clause. Satisfaction of the substantive education requirement does not necessarily satisfy the uniformity requirement, just as satisfaction of the uniformity requirement does not necessarily satisfy the substantive education requirement. In contrast to the view expressed in the concurring opinion, post, at 32, this case affords us no opportunity to define adequacy of education or minimum standards under the constitution. While we agree that uniformity is but a necessary and not a sufficient condition under art. 11, § 1, the contours of sufficiency are simply not before us.

by art. XI, § 1.⁸ Indeed, if citizens were not free to go above and beyond the state financed system to produce a school system that meets their needs, public education statewide would suffer. Those who could might opt out of the system for private education. There could be political pressure to fund the public school system at a level adequate enough to comply with the constitution, but insufficiently adequate to achieve academic excellence.

Political subdivisions of the state, such as districts and counties, are therefore free to go above and beyond the system provided by the state. It is thus not the existence of disparities between or among districts that results in a constitutional violation. The critical issue is whether those disparities are the result of the financing scheme the state chooses.

~~In short, the system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities. There is nothing unconstitutional about relying on a property tax. There is nothing unconstitutional about creating school districts. But if together they produce a public school system that cannot be said to be general and uniform throughout the state, then the laws chosen by the legislature to implement its~~

⁸Indeed, James Coleman and other sociologists have concluded that socioeconomic background is the most powerful predictor of student performance; it is all in the "quality of the homes from which the students come." George F. Will, Look to Family to Find Signs of School's Success, The Arizona Republic, Feb. 18, 1994, at B5; see also James Traub, Can Separate Be Equal?, Harper's, June 1994, 36, 44 ("it is undeniable that neither desegregation nor school reform, nor financing, nor any intervention, weighs very heavily in determining academic outcomes compared with a student's socioeconomic status").

constitutional obligation under art. XI, § 1 fail in their purpose.

This is not a case in which capital facility disparities are the result of districts going above and beyond the state financing scheme. Here, the districts claim that the statutory financing system is itself the cause of the disparities. And on these undisputed facts, the state concedes that the enormous disparities among school districts are the direct result of the state's financing scheme. The scheme is a combination of heavy reliance on local property taxation, arbitrary school district boundaries, and only partial attempts at equalization.

Here, the state knew of the profound differences in property value among the districts, yet selected a funding mechanism where 45% of the revenue depends upon property value. Thus, the state's financing scheme could do nothing but produce disparities. The statutes are inherently incapable of achieving their constitutional purpose. Because the state's financing system is itself the cause of these disparities, the system, taken as a whole, does not comply with art. XI, § 1 of the Arizona Constitution.

We therefore hold that the present system for financing public schools does not satisfy the constitutional mandate of a general and uniform school system. We emphasize that a general and uniform school system does not require perfect equality or identity. For example, a system that acknowledges special needs would not run afoul of the uniformity clause. We also emphasize that disparities that are not the result of the state's own financing scheme do not implicate the interests sought to be served by art. XI, § 1.

As the conventioners who drafted Arizona's constitution foresaw, public education has been a key to America's success. The education provisions of the constitution acknowledge that an enlightened citizenry is critical to the existence of free institutions, limited government, economic and personal liberty, and individual responsibility. Financing a general and uniform public school system is in our collective self-interest.

III. RELIEF

This case comes to us in an unusual posture. The state conceded the existence of substantial disparities among the districts and a causal relationship between these disparities and the statutory scheme. The court below, therefore, erred in granting summary judgment in favor of the state, and instead should have granted summary judgment in favor of the districts. While injunctive relief is inappropriate at this time, the districts are entitled to a declaration that the existing statutory scheme for the financing of public schools in Arizona fails to comply with art. XI, § 1 because it is itself the source of substantial nonuniformities. There are doubtless many ways to create a school financing system that complies with the constitution. As the representatives of the people, it is up to the legislature to choose the methods and combinations of methods from among the many that are available.' Other states have already done so.

³We note that there is significant public support for reform and that the Governor, the Superintendent of Public Instruction, and some legislators have attempted to take up the challenge. Education Finance: What a Mess, The Arizona Republic, Feb. 22, 1994, at B8.

We therefore reverse the judgment of the superior court and remand the case for entry of judgment declaring that art. XI, § 1 of the Arizona Constitution requires the legislature to enact appropriate laws to finance education in the public schools in a way that does not itself create substantial disparities among schools, communities or districts. Because the present scheme is the source of these disparities, it is not in compliance with art. XI, § 1. The trial court shall retain jurisdiction to determine whether, within a reasonable time, legislative action has been taken.

Frederick J. Martone, Justice

CONCURRING:

Thomas A. Zlaket, Justice