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CAMPAIGN FOR FISCAL EQUITY, INC. V. STATE

(decided June 26, 2003)

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The implementation of a proper and effective remedy concerning school finance reform has continued to evade the courts in this country for decades. Since the United States Supreme Court decided *San Antonio Independent School District v. Rodriguez* in 1973,¹ litigation challenging the constitutionality of state school funding has yielded court decisions in 43 states.² In *Rodriguez*, the Court held that funding disparities among various school districts in Texas did not amount to a violation under the Equal Protection Clause of the Fourteenth Amendment.³ As a result of the Supreme Court's failure to recognize a federal remedy for disproportionate state school funding, litigants began invoking claims under state constitutions. On June 26, 2003, in *Campaign for Fiscal Equity, Inc. v. State (CFE II)*,⁴ the Court of Appeals of the State of New York decided the issue concerning New York State school funding once and for all. The court held that the state violated the Education Article of the New York State Constitution by establishing a property tax finance system that failed to provide New York City public schools with appropriate funding for its school system.⁵ In devising a remedy, the court adopted an intermediate approach, which gave

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

2. Molly A. Hunter, *Status of School Funding Litigations in the 50 States*, Advocacy Center for Children's Educational Success with Standards, available at <http://www.accessednetwork.org/litigation/LitigationChart.pdf> (June 27, 2003). Delaware, Hawaii, Mississippi, Nevada and Utah are the only five states in the nation which have had no litigation regarding the issue of state school funding. In 1987, after developing a new education finance scheme, an Indiana suit was withdrawn. An Iowa case, *Coalition for a Common Cents Solution v. State*, was filed in 2002 but has yet to be decided. Advocacy Center for Children's Educational Success with Standards, *Finance Litigation: Delaware*, available at http://www.accessednetwork.org/litigation/lit_de.html (last visited November 17, 2003).

3. *Rodriguez*, 411 U.S. at 54-56.

4. 100 N.Y.2d 893 (2003).

5. *Campaign for Fiscal Equity*, 100 N.Y.2d at 903, 930.

credence to the doctrine of separation of powers by recognizing the supremacy of the legislature's law-making power. However, the court did not completely defer to the good faith of the legislature.⁶ While the court is undoubtedly correct in its decision regarding the state's constitutional failures, its holding provides an immeasurable standard of what constitutes a meaningful high school education. The court incorporated an intentionally vague remedy that will continue generating further litigation rather than definitively settling the issue of state school funding in New York.

Under the Education Article of the New York State Constitution, "the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."⁷ In a 1982 ruling, the New York Court of Appeals elaborated on the legislative intent of the Education Article by holding that it guarantees all students the opportunity for a sound basic education.⁸ In 1993, pursuant to the Education Article and the sound basic education requirement inherent in the constitutional standard, plaintiffs, Campaign for Fiscal Equity, Inc. ("CFE"),⁹ commenced an action on behalf of New York City public schoolchildren against the State of New York. CFE alleged that the state's New York City public school funding program was unconstitutional. CFE sought declaratory relief under the Education Article, Equal Protection Clause, and Anti-Discrimination Clause of the New York State Constitution, as well as under the Equal Protection Clause of the United States Constitution and Title VI of the Civil Rights Act of 1964.¹⁰

In 1995, after denying the state's motion to dismiss, the New York Court of Appeals set forth a ruling which formed the foundation of the court's 2003 landmark ruling.¹¹ First, the court held that the state had a constitutional duty to guarantee a sound basic

6. *Id.* at 930.

7. N.Y. CONST. art. XI, § 1.

8. *Levittown v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982). The court only determined that education, as mentioned in the Education Article, means a sound basic education. The court did not list the substantive requirements for a sound basic education. *See id.* at 369.

9. The plaintiffs, Campaign for Fiscal Equity (CFE), are a combination of advocacy groups, parent organizations, and community school boards.

10. *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 663 (N.Y. 1995).

11. *Campaign for Fiscal Equity*, 100 N.Y.2d at 902.

education to all public schoolchildren.¹² Second, the court supplied the basic framework for what a sound basic education entails,¹³ holding that a sound basic education includes “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.”¹⁴ The court set forth the following essentials needed in order to ensure that New York City public schoolchildren receive a sound basic education:

Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.¹⁵

Finally, the court in recognizing that the case could only be decided after the development of a factual record, sent the case back down to the trial court in order to develop such record.¹⁶

After a seven month trial, which included the testimony of seventy-two witnesses and 4300 exhibits, the trial court, weighing all of the evidence gathered at trial, found that the state had violated the Education Article on a consistent basis.¹⁷ The court found that being a productive member of society by virtue of a sound basic edu-

12. *Id.*

13. *Id.*

14. *Id.* at 905.

15. *Id.* at 907 (quoting *Campaign for Fiscal Equity*, 655 N.E.2d at 666). The court refused to use the Regents Learning Standards as a benchmark of the necessary essentials that need be provided because to do so “would be to cede to a state agency the power to define a constitutional right.” *Campaign for Fiscal Equity*, 100 N.Y.2d at 907. Pursuant to the new Regent Learning Standards, students are required to pass five state-administered Regents Examinations in English, mathematics, social studies and science in order to receive a high school Regents Diploma. In addition, students may receive a Regents Diploma demonstrating advanced achievement in mathematics, science and foreign language by successfully completing eight Regents examinations. *Id.* at 937 (Smith, J., concurring).

16. *Campaign for Fiscal Equity*, 100 N.Y.2d at 902.

17. *Id.*

cation requires “more than just being qualified to vote or serve as a juror, but to do so capably and knowledgeably.”¹⁸ The court also determined that the state was in violation of Title VI.¹⁹ On appeal, the appellate division reversed the lower court’s holding by rejecting the court’s definition of a sound basic education. The intermediate court found the constitutional requirement of a sound basic education to be the equivalent of an eighth or ninth grade education.²⁰ In addition, the appellate division denied plaintiffs’ claim under Title VI.²¹

The court of appeals affirmed the dismissal of plaintiffs’ Title VI claims, but reversed the order of the appellate division.²² In writing for the majority, Chief Judge Kaye set out a detailed opinion evaluating all of the evidence pertaining to the state constitutional issue presented at trial.²³ First, the court applied the standard it set out in *CFE I*²⁴ regarding what entails a sound basic education.²⁵ In essence, the court found that a sound basic education means a meaningful high school education,²⁶ which is achieved through “meaningful civic participation in contemporary society.”²⁷ Unlike the appellate division, the court chose not to recognize a precise connection between completion of a specific grade level and the achievement of a sound basic education.²⁸ The court then evaluated the evidence regarding the quality of “inputs” received by the New York City public schoolchildren and the “outputs” that followed.²⁹ More specifically, the inputs related to the quality of teaching, facilities, and instrumentalities,³⁰ while the resulting outputs concerned test scores as well as graduation rates and dropout percentages.³¹ According to the evidence presented at trial, the

18. *Id.* at 906.

19. *Id.* at 903.

20. *Id.* at 903, 906.

21. *Campaign for Fiscal Equity*, 100 N.Y.2d at 903.

22. *Id.*

23. *Id.* at 901-930.

24. *Campaign for Fiscal Equity*, 655 N.E.2d at 666.

25. *Campaign for Fiscal Equity*, 100 N.Y.2d at 905-08.

26. *Id.* at 914.

27. *Id.* at 905.

28. *Id.* at 906.

29. *Id.* at 908-19.

30. *Campaign for Fiscal Equity*, 100 N.Y.2d at 908.

31. *Id.* at 908.

court held that in the aggregate, the quality of educational inputs,³² particularly the overcrowded classrooms, unqualified teachers, and inadequate teaching facilities and equipment,³³ totaled a systemic failure.³⁴ Similarly, the court, in reviewing the educational outputs, determined that New York City public schoolchildren were not being afforded a sound basic education.³⁵

The court then turned to the issue of causation and held that a causal link existed between the lack of sufficient New York City public school funding and the schools' inadequate performance.³⁶ In making its determination, the court used as an evidentiary basis the fact that increased funding can lead to improved facilities and the ability to hire more competent teachers.³⁷ The court also emphatically dismissed the state's argument that the City of New York, through fraud, corruption, and mismanagement, was accountable for the inadequacy of the school system.³⁸ By rejecting these arguments, the court held that regardless of any proven failure of the city to properly manage its school system, the state still has the ultimate responsibility of making certain that its citizens are granted their constitutional right to a sound basic education.³⁹

The court, recognizing its duty to define and safeguard constitutional rights as well as the legislature's responsibility to make policy,⁴⁰ ordered a three-part remedy which called for the state: (1) to determine the actual cost of providing a sound basic education in New York City public schools;⁴¹ (2) to implement reforms to the

32. *Id.* at 909-14. In order to measure the quality of inputs received in New York City public schools, the trial court carefully considered teacher quality, school facilities, classrooms, and instrumentalities of learning. *Id.*

33. *Id.* at 914.

34. *Campaign for Fiscal Equity*, 100 N.Y.2d at 914.

35. *Id.* at 914-19. The trial court determined that the quality of educational outputs was not sufficient based on school completion rates and test results. *Id.*

36. *Id.* at 919.

37. *Id.*

38. *Id.* at 921-25.

39. *Campaign for Fiscal Equity*, 100 N.Y.2d at 922-23.

40. *Id.* at 925.

41. *Id.* at 930. CFE and the New York State School Boards Association, along with thirty-two other organizations throughout the state, have joined forces to conduct a one-year, costing out study to determine the actual cost of providing a sound basic education to all students in New York State. An independent panel of national experts who have had previous success in conducting costing out studies across the nation are heading the New York costing out study. The study's findings will be presented to the

present funding system in order to make certain that every school in New York City has the necessary resources to provide a sound basic education;⁴² and (3) to include a system of accountability whereby the success of the reforms and their ability to provide a sound basic education can be measured.⁴³ The court retained jurisdiction over the case and set a July 30, 2004 deadline for establishing the cost of a sound basic education in New York City and for implementing the necessary and proper reforms.⁴⁴

In his concurring opinion,⁴⁵ Judge Smith stated that the remedy should include a reformulation of the present method of allocating state funds that should be state-wide in effect, rather than limited to New York City.⁴⁶ In addition, Judge Smith (in discussing the minimum skills requirement of providing a sound basic education) argued for the use of the Regents Learning Standards,⁴⁷ the very standards that the majority specifically struck down as yielding the power of defining constitutional rights to a state agency.⁴⁸

Despite agreeing with the majority that a sound basic education demands a much higher standard than the eighth or ninth grade level established by the appellate division,⁴⁹ Judge Read, in her dissent,⁵⁰ criticized the court for creating a new educational standard and then failing to delineate an actual working definition

governor and the state legislature in 2004. Campaign for Fiscal Equity, *Costing Out Study*, CFE v. State of New York, available at <http://www.cfequity.org/PressRelease11-03-03.PDF> (last visited November 17, 2003). In order to help provide New York City public schoolchildren with a sound basic education, the Department of Education and the City Council have approximated that \$13 billion will be needed to be spent over the next five years to provide New York City public schools with new classrooms, science labs, computer technology, and adequate facilities. This is twice the amount currently allocated in the five-year capital plan. *See id.*

42. *Campaign for Fiscal Equity*, 100 N.Y.2d at 930.

43. *Id.*

44. *Id.* at 930.

45. *Id.* at 932-47 (Smith, J., concurring).

46. *Id.* at 932. The court did not want to create a statewide remedial order because the cause of action before the court specifically targeted New York City schools. However, the court did note that the state may, at its discretion, address the statewide issues. *See id.* at 928.

47. *Campaign for Fiscal Equity*, 100 N.Y.2d at 932 (Smith, J., concurring).

48. *Id.* at 907; *see supra* text accompanying note 14.

49. *Campaign for Fiscal Equity*, 100 N.Y.2d at 948.

50. *Id.* at 948-59 (Read, J., dissenting).

of a sound basic education.⁵¹ More specifically, Judge Read faulted the court for providing an immeasurable standard of education while categorically rejecting the Regents Learning Standard.⁵² Judge Read then argued against CFE's "article of faith" claim that lack of funding necessarily caused the New York City public schools to become inadequate.⁵³ She reasoned that the state could not be used as a scapegoat for the educational shortcomings of the city school system, especially since the state is always wholly responsible under the Education Article of the New York State Constitution.⁵⁴

Responding to the majority's remedial order directing the trial court to supervise the remedy proceedings, Judge Read accused the court of exceeding its judicial boundaries.⁵⁵ Through its failure to comply with the state's request to identify the constitutional deficiencies and allow the legislature to oversee its own reforms, Judge Read charged the court with disregarding the "prudential bounds of the judicial function" as well as separation of powers.⁵⁶ Concluding her dissent with concerns over endless litigation regarding reform issues, Judge Read predicted that this dispute would last for decades while spurring similar lawsuits statewide.⁵⁷

One of the most fundamental principles of American constitutional law is the doctrine of separation of powers,⁵⁸ which is embodied by the division of governmental powers among the three coordinate branches of the federal government.⁵⁹ More specifically, the doctrine of separation of powers represents the ideal that each governmental department perform specific functions separate and distinct from the other branches, so that "the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other depart-

51. *Id.* at 951.

52. *Id.* at 952.

53. *Id.* at 956.

54. *Campaign for Fiscal Equity*, 100 N.Y.2d at 956 (Read, J., dissenting).

55. *Id.* at 958.

56. *Id.*

57. *Id.*

58. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 2-3, at 124 (3d. ed. 2000).

59. *Touby v. United States*, 500 U.S. 160, 168 (1991).

ments.”⁶⁰ However, the separation of powers does not stand for the proposition that the branches must be kept entirely separate and distinct.⁶¹ Therefore, the separation of powers is violated only when one branch of government usurps the power of another branch by exercising power exclusively delegated to that branch. In accordance with the United States Constitution, the New York State Constitution has distributed governmental powers among the legislature, executive, and judiciary, thereby signaling adherence to the doctrine of separation of powers.⁶² While the courts may not engage in law-making (because to do so would usurp the powers of the legislature), New York courts have long recognized that the doctrine of separation of powers need not always be so strictly applied.⁶³

In *CFE II*, the court, fully cognizant of the remedial failures of other state courts, adopted an intermediate approach in an attempt to avoid the countless years of litigation⁶⁴ that other jurisdictions had encountered in similar contests.⁶⁵ In doing so, the court made a conscious decision to respect the doctrine of separation of powers by deferring to the legislature. Nevertheless, the court’s holding was too deferential; it would have been completely within the court’s power to have ordered the parties to develop a remedy through

60. Dreyer v. Illinois, 187 U.S. 71 (1902) (quoting JUSTICE STORY, STORY’S CONSTITUTION 393 (5th ed.)).

61. *Id.*

62. N.Y. CONST. art. III, IV, VI.

63. Rosenthal v. McGoldrick, 19 N.E.2d 660, 661 (N.Y. 1939).

64. The dissent challenges the majority’s approach by positing that once the trial court evaluates the new reforms, new litigation challenging the reforms will begin leading to an additional trial followed by another extensive appeals process. *Campaign for Fiscal Equity*, 100 N.Y.2d at 958. The majority responds that because it offers greater “detailed remedial directions,” additional litigation will be circumvented. *See id.* at 932.

65. One example of such extensive, prolonged litigation is in New Jersey, where the court and the legislature have debated over the issue of state school funding for three decades. *See, e.g.*, Robinson v. Cahill, 303 A.2d 273 (N.J. 1973); Robinson v. Cahill, 306 A.2d 65 (N.J. 1973); Robinson v. Cahill, 335 A.2d 6 (N.J. 1975); Robinson v. Cahill, 351 A.2d 713 (N.J. 1975); Robinson v. Cahill, 355 A.2d 129 (N.J. 1976); Robinson v. Cahill, 358 A.2d 457 (N.J. 1976), *modified* 360 A.2d 400 (N.J. 1976), *dissolved* 360 A.2d 400 (N.J. 1976); Abbott v. Burke, 495 A.2d 376 (N.J. 1985); Abbott v. Burke, 575 A.2d 359 (N.J. 1990); Abbott v. Burke, 643 A.2d 575 (N.J. 1994); Abbott v. Burke, 693 A.2d 417 (N.J. 1997); Abbott v. Burke, 710 A.2d 450 (N.J. 1998); Abbott v. Burke, 748 A.2d 82 (N.J. 2000), *clarified by* Abbott v. Burke, 751 A.2d 1032 (N.J. 2000); Abbott v. Burke, 790 A.2d 842 (N.J. 2002); Abbott v. Burke, 798 A.2d 602 (N.J. 2002).

mediation. By ordering mediation, the court would not have violated the separation of powers because such a ruling would have allowed the law-making power to remain in the hands of the legislature. Instead, the court's deference to the legislature reflects a remedial measure that will likely result in further litigation, thereby leaving the issue of state school funding in New York unresolved.

State courts have long cited separation of powers concerns when deferring to the legislature to remedy state school funding inequities.⁶⁶ Although the majority purports to issue a detailed directive order to the legislature to enact a remedy,⁶⁷ it remains apparent that the court was mindful of the separation of powers and feared usurping the legislature's law-making ability. The best example of the court's separation of powers concerns is the court's failure to delineate the state's actual constitutional deficiencies in providing a sound basic education.⁶⁸ The court found a meaningful high school education to be the new constitutional standard for a sound basic education, yet failed to provide any specific guidance as to what constitutes a meaningful high school education. As a result, the court simply defers to the legislature the task of ascertaining the actual cost of providing a sound basic education without establishing the specific educational requirements that encompass such an education.⁶⁹ Because this court, like so many other courts in school finance reform litigation, was weary of overstepping its judicial boundaries, it handed down a vague decision that failed to deliver any direction in determining the legislative and fiscal inadequacies to the legislature. Such deference to the legislature, although seemingly appropriate since it is the legislature's

66. Michael A. Rebell & Robert L. Hughes, *Efficacy and Engagement: The Remedies Problem Posed by Sheff v. O'Neill—and a Proposed Solution*, 29 CONN. L. REV. 1115, 1132 (1997). The author notes that, in contrast to state courts, rulings handed down by federal district courts regarding desegregation in local school districts have a tendency to issue detailed remedial directives. *Id.* at 1138.

67. *See Campaign for Fiscal Equity*, 100 N.Y.2d at 932. In particular, the majority finds the utilization of more detailed remedial directives to be more effective since such remedial efforts in other jurisdictions have spawned significantly less litigation. *Id.*

68. *See id.* at 958 (Read, J., dissenting) (stating that the majority should, as the state had requested, detail the constitutional deficiencies of the state). However, the dissent further argues that the majority's holding "casts the courts in the role of the judicial overseer of the Legislature. This disregards the prudential bounds of the judicial function, if not the separation of powers." *Id.* at 958.

69. *Id.* at 930.

responsibility to determine the method of compliance with constitutional mandates,⁷⁰ tends to result in ongoing litigation.⁷¹ Because judicial deference to the legislature has failed to yield successful results,⁷² state fiscal equity cases appear to be one of the exceptions to the stringent application of the doctrine of separation of powers.⁷³

In deciding this landmark ruling regarding state school funding, the court's intermediary remedial tactics signal the possibility of ongoing litigation instead of setting an innovative remedial precedent in the state of New York and, perhaps, throughout the nation. An archetype of such a precedent would have been to issue court-ordered mediation.⁷⁴ The Ohio Supreme Court, in *DeRolph v. State*,⁷⁵ was confronted with resolving the issue of state school finance and, after holding that the state's school financing mechanisms were unconstitutional,⁷⁶ allowed the legislature one year to implement remedies while the trial court retained jurisdiction over the case.⁷⁷ After ruling that the General Assembly had failed to enact appropriate legislation to remedy their constitutional deficiencies,⁷⁸ the Ohio Supreme Court referred the matter to be set-

70. *Felder v. Fullen*, 27 N.Y.S.2d 699, 711 (N.Y. Sup. Ct. 1941), *aff'd* 34 N.Y.S.2d 396 (N.Y. App. Div. 1942), *aff'd* 45 N.E.2d 167 (N.Y. 1942).

71. *Rebell & Hughes*, *supra* note 66, at 1138.

72. *See supra* text accompanying note 65.

73. *Rosenthal v. McGoldrick*, 19 N.E.2d 660 (N.Y. 1939) (holding that in New York the rule of separation of powers cannot always be rigidly applied).

74. Molly Townes O'Brien, *At the Intersection of Public Policy and Private Process: Court Ordered Mediation and the Remedial Process in School Funding Litigation*, 18 OHIO ST. J. ON DISP. RESOL. 391, 393 (2003).

75. 677 N.E.2d 733 (Ohio 1997).

76. *Id.* at 747.

77. *Id.*

78. *DeRolph v. State*, 754 N.E.2d 1184 (Ohio 2001). A previous ruling by the Ohio Supreme Court in May, 2000, initially found the legislature had failed to remedy its constitutional deficiencies. However, the court, after declining to assign a special master to ensure the legislature's compliance with the court's mandate, appointed the legislature additional time to cure its fiscal equity inadequacies. *DeRolph v. State*, 728 N.E.2d 993, 1021 (Ohio 2000). Perhaps persuaded by way of the failure of the Ohio legislature to enact appropriate reforms, New York State Supreme Court Justice Leland DeGrasse announced his intention to appoint a special master to ensure that the legislature is complying with the court's remedial orders. The appointment of special master would coincide with the legislature's July 2004 deadline of enacting reforms. Campaign for Fiscal Equity, *Justice DeGrasse Announces Intent to Appoint Special Master as of July 2004*, CFE v. State of New York, available at <http://www.cfeequity.org> (September 25, 2003).

bled through mediation.⁷⁹ However, only a few months after mediation was issued, negotiations came to a halt and the mediation subsequently failed.⁸⁰

Although the mediation efforts in *DeRolph* were ineffective,⁸¹ the overall value of resorting to such a method cannot be ignored. First, as in *CFE II*,⁸² it is imperative that the trial court retain jurisdiction during the mediation process⁸³ in order to signal to the parties that inaction or non-settlement will not be tolerated and that the court will take action if the parties do not reach a settlement.⁸⁴ Second, a necessary adjunct to the mediation process is the participation of all those who have an interest or investment in the mediation, either first-hand or through representation by some qualified organization or entity.⁸⁵ In a case such as *CFE II*, the relevant parties would include not only those represented in the actual controversy itself, but also other parent-student organizations and education finance coalitions.⁸⁶ Lastly, a successful court-ordered mediation aimed at settling state school funding issues must necessarily be implemented prior to the court deferring any issues or

79. *DeRolph v. State*, 758 N.E.2d 1113, 1114 (Ohio 2001).

80. *DeRolph v. State*, 759 N.E.2d 781 (Ohio 2001) (Bellman, Med.), available at <http://www.sconet.state.oh.us/derolph/bellman3-21.pdf> (November 16, 2001).

81. *Id.* However, mediation efforts made at the outset of the controversy are much more likely to succeed because the parties hold less animosity towards each other and are more focused at reaching a settlement. See O'Brien, *supra* note 74, at 423-424.

82. *Campaign for Fiscal Equity*, 100 N.Y.2d at 930.

83. Note, *Unfulfilled Promises: School Finance Remedies and State Courts*, 104 HARV. L. REV. 1072, 1086 (1991) (stating that a prerequisite for more effective fiscal equity remedies is increased judicial supervision, particularly by the trial court retaining jurisdiction while the legislature is executing the remedies); see also O'Brien, *supra* note 74, at 391, 420-421.

84. See O'Brien, *supra* note 74, at 421.

85. *Id.* at 429.

86. On September 3, 2003, New York Governor George Pataki revealed his appointment of a Commission on Education Reform, which was formed in response to CFE II to analyze a wide variety of education concerns in New York. Advocacy Center for Children's Educational Success with Standards, *New York "Commission on Education Reform" will Address CFE Remedy Issues* (Sept. 11, 2003), available at <http://www.accessednetwork.org/states/ny/PatakiCommission9-11-03.htm>. The Commission on Education Reform is an example of another organization that, although not involved in the immediate controversy, does have a stake in the issues at large. In addition, such a forum would necessarily allow all of the parties to express their concerns and be able to achieve long-standing, satisfactory goals that would not have been able to have been achieved without further litigation if mediation were not used.

remedies to be resolved solely by the legislature.⁸⁷ Applying a different remedial solution after the one enacted has failed almost always appears, in retrospect, to provide a better solution. While it is true that the court's remedy in *CFE II* has yet to fail, history tends to prove that cases that defer remedies to the legislature will fail.⁸⁸ One can imagine what a state ordered mediation would look like:⁸⁹ first, the court would have appointed a mediator and directed the trial court to retain jurisdiction over the case.⁹⁰ Next, after plaintiffs assembled a representative body of education-finance coalitions, parent groups, and student organizations to partake in the mediation process, both adversarial parties, as well as the appointed mediator, would meet to discuss state school funding reformation. Finally, once the parties reached a compromise, the final determination of proper remedial reform schemes would be reported to the trial court. Because the mediation process would have been implemented at the outset of the reform process, it is unlikely that any ill will between the parties would have had time to develop.⁹¹

Rather than use *CFE II* as a platform to pioneer an innovative remedial strategy concerning state school funding, the court seemingly adhered to the basic remedial principles that other courts have struggled with for decades. In doing so, the court has set the stage for another state school funding courtroom legacy,⁹² and like the dissent hypothesized, once the legislature enacts any remedial measures, those measures will be intensely scrutinized and subject to litigation.⁹³ Not surprisingly, the court's holding raises considerable issues concerning the fate of state school funding in New York.

87. See *supra* text accompanying note 81.

88. See *supra* text accompanying note 65.

89. This is a purely hypothetical example based, in part, on the ongoing DeRolph v. State litigation in Ohio. See DeRolph, 677 N.E.2d 733 (Ohio 1997); DeRolph, 728 N.E.2d 993 (Ohio 2000); DeRolph, 754 N.E.2d 1184 (Ohio 2001); DeRolph v. State, 780 N.E.2d 529 (Ohio 2002); State v. Lewis, 789 N.E.2d 195 (Ohio 2003).

90. See Note, *supra* note 83, at 1086.

91. But see *DeRolph*, 780 N.E.2d 529, *DeRolph*, 780 N.E.2d 529, *Lewis*, 789 N.E.2d 195, where bad blood did ensue once mediation was ordered.

92. See *supra* text accompanying note 65.

93. *Campaign for Fiscal Equity*, 100 N.Y.2d at 958 (Read, J., dissenting) (stating that "as soon as the trial court is called upon to evaluate the cost and educational effectiveness of whatever new programs are devised and funded to meet the needs of New York City's school children, the education policy debate will begin anew in another long trial followed by lengthy appeals").

Most significantly, the court announced a new constitutional standard of a sound basic education,⁹⁴ failed to define exactly what that standard means, and then delivered a vague remedy wrought with many of the failed principles of past school finance reform litigation.⁹⁵ Although it is true that the court reasons that its intermediate remedial approach will avoid further litigation, the fact remains that many issues concerning the constitutionality of state school funding in New York are unsettled and will likely continue to be unresolved for years to come.

94. *Id.* at 914.

95. *Id.* at 931.