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Deborah A. Verstegen
University of Virginia

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...The lower court admonished plaintiffs and asked for “objective” evidence rather than anecdotes and a clear showing that spending disparities resulted in unequal educational opportunities for children in schools and in classrooms.

Coming Around Again: Equity Litigation and Wisconsin Rural Finance

Deborah A. Verstegen

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The Wisconsin Constitution, adopted in 1848, provides that “The legislature shall provide by law for the establishment of district schools, which shall be as nearly as uniform as practicable...”¹ For over 150 years the legislature has grappled with the question of how to achieve this mandate, particularly as social, economic and demographic changes have conditioned concepts of what is “as nearly as uniform as practicable”²

Today, this question has once again returned to the top of policy agendas, propelled by the onset of the information age, technological revolution and global economy. At the same time, a challenge to the constitutionality of the Wisconsin education finance system is currently awaiting review by the Wisconsin Supreme Court.³ The finance system was upheld by the high court in 1989 in *Kukor v. Grover*.⁴

This chapter discusses the impact of school finance litigation on rural and small schools in Wisconsin. First, the 1989 supreme court decision on the constitutionality of the state finance system is discussed. Next, social, economic and demographic changes in Wisconsin over the 1990s are reviewed. Third, the Wisconsin school aid system is examined and analyzed. Finally, the current challenge to the constitutionality of the state aid system, is reviewed and a summary is provided. Throughout, issues related to rural and small schools are highlighted.

Study Method

Data for this study were taken from documents available in the field, the analysis of finance information produced for this study, and interviews with individuals in Wisconsin chosen on a positional and reputational basis.⁵ A snowballing interview technique was used: respondents were asked to name other individuals knowledgeable about the issues of interest. Most interviews were undertaken by telephone;

Deborah Verstegen is Professor in the Curry School of Education at the University of Virginia.

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a limited number occurred face to face. Data were collected in the field during a trip to Wisconsin;⁶ at that time, knowledgeable individuals were contacted and discussions occurred around areas of particular interest related to school funding. For analysis purposes, findings from interviews, documents and data analyses were triangulated. The overarching purpose was to determine whether school finance litigation had an impact on rural and small schools and districts, what that impact was, and what continuing issues have emerged over time. The study proceeded in three stages: exploration, description and verification.

School Finance Litigation

Kukor v. Grover (1989)

Over a decade ago, in 1989, the Wisconsin Supreme Court handed down its opinion upholding the Wisconsin school finance system in the case, known as *Kukor v. Grover*.⁷ The court stated that: 1) the statutory system of determining state aid to public school districts did not violate the uniformity requirements of the state constitution simply because it resulted in certain districts having inadequate funds to provide specialized programs and meeting particularized needs of impoverished students; and 2) the state financing system did not violate the equal protection provisions of the state constitution, because disparities in per pupil expenditures were rationally based upon the preservation of local control over education as mandated by the supreme court.⁸

The high court held that education was a fundamental right under the Wisconsin constitution and entitled a student to a basic education— but not uniform financing or extra funds for high costs. A basic education was defined under Article X, section 3: the “character of instruction” was required to be uniform as defined by state minimum standards, such as teacher certification, minimal school days and standard school curriculum.⁹

The court found that districts with a high concentration of students from families living in poverty were required to spend more per student but had fewer available resources to spend.

The wide expenditure and tax effort disparities in Wisconsin school districts lead to a substantial lack of equality and uniformity in the program of instruction available to all the school children in the low spending districts, and as we have observed act as a drain on the regular program of instruction in districts with very high poverty concentrations.¹⁰

Nonetheless, the plurality ruled that the finance plan was sound as a matter of constitutional law, there being no requirement to meet the particularized needs of disadvantaged students beyond the provision of basic education programs¹¹. Coming to these conclusions, the majority upheld the decision of the circuit court that had sustained the constitutionality of the plan despite serious misgivings as to its adequacy in addressing the needs of the poor.¹²

The majority noted that during litigation select programs addressing poverty for some children were enacted by the legislature. However, the high court took the opportunity to mention that although variations across school districts in special needs and their associated costs were not found unconstitutional, more assistance for special needs was necessary and desirable, to wit: “...while the greater uniformity in educational opportunities is, in the opinion of both parties, desirable and necessary, it is not something which is constitutionally mandated under the uniformity provision.”¹³

Further, the high court opined:

We recognize that more and improved programs are needed in the less affluent or overburdened districts but find that these legitimate demands may not be correctly described as claims for uniformity under [the] Wisconsin Constitution, Art. X, sec. 3... such claims must be made to the legislature.¹⁴

The finance system was upheld by the plurality using the rational basis test; local control and deference to the legislature on education spending matters were the legitimating rationales.

In a concurring opinion, J. Steinmetz underscored this issue, writing: "This case has been a public cry to the legislature, disguised as a constitutional attack, that additional funds are necessary to improve education in some districts."¹⁵

The minority opinion, written by J. Bablich representing three members of the court, took issue with the main tenets of the majority opinion but found special needs of high cost children compelling. The dissent found that the issue in the case was not "spending disparities" but whether the state, through its finance system, met its constitutional obligation to provide an equal educational opportunity for all children within the state, "rich and poor alike." According to the dissent: "it has not". This conclusion was based on an "ample" record, it said, including four points that all members agreed on.¹⁶ These included:

- 1) it is a fundamental right of each child in the state to have an equal opportunity for education,
- 2) the state is constitutionally mandated to provide that opportunity,
- 3) the method the state has chosen to fulfill this responsibility is the statutorily created system of financing K-12 education,
- 4) the trial record clearly established that the educational needs of a significant number of school children in this state, primarily those from high poverty districts, are very great, and these needs are not being met. These children come to school unready to learn. Compensatory education programs are unavailable to remedy their learning deficiencies. Supportive services and exceptional educational needs are insufficient to assist them. The little money that is channeled to these programs comes at the expense of the regular educational programs, thereby "shorting" the regular programs.¹⁷

The "fundamental flaw" in the system, the dissent said, was "dollars without regard to educational needs." The result, it said, was: "a significant number of school children in this state are denied an equal opportunity to become educated people."¹⁸ The mandate of Article X, section 3, Wisconsin Constitution, it said:

is that the state provide a character of instruction in the state schools such that all children are provided with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.¹⁹

Social, Economic and Demographic Changes

Over the past decade, social, economic and demographic changes occurred in Wisconsin, that impact rural and small schools and districts in the state and the context in which the legislature must decide whether the finance system is "as nearly as uniform as practicable." These indicators are shown in Table 1 and include ranks to determine the position of Wisconsin compared to other states in the country.²⁰

Wisconsin is a fairly large state with a sizable school population. In resident population, Wisconsin ranked 16th in 1990 (4.9 million) compared to other states within the U.S.; but this fell to 18th in 1998 (5.2 million). Projections indicate the population will continue to decline to a rank of 20th by 2025. Sixty-eight percent of the population lived in metropolitan areas in 1990; this fell slightly to 67.7% in 1998. Approximately 26% of the population were under 18 years in 1990; a figure that held steady over the decade, ranking Wisconsin 21st.

School-aged persons (aged 5 to 17) numbered 860 thousand in 1990, but 870 thousand in 1995. This is 19.7% of the U.S. school population, ranking Wisconsin 17th. Persons 65 years or older made up about 13% of the population over time, ranking Wisconsin 21st (1995).

In 1995, income per capita (\$22,379) was slightly below the U.S. average (\$22,379). The percent of the population in poverty was 8.5%; this is below the U.S. average of 13.6%. However, children made up a disproportionate share of poverty: 13.9% were under age 18 and 16.7% were under age 5.

Wisconsin's state and local general revenue in 1993-94, the latest year data were available, ranked 13th. Tax revenue from the property tax was high- Wisconsin ranked 8th; state individual income tax was high- Wisconsin ranked 7th; but the general sales tax was average, Wisconsin ranked 20th. State and local expenditures on public welfare ranked 15th, health and hospitals, 33rd; police protection, 14th; fire protection, 14th; highways, 16th; but revenue for local public schools, ranked 9th- ranking Wisconsin high in the country in terms of spending on schools.

School revenue for 1996-97 averaged \$8,157 per pupil in ADA (average daily attendance) ranking Wisconsin 11th. Of this, 41.1% was derived from local sources; 54.5% from state sources; and 4.5 % from federal sources. Currently two-thirds of all school funding is paid for out of state coffers; one-third is funded locally.

In 1998-99 there were 426 school districts in Wisconsin, including ten Union High School Districts, that received incoming 9th graders from several of the 47 underlying elementary (K-8) districts. These districts enroll 881,248 students.²¹ The school population was 82.27% White; 1.37% American Indian or Alaskan Native; 9.71% Black; 3.64% Hispanic, and 3.01% Asian American or Pacific Islander.

A significant number of school districts in Wisconsin are rural or small. Of all 426 school districts, 83 had enrollments of 1-499 students; 125 had enrollments of 500-999 students; 115 had enrollments of 1,000 to 1,999. At the other extreme, 11 districts had enrollments of 10,000 or more. For secondary schools only, 47 had enrollments of no students; 138 had enrollments of 1-299 students; 90 had enrollments of 300-499 students; and 87 had enrollments of 500-999 students. Only 64 districts had secondary enrollments above 1,000 students. According to an expert in school finance: "the wealthy rural and small districts are in the Southeast. Most are K-8 or Union High School Districts. The rural poor are in the Northeast and Southwest."

Table 1. Rankings of Wisconsin.*

WISCONSIN	Rank	State	U.S.	Table
DEMOGRAPHICS				
Resident population in 1995 (in thousands)	18	5,123	262,755	(A-1)
Percent age 5 to 17	17	19.7%	18.7%	(A-6)
Percent age 18 and over	31	73.6%	73.8%	(A-7)
Percent age 65 and over	21	13.3%	12.8%	(A-8)
ECONOMY				
Personal income in 1995				
Total (in millions)	18	\$114,628	\$6,137,879	(D-1)
Per capita	23	\$ 22,379	\$ 23,348	(D-3)
As % of national average	23	95.8%	100%	(D-4)
Per pupil in ADA	24	\$143,298	\$ 150,452	(D-12)
GOVERNMENT REVENUE				
State and local general revenue from own sources in 1993-94				
Per capita	13	\$ 3,614	\$ 3,399	(E-2)*
Per \$1,000 of personal income	9	\$ 171	\$ 153	(E-3)*
State and local tax revenue in 1993-94				
Per capita	9	\$ 2,698	\$ 2,402	(E-4)*
Per \$1,000 of personal income in 1994	5	\$ 127	\$ 108	(E-5)*
Tax revenue by major source in 1993-94				
Per capita				
Local property tax	8	\$ 994	\$ 725	(E-7)*
State individual income tax	7	\$ 768	\$ 478	(E-13)
State general sales tax	20	\$ 502	\$ 504	(E-14)
Per \$1,000 of personal income in 1993-94				
State and local property tax	5	\$ 47	\$ 34	(E-9)
State individual income tax	4	\$ 34	\$ 20	(E-15)
State general sales tax	24	\$ 22	\$ 22	(E-16)
GOVERNMENT EXPENDITURE				
State general expenditures in 1993-94				
Per capita	22	\$ 2,839	\$ 4,125	(G-1)
Per \$1,000 of personal income in 1992	16	\$ 204	\$ 186	(G-4)
State and local expenditures by major function in 1993-94				
Per capita				
Local public schools	9	\$ 1,096	\$ 949	(H-8)
Public welfare	15	\$ 739	\$ 691	(G-5)
Health and hospitals	33	\$ 276	\$ 386	(G-6)
Police protection	14	\$ 221	\$ 210	(G-7)
Fire protection	27	\$ 93	\$ 124	(G-8)
Highways	16	\$ 351	\$ 277	(G-9)
SCHOOL FINANCE EFFORT				
School revenue in 1994-95				
Per \$1,000 of personal income in 1995	9	\$ 52	\$ 45	(F-5)
School expenditures in 1994-95				
Per \$1,000 of personal income in 1995	8	\$ 46	\$ 40	(H-13)
SCHOOL FINANCES (CURRENT YEAR)				
School revenue in 1996-97				
Per pupil ADA	11	\$ 8,157	\$ 7,141	(F-4)
Percent of total from				
Local	28	41.1%	44.5%	(F-8)
State	20	54.5%	48.7%	(F-10)
Federal	45	4.5%	6.7%	(F-11)
Current expenditures in 1995-96				
Per pupil ADA	13	\$ 6,782	\$ 6,133	(H-14)

*Data Source: NEA (1998). *Rankings of the States, 1997*. Washington D.C.: Author, 1998.

Wisconsin State School Aid System

Changes have also occurred in the Wisconsin finance system over the decade. The state of Wisconsin funds primary and secondary schools using a guaranteed tax base system. The main goal of the finance plan is to equalize the ability of local residents to raise funds for schools by equalizing property tax bases, but to leave the decision over how much to spend to the people or their elected representatives.

The basic concept of equalizing differences in local property tax bases of school districts, in an effort to provide equity for taxpayers and children, has been promoted through Wisconsin's general school aid formula since 1949, but the current finance system has its genesis in legislative changes enacted in 1973-75. The system was restructured in 1995. At that time, the current three tiered guaranteed tax base system was adopted to replace the previous two tiered system. Also, the state committed itself to funding two-thirds of the cost of primary and secondary schools and revenue controls were made permanent.²² (These changes are discussed further below.)

Equalization aid is the primary source of state aid; as stated, it is distributed to school districts through a Guaranteed Tax Base system (GTB). Under a GTB, the state guarantees a certain amount of property wealth behind each pupil for different levels of spending. If a district's property tax base falls below the guarantee, state aid is provided to make up the difference.²³

Table 2 shows the current guarantees for Tiers I, II, and III for the 1998-99 school year. Localities determine spending and tax rates; the state makes up the difference in the amount of funding raised from the local tax base to the guaranteed tax base level, but places a limit on per pupil expenditures that are assisted by state aid. As shown, the first tier (primary aid) guarantees a tax base of \$2,000,000 per pupil for the first \$1,000 per pupil spent on schooling. The second tier (secondary aid) guarantees a tax base of \$676,977 per student for spending ranging from \$1,001 to \$6,285 per pupil. The third tier (tertiary aid) guarantees the state average tax base, \$263,240 per pupil for local spending above \$6,285. In addition, 37 categorical aids are added to basic aid, and are distributed by the state as a flat grants (a uniform amount of aid). Despite the large number of categorical aids provided by the state, there is no extra funding for rural and small school districts, nor does the state provide adjustments in basic aid for school or district size.

Table 2.
Wisconsin's Three-Tiered GTB 1998-99 State Aid Year

	Guaranteed Tax Base per Member	Shared Cost Ceiling per Member
First Tier	\$2,000,000	\$1,000
Second Tier	676,977	1,001-6,285
Tertiary Tier	263,246	none

The purpose of Guaranteed Tax Base System is to provide taxpayer equity or equal yield (funding) for equal effort (tax rates). Usually these finance systems include a sliding scale that provides increased amounts of state aid for each increase in local resources and a maximum and a minimum level of local resources is specified. Also,

negative aid is assumed, that is, districts raising more than the guarantee are required to return the additional funding back to the state for redistribution. Currently only Wisconsin and Indiana use Guaranteed Tax Base systems to pay for public elementary and secondary schools.²⁴ Since the 1970s, states using some variant of this type of system to fund primary and secondary education have fallen almost 70%.

Issues Related to Wisconsin School Aids

According to scholars, education officials and individuals who were interviewed for this study, pupil and taxpayer equity is compromised under the Wisconsin school aid system for several reasons.²⁵ First, is the lack of negative aid. Second, is the provision of "minimum aids" under Tier I— also called the primary guarantee. Third, are the 37 categorical aids that are provided to school districts as flat grants regardless of local ability-to-pay for schools or tax rates. Fourth, levy credits reduce equalization aid while assisting mostly high wealth districts—in direct opposition to the goal of taxpayer equity which demands revenue be based on equalized tax rates not the amount of tax dollars paid by localities. Likewise, special adjustment aid, provided to cushion changes in aid from year to year, has the effect of limiting the equalization by off-setting the link between revenue and taxes.

Other major disequalizers in the funding system include the underfunding or nonfunding of special needs. When state funding is inadequate to pay for the excess costs of high need students, local districts essentially have two choices: to take revenue from the general education budget to pay for the special needs of students thereby lowering funding available for the general school program, or to ignore the needs of those students who most need special programs and services. The encroachment of these programs on general aid restricts taxpayer equity by lowering funding for general education due to the size of the special (bilingual/poverty) population—an irrational feature that results in those districts with fewer special needs students garnering more state aid. This signals a lack of vertical equity and wealth neutrality in the system. In essence, when a child has special educational needs, or a school district has uncontrollably higher costs, the quality of a child's education is a function of local not state wealth, in contradiction to wealth neutrality principles that are presumed to undergird state aid systems.

According to Wisconsin's Department of Public Instruction:

In a perfectly equalized formula, actual levy rates and "theoretical" or calculation rates would be one and the same. However, not all school costs are shared through the general aid formula in Wisconsin. Categorical aid programs fund costs outside of the equalization aid formula. These programs and other disequalizing factors contribute to differences between the calculation rate and actual equalized tax rates. Other disequalizing factors in Wisconsin's general aid formula are: the provision that primary aid may not be reduced by negative non-primary aid, cancellation of negative primary aid, payment of special adjustment aids, payment of special transfer aids from the equalization aid appropriation, and use of prior year rather than current year, membership, costs, and property value for computation.²⁶

Comparison of Two Small School Districts: Rich and Poor.

A comparison of two small school districts, one rich and one poor, illustrates these issues. In addition, critics charge that wealthy districts in Wisconsin can tax low and spend high; poor districts, in contrast, tax high but spend low.

In 1997-98, Gibraltar, a small, wealthy school district with \$1.7 million per pupil in equalized property value, received \$225 per pupil in general aid (primary aid \$136 per pupil and special adjustment aid of \$89) and \$464 in categorical aid from the state. Local property taxes were \$4.15 (mills) per \$1,000 equalized value and raised an additional \$8,460 per pupil. The total expenditure in Gibraltar was \$9,140 per pupil.

Bowler, a small, poor school district with \$88,193 per pupil in equalized value and 621 students, received \$4,867 in state general aids (\$955 primary aid; \$4,382 secondary aid; \$110 tertiary aid) and \$321 in categorical aid. Bowler taxed at \$8.63 per \$1000 in equalized valuation, and raised \$690 per pupil in local revenue. The total expenditure from state and local sources of was \$6,587 per pupil. Bowler taxed twice what Gibraltar did, yet total expenditures from state and local sources were only 70% of Gibraltar's expenditures. This difference amounts to over \$1.5 million per year or an advantage for Gibraltar of \$2,562 per pupil. These are nontrivial differences.

As stated, the Wisconsin school aid system includes approximately 37 categorical aids that are distributed without regard to local ability-to-pay or tax rates. In 1998-99, Gibraltar, with over 20 times the property tax base of Bowler, received \$464 per pupil in categorical aid; Bowler received only \$321 per pupil. Special education is the largest categorical aid. Special enrollments in Gibraltar comprised 11.1% of enrollments (83 students); special education children in Bowler comprised 15.1% of enrollments (86 students). Nonetheless, Bowler with greater needs and lower ability-to-pay for education out of local sources, received fewer dollars than did Gibraltar.

Over time, state aid in Wisconsin has shifted to equalization aids, and away from categorical aids. In 1989-90 equalization aid was 79.1% of state aid; categorical aid was 17.0%. In 1994-95 equalization aid was 80.8% of state aid; categorical aid was 15%. In 1998-99 equalization aid was 87.1% of state aid; categorical aid was 10.8%. The shift in aid has eroded funding for students in districts with relatively more special needs students that impose higher costs on school systems. Viewed from another perspective, however, according to an interviewee: "There has been an unwillingness to continue to plow a lot of flat aid money into wealthy districts. Wealthy districts get more flat aids under categorical [than from general aid]."

Special Education Assistance.

Categorical aids in Wisconsin are not only disequalizing but also underfunded or not funded at all. For example, in special education, the gap between appropriations and authorizations has grown over time. In FY 1997-98, state categorical aid for special education was 31.3% of costs. If special education was fully funded, it would support 63% of the costs of special education costs. Special education costs that are not reimbursed by federal or state categorical aids are eligible for reimbursement under state general equalization aids. In 1997-98, special education costs paid by general equalization aid amounted to \$196.2 million. Because increases in costs occurred after the establishment of state revenue limits that restrict total education spending, "increases in special education spending have

reduced the spending authority available for regular education in some districts."²⁷ According to a 1999 report submitted to the Joint Legislative Audit Committee Members:

Special education costs not paid by federal or state categorical aids are eligible for reimbursement under state general aids, but school district officials note that costs included under general aids are controlled by state-imposed revenue limits. Therefore, *some districts must reduce regular education spending in order to fund special education*, which is mandated by federal and state law (emphasis added).²⁸

On average, federal aid pays 4.9% of special education costs. State categorical aid pays for only 31.3% of special education costs; 39% comes from the general education budget. For example, targeted state funds for special education in Bowler cover only 30.8% of the cost. Bowler pays 60% of its special education costs from general aids, thus reducing funding for children in general education programs. Mellen, another small, poor district, receives only 29.6% of its special education funding from state categorical aids. It takes an additional 51.2% from general aids to cover the mandated costs of special education.²⁹

According to one school district official: the "[underfunded] categorical draw down regular education funding". Another pointed out that,

we don't have any money for the normal kids. The average student is losing, falling by the wayside, because we're frozen [with revenue limits]. The mandated [programs such as special education and Limited English Speaking] get the money and the others get lost. The revenue limits keep us from raising money. That is the problem.

Assistance for Limited English Speaking and Economically Disadvantaged Pupils.

Not only does special education encroach on regular education; this is also the case with programs for Limited English Speaking (LES) students and economically disadvantaged children. Although the state provides some funding for these children and youth, these programs are not fully funded and do not cover all eligible children and youth. Programs for Limited English Speaking students for example, are reimbursed at only 21.3% of costs; this figure has fallen from 28% in 1995-96.³⁰

For economically disadvantaged children and low achieving children, there is a patchwork of programs that reach some school districts and some school children, mainly in large urban districts. Preschool to Grade 5 grants fund programs in Beloit, Kenosha, Milwaukee and Racine. Children at risk programs, based on prior year drop-out rates, fund pupils that meet certain requirements, such as attendance and the number of credits earned. It is provided to 18 districts. Student Achievement Guarantee, created in 1995, awards five year grants to school districts with at least one school with an enrollment made up of at least 50% low-income pupils, for the main purpose of reducing class size in K-3 to 15 pupils and providing a rigorous curriculum. Eighty schools in 46 districts participate. This program has been expanded but fails to reach all eligible students and schools across the state. For example, in 1998-99, only 7,500 children were supported from SAGE grants; this is less than one percent of children in poverty in the state.³¹ It was estimated that 222 schools from 39 school districts were eligible but not funded.

In addition, transportation aid is limited. It is based on a scale that reimburses mileage; the upper limit is 18 miles. This disadvantages sparsely populated school districts that transport pupils in excess of the reimbursed mileage. According to a superintendent:

Transportation costs take a larger amount for rural [districts]. The per mile payments for students haven't changed [and they top off at] 18 miles. The state pays for oil, gas, things like that. We have some kids 30 miles from school [one way] in two different directions. I got \$29,000 from the state- I spent \$260,000.

Revenue Limits.³²

The underfunding or nonfunding of categorical aid programs is exacerbated for some low-spending school districts due to the school district revenue limits. Under the limits, the annual increase in a school district's revenue from general aids (equalization aids, integration aid, special adjustment or hold harmless aid) and property taxes is restricted to \$208.88 per pupil in 1998-99; it is adjusted for inflation in future years. Additional funds excluded from revenue limits include federal aid, categorical aid, co-curricular/enterprising funds, and additional aid that is provided for consolidation (for five years if consolidation occurred after July 1, 1995).³³ A special "catch-up" provision allows districts with less than \$5,600 to raise spending to that amount by 1996-97 and subsequent years. School districts may exceed the revenue limit with voter approval.

According to a small district superintendent, revenue limits have exacerbated disparity among school systems:

Since *Kukor* the state has imposed revenue limits. Small, rural and low spending districts are basically frozen. High spending districts continue to do that so disparity between the fiscally conservative and high rollers is exacerbated.

Consolidation Aid.

Also, under the state aid system, incentives are provided for school districts to consolidate. For no less than five years, consolidated districts are guaranteed additional aid of no less than the total amount of general aid received by the separate districts in the year prior to consolidation. They also receive a 10% increase in the equalization aid formula's guaranteed valuations and primary cost ceiling which is funded through equalization aids.

Rural and Small District Allotments and Cost Index.

The state aid system provides no state funding for a school district's uncontrollably higher costs- such as differences in the cost of doing business; or adjustments for small and rural districts or districts with high enrollments in metropolitan areas- such as Milwaukee public schools. As a superintendent explained: the "state never reimbursed small/rural [districts based on size but] fixed costs as a percent of the budget are higher." However another interviewee believed that: "It has been a local control issue..." "they could consolidate," [the state seems to think] "if those dummies want to continue- that's their problem." Still, this individual said, there were many benefits accruing to students from small schools- such as more student involvement and higher outcomes.

Finally, another provision that is not provided for under the Wisconsin finance system is a cost index; it would adjust funding for variations in the cost of doing business across the state. These

indices are utilized in a handful of states including: Florida, Alaska, Missouri, and Texas. According to a finance expert, when asked about the desirability of including this factor in Wisconsin's system: "Perfection is the enemy of what's possible."

Analysis of the Wisconsin School Finance System

Have conditions improved for rural and small districts since the supreme court ruling in *Kukor*? According to a superintendent, who expressed the sentiment of several other rural and small school district officials: "No...in my opinion, things have gotten worse. There is more of an imbalance since *Kukor*." Another observer explained: "*Kukor* is being interpreted to mean absent a complete denial of education then the system is ok." Also, an interviewee pointed out, there are some basic problems with the formula, mainly the assumptions that "all kids cost the same to educate, and the revenue controls that assume a static student base." As one individual explained: When the court upheld the finance system, the reaction of the state was to "dig in its heels;" However, a finance expert opined: "it's better now- more money is flowing. The state provides two-thirds of costs and most of it is general aid."

Given the changes in the state funding system that have occurred over time, and the sentiments of interviewees, researchers and others concerning equalization, analyses were performed to determine the level of equity in the system, and whether district tax rates were linked to spending on children in schools. The state aid system has as its primary goal equity for tax payers. This means that equal tax rates across the state should provide equal funding for students regardless of local ability to pay for education. As education is considered a fundamental right in Wisconsin, another important goal of the funding system is to provide equal opportunities to children that are not conditioned on irrelevant factors, such as local ability to pay for education out of real estate taxes.

Tax Rates and Spending

An analysis was undertaken to determine the extent to which tax rates would explain variations in school funding among school districts with the state. Tax rates on local property used for schools were compared to school district revenue per pupil. Revenue included general and categorical aid and the gross property tax levy. Transportation aid and special education funding were deleted, as these aids are provided out of state categorical aid for special educational needs of districts or students- legitimate bases for differentiation.

Findings of the analysis are shown in Tables 3 and 4. They showed that the relationship between tax rates and school district spending was moderate ($r = .55$). A bivariate regression analysis indicated that a district's tax rate explained less than one-third of the variation (30%) in state and local revenue in 1997-98. These findings suggest that taxpayer equity- equal yield for equal effort- is compromised under the Wisconsin Guaranteed Tax Base System.

FISCAL EQUITY ANALYSIS

Two fiscal equity analyses, using multiple statistics, were undertaken to determine the extent to which fiscal equity existed in the Wisconsin school finance system. Univariate equity statistics were computed for total state and local aid, including general aid, categorical aids (minus state special education aid and transportation aid) and the gross property tax levy.³⁴ The first set of computations measured variations in revenue per pupil. However, because of

concerns related to the need for funding based on a child's special educational needs, a second set of computations were completed to determine variations in aid for weighted pupils. Pupils were weighted based on research estimates of the cost of special adjustments.³⁵

Each child receiving special education and related services was weighted 2.3;³⁶ Limited English Speaking students were weighted 1.2;³⁷ and compensatory education students who were receiving free and reduced price lunches, were weighted 1.2.³⁸ For each of the two analyses, findings are reported for all school districts, and for K-12 districts only.³⁹ The data computed univariate statistics that were adjusted for the number of students rather than districts, as is suggested by research and best practice. Measures of funding changes for all pupils were reported in nominal dollars, which accounts for some legitimate variation related to inflationary changes over time. Data are reported for all districts.

Analysis of Per Pupil Funding—Unweighted Pupils.

Findings of the fiscal equity analysis are shown in Tables 5 and 6. They compare funding in 1991-92 to funding in 1997-98 for all school districts and for K-12 school districts only.

The findings present a mixed message related to equity in Wisconsin school finance. For all districts in 1997-98, the data indicated reduced equity based on the range, range ratio, and the Atkinson Index. Other measures indicated a slight improvement in equity over time. As indicated in Table 5, in 1991-92 the range in revenue between the highest and lowest spending districts was \$5,531; there was two and four-fifths more revenue in some districts than in others. In 1997-98 there were differences of \$10,454 per pupil between high and low spending districts within the state— or over \$300,000 for every classroom of 30 students. The range ratio indicated that there was over seven and one-half times more funding available to students in wealthy districts than students in poor districts.

Table 3.
Correlation Analysis of Education Revenue and Property Tax Rates

Simple Statistics						
Variable	N	Mean	Std Dev	Sum	Minimum	Maximum
Revenue	426	7132.027958	733.399565	6132345863	5456.737243	13041
Taxes	426	11025	2023.762870	9479632796	2545.000000	20490
<i>Pearson Correlation Coefficients / Prob > R under Ho: Rho=0 / N = 426 / WEIGHT Var = PUPILS</i>						
			REVENUE	TAXES		
		REVENUE	0.0	0.55196 0.0001		
		TAXES	0.55196 0.0001	1.00000 0.00000		

Table 4.
Regression Analysis: Education Funding and Property Tax Rates

Analysis of Variance					
Source	DF	Sum of Squares	Mean Square	F Value	Prob>F
Model	1	140897686077	140897686077	185.770	0.0001
Error	424	321583845607	758452466.06		
C. Total	425	462481531684			
Root MSE	27540.01572	R-square	0.3047		
Dep Mean	7132.02796	Adj R-Sq	0.3030		
C.V.	386.14565				
Parameter Estimates					
Variable	DF	Parameter Estimate	Standard Error	T for HO: Parameter=0	Prob > T
INTERCEP	1	4926.748317	164.50234299	29.949	0.0001
TAXES	1	0.200026	0.01467567	13.630	0.0001

However, the restricted range, the difference between the district spending at the 95th percentile versus the 5th percentile, fell. The restricted range ratio was 1.43 in 1991-92 but 1.34 in 1998-99, suggesting a narrowing of the gap in spending when very high and very low spending districts were not taken into consideration.

The *coefficient of variation* (COV), for 1991-92 was .12; it was .11 in 1998-99 indicating that two-thirds of all pupils were within 11% of the average per pupil revenue amount of about \$6,100 per pupil, and about nine-tenths were within 20% of the average. The *Gini Coefficient* and *Theil Index* showed similar results: funding for all pupils was slightly more equitable in 1997-98 than in 1991-92. The *Verstegen Index*, which measures equity the upper portion of the revenue distribution (above the median), was 1.11 for all pupils in 1998-99; it was 1.12 in 1991-92. The *McLoone Index*, which measures equity for the lower portion of the revenue distribution, was .96 in 1997-98; a slight improvement from 1991-92, when it was .96- but the *Atkinson Index*, also measuring equity for the lower portion of the distribution indicated movement away from equity over time. Because 1.0 indicates spending at the median for the Verstegen and McLoone Indices, these data indicate most of the dispersion in revenues in 1998-99 was located above the median, as the Verstegen Index was 11 points above 1.0, but the McLoone Index was only 4 points below 1.0. Thus, while districts below the median are rather tightly clustered; those above the median are more widely dispersed in terms of revenues.

Table 6 shows cross-time revenue deciles for all districts and K-12 districts. As shown, the spread of the distribution increased over time at all levels. Interestingly, the variation in funding almost doubled between the 90th and top decile, in 1997-98.

Equity Analysis of Weighted Per Pupil Funding.

Findings of the fiscal equity analysis are shown on Tables 7 and 8 for unweighted (ADM) and weighted (WADM) pupils for all school districts and for K-12 districts only, for 1997-98. The weighted pupil analysis incorporates vertical and horizontal equity considerations, or the notion that people in similar circumstances should be treated similarly (horizontal equity) but individuals can be treated differently based on relevant and justifiable differences (vertical equity).⁴⁰

In school finance this means that the goal is not absolute equality in spending among districts; but fairness in the distribution of revenues (expenditures). Vertical equity permits more to be spent on some students (districts) if their needs are greater and entail higher costs. By weighting students (districts), vertical and horizontal equity analyses occur simultaneously; this is the preferred method of comparison.

Table 7 shows statistics for ADM and WADM in 1997-98. A more inequitable aid distribution was found when the excess costs for students with special needs (WADM) were taken into consideration. For example, the range ratio for weighted students was 8.24; for unweight students it was 7.61. Thus, when the costs of special

Table 5.
Equity Statistics for Wisconsin School Finance, 1991-92 and 1997-98: Regular Education (Debt Service Included).*

WISCONSIN EDUCATION FINANCE				
Measure	All Districts		K-12 Districts	
	1992-92	1997-98	1991-92	1997-98
Range	\$5,531	\$10,527	\$4,263	\$8,104
Top	\$8,501	\$12,037	\$7,233	\$9,413
Bottom	\$2,970	\$ 1,582	\$2,970	\$4,603
Range Ratio	2.86	\$ 7.61	1.70	2.04
Restricted Range	\$1,658	\$ 1,870	\$1,489	\$1,795
95%	\$5,571	\$ 7,313	\$5,424	\$7,215
5%	\$3,912	\$ 5,443	\$3,935	\$5,419
Restricted Range Ratio	1.43	1.344	1.38	1.33
Federal Range Ratio	0.4240	0.3436	0.3786	0.3312
Mean	4,607	6,133	4,585	6,093
Coefficient of Variation	0.1185	0.1098	0.1078	0.9432
Gini Index	0.0615	0.0538	0.0578	0.0493
Theil Index	0.0067	0.0057	0.0057	0.0043
Atkinson's Index				
18	0.9610	0.4444	0.9646	0.4450
110	0.9502	0.3343	0.9543	0.3350
McLoone Index	0.9379	0.9571	0.9400	0.9565
Verstegen Index	1.1125	1.1050	1.1050	1.0924

*For 1991-92: General Fund, Debt Service Fund, State Transportation, and State Exceptional Education Minus State & Local Transportation and State & Local Exceptional Education Expenditures. Norris excluded due to data anomalies. As Norris was the lowest expenditure district, it is probable that the above weighted disparity measures underestimate inequalities between districts. For 1997-98: Equalization aid, categorical aid, and property tax levy minus transportation and special education. Norris excluded. N = 792,475 for all districts; N = 791,864 for K-12 districts (1991-92). N = 859,832 for all districts; N = 828,036 for K-12 districts (1997-98).

Table 6.
A Comparison of Revenue Deciles For All Districts and K-12 Districts for Wisconsin School Finance, 1991-92 and 1997-98: Regular Education (Debt Service Included).*

WISCONSIN EDUCATION FINANCE (ADM)				
Pupil Decile	All Districts		K-12 Districts	
	1991-92	1997-98	1991-92	1997-98
0%	\$2,970	\$1,582	\$2,970	\$4,602
10	4,094	5,544	4,104	5,561
20	**	5,659	**	5,670
30	4,260	5,812	4,260	5,820
40	4,386	5,907	4,369	5,927
50	4,494	5,948	4,485	5,948
60	4,641	6,086	4,617	6,076
70	4,754	6,286	4,741	6,264
80	4,994	6,544	4,974	6,470
90	5,244	6,869	5,180	6,799
100	8,501	12,036	7,232	9,413

*For 1991-92: General Fund, Debt Service Fund, State Transportation, and State Exceptional Education Minus State & Local Transportation and State & Local Exceptional Education Expenditures. Norris excluded due to data anomalies. As Norris was the lowest expenditure district, it is probable that the above weighted disparity measures underestimate inequalities between districts. For 1997-98: Equalization aid, categorical aid, and property tax levy minus transportation and special education. Norris excluded. N = 792,475 for all districts; N = 791,864 for K-12 districts (1991-92). N = 859,832 for all districts; N = 828,036 for K-12 districts (1997-98).

**For 1991-92: Milwaukee spanned percentiles from 19% to 31%, thus there was no observation for the 20%. For 1997-98, Milwaukee spanned percentiles from 43% to 56%.

students were considered, some districts had over eight times more to spend than others. Likewise, the coefficient of variation was .13 for weighted pupils, compared to .11 for unweighted pupils— thus, the disparity is larger when weighted pupils were considered. The Gini Index, Theil Index and Verstegen Index also show less equity when weighted pupils were taken into consideration. The Gini Index was .05 for ADM but .06 for WADM; the Theil Index was .0056 for ADM but .0081 for WADM. The Verstegen Index was 1.11 for ADM but 1.13 for WADM.

Measures for the lower portion of the distribution were mixed. The McLoone showed less equity for WADM; the Atkinson Index showed more— but this miniscule. This indicates that when the costs of special needs students were considered, the relative position of poor districts deteriorate because special needs students were a larger proportion of the population. This assumption was borne out to some extent. Table 8 shows revenue deciles for weighted (WADM) and unweighted (ADM) pupils. All values were depressed when the high costs of special needs students were considered (WADM). A difference of 21% between funding for unweighted versus weighted students was found at the 20th percentile signifying the largest concentrations of special needs students were located there. Other

differences in values between ADM and WADM ranged from 17% (lowest percentile) to 19% (40th percentile), except at the top of the distribution where differences were 16% and 10% for the 90th and 100th percentile, respectively. Thus, special needs students were spread throughout the revenue distribution, but the largest proportions, and therefore highest costs, are located at the bottom of the distribution.

Overall, these findings raise questions over whether the state aid system is “as nearly as uniform as practicable” and provides equal educational opportunities to all children and at all schools. They also raise questions over how the system might be restructured to provide greater equity— for both children and taxpayers while meeting the needs of all children— rich and poor, rural and urban, special needs and those in general education programs.

Current School Finance Litigation

*Vincent v. Voight*⁴¹

Issues related to equity for students and taxpayers feature prominently into a current challenge to the Wisconsin finance system. A decade after *Kukor*, this new challenge has been brought on behalf of poor school districts and others and is awaiting review by the Wisconsin Supreme Court. It is discussed below.

Circuit Court Decision

One hundred and eighty-one plaintiffs brought the case, *Vincent v. Voight*,⁴² including school districts, parents, students and taxpayers. Intervening plaintiffs consist of the Wisconsin Education Association, teachers, and school administrators from school districts across the state. The defendants are the State Treasurer, the State Superintendent of Public Instruction, the Department of Public Instruction, the Secretary of the Department of Revenue, and the Department of Revenue. The facts of the case are undisputed.

Plaintiffs and intervening plaintiffs claim— that the system was unconstitutional under the education article and the equal protection clauses of Wisconsin Constitution and U.S. Constitution— were denied in lower court action because “the school funding plan is constitutional under *Kukor v. Grover* which was controlling in this case.”⁴³

Plaintiffs alleged that districts that spent more per pupil were able to provide their students with more opportunities in a variety of areas, and that students in less wealthy districts did not have equal educational opportunities. They stated that,

...many districts have eliminated or reduced advanced foreign language, science and math classes, advanced placement classes, gifted and talented classes, and elective classes. Some school districts are unable to keep up with text-book replacement⁴⁴

The plaintiffs explicitly noted that “small, remote” districts were negatively affected by the state aid system. Although “distance learning enabled small, remote school districts to provide their students with opportunities for broader course offerings” ...some of the districts that could benefit had only non-interactive distance learning or “no distance learning at all”.⁴⁵ Moreover, plaintiff districts were forced to eliminate teaching positions, not replacing retiring teachers, and increasing class sizes and an inadequate number of counselors. An inability to raise funds under the finance system resulted in increased class sizes and:

...classes are sometimes being taught in partially condemned buildings, house trailers, basements storage

Table 7.
Equity Statistics for Wisconsin School Finance, 1997-98: Regular Education (Debt Service Included).*

WISCONSIN EDUCATION FINANCE				
MEASURE	All Districts		K-12 Districts	
	1997-98 (ADM)	1997-98 (WADM)	1997-98 (ADM)	1997-98 (WADM)
Range	\$10,454	\$ 9,497	\$4,811	\$4,747
Top	\$12,037	\$10,807	\$9,413	\$8,093
Bottom	\$ 1,582	\$ 1,310	\$4,603	\$3,345
Range Ratio	7.61	8.25	2.04	2.42
Restricted Range	\$1,870	\$ 1,707	\$1,795	\$1,652
95%	\$7,313	\$ 6,148	\$7,215	\$6,088
5%	\$5,443	\$ 4,441	\$5,419	\$4,436
Restricted Range Ratio	3.91	1.38	1.33	1.37
Federal Range Ratio	0.3436	0.3845	0.3313	0.3723
Mean	\$6,134	\$5,018	\$6,094	\$4,976
Coefficient of Variation	0.1095	0.1321	0.9360	0.1146
Gini Index	0.0537	0.0654	0.0492	0.0602
Theil Index	0.0056	0.0081	0.0043	0.0063
Atkinson's Index				
18	0.8658	0.8677	0.9757	0.9657
110	0.7113	0.7188	0.9699	0.9575
McLoone Index	0.9573	0.9388	0.9567	0.9395
Verstegen Index	1.1050	1.1269	1.0923	1.1141

*For 1997-98: Equalization aid, Categorical aid, and Property Tax Levy Minus Transportation and Special Education; WADM. Norris excluded due to data anomalies. N = 859,832 pupils for all districts; N = 828,036 for K-12 districts. ADM=average daily membership. WADM=weighted average daily membership.

Table 8.
A Comparison of Revenue Deciles For All Districts and K-12 Districts for Wisconsin School Finance, 1997-98: Regular Education (Debt Service Included).*

WISCONSIN EDUCATION FINANCE				
Pupil Decile	All Districts		K-12 Districts	
	1997-98 (ADM)	1997-98 (WADM)	1997-98 (ADM)	1997-98 (WADM)
0%	\$1,582	\$1,310	\$4,603	\$3,345
10	5,544	**	5,544	**
20	5,655	4,479	5,655	4,477
30	5,812	4,591	5,806	4,587
40	5,907	4,765	5,907	4,750
50	5,948	4,858	**	4,846
60	6,092	5,027	6,076	5,001
70	6,286	5,180	6,264	5,155
80	6,544	5,383	6,470	5,383
90	6,869	5,750	6,799	5,716
100	12,037	10,806	9,413	8,092

*Norris excluded due to data anomalies both years. For 1997-98: General Aid, Categorical Aid, and Property Tax Levy Minus Transportation and Special Education. N = 828,036 for K-12 districts (1997-98).

**For 1997-98, WADM, Milwaukee spanned percentiles from 4.9% to 17.9%. For ADM, 43% to 55%.

rooms, hallways, auditorium stages, unused shower facilities, elevator shafts, and janitor's closets. Some buildings do not meet the Americans with Disabilities Act requirements for handicapped accessibility. Maintenance is being delayed on many buildings resulting in leaking roofs, unsafe ventilation systems, antiquated heating and cooling systems, inadequate lighting and water running through the walls.⁴⁶

All sides moved for summary judgement; all agreed that education was a fundamental right in Wisconsin. The problem, the court noted, was that "courts have not offered clear guidance as to what that right entails and how it is to be achieved."⁴⁷

According to the lower court, the plaintiffs mistakenly framed the issue as whether the state distributes its school money in a manner that disequalizes local budgets rather than whether children are being denied an education. This, the court said, means that plaintiffs have challenged legislative acts, with their presumptive validity, and makes the court reluctant to interfere. Thus,

courts will bend over backwards to avoid having to declare a statute unconstitutional. Courts will avoid the issue altogether if possible... when forced to confront the issue, courts will stack the deck against the challenger of the statute...[this] reluctance to invalidate legislative acts is compounded when the challenge is to the taxing or spending laws, with all of their accompanying political compromises.⁴⁸

Although plaintiffs contended that the finance scheme was unconstitutional because it “fails to equalize the tax burden of the various school districts, and less wealthy or property poor districts are required to make a more burdensome tax effort than property rich districts for the same expenditure per pupil, the court found the plaintiff case was wanting. This was so because the education article “at one level... tolerates a great deal of disparity of tax effort among school districts.”⁴⁹ However, the court pointed out:

...it is stating the obvious to say that the situation confronting the framers was different from that which exists today... the issues presented here... required the court to be faithful to both the language and intent of a document which neither directly speaks to nor anticipates conditions which exist 150 years later. It comes as no surprise that the Supreme court was highly divided [in *Kukor*] in its efforts to apply the provisions of Article X to modern school finance schemes.⁵⁰

The lower court agreed with the majority in *Kukor* that “so long as there is no fundamental failure in the ability of the districts to provide their children with a basic education... the school finance scheme is sound.”⁵¹ It pointed out that the dissent’s definition of a “sufficient” basic education did not provide guidance in “how to define” it, creating a risk that “purely subjective standards” would be used. The plurality defined a basic education as one that complied with legislatively required minimum standards, such as minimum school days and teacher certification.⁵² The court noted that the dissents’ test was qualitative; the plurality, quantitative; but these were not “irreconcilable.”⁵³

Plaintiffs in *Vincent* asserted that the basic education standards cited by the plurality in *Kukor* were the “bare minimum”, and wealthier districts could provide much more. However, the lower court said, “in the absence of any effort by the parties” to show these were inadequate, it “felt” bound by *Kukor* thus disposing of the challenge to the education article.

As related to equal protection arguments, the lower court said they were “largely redundant” to rights provided under the education article. It pointed out that the fundamental flaw in plaintiffs arguments provided “very little statistical evidence (and very little of any kind of evidence apart from anecdotes and conclusory opinions) on the crucial question of whether children are actually being deprived of a basic education.”⁵⁴ In a strongly worded statement the court baldly stated:

The Court cannot provide Plaintiffs with the drastic remedy they seek– the sacking of the State’s entire system of financing schools throughout the State on such an unevenly developed record.⁵⁵

The lower court elaborated at length, stating that the plaintiffs’ case did not provide an overview of “how much money goes to which districts– it only made comparisons of the richest and poorest districts.” As with “a curved mirror, Plaintiffs have presented the Court only with a view of the distorted edges.”⁵⁶ The court noted that even using this evidence was not useful, because it showed that poorer districts received more equalization aid than nonpoor districts, the system was highly progressive, and at all levels provided more funding than was available to districts in the *Kukor* challenge. The analysis changed little when categorical aid was factored in– but here, plaintiffs and intervening plaintiffs were at odds. Plaintiffs criticized

the use of categorical aids as disequalizing. Intervening plaintiffs criticized the legislature’s turning away from categorical aid. Moreover, these funds, including integration aid, only make up 12.7% of all state aids; although they have decreased as a percentage amount, in dollar terms they have increased. Categorical aids cited in the complaint– integration aid, the levy credit, revenue limits, special adjustment aid– were sustained by the court.

The final question entertained by the court was whether the plaintiffs could establish that basic education resulted in unacceptable disparity, with special education diverting funds from regular education. The court said that the plaintiffs’ case was weaker than that provided in *Kukor*, when the system was upheld. Moreover, there was no evidence of the impact of disparity on children in schools. The court said helpful analysis, considered “crucial” would have included:

...rates at which high school graduates go to college, drop-out rates, the percentages of children requiring remedial education, comparison of the wages of those who do not go to college, comparison of standardized test scores such as the college entrance exams or standardized test scores in the lower grades, audits and like evidence.⁵⁷

The court called for “objective guidance” in defining a basic education stating “it must be something more than ‘we know its bad when we see it’” and admonished plaintiffs that:

This Court... cannot take the drastic step of nullifying the State’s entire scheme of paying for education in the absence of a systematic analysis which identifies the nature and scope of the problem and the State’s finance scheme, and which provides a framework for the steps which the legislature must, and realistically can, take to rectify the problem. That evidence has not been presented here.⁵⁸

Plaintiffs have undertaken no effort, the court said, to differentiate between the basic education required under the education clause and the additional educational opportunities localities may provide under that same article– but,

...the Court cannot evaluate equal opportunities against some greatest common denominator standard... The laws clearly does not require that the State provide for the opportunities some localities have elected for their children in areas like college level classes, electives, extra-curricular activities and computer education. Yet it also seems that in light of ever growing technological demands on the work force, an equal opportunity in education ought to require that at least some of these be available to students. Plaintiffs have not given the Court the tools to draw the line.⁵⁹

Interestingly, the court said that “even if institutional constraints could be overlooked and the court were willing to suspend deference to the legislature on budgetary authority,” plaintiffs did not provide enough guidance. “What Plaintiffs are really trying to establish is that the legislature does not give some local districts enough money to provide for an adequate education, but they have drawn attention to no evidence as to what an adequate education is or how much it costs.”⁶⁰ The court acknowledged the “grave” pressures faced by school districts today:

...the diseconomies of scale faced by smaller and shrinking districts, the high concentration of high needs students in inner cities. The court does not doubt that these problems have a serious adverse impact on the education received by many of Wisconsin's children.⁶¹

In conclusion, the court pointed to the many benefits that were derived from an educated citizenry— and the “stake we all have in the State's education system;” and the lack of a meaningful standard by which it could evaluate equal opportunities, calling on the supreme court to enunciate one.⁶²

Court of Appeals Decision

The lower court ruling in *Vincent v. Voight* was appealed to the Wisconsin Appeals Court; and on December 21, 1998 a decision was released that affirmed the lower court's holding.⁶³ The court of appeals said that to reach a conclusion that contradicted *Kukor* the plaintiffs must demonstrate that the system materially differs from the finance system that existed in *Kukor*— but they had not done so.

The court reviewed the record in the case and the system of funding education in Wisconsin; then discussed precedent under *Buse v. Smith*⁶⁴ and *Kukor*. *Buse*, the case that struck down negative aid provisions in Wisconsin, established that absolute uniformity was not required, and a minimum level of schooling was required. *Kukor* plaintiffs argued the system did not take into account the fact that some children had differing educational needs requiring certain districts to provide greater financial resources to provide them the same level of education; and that those districts with greater needs had lower ability to raise education funds. The majority agreed that the system did not violate the constitution but “could not agree why”,⁶⁵ the appeals court said.

The lower court record was reviewed including its holding that it was bound by *Kukor*, and that the statistical record did not provide the evidence necessary to prove that the current system created greater disparities among lower and higher property value districts than existed at the time of *Kukor*.

Plaintiffs asserted, on appeal, that the finance system was different than what existed in *Kukor* and there was no clear majority opinion in *Kukor* so it was not controlling. They asked for a different result based on these assertions.

The court of appeals first determined the weight that should be given to *Kukor* but found that a majority did prevail, given that the three-justice plurality opinion was joined by a single justice who also concurred on three major points while rejecting the plurality's local control justification. First, absent a showing that the legislature unconstitutionally denied a uniform opportunity for education or treated students unequally, the court should defer to the legislature. Second, they agreed that education was a fundamental right, but plaintiffs did not assert they were being denied that right. Third, they stated that the uniformity clause did not require the legislature to maintain absolute uniformity.

The court of appeals concluded that 1) Article X, section 3, requiring the Wisconsin state aid system to be “as nearly as uniform as practicable” did not require absolute uniformity; 2) the legislature was entitled to great deference when determining what degree of uniformity is “practicable”; and 3) equal access to education is a fundamental right but equal access to allocation of resources was not. Finally, it said that the proper standard of review was not strict

scrutiny and that the court of appeals was prohibited from reaching a different conclusion than the supreme court in *Kukor*.

The appeals court pointed out that for plaintiffs to prevail they must establish that the system differed materially from the finance plan reviewed in *Kukor*. Plaintiffs, in turn, alleged that differences were made in the funding system through a first tier hold harmless provision, in the categorical grant system, in the school tax levy credit system, and in the implementation of revenue limits.

Although the plaintiffs argued that the first tier was disequalizing because it maintained or widened the gap by providing equalization aid to districts spending well above the state average, the court of appeals found that the plaintiffs failed to show that the resulting disparities were substantially greater than the disparities that existed in *Kukor* and the evidence provided did not establish this fact either. The plaintiff's assertion that categorical aid was disequalizing, has fallen as a percent of funding, and disadvantaged poor districts who have meager ability to provide local funds, the court of appeals said, failed to show that the system was distributed on a basis that favored wealthy districts; categorical aid was a small portion of overall funding and the actual dollar amount has increased. This reasoning was also applied to special adjustment aid— no evidence was provided that it contributed to the denial of equal opportunities in education. Levy credits, by the plaintiffs' own assertion, was not viewed as state funding for schools.

Finally, revenue limits, introduced in 1993, were challenged by plaintiffs because most school system costs were fixed regardless of the size of the student population. When a “struggling district loses students, it has less money available to pay for those fixed costs, and they generally must cut programs in order to pay for them.”⁶⁶ Revenue limits also provided difficulties for poor districts when they had an influx of special needs students, who required state and federally mandated programs. The resources needed were quite expensive and struggling districts needed to cut other programs and services to comply with the mandates. Further, plaintiffs asserted that the revenue limits perpetuated disparities, by limiting spending.

The court of appeals found that the plaintiffs failed to present evidence that the revenue limits resulted in substantial spending disparities or that certain children were denied a basic education. Plaintiffs have not presented “objective” proof of how poor districts were impacted by low spending, other than testimonials, affidavits and the like.

Thus, the appeals court concluded, decisions on how to distribute state aid are left to the legislature and state supreme court. After *Kukor*, the court of appeals said, it was “limited to determining whether the system allows children access to a basic education.”⁶⁷ However, “plaintiffs have provided no comparative evidence that the system denies children access any more than it did when that case was decided.” In fact, the “evidence suggests that the state is providing greater aid to school districts than it did at the time *Kukor* was decided.”⁶⁸ Unless evidence could show that greater disparities exist under the current system, and that some children were denied a basic education, the court of appeals said it had “no choice” but to affirm the lower court's decision, upholding the Wisconsin school finance system.

Discussion

The impact of school finance litigation on children in the state of Wisconsin— including children in rural and small schools and districts— is not yet definitive due to the ongoing challenge to the state school finance system that is awaiting review by the high court. Many of the plaintiff school districts are composed of rural and small school districts from across Wisconsin. The plaintiffs allege that the finance system fails to provide equal opportunities to all children, and that there are substantial funding disparities among districts indicating the plan is not as “nearly as uniform as practicable.”

The highly divided Wisconsin Supreme Court previously upheld the finance system in *Kukor* (1989) despite the educational overburdens imposed on many districts because of the high costs associated with children with special educational needs that required higher costs for programs and services to reach a basic standard. Thus, the court noted that the constitution did not require funding for special needs children, but failed to address the fact that the costs associated with special needs children were encroaching on regular education programs and services, because programs to address these needs (such as special education, and limited English speaking) were mandatory. This means that education programs for general education students were conditioned on the size of the population of special needs students— an irrational factor that erodes the equity of the overall finance system for all children. Although the court usually deferred to the legislature on matters of funding, it took the opportunity to point out that more revenue was needed for poor districts.

The supreme court in *Kukor* said that the state must provide only a basic education to all children to meet the constitutional command. A basic education was defined as a minimum educational program, including a minimum number of days children attended schools and minimum teacher certification requirements. Thus, the high court appeared to be invoking an age-old minimalist standard of educational adequacy set in the sole U.S. Supreme Court case on education finance equity, *Rodriguez*, decided nearly a quarter of a century ago: that because all students had access to a minimum, basic education, the finance system was not constitutionally infirm despite disparities in educational quality and equality. That significant changes have occurred in society and the economy over the past quarter century appears unacknowledged. However, the *Kukor* court left the door open to another challenge should this standard be violated stating: “Our deference would abruptly cease should the legislature determine that it was ‘impracticable’ to provide to each student a right to attend a public school at which a basic education could be obtained, or if funds were discriminatorily disbursed and there was no rational basis for such a finance system.”⁶⁹

The dissent found that the issue in *Kukor* was not “spending disparities” but whether the state, through its finance system, met its constitutional obligation to provide an equal educational opportunity for all children within the state, “rich and poor alike.” According to the dissent: “it has not”. The “fundamental flaw” in the system, the dissent said, was “dollars without regard to educational needs.” The result, it said, was: “a significant number of school children in this state are denied an equal opportunity to become educated people.”⁷⁰

The mandate of Article X, section 3, Wisconsin Constitution, it stated:

is that the state provide a character of instruction in the state schools such that all children are provided with a uniform opportunity to become equipped for their future

roles as citizens, participants in the political system, and competitors both economically and intellectually.⁷¹

Have conditions improved for rural and small districts since the 1989 supreme court ruling in *Kukor*? Reactions from interviewees were mixed. According to a superintendent, who expressed the sentiment of other rural and small school district officials: “No... in my opinion, things have gotten worse. There is more of an imbalance since *Kukor*.” Another observer explained: “*Kukor* is being interpreted to mean absent a complete denial of education then the system is ok.” Also, an interviewee pointed out, there were some basic problems with the current formula, mainly the assumptions that “all kids cost the same to educate, and the revenue controls that assume a static student base.” However, a finance expert opined: “it’s better now—more money is flowing. The state provides two-thirds of costs and most of it is general aid.”

The Wisconsin state aid system for funding primary and secondary education challenged in *Kukor* is a Guaranteed Tax Base system that aims to provide equal funding for equal tax rates. However, several components of the system worked against this goal, including changes made to the system in 1995 after the supreme court handed down its opinion. These included: the new first tier of the system, a movement away from categorical aid further eroding limited funds for special needs students, and the combined effects of this underfunding when considered in tandem with recently implemented revenue limits. Because school districts had a limited number of students, when enrollment changes occurred or new special needs students were added, limitations on funding increases and underfunded categorical operated to disadvantage these districts. According to one school district official: the “[underfunded] categorical draw down regular education funding”. Another pointed out that, “we don’t have any money for the normal kids. The average student is losing, falling by the wayside, because we’re frozen [with revenue limits]. The mandated [programs such as special education and limited English speaking] get the money and the others get lost. The revenue limits keep us from raising money. That is the problem.”

Data analysis undertaken for this study, revealed that there are large disparities between the highest and lowest spending districts in Wisconsin, although the shape of the system was quite flat for districts from the 20th percentile in funding to the 90th percentile. However, when weighted pupils were incorporated into analysis to represent the high costs of special needs students, movement away from equity was apparent for all children. Moreover, a regression analysis showed that there was little relationship between tax rates and spending in Wisconsin ($r^2 = .30$). These data (discussed more fully in the body of the paper) raise serious questions about the equity of the system, particularly for poor, rural and small schools and districts.

An example illustrates these issues. In 1997-98, Bowler, a small poor school district, taxed twice what Gibraltar did, yet total expenditures from state and local sources were only 70% of Gibraltar’s expenditures. This difference could not be accounted for by differences in special education funding. The difference amounts to over \$1.5 million per year or an advantage for Gibraltar of \$2,562 per pupil. These are nontrivial differences and suggest the finance plan is not “as nearly as uniform as practicable” as mandated under the Wisconsin Constitution.

Similar equity issues are raised in the active court case on school finance equity, awaiting review by the Wisconsin supreme court,

Vincent v. Voight. Thus, almost ten years after *Kukor*, another challenge to the constitutionality of the state aid system is moving through the judicial system. Both the circuit court and the court of appeals have upheld the current Wisconsin school aids system, pointing out that *Kukor* was controlling unless plaintiffs could show that the finance system had changed in the interim; that children were being denied an equal educational opportunity; and that disparities were greater under the current system than under *Kukor*.

Plaintiffs spoke of the difficulties small districts faced under the current finance system, to wit: when a “struggling district loses students, it has less money available to pay for those fixed costs, and they generally must cut programs in order to pay for them.”⁷² Likewise, the lower court in *Vincent* specifically spoke to the difficulties faced by small school districts because of “diseconomies of scale” and noted that social, economic and demographic conditions had changed vastly since the constitutional framers debated the needs and requirements for financing education in the state of Wisconsin. Nonetheless, the lower court admonished plaintiffs, and asked for “objective” evidence rather than anecdotes, and a clear showing that spending disparities resulted in unequal educational opportunities for children in schools and in classrooms. The lower court asked how to measure equity and adequacy in the system if not by the minimum education standards established by the state and cited in *Kukor*. The lower court pointed out that absent a compelling justification, there was no choice but to uphold the system. The court of appeals agreed with this rationale, calling on the supreme court to determine what constituted an equal educational opportunity.

Thus, for rural and small districts to prevail, it appears that what is needed is a clear showing of disparities in education spending that impact children in schools and in classrooms; a showing that opportunities for these children infringe on their ability to be “citizens and competitors” in the labor market in the 21st century; and a showing that the current finance system is inadequate and structures inequality under the law.

References

1. Wisconsin Constitution, Article X, Section 3, emphasis added.
2. See, Rossmiller, R. A. (September 1990). “As Nearly As Uniform As Practicable”?: *A Historical Review of Wisconsin’s Equalized Aid Formula*. Madison, Wisconsin: Wisconsin Association of School District Administrators. pp. 1 ff.
3. *Vincent v. Voight*, (date). Memorandum Decision and Order (Summary Judgement), Case No. 95-CV-2586, Trial Court. *Vincent v. Voight*. Court of Appeals Decision, Dated and Filed December 21, 1998, No. 97-3174. Note: Appeals Opinion is Subject to Further Editing.
4. *Kukor v. Grover*, 436 N.W.2d 568 (Wisc. 1989).
5. Approximately ten individuals were interviewed, including school district officials, policymakers and staff, academics, and individuals from Wisconsin’s Department of Public Instruction.
6. Fieldwork was completed in July 1999 on site.
7. *Kukor v. Grover*, 436 N.W.2d 568 (Wisc. 1989).
8. *Id.*, at 569.
9. Wisconsin Statutes, section 121.02, defining minimum state standards.
10. *Kukor*, 148 Wis. 2d at 522.
11. *Kukor*, 148 Wis. 2d at 509-10.
12. 148 Wis. 2d at 483 n.8, cited in *Vincent v. Voight*, at 16.
13. *Id.*, at 577.
14. *Kukor*, at 585.
15. *Kukor*, at 587.
16. *Kukor, Id.*, at 587.
17. *Id.*, at 587-88.
18. *Kukor, Id.*, at 588.
19. *Kukor, Id.*, at 590.
20. Data are taken from: National Education Association (1998). *Estimates of School Statistics*. New Haven, CN: NEA Library. U.S. Census Bureau (1999). Model-Based Income and Poverty Estimates for Wisconsin. Washington, D.C.: <<http://www.census.gov/hhes/www/saife/estimate/cty/cty55000.htm>>; U.S. Census (1999). Statistical Abstract of the United States, 1998. Washington, D.C.: <<http://www.census.gov/statab/www/states/wi.txt>>
21. Department of Public Instruction (1999). *Basic Facts: About Wisconsin Elementary and Secondary Schools*. Madison, WI: DPI.
22. For a discussion see: Wisconsin Legislative Fiscal Bureau (January 1999). Informational Paper #27. *Elementary and Secondary School Aids*. Madison, WI: Wisconsin State Capitol. Busch, C., Kucharz, Kl., and Odden, A. (1997). Wisconsin Public Education and Property Tax Relief in the 90’s. *Educational Considerations*. vol. 25, no. 1, 52-58.
23. For example, if District X has a tax base of \$800,000 per pupil or 40% of the primary state guaranteed tax base (\$2 billion), the state will assume the remaining 60% of the district’s per pupil expenditure, up to \$1000 per pupil. The equalization formula is as follows:

$$\text{State Aid} = 1 - \frac{\text{Equalized Valuation Per Member}}{\text{State Guarantee}} \times [\text{Shared Cost}]$$
24. See: Versteegen, D. A. (1990). *School Finance at a Glance*. Denver, CO: Education Commission of the States. Gold, S., Smith, D. & Lawton, S. eds., (1995). *Public School Finance Programs of the United States and Canada 1993-94. Volume I*. American Education Finance Association and Center for the Study of the States, State University of the States. Versteegen, D. A. (1993). *Restructuring School Finance: A Time for Action*. Paper presented at the American Education Finance Association’s Annual Conference. Albuquerque, New Mexico.
25. See, for example: Rossmiller, “As Nearly As Uniform”; Odden, A., Busch, C. and Hertert, L., (Winter 1996). The Intricacies of Reforming School Finance and Providing Property Tax Relief in Wisconsin, *Journal of Education Finance*, 21, 321-342; Reschovsky, A. (1995). The Two-Thirds Initiative: A Reform Opportunity Lost? *La Follette Issues*. Madison, WI: University of Wisconsin, Robert La Follette Institute of Public Affairs; Wisconsin Department of Public Instruction (1999). *Basic Facts About Wisconsin’s Elementary and Secondary School Schools*. Madison, WI: Department of Public Instruction.
26. Department of Public Instruction, *Basic Facts*, p. 153.
27. Mueller, J., State Auditor (May 1999). *An Evaluation: Special Education Funding*. (A Report to the Joint Legislative Audit Committee Members- Letter of Transmittal). Madison, WI: Wisconsin State Capitol.
28. Joint Legislative Audit and Review Committee, p. 3 ff.

29. Mueller, J. (State Auditor). (May 1999). An Evaluation: Special Education Funding. *Report to the 1999-2000 Joint Legislative Audit Committee Members*. Madison, WI: Wisconsin State Capitol, Appendix III.
30. Wisconsin Legislative Fiscal Bureau (January 1999). *Informational Paper #27: Elementary and Secondary School Aids*. Wisconsin State Capitol, Legislative Fiscal Bureau, p.19.
31. See also, Joint Committee on Finance (May 20, 1999). *Student Achievement Guarantee in Education (DPI—Categorical Aids)* (Paper #778). Madison, WI: Wisconsin State Capitol.
32. See, for example, Blair, J. (January 27, 1999). "Wis. Districts Chafe Under State's Revenue Limits. *Education Week*, 1, 15.
33. Wisconsin Legislative Fiscal Bureau (January 1999). *Local Government Expenditure and Revenue Limits*. Madison, WI: Wisconsin State Capitol.
34. Data were collected from the Legislative Fiscal Bureau, Wisconsin State Capitol and cross-referenced to information from the Department of Public Instruction (1999). *Basic Facts, 1997-98*. Madison, WI: Department of Public Instruction.
35. Using this approach, "weights" are derived based on the ratio of excess costs to general program costs; they are driven off the cost of the general education program, which is the level of 1.00 in the system; and they are empirically derived. Thus, a child with special educational needs would be weighted based on research-based cost-differentials that establish the ratio of excess costs to special program costs. For example, a child enrolled in a program that costs half again as much as the general education program is weighted 1.5; another 50% in funding is required.
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38. Levin, H. M. (1989). Financing the Education of At-Risk Students. Cooper, B. & Speakman, S. (Ed.) *Educational Evaluation and Policy Analysis*, 11(1) 47-60. See also, Verstegen, D. A. (1996). The Assessment of Equal Educational Opportunity: Methodological Advances and Multiple State Analyses. (pp. 127-148). *Advances in Educational Productivity*, vol. 6.
39. It should be noted that findings for all districts include Union High School Districts and K-8 Districts, which can confound results.
40. Bivariate statistics were not computed as K-8 and UHS districts do not have discrete property values which can confound results.
41. This section draws heavily on a brief prepared for Council for the Plaintiffs, March 1999, Jacksonville, FL.
42. *Vincent, et al. v. Voight, et al.* Circuit Court Branch 6, Dean County, Memorandum Decision and Order (Summary Judgement), Case No. 95-CV-2586, p. 1 (mimeo).
43. *Vincent, et al. v. Voight, et al.* Circuit Court Branch 6, Dane County, Memorandum Decision and Order (Summary Judgement), Case No. 95-CV-2586, p. 1 (mimeo).
44. *Vincent*, at 7.
45. *Id.*, at 7.
46. *Id.*, at 8.
47. *Id.*, at 8.
48. *Id.*, at 9.
49. *Id.*, at 13.
50. *Id.*, at 13.
51. *Id.*, at 21.
52. *Id.*, at 22, ff., quoting Section 121.02 Wisc. Stats.
53. *Id.*, at 23.
54. *Id.*, at 26.
55. *Id.*, at 26.
56. *Id.*, at 27.
57. *Id.*, at 36.
58. *Id.*, at 37.
59. *Id.*, at 38.
60. *Id.*, at 39.
61. *Id.*, at 39.
62. *Id.*, at 40.
63. The decision was nonpublished thus not precedent setting.
64. *Buse v. Smith*, 74 Wis.2d 550, 247 N.W.2d 141 (1976).
65. *Vincent et al. v. Voight et al.*, December 23, 1998, Court of Appeals Decision, No. 978-3174, State of Wisconsin. (Unpublished), at 17.
66. *Id.*, at 32.
67. *Id.*, at 33.
68. *Id.*, at 33.
69. *Supra* nt. 12, *Kukor*, at 582.
70. *Kukor, Id.*, at 588.
71. *Kukor, Id.*, at 590.
72. *Id.*, at 32.