**Off Case**

**Federalism DA**

**UQ; Trump has revitalized federalism — state control of education policy is key.**

Roberts 17 — Kevin D. Roberts, Ph.D., a longtime educator who is Executive Vice President of the Texas Public Policy Foundation in Austin, 2017 (“States, Not the Feds, Should Lead Education Reform,” *Real Clear Education*, February 7th, Available Online at [http://www.realcleareducation.com/articles/2017/02/07/states\_not\_the\_feds\_should\_lead\_ education\_reform\_\_110115.html](http://www.realcleareducation.com/articles/2017/02/07/states_not_the_feds_should_lead_%20education_reform__110115.html), Accessed 06-22-2017)

The era of Donald Trump offers conservative reformers opportunities they have not seen since the 1980s. The most significant are in education, where the federal government has aggrandized its power, rendering states impotent. This overreach comes at the *expense* of two things very dear to the nation—our schoolchildren and our understanding of *shared power.*

Though the Trump administration will no doubt address the former problem, *its means of doing so may* very well *exacerbate the latter*. Too often, well-intentioned, conservative executives end up using federal power to heal the wounds caused by the *very same bludgeon—federal power.*

If President Trump is correct in his inaugural exhortation that “now is the hour of action,” then states—*not federal bureaucrats*—need to lead the charge on education policy.

Among the many problems facing American education, the most significant may be our schools’ and colleges’ utter failure to teach civic education. Two generations of American students have been taught precious little about the American Founding or the Constitution, let alone the philosophical foundation of the American system of government—federalism. That notion of shared power between the federal government and states has, as a result, withered.

How fitting, then, that Texas—where the American spirit of independence, work ethic, freedom and a vibrant notion of state power is palpable—take the lead in renewing federalism. And how fitting that it do so in the policy area where *revitalized state power is most needed: education.*

During the otherwise-bleak years of the previous administration, the Lone Star State has shined as a beacon of liberty, deregulation and restrained government authority. Harkening to Justice Louis Brandeis's early-20th-century comment that “states are the laboratories of democracy,” Texas-based initiatives have sprouted across the nation. It's no Texan braggadocio to observe that nationwide, efforts in tort reform, deregulation, tax reduction and criminal justice reform originated in Texas. The resulting “Texas Model” has become the blueprint for leaders in dozens of states.

And that is precisely how our system should work. Though we are all familiar with the legitimate claims based on state sovereignty and the Tenth Amendment, our Founders viewed those as mere baseline expectations. In the realm of public policy, they saw the states as taking the *initiative*, being so bold and innovative that the federal government would have to serve as a check on them—not the other way around, as the case has been in recent years.

As the Obama administration would be the first to say, Texas has led those efforts to check federal power. That defensive posture was necessary—and, for the Republic, crucial. But now Texas and other states must seize the field of education policy, exercising their own power with bold policy initiatives.

The timing for Texas policymakers is *perfect*. The state's biennial legislative session has just begun, and the momentum for an education overhaul has never been stronger. At the National School Choice Week rally earlier this week, both Gov. Greg Abbott and Lt. Gov. Dan Patrick gave rousing, full-throated endorsements of school choice reforms.

There are obstacles, to be sure, but even the defenders of the status quo recognize that it's *hard to defend the mediocrity of the status quo.*

Among the many school choice vehicles, the most far-reaching—for Texas and the United States—is an Education Savings Account (ESA). Built on the successes of early choice vehicles such as tax-credit scholarships, ESAs offer wider and easier usage, removing the barriers to access that have been foisted on choice programs by opponents. Parents may use an ESA to pay for a host of education-related expenses, including private school tuition, tutoring, special needs programs and books.

In sum, an ESA gives parents an unprecedented means for customizing their child’s education—the exact opposite of the conveyor-belt, cookie-cutter approach that has become modern American education.

Though some reformers have advocated for federal ESAs, the inefficiency inherent in the large federal bureaucracy begs for states to take the lead. Texas, the most populous state with a bent toward conservative, free-market reforms, has a unique opportunity to show that states, as our Founders expected, can be at the *forefront of policy innovation.*

There could not be more at stake. Our children deserve an end to zip-code discrimination, which dramatically limits their access to decent educational options. Furthermore, the civic health of our *American Republic*—in particular, the *long-standing view that states, not the feds, would lead—hangs in the balance.*

**Link: Federal action on education upsets the overall balance of federalism.**

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

Every state constitution, in contrast with the Federal Constitution, contains some *guarantee of education*.18 State courts split into two groups on how to give effect to these guarantees: (1) by evaluating education policy under Equal Protection by declaring education a fundamental right or by treating wealth as a suspect classification,19 or (2) by evaluating education policies under a framework of educational adequacy.20 In either case, these clauses establish *substantive educational guarantees* on the state level *that do not exist at the federal level* and provide the courts with a role in ensuring the fulfillment of these guarantees.21 These clauses also help to create a *valuable political dynamic*, which has inured to the benefit of children. As part of this political dynamic, courts define the contours of these affirmative guarantees, and the legislature fulfills its own *constitutional duty* by legislating between those boundaries.2

However, when the *fed*eral *gov*ernment legislates or regulates in a given field, it necessarily *constrains the ability of states to legislate* in that same field.23 In the field of education, the ability of courts to protect the rights of children is dependent on the ability of legislatures freely to react to courts. As such, anything that *constrains state legislatures* also *constrains state courts* and *upsets this valuable political* dynamic created by the interaction of state legislatures and state courts. An expansive federal role in educational policymaking is *normatively undesirable* when it threatens to interfere with this political dynamic. This dynamic receives scant attention in the literature described above. However, mindfulness of this dynamic is crucial to the *proper placement* of the educational policymaking and regulatory epicenter.

Constraints on state legislatures would not be as problematic if the *fed*eral *gov*ernment had proven itself *adept* at guaranteeing adequate educational opportunity for all students. However, RTTT and NCLB have, in some cases, proven remarkably unhelpful for poor and minority students.24 These negative outcomes, of course, are not guaranteed. However, the fact that federal involvement in education has produced undesirable outcomes for poor and minority students should cause policymakers to reexamine whether it is most desirable for the federal government to play such a significant role in education. This Comment argues that it is not.

**Internal link: Progressive federalism is the *basis* for resistance to Trump’s agenda.**

Chemerinsky 17 — Erwin Chemerinsky, Founding Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, Fellow of the American Academy of Arts and Sciences, former Alston & Bird Professor of Law and Political Science at Duke University, holds a J.D. from Harvard Law School, 2017 (“Embracing Federalism,” *Take Care*—a scholarly legal blog, March 16th, Available Online at<https://takecareblog.com/blog/embracing-federalism>, Accessed 06-14-2017)

It is time for progressives to embrace federalism and to use Supreme Court precedents protecting states’ rights to fight against Trump administration policies.  Throughout American history, “states’ rights” have been used by conservatives to oppose progressive change.  In the early 19th century, those opposing abolition of slavery did so in the name of states’ rights.  In the late 19th and early 20th centuries, the Supreme Court struck down many progressive federal laws, including the first federal statute restricting the use of child labor, on federalism grounds.  In the 1950s and 1960s, Southerners opposed desegregation by invoking states’ rights.  In more recent decades, the Supreme Court, in a series of ideologically split 5-4 decisions, used federalism to strike down desirable federal laws, including provisions of the Violence Against Women Act, the Brady Handgun Control Act, and the Patient Protection and Affordable Care Act.

But now, with the Trump administration taking far right positions on almost every issue, state and local governments are a key hope.  For example, President Donald Trump’s threat to withhold federal funds from “sanctuary cities” is coercion of local governments that violates principles of federalism long advocated by the conservative justices on the Supreme Court.

A great deal of confusion exists over what it means for a city to declare itself to be a “sanctuary.”  It does not mean that a city will conceal or shelter undocumented immigrants from detection.  Instead, when a city says that it is a “sanctuary,” it means that the city will not be an arm of federal immigration authorities.  For example, a sanctuary city will not investigate, arrest, or detain individuals on the basis of immigration status.  Rather, the city will provide services to all, regardless of immigration status, and generally will not turn over undocumented individuals to federal immigration authorities.

There are compelling reasons for cities to adopt such policies.  Victims of crime and witnesses to crime will not come forward to the police if they fear deportation.  Public health officials worry that sick people, including those with communicable diseases, will not go for treatment if they fear that it could lead to their deportation.  Of course, their untreated communicable diseases can spread to all of us.  Education officials worry that parents will not send their children to school if they think it might lead to deportation.  Educating children, whether documented or undocumented, is a moral obligation and obviously essential for society.

Nonetheless, President Trump issued an executive order on January 25, 2017, which threatens sanctuary cities with loss of federal funds. But this violates the Tenth Amendment.  The Supreme Court has held that it is unconstitutional for Congress to commandeer state and local governments and force them to administer federal mandates.

For example, in United States v. Printz, in 1997, the Supreme Court declared unconstitutional a provision of the federal Brady Handgun Control Act that required that state and local governments do background checks before issuing permits for firearms.  The Court, in an opinion by Justice Scalia, said that such coercion violated principles of federalism and the Tenth Amendment.

Nor may Congress do this by putting strings on grants to state and local governments.  The Supreme Court has said that such strings are constitutional only if the conditions are clearly stated, relate to the purpose of the program, and are not unduly coercive.  None of these requirements are met by the Trump Executive Order.  No federal statute conditions federal funds on cities denying themselves sanctuary status.  And most federal grants to local governments have nothing to do with immigration.

But most of all, the Trump Executive Order is impermissibly coercive.  In 2012, in National Federation of Independent Businesses v. Sebelius, the Supreme Court, 7-2, declared unconstitutional the Medicaid provisions of the Patient Protection and Affordable Care Act.  These provided that if a state accepted federal Medicaid funds, it had to provide coverage for those within 133% of the federal poverty level.  The federal government paid 100% of these costs until 2019 and 90% thereafter.  The Court, in an opinion by Chief Justice Roberts, declared this unconstitutional as impermissibly coercing state governments in violation of the Tenth Amendment.  The Court referred to this as like “a gun to the head” of the states and as “dragooning” them.  The Trump Executive Order does exactly the same thing.

The federal government can use its agencies and agents to enforce federal immigration law however it chooses.  But it cannot turn local governments into enforcement arms of the federal government.  That is exactly what the Trump Executive Order does.

This is just one of many examples where principles of *federalism must be used by progressives*.  In the area of environmental law, it will be crucial for state governments to adopt stricter pollution control laws in the face of the dismantling of federal environmental protections.   Just last week, Scott Pruitt, the head of the Environmental Protection Agency, once more denied any link between greenhouse gas emissions and climate change.  It is clear that he and the Trump administration will gut federal environmental regulations.  But there long has been a principle that states can have stricter environmental laws, so long as Congress does not explicitly preempt this.

Another important area concerns *decriminalization of marijuana*.  A number of states, including California, have repealed laws that make it a crime to possess small amounts of this drug.  Attorney General Jeff Sessions has expressed opposition to these laws.  But Congress cannot force state governments to enact or enforce laws.  A state does not need to have any law prohibiting marijuana, or can have one with exceptions for possession for medical use or for small amounts.  To be sure, the federal government can enforce its own drug laws however it wants, but it cannot compel state governments to do so.

*States*, *of course*, *will vary enormously in their policies*.  But *that*, too, *is what federalism and states’ rights are about*.  Progressives should not be hesitant to use conservative decisions to achieve desirable results.  We will need all the tools we can find to fight over the next four years.

**Impact: Resisting Trump’s agenda is essential to lower the risk of multiple existential threats.**

Baum 16 — Seth Baum, Co-Founder and Executive Director of the Global Catastrophic Risk Institute, Affiliate Researcher at the Center for Research on Environmental Decisions at Columbia University, and Affiliate Scholar at the Institute for Ethics and Emerging Technologies, and a Research Scientist at Blue Marble Space Institute of Science, earned a Ph.D. in Geography from Pennsylvania State University, an M.S. in Electrical Engineering from Northeastern University, and a B.S. in Optics and a B.S. in Applied Mathematics from the University of Rochester, 2016 (“What Trump means for global catastrophic risk,” *Bulletin of Atomic Scientists*, December 9th, Available Online at<http://thebulletin.org/what-trump-means-global-catastrophic-risk10266>, Accessed 07-09-2017, Lil\_Arj)

In 1987, Donald Trump said he had an aggressive plan for the United States to partner with the Soviet Union on nuclear non-proliferation. He was motivated by, among other things, an encounter with Libyan dictator Muammar Qaddafi’s former pilot, who convinced him that at least some world leaders are too unstable to ever be trusted with nuclear weapons. Now, 30 years later, Trump—following a presidential campaign marked by impulsive, combative behavior—seems poised to become one of those unstable world leaders.

Global catastrophic risks are those that *threaten the survival of human civilization*. Of all the implications a Trump presidency has for global catastrophic risk—and there are many—the prospect of him ordering the launch of the massive US nuclear arsenal is by far the most worrisome. In the United States, the president has sole authority to launch atomic weapons. As Bruce Blair recently argued in Politico, Trump’s tendency toward erratic behavior, combined with a mix of difficult geopolitical challenges ahead, mean the probability of a nuclear launch order will be unusually high.

If Trump orders an unwarranted launch, then the only thing that could stop it would be disobedience by launch personnel—though even this might not suffice, since the president could simply replace them. Such disobedience has precedent, most notably in Vasili Arkhipov, the Soviet submarine officer who refused to authorize a nuclear launch during the Cuban Missile Crisis; Stanislav Petrov, the Soviet officer who refused to relay a warning (which turned out to be a false alarm) of incoming US missiles; and James Schlesinger, the US defense secretary under President Richard Nixon, who reportedly told Pentagon aides to check with him first if Nixon began talking about launching nuclear weapons. Both Arkhipov and Petrov are now celebrated as heroes for saving the world. Perhaps Schlesinger should be too, though his story has been questioned. US personnel involved in nuclear weapons operations should take note of these tales and reflect on how they might act in a nuclear crisis.

Risks and opportunities abroad. Aside from planning to either persuade or disobey the president, the only way to avoid nuclear war is to try to avoid the sorts of crises that can prompt nuclear launch. China and Russia, which both have large arsenals of long-range nuclear weapons and tense relationships with the United States, are the primary candidates for a nuclear conflagration with Washington. Already, Trump has increased tensions with China by taking a phone call from Taiwanese President Tsai Ing-wen. China-Taiwan relations are very fragile, and this sort of disruption could lead to a war that would drag in the United States.

Meanwhile, Trump’s presidency could create some interesting opportunities to improve US relations with Russia. The United States has long been too dismissive of Moscow’s very legitimate security concerns regarding NATO expansion, missile defense, and other encroachments. In stark defiance of US political convention, Trump speaks fondly of Russian President Vladimir Putin, an authoritarian leader, and expresses little interest in supporting NATO allies. The authoritarianism is a problem, but Trump’s unconventional friendliness nonetheless offers a valuable opportunity to rethink US-Russia relations for the better.

On the other hand, conciliatory overtures toward Russia could backfire. Without US pressure, Russia could become aggressive, perhaps invading the Baltic states. Russia might gamble that NATO wouldn’t fight back, but if it was wrong, such an invasion could lead to nuclear war. Additionally, Trump’s pro-Russia stance could mean that Putin would no longer be able to use anti-Americanism to shore up domestic support, which could lead to a dangerous political crisis. If Putin fears a loss of power, he could turn to more aggressive military action in hopes of bolstering his support. And if he were to lose power, particularly in a coup, there is no telling what would happen to one of the world’s two largest nuclear arsenals. The best approach for the United States is to rethink Russia-US relations while avoiding the sorts of military and political crises that could escalate to nuclear war.

The war at home. Trump has been accused many times of authoritarian tendencies, not least due to his praise for Putin. He also frequently defies democratic norms and institutions, for instance by encouraging violence against opposition protesters during his presidential campaign, and now via his business holdings, which create a real prospect he may violate the Constitution’s rule against accepting foreign bribes. Already, there are signs that Trump is profiting from his newfound political position, for example with an end to project delays on a Trump Tower in Buenos Aires. The US Constitution explicitly forbids the president from receiving foreign gifts, known as “emoluments.”

What if, under President Trump, the US government itself becomes authoritarian? Such an outcome might seem unfathomable, and to be sure, achieving authoritarian control would not be as easy for Trump as starting a nuclear war. It would require compliance from a much larger portion of government personnel and the public—compliance that cannot be taken for granted. Already, government officials are discussing how best to resist illegal and unethical moves from the inside, and citizens are circulating expert advice on how to thwart creeping authoritarianism.

But the president-elect will take office at a time in which support for democracy may be declining in the United States and other Western countries, as measured by survey data. And polling shows that his supporters were more likely to have authoritarian inclinations than supporters of other Republican or Democratic primary candidates. Moreover, his supporters cheered some of his clearly authoritarian suggestions, like creating a registry for Muslims and implying that through force of his own personality, he would achieve results where normal elected officials fail.

An authoritarian US government would be a devastating force. In theory, dictatorships can be benevolent, but throughout history, they have been responsible for some of the *largest human tragedies*, with tens of millions dying due to their own governments in the Stalinist Soviet Union, Nazi Germany, and Maoist China. Thanks to the miracles of modern technology, an authoritarian United States could wield overwhelming military and intelligence capabilities to even more disastrous effect.

Return to an old world order. Trump has suggested he might pull the United States back from the post-World War II international order it helped build and appears to favor a pre-World War II isolationist mercantilism that would have the United States look out for its unenlightened self-interest and nothing more. This would mean retreating from alliances and attempts to promote democracy abroad, and an embrace of economic protectionism at home.

Such a retreat from globalization would have important implications for catastrophic risk. The post-World War II international system has proved remarkably stable and peaceful. Returning to the pre-World War II system risks putting the world on course for *another major war*, this time with deadlier weapons. International cooperation is also essential for addressing global issues like climate change, infectious disease outbreaks, arms control, and the safe management of emerging technologies.

On the other hand, the globalized economy can be fragile. Shocks in one place can cascade around the world, and a bad enough shock could collapse the whole system, leaving behind few communities that are able to support themselves. Globalization can also bring dangerous concentrations of wealth and power. Nevertheless, complete rejection of globalization would be a dangerous mistake.

Playing with climate dangers. Climate change will not wipe out human populations as quickly as a nuclear bomb would, but it is wreaking slow-motion havoc that could ultimately be just as devastating. Trump has been all over the map on the subject, variously supporting action to reduce emissions and calling global warming a hoax. On December 5th he met with environmental activist and former vice president Al Gore, giving some cause for hope, but later the same week said he would appoint Oklahoma Attorney General Scott Pruitt, who denies the science of climate change, to lead the Environmental Protection Agency. Trump’s energy plan calls for energy independence with development of both fossil fuels and renewables, as well as less environmental regulation. If his energy policy puts more greenhouse gas into the atmosphere—as it may by increasing fossil fuel consumption—it *will increase global catastrophic risk*.

For all global catastrophic risks, it is important to remember that the US president is hardly the only important actor. Trump’s election shifts the landscape of risks and opportunities, but does not change the fact that each of us can help keep humanity safe. His election also offers an important reminder that outlier events sometimes happen. Just because election-winning politicians have been of a particular mold in the past, doesn’t mean the same kind of leaders will continue to win. Likewise, just because we have avoided global catastrophe so far doesn’t mean we will continue to do so.

**States Counterplan**

**The 50 state governments should regulate K-12 schools that receive public funding by implementing a law that:**

**ν Requires states to affirmatively further racially integrated education**

**ν Explicitly includes a private right of action for parties to sue for equitable relief if states fail to take measures to affirmatively reduce racial isolation in schools**

**ν Creates clear statutory language that confers rulemaking and regulatory authority to the Department of Education’s Office for Civil Rights or an independent agency directed by a career employee, rather than a political appointee, to provide federal oversight and enforcement**

**ν Authorizes and requires action by the Department of Justice for states that refuse compliance**

**ν Funds deliberations that both document the current racial inequities in educational opportunity and provide useful data that may assist states and localities in fostering racially inclusive educational opportunities**

**ν Funds research, development, and policy replication to preserve and strengthen federal, state, and local efforts to protect equal access to educational opportunities**

**ν Includes the provision of transportation and construction funding to suburban schools, while also increasing school funding for inner-city schools**

**CP is germane, predictable and solves the case --- federal action undermines effective state action**

Lawson, 13 --- J.D. 2013, University of Michigan Law School (Aaron, Brigham Young University Education and Law Journal, “EDUCATIONAL FEDERALISM: A NEW CASE FOR REDUCED FEDERAL INVOLVEMENT IN K-12 EDUCATION,” 2013 BYU Educ. & L. J. 281, Lexis-Nexis Academic, JMP)

V. Conclusion

When we, as a nation, consider how best to provide adequate educational opportunity to as many students as possible, *one critical question that must be answered is at what level these decisions are best made*. This means developing an awareness of both where students may most effectively vindicate their own interests and *where these decisions may be made most efficiently*. NCLB and RTTT represent a belief that *education policy* may be usefully directed, if not dictated, at the federal level. As this Comment argues, these *decisions*  [\*317]  *are best made on the state level*. *Substantive constitutional guarantees of education can be found in every state*, entitling students to an adequate level of educational opportunity. These guarantees provide *a role for both state courts and state legislatures in vindicating the national educational interest in ensuring educational opportunity for all*.

The very nature of the educational right - positive in character - requires active government involvement. As Feldman recognizes, legislative inertia and not judicial overreach is the primary barrier to adequate vindication of positive rights. n172 Part of this active government involvement must come from the judicial branches, which are in a position to prod the legislature to act where educational quality falls below some minimally adequate level.

The judiciary is the ultimate defense against the legislative inertia that threatens the ability of poor and minority students to obtain an adequate education. Educational adequacy litigation began to open new doors and expand beyond funding precisely at the moment that federal involvement, through NCLB and RTTT, began to grow to such a level as to threaten to interfere with judicial intervention in education. n173 *This potential pitfall is precisely the reason why the federal government should not take such an active role in education.*

Courts are important players in education reform not by articulating the content of educational policy but by setting the rules governing how education reform can proceed. Educational reform involves an important give and take as interested parties advance their own solutions, but *there are constitutional limits on this give and take that should be defined by state courts*. The experience of educational adequacy lawsuits indicates that there is an important political dynamic at play here, which involves courts and ultimately inures to the benefit of students, as all education reform should.

To the extent that the federal government is involved, through programs like NCLB and RTTT, that involvement has the potential to *diminish the effectiveness of state legislative*  [\*318]  *response to state courts by binding the legislature to the requirements of federal funding programs*. Thus, through NCLB and RTTT, the federal government threatens this valuable political dynamic in which courts play an important role in vindicating the substantive educational entitlements enjoyed by students. *Although state legislatures may be able to respond to both the federal government and to state courts simultaneously, the very real possibility that state legislatures may, in some instances, be placed in an untenable position between federal requirements and state court dictates should counsel against extensive federal involvement in education.*

An adequacy framework for educational policy requires more than that a state legislature commit to a certain level of education funding. It requires also that a legislature be sensitive to the ways in which educational policies, especially those that go beyond the funding context, affect student performance and achievement. NCLB and RTTT focus legislatures in ways that may not actually be helpful. These policies may have any number of constitutionally relevant consequences, particularly for poor and minority students.

There is a role for courts to play in educational policy, and that role is to make sure that legislatures remain sensitive to the ways educational policies affect students and especially that they remain sensitive to the unique challenges posed to racially and socioeconomically isolated students within our educational systems and society. State constitutional text demands that closing the achievement gap cannot merely be a legislative priority. *State courts cannot effectively play that role in a system riddled with federal commands.* There are reasons for federal involvement in local educational policy, but *protection of student interests counsels in favor of more restrained involvement*, rather than the ever-expanding role the federal government has given itself in the last decade.

**2nc Solvency – State Courts**

**State courts solve better --- their protections extend beyond the Supreme Court**

Hilbert, 17 --- Associate Professor of Law at Mitchell Hamline School of Law, one of the plaintiffs' attorneys for the Minneapolis NAACP in the 1995 desegregation case (Winter 2017, Jim, Journal of Law & Education, “Restoring the Promise of Brown: Using State Constitutional Law to Challenge School Segregation,” 46 J.L. & Educ. 1, Lexis-Nexis Academic, JMP)

IV. STATE CONSTITUTIONAL CASES: EDUCATIONAL REFORM OF A DIFFERENT TYPE

As efforts in federal court became more and more difficult because of Supreme Court limitations on desegregation, a new focus emerged on unequal funding as a mechanism to improve the conditions of  [\*28]  America's struggling schools. n150 This "school finance" litigation movement developed largely out of dissatisfaction and concern about a lack of progress in desegregation during the 1960s, shifting the focus from the demographics of schools to the disparities in funding between schools. n151 From the beginning, school desegregation and school finance movements were driven by similar goals: securing educational opportunity for children, often low-income students of color, to whom access to quality education was largely denied. n152

A. The First "Wave" of Educational Reform through School Finance Litigation: Federal Court

Initially, school finance litigation advocates argued that funding disparities between school districts violated the Federal Equal Protection Clause. This "first wave" of school finance cases began in 1971 with Serrano v. Priest, in which the California Supreme Court held that the state's school finance system violated the guarantees of Equal Protection in both the California and United States Constitutions. n153 The success of Serrano inspired similar lawsuits mostly based on the federal constitution in more than thirty other states. n154

[\*29]  Reliance on the federal constitution for school finance, however, did not last long. Two years after Serrano, the Supreme Court definitively addressed school finance litigation in federal courts. In San Antonio Independent School District v. Rodriquez, the Court reviewed the Texas education financing system under the federal Equal Protection Clause. n155 In a 5 to 4 decision, the Court concluded that education is not a fundamental right because *the U.S. Constitution does not mention a right to education*. n156 The Court concluded that the Texas school-financing scheme was rationally related to the legitimate state interest of local school control. n157 Rodriquez essentially foreclosed the federal courts from addressing the wide funding disparities between wealthy and low-income districts. n158

*State constitutions*, on the other hand, *provided a new window for advocates*. Shortly after Rodriquez, Justice William Brennan suggested that "because a conservative U.S. Supreme Court had given a cramped reading to equal protection guarantees, *state courts should take up the slack*." n159 In Justice Brennan's words, *"state constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law."* n160  [\*30]  Justice Brennan specifically mentioned the Court's then-recent desegregation decision in Milliken, n161 which was decided the year after Rodriquez, as evidence that *state courts may be a more promising venue for advocates of education reform*. n162 School finance plaintiffs were already there.

B. The Second Wave: A Focus on Equity, but this Time in State Courts

After the failure in Rodriquez and the first wave of school finance litigation, which was in federal court, n163 school finance advocates shifted to state constitutional provisions, something explicitly suggested by Justice Marshall in his dissent in Rodriquez. n164 *Unlike the federal constitution, every state constitution contains specific language imposing a duty on states to provide at least some level of public education to schoolchildren.* n165 Using these "education clauses" and state constitutional principles, the initial focus of school finance claims was on unequal spending between districts: n166 This "second wave" of  [\*31]  school finance litigation argued that state constitutional provisions required equal resources for all school districts. n167

The New Jersey Supreme Court ushered in the second wave almost immediately after Rodriguez was handed down. In Robinson v. Cahill, the New Jersey Supreme Court held that the state's educational funding scheme violated the state constitution's guarantee of a "thorough and efficient" education. n168 The court defined a "thorough and efficient" education as one that provides equal educational opportunities for all children such that each child is equipped both as a citizen and as a competitor upon entering the working world. n169 In striking down the state-funding scheme, the court specifically acknowledged that state constitutional reviews can be broader than afforded under the federal constitution. n170

Despite the court victory in New Jersey, second wave cases had more losses than wins. Of the twenty-two meaningful opinions in school finance cases issued between 1973 and 1989, less than one-third were victories for plaintiffs. n171 In addition, even the few victories had rather mixed results, often resulting in vague remedies that were overly deferential to noncompliant legislatures. n172 In Robinson, for example,  [\*32]  the case went before the New Jersey Supreme Court six times, because the legislature failed to comply with the court's order to address the disparities caused by the state's finance system. n173 Only after the court closed the New Jersey public schools for eight days did the legislature pass a statewide income tax to fund a more equitable school finance program. n174 In light of the poor track record, school finance cases began to wane in the 1980s as concerns with remedies and compliance from state legislatures left advocates looking for different solutions. n175

C. The Third Wave: Educational Adequacy and Ensuring a Sufficient Level of Education

Momentum for state-based educational cases swung back in favor of the plaintiffs in a big way following a revolutionary case in Kentucky in 1989. In Rose v. Council for Better Education, Inc., n176 the Kentucky Supreme Court declared the state school system unconstitutional under the Kentucky constitution. n177 Unlike previous cases that had merely struck down state financing systems, *the court in Rose held the state's entire system of public schools unconstitutional*, n178 one of the largest interventions by a state court in education. n179

[\*33]  Importantly, the court detailed the overwhelming evidence not only about the deep disparities between wealthier and low-income districts, but also the overall inadequate conditions of Kentucky schools throughout the state. n180 According to the court, Kentucky's educational effort was "inadequate and well below the national effort." n181 Perhaps most troubling to the court, less than 7 out of 10 Kentucky ninth graders were remaining in school long enough to earn a diploma. n182

The court based its ruling on the Kentucky Constitution's requirement that the state provide an "efficient system of common schools" n183 and *directed the state legislature to re-create and re-establish a system of common schools.'* n184 As sweeping as its order striking down the entire system of education was, the court went even further. It also *provided the legislature with specific criteria on what would constitute an "efficient" system of common schools*, including what competencies students should receive and what characteristics a constitutional school system should exhibit. n185

[\*34]  *The court's now legendary ruling in Rose had an immediate impact both in Kentucky and in other states.* n186 *The remedy in Rose essentially transformed the education system in Kentucky overnight* n187 *and brought national attention to the remarkable commitment to fixing the problem that the court decision promoted*. n188 The impact outside of Kentucky brought about a new wave of education-reform litigation n189 Soon after the Rose decision, three state cases specifically relied on the Kentucky court's definition of "adequacy" and sent the matter back to their legislatures to craft a remedial plan in accordance with the criteria set forth in Rose. n190 This "third wave" and new focus on "adequacy" rather than "equity" shifted state court litigation from ensuring an equitable balance of resources to securing sufficient resources to provide every student an adequate education. n191 Rose revolutionized the approach in state courts. n192

[\*35]  D. Where State Constitutional Actions Failed: Students of Color in Segregated Schools

1. Most low-income school districts, particularly those that are predominantly students of color, lose these cases.

*Compared to federal desegregation jurisprudence, state-finance litigation has developed a relatively successful track record.* Since Rose, plaintiffs have won about two-thirds of finance and adequacy cases. n193 These court victories, however, have been far fewer and less impactful for school districts comprised predominantly of students of color. A study by Professor James Ryan, comparing the outcomes of school finance litigation along racial lines, made two key findings: (1) school districts comprised primarily of students of color did not do as well in school finance litigation as mostly white districts, and (2) when districts of mostly students of color were successful in courts, the  [\*36]  legislative resistance to reform far exceeded the resistance the predominantly white districts faced. n194

Of the 36 cases analyzed, 18 upheld the state school finance scheme at issue and 18 struck down the scheme at issue. n195 Yet only 25% of school districts that consisted predominantly of students of color were victorious in finance litigation, compared to more than double that rate when the plaintiff was a predominantly white school district. n196 Such districts of color were even less likely to prevail if they were in urban areas. The schools "most in need of additional resources," n197 namely urban districts that were predominantly students of color, won only 12.5% of their cases. n198

Even when districts that are predominantly students of color do prevail, state legislatures have been particularly resistant to complying with court orders to provide sufficient funds. n199 The resistance is "more intense and longer-lasting" than what is faced by predominantly white districts. n200 The examples in New Jersey and Texas are instructive. Both states had court victories by districts that are predominantly students of color but experienced decades of resistance by the legislature and multiple rounds in court trying to enforce court orders. n201

[\*37]  2. Funding alone does not work.

School districts with large percentages of students of color face another challenge with school finance litigation. Even in the small number of cases where districts with large populations of students of color win, or even looking to the future of such cases, if they are victorious for plaintiffs, the injection of money into segregated schools does not guarantee improved educational performance. n202 On the contrary, funding may not improve performance at all in heavily segregated schools. As Professor Molly McUsic has found, "[i]n school district after school district, large funding increases have proved inadequate to overcome the educational disadvantages faced by poor, underachieving students." n203 Simply put, segregated schools do not provide better educational performance if they receive more money. n204

E. Sheff v. O'Neill -- The Rose of Desegregation?

In 1989, two months before the Kentucky Supreme Court sent ripples through the school finance world with its decision in Rose, n205 another school finance case was filed in Connecticut that would make waves of its own and may have more impact in the long run. Sheff v. O'Neill was different than all other school finance cases. n206 Instead of seeking more equitable funding or more resources to improve education, the Sheff plaintiffs sought desegregation. Sheff, of course, was also very different  [\*38]  from federal desegregation cases. Sheff was filed in state court, relying on the Connecticut state constitution. The first of its kind, Sheff combined the underlying principles of state adequacy litigation with the original message of Brown. n207

The conditions in the Hartford schools that led to the filing of Sheff illustrate the limits to traditional school finance cases. Connecticut had previously experienced a successful school finance case twelve years earlier in 1977. In Horton v. Meskill, n208 the Connecticut Supreme Court struck down the state's school funding structure under the state constitution. n209 The court concluded that large differences in local revenue-raising capacity have "given rise to a consequent significant disparity in the quality of education available to the youth of the state." n210 In the years that followed the ruling in Horton, the Connecticut legislature made a number of important changes in its funding structure to provide the most state aid to the Hartford schools, which were predominantly low-income and students of color. n211 Despite additional funding, however, students in Hartford's segregated schools did significantly worse than their suburban counterparts. n212

[\*39]  In this respect, Sheff is very much unlike previous school finance cases. Plaintiffs filed their complaint in Sheff not because of disparities in funding or to enforce previous court rulings resisted by state legislatures. n213 Horton and subsequent legislation had already resulted in a school funding structure that provided more resources to the low-income students of color in Hartford than their suburban counterparts. Plaintiffs filed Sheff because funding was not enough. n214

In Sheff, the plaintiffs alleged that "students in the Hartford public schools are burdened by severe educational disadvantages arising out of their racial and ethnic isolation and their socioeconomic deprivation." n215 Rejecting the state's argument that adequacy cases must be limited to only issues of funding, n216 the Connecticut Supreme Court held that "the existence of extreme racial and ethnic isolation in the public school system" violated the state constitution. n217 Importantly, unlike the federal cases in the Brown progeny, the issue of intent and the de jure/de facto  [\*40]  distinction were not relevant, n218 thus permitting the remedy to extend beyond boundaries of the school district. n219

The Connecticut Supreme Court issued what some thought might be the Rose of its day, providing a sweeping rebuke of segregation under the state constitution. n220 Using a combination of both state constitutional law and the framework of Brown, the plaintiffs in Sheff brought a hybrid state constitutional case directly challenging the segregated schools of Hartford using the underlying legal principles of state-based educational adequacy litigation. n221 Like Rose before it, Sheff had demonstrated that "the underlying right recognized in school finance cases--the right to an adequate or equal education--need not be defined solely in monetary terms . . . ." n222 Under Sheff, educational adequacy required remedying segregated schools. n223

F. Limits to Applying Sheff Beyond Connecticut

Sheff s impact on potential similar suits in different states is limited, however, by two important features: 1) a unique provision in its state constitution and 2) challenges in the remedy phase. First, the court in Sheff relied, in part, on Connecticut's unique anti-segregation clause, n224  [\*41]  which provides that no person shall "be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil rights because of . . . race [or] ancestry." n225 The court explicitly relied on the clause. n226 Commentators have suggested that the presence of the anti-segregation clause limits the Sheff holding to Connecticut. n227

An at least equally impressive collection of commentators, however, support the view that the court's use of the segregation clause in Sheff may have been more for convenience than necessity. n228 Despite the use of the segregation clause, the "logic of Sheff rests primarily on the equal educational opportunity principle first used by the state supreme court [in Horton] in finding a constitutional right to more equitable spending." n229 The court made clear that prior state case law "imposes an affirmative constitutional obligation on the legislature to provide a substantially equal educational opportunity for all public  [\*42]  schoolchildren." n230 If schoolchildren are denied their right to the "equal educational opportunity" because of segregated schools, the legislature has an "affirmative obligation" to provide an effective remedy. n231 As the court reasoned, "[t]he failure adequately to address the racial and ethnic disparities that exist among the state's public school districts is not different in kind from the legislature's failure adequately to address the 'great disparity in the ability of local communities to finance local education' that made the statutory scheme at issue in Horton unconstitutional in its application." n232 As others have concluded, the court's use of the segregation clause may have largely been merely a "political attempt to avoid the appearance of relying on social science evidence about the effects of segregation." n233

Second, the remedy in Sheff also raises potential concerns as a model for future lawsuits. After pronouncing that de facto segregation violated the state constitution, the court limited its relief to a declaratory judgment that the school districting and boundary-drawing system was unconstitutional. n234 In "staying [its] hand," the court issued only an admonishment to "the legislature and the executive branch to put the search for appropriate remedial measures at the top of their respective agendas." n235 As the lengthy dissent argued, the court's mandate would be "extraordinarily difficult or perhaps even impossible" to follow "because the majority articulates no principle upon which to structure such a remedy." n236

The dissent's concerns were prescient. Five years after the decision, "only six percent of Hartford schoolchildren had access to desegregated schools, prompting the plaintiffs to return to court again in December  [\*43]  2000." n237 The parties reached a settlement in 2003 that ultimately resulted in a $ 245 million voluntary desegregation plan requiring the construction of eight new magnet schools to attract suburban white children to the urban center and increased opportunities for students of color to attend the suburban public schools. n238 While the Sheff ruling has certainly led to important reforms, many of the conditions the case sought to remedy remain just as bad as before. n239

G. Post-Sheff: Other Cases

Unlike Rose, Sheff did not herald a new wave of similar cases. Until very recently, only two cases had utilized Sheff's adequacy-based attack on segregation. In Minneapolis Branch of the NAACP v. State of Minnesota, filed shortly before the Sheff decision but very much based on the Sheff complaint, n240 the plaintiffs argued that racial and socioeconomic segregation in the Minneapolis schools violated the Minnesota Constitution's education and equal protection clauses. n241 Similar to the situation in Sheff and the law in Connecticut, two years before the filing of the Minneapolis NAACP complaint, the Minnesota  [\*44]  Supreme Court had found that the state's education clause created a fundamental right to education. n242

The Minneapolis NAACP case, however, did not result in a final court decision. After surviving two separate motions to dismiss, certified questions to the state supreme court, n243 and multiple attempts at mediation, the case finally settled in 2000, nearly five years after being filed. n244 Though small in scope and scale, the settlement has largely been viewed as a success, albeit a limited one. n245 The settlement established a four-year experimental program that provided students in the most racially isolated neighborhoods in Minneapolis to have free transportation and guaranteed seats in successful suburban schools and the highest performing magnet schools in Minneapolis. n246 The legislature voted to continue the program even after the four-year  [\*45]  settlement expired, n247 and a version of the main provision of the settlement still exists today. n248

Shortly after the settlement in the Minnesota case, plaintiffs filed a Sheff-like case in Rochester, New York, directly challenging segregation under the New York state constitution. n249 Like the plaintiffs in Sheff and Minneapolis NAACP, the plaintiffs in Paynter v. State alleged racial and socioeconomic segregation deprived them of an adequate education under the state constitution. n250 Unlike Sheff and Minneapolis NAACP, however, the plaintiffs in Paynter lost, as the New York Court of Appeals affirmed a motion to dismiss the claim without letting it go to trial, saying the plaintiffs had failed to state a claim under the state constitution's education article. n251 As commentators have pointed out, this result is more likely because of the particularly limited reading of state constitutional rights in education in New York, which narrowly defines adequacy to include only "minimal acceptable facilities and services." n252 New York also has an unusual adherence to principles of local control. n253

[\*46]  H. Cruz-Guzman v. State of Minnesota: A New Beginning to Remedy the Harms of Brown in State Court

Cruz-Guzman is the most recent in a limited series of educational-adequacy cases committed exclusively to restoring the promise of Brown. n254 The complaint and legal theories follow closely from the litigation of the Minneapolis NAACP case in the 1990s. n255 The plaintiffs clearly linked this new case to that previous Minnesota case from twenty years ago. n256 Like its predecessor, Cruz-Guzman challenges racial segregation, although this version has expanded its coverage to both Minneapolis and St. Paul. n257 In addition to their complaint, the  [\*47]  plaintiffs published background materials to clarify that the purpose of Cruz-Guzman is to continue where Minneapolis NAACP left off and promote "metropolitan-wide desegregation." n258

The conditions in Minneapolis and St. Paul are arguably even worse today then the situation confronting the previous case. n259 Segregation is more intense, and there are far more highly segregated schools than in 1995. There are now 36 public schools at 90% or more students of color in Minneapolis and St. Paul combined. n260 Such a high number of racially isolated schools is remarkable in a state that is less than 30% students of color. n261 The most recent test scores show that students of color have proficiency rates in reading, math, and science at less than 1/3 the proficiency rates of white students. n262

While the case is still in the very early stages, plaintiffs have already survived the first major barrier. On July 8, 2016, the district court denied the main parts of the defendants' motion to dismiss. n263 Importantly, the court acknowledged the link between Cruz-Guzman and previous adequacy cases that established that education clauses contain a "qualitative standard" as established by Rose and the other progressive adequacy cases. n264

[\*48]  V. MERGING BOTH APPROACHES: HOW STATE CONSTITUTIONAL CLAIMS COULD ADDRESS SEGREGATION

A. State-based Desegregation Cases: Will Others Follow?

The approach of Cruz-Guzman, along with the earlier decision in Sheff and promising settlement in Minneapolis NAACP, represent an important step toward merging Brown and its progeny with educational adequacy litigation in state courts, but the paucity of such cases suggests this approach may also carry serious drawbacks. On the one hand, it makes sense to use educational adequacy principles to address the harm of segregation that Brown recognized over sixty years ago. Segregated schools undermine educational adequacy certainly as much as inadequate funding. n265

*State constitutions include explicit rights to education not recognized in federal constitution. State courts avoid issues that have derailed the federal courts, namely requirements of intentional discrimination and concerns over federalism that obstruct effective remedies. The jurisprudence of adequacy litigation has empowered state courts with remedial flexibility not available to federal courts.*

On the other hand, no decision other than Sheff has supported Cruz-Guzman' s theory, and the New York high court in Paynter rejected a similar approach. Many commenters have suggested that without the specific anti-segregation language of the Connecticut constitution, such state-based claims may not work. In addition, remedies in adequacy cases have delivered far less than what plaintiffs originally demanded or, at times, needed, much as it has been with Sheff and subsequent efforts to desegregate the Hartford schools.

[\*49]  B. The Benefits of State-Based Educational Adequacy Claims for Desegregation

As a starting point, state courts do not have to worry about two key problems with federal desegregation jurisprudence. *Federal courts were highly restricted by the self-imposed distinction of de jure versus de facto segregation and the requirement of intentional discrimination on the part of school districts.* This requirement largely prevented federal courts from addressing segregation in the North, and led to eventual limitations on enforcement and oversight in the South. With Milliken, the Court imposed another game-changing requirement of restricting the geographic reach of desegregation remedies, imposing federalism concerns that thwarted metropolitan-wide remedies. *State courts have neither one of these requirements.*

1. More expansive rights

*Education has a special place in state constitutional law. Education has always been recognized as the primary responsibility of states, not the federal government.* n266 *While the word "education" does not appear in the federal constitution, all fifty states have some form of an education clause.* n267 *State constitutions have generally singled out education to receive special protection under the state constitution.* As the Supreme Court of Vermont put it, "[o]nly one governmental service--public education--has ever been accorded constitutional status in Vermont. " n268

[\*50]  *Many states already consider education a fundamental right.* n269 Twenty-two states have interpreted their education clause to confer an affirmative obligation on the state to provide an adequate education. n270 Without exception, the right to education under state constitutional law has always required at least a minimal guarantee of quality of education. n271 Because the federal Constitution does not contain an education clause, there is no federal constitutional supremacy issue limiting what states can derive from their state constitutions. n272 State courts can follow their own interpretation. n273 As a result, state court decisions based on the education clause "create no tension with federal law." n274

2. More expansive remedies

The affirmative right to education is reflected in how far state courts are willing to go to protect that right. *Educational adequacy jurisprudence has been significantly expansive in its remedial powers.* Cases like Rose, Serrano, Robinson, and Pauley, in particular, reflect "substantial judicial flexibility." n275 State courts have imposed broad remedial measures in two ways. First, *state courts have invalidated large pieces of state education*  [\*51]  *systems in light of constitutional violations*, n276 including in one instance invalidating the entire state school system. n277 Second, *state courts have imposed stringent guidelines and measures against which legislatures must enact remedial educational policy*. n278 The momentum is pushing state courts to go even further. n279

The constraints the U.S. Constitution imposes on federal desegregation cases do not limit state courts in their application of state constitutional principles. n280 The prohibition on metropolitan-wide remedies first articulated in Milliken does not apply to state courts  [\*52]  enforcing state constitutional principles. n281 Additionally, to the extent the Supreme Court imposed limitations on what districts can do to address segregation, recently in Parents Involved, *the Court left open plenty of options for districts working under a state court mandate to create desegregation policies*. n282

3. Easier to show a violation -- failure to provide an adequate education vs. intentional discrimination

Limiting federal court intervention to only those school districts with a clear record of de jure segregation has undermined the promise of Brown as much as any other restriction imposed by the Supreme Court. n283 The Supreme Court's prohibition against addressing de facto segregation means most of the segregation in the North and the resegregation of the South is out of the reach of federal courts. n284

*State courts applying educational adequacy principles do not have to worry about the distinction between de jure and de facto segregation.* The state has an affirmative obligation to provide an adequate  [\*53]  education. Failure to do so, regardless of whether such failure includes intentional conduct or simple inaction, is irrelevant. n285 As the high court in Connecticut found, "The fact that the legislature did not affirmatively create or intend to create the conditions that have led to the racial and ethnic isolation in the Hartford public school system does not, in and of itself, relieve the defendants of their affirmative obligation to provide the plaintiffs with a more effective remedy for their constitutional grievances." n286 In other words, an educational-adequacy analysis is interested only in the impact on students, not the intent of the school district." n287

**State constitutional law can be used to challenge segregation**

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[\*1]  I. INTRODUCTION

On November 5, 2015, seven families filed a class action lawsuit challenging the racial and socioeconomic segregation in their public schools. n1 This potentially transformative case with national implications, Cruz-Guzman v. State of Minnesota, alleges that segregated schools deny schoolchildren their right to receive an adequate education under their state constitution. n2 While the complaint explicitly references Brown v. Board of Education, n3 Cruz-Guzman represents a major departure from Brown and its progeny in the federal courts, a departure that reflects the many disappointments that have followed the Brown decision and left  [\*2]  America's public schools more segregated today than in generations. n4 It is remarkable enough that such a lawsuit was necessary more than sixty years after the historic ruling in Brown, which prohibited segregated schools. n5 Equally noteworthy is that unlike Brown, *this lawsuit was filed in state court relying on state constitutional law*.

Cruz-Guzman represents the joining of two strands of legal approaches that have spent the last few decades headed in different directions. n6 For more than forty years, state courts have played a major role and have had varied success in addressing issues of educational inequality under school finance and educational adequacy theories. n7 Federal courts, on the other hand, have departed sharply from the initial promise n8 of the Brown decision and have spent the last few decades undermining desegregation. n9

Both state and federal court strategies have largely failed to address inequalities and segregation in America's schools. n10 Despite the limited progress in state courts and the long past progress in federal courts, our  [\*3]  schools remain deeply segregated. n11 Levels of segregation have generally been increasing over the past thirty years. n12 In both academic and social outcomes, students in these segregated schools lag far behind their peers. n13

Part I of this article discusses the Brown decision and the federal jurisprudence of desegregation that has followed in the Supreme Court. While hailed as one of the Supreme Court's greatest accomplishments, the iconic Brown decision has been largely dismantled. Federal courts have not only allowed segregation to return; they have also gone so far as to place limits on school districts that are willing to address segregation on their own. It is no wonder that *plaintiffs hoping to address segregation in their schools, like the ones in Cruz-Guzman, find themselves looking for options other than the federal courts*.

Part II discusses the promise of Brown and why addressing segregation in the courts remains a priority. Segregation has been so pervasive and enduring that by now there are decades of research on both the harms of segregation and the benefits of desegregation. The research is fairly clear: segregation impacts not only the educational outcomes of students, but it has long-lasting negative effects on social aspects as well. Desegregation has clear academic and social benefits, which remain as important today as they were in the days of the Brown decision.

Part III discusses the divergent jurisprudence in state court, which has largely ignored segregation and focused instead on funding and educational adequacy to improve educational opportunities. *Relying on state constitutions, which unlike the federal constitution recognize educational rights, plaintiffs in state courts have made important progress in reforming educational systems*, particularly with respect to funding. A few state court cases have even addressed segregation, with mixed results.

[\*4]  Part IV discusses how *state constitutional claims can bring new life to the promise of Brown and address segregation in the schools*. n14 Cruz-Guzman is in some respects a combination of the best of federal courts and state courts. While it is certainly too early to tell, the Cruz-Guzman litigation represents the next logical step in addressing inequality in our schools, combining the many advantages of state court litigation with the original promise of Brown.

**On Case**

**Advantages?**

**School-to-Prison Advantage**

Desegregating schools will not fix the race factor of the school to prison pipeline because police can still target minority students. They just target students in more schools. Desegregation also doesn’t solve the fact that school to prison pipeline ruins lives. Only the removal of the school to prison pipeline would solve this issue. Removing school to prison pipeline will definitely fix the fact that it costs more money to maintain prisoners than for education, but there is no guarantee that desegregation will solve the money issue either.

**Second, Our evidence is reverse causal and there is no negative effects on discipline--- Only Removal Solves**

Curley 16 (Caitlyn Curley is a writer and journalist covering education, prison reform, and unemployment rates @ GenFKD. “Zero Tolerance Policies: A Key Tool in the School-to-Prison Pipeline”<http://www.genfkd.org/zero-tolerance-policies-key-tool-school-prison-pipeline>” MW)

Children who interact with law enforcement at a young age are more likely to end up in the criminal justice system. Suspensions, expulsions and arrests, all components of zero tolerance policies, lead to these interactions. As evidenced by extensive research, the rise of zero tolerance policies has led to more suspensions, expulsions and arrests, and therefore more children ending up in the criminal justice system later in life. The rise of zero tolerance policies Zero tolerance policies came about during the tough on crime era in the 1980s, when public fear of increasing street crime resulted in politicians pushing legislation for harsher sentences. Congress also turned this attitude toward schools, passing the Gun-Free Schools Act in 1994, which mandated that schools expel any student, for at least one year, for bringing a weapon to school. By 1996, 79 percent of schools had adopted zero tolerance policies for violence. Public fear of violence in schools peaked after the Columbine shooting in 1999 and zero tolerance policies were adopted by schools all over the country. Soon, zero tolerance policies were expanded beyond violence and many schools began implementing them for drug use and other offenses. In the same time period, the federal government was expanding funding for security guards and law enforcement in schools. With the extra muscle, zero tolerance policies were toughly enforced, seeing more kids suspended and expelled. The sad result of zero tolerance policies Zero tolerance policies were intended to provide swift punishment for unacceptable actions, but they have instead been used more broadly for mild incidents, resulting in a dramatic increase in suspensions and expulsions. Between 1972 and 2009, the number of secondary school students suspended or expelled over a school year increased about 40 percent. Now, an estimated two million students are suspended each year and only five percent of serious disciplinary actions in recent years actually involve possession of a weapon. Unfortunately, these zero tolerance policies disproportionately affect minority children. Nationally, black students are suspended nearly four times as often as white students, and Latino youth are roughly twice as likely to be suspended or expelled. What’s worse, despite the intentions of zero tolerance policies, research has been unable to prove that they increase the safety level at schools.

**Desegregation Advantage**

Asking the federal government to enforce desegregation laws will not work. With Donald Trump and Betsy Devos running this country and education, they can easily stop and veto any bills passed by congress. SCOTUS can deem this unconstitutional, but there is no one capable enough to enforce desegregation. Brown V. Board of Education has been ignored completely and that was a Supreme Court Case that deemed segregation unconstitutional.