

**Historical Observation of Contradiction as Constitutional Law: Wisconsin's First School  
Finance Equity Case and Reform Efforts to 1975**

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Abstract

This paper examines school finance in Wisconsin. The focus is on school finance efforts following World War II with particular emphasis on the 1960's and early 1970's. Several themes run throughout: activist lawyers and judges may be conservative or liberal, efforts at financial equalization are often joined by accountability and standards or possibly can be seen as part of the same forces, that tinkering reforms which are often advanced by education insiders are more likely to be implemented than drastic changes often advanced by education outsiders, and that even tinkering must preserve the relative advantage of the wealthy.

The Usual Story

In the 1960's and 1970's, activist leftist lawyers were spurred by the success of the civil rights movement which included *Brown v. Board of Education*<sup>1</sup> and the Civil Rights Act of 1964 and motivated by increased court involvement by activist judges in education by such cases as *Dixon v. Alabama*<sup>2</sup> recognizing college student due process rights. These lawyers sought other ways to transform society by using the courts and filing lawsuits claiming due process and equal protection violations for numerous groups. The Bill of Rights of the U.S. Constitution (which originally protected only individuals from federal government violations of due process) and equal protection had been expanded through the post-Civil War 14th amendment to apply to the states. Ironically, this process is called incorporation. The growth of social science and a sociological group emphasis combined with class action legal strategy based on social science research had allowed for successful litigation and legislation for race and gender groups to end discrimination. Litigation of class-based rights remained. Opportunistic lawyers brought suit on behalf of group representative clients challenging the school finance systems on the basis of due process and equal protection under the U.S. Constitution. Would there ever be an end to this litigiousness by the leftists?

Not the Usual Suspects

The usual story told by many conservatives and anti-lawyer intellectuals brings visions of leftist lawyers searching for "poor" students to serve as nominal clients so they could attack the status quo that had served the middle-class, wealthy, and whites for so long in public school finance. Surely it was the leftists that were trying to "end run" the more democratic institutions of government and enforce their ideology through an undemocratic and authoritarian judiciary.

After all, the “crazies” in California, home of long-haired dope smoking hippies, had carried the Warren Court’s commitment to equality for all to the extreme ruling that the poor are a “suspect classification” and that public education is a fundamental right under the U.S. Constitution, though education is never mentioned in the Constitution.<sup>3</sup> All hell had broken loose in Madison in the late 1960’s and early 1970’s as radical students protested for rights, against the Vietnam War, and a few even bombed buildings.<sup>4</sup> But if you understand Wisconsin, you understand that the usual is anything but norm. A state known for political experimentation, Wisconsin “has always been an essentially conservative and stable society.”<sup>5</sup> The reform litigation in Wisconsin was instigated by “activist” wealthy school districts and some of their distinguished citizens who were also all school board members, taxpayers, and parents of children in the wealthy districts.<sup>6</sup> Among their many claims in *Buse v. Smith*<sup>7</sup> attacking a 1973 legislative and executive endorsed and enacted public school finance reform law that sought to address financial inequities was that the public school districts’ U.S. Constitutional rights of due process and equal protection had been violated. The Civil War Amendments were now being argued as protecting corporate groups against equal school funding. While the Wisconsin Supreme Court did not overrule the legislation on such basis, the court did grant relief against the equalization reform. We are reminded that “Judicial activism is not consistently liberal and judicial restraint is not consistently conservative.”<sup>8</sup>

### Near-sighted

Our culture tends to be very near-sighted when seeking cause or blame. It is rather fashionable to blame all of our current ills on the sixties. The youth had been brought up in increasing materialistic wealth and were spoiled. Spoiled children rebel against the values of their parents. Of course, this analysis ignores the historical reality that *Brown* was decided in 1954 and that much of the effort toward equality was led by the World War II generation which had seen the world while fighting for a society that treated them as second class citizens. Adam Nelson reminds us that the states and local governments often enacted programs promoting then current perceptions of equality well before the popularized federal acts of the 1960’s and 1970’s.<sup>9</sup>

This same generation, which had learned out of the necessity of the Great Depression and the scarcity of goods during the war years to make efficient use of resources, helped shape public policy for years to come following World War II. A grave concern expressed by economic experts and others was that the Great Depression would resume as the war ended. A generation that had suffered so long and so hard could not afford to imagine a massive growth in population and income.<sup>10</sup> Fiscal prudence combined with efficiency and effectiveness were political buzzwords following the war, especially in stable and conservative Wisconsin.

Our current near-sightedness may cause us to see the accountability movement and the equity movements as disjointed enterprises carried on by differing people of differing political and ideological persuasions. But for the generation raised in the New Deal era, effectiveness and equal opportunity were not dissimilar or inconsistent ideas. In Wisconsin, people such as C.K. Alexander of the Wisconsin Taxpayers Alliance, were involved for decades in legislation and advisory groups charged with equity and economy in public school finance.<sup>11</sup> In 1949, Wisconsin became the first state to adopt a school aid formula based on guaranteed valuation.

Guaranteed valuation was state assurance that each public school student would be supported by a guaranteed property evaluation. This same legislation included incentives for quality programs and efficient organizational patterns. Schools that met higher standards and were comprehensive k-12 schools received more aid.<sup>12</sup> Thus, equality and accountability in the form of higher standards and efficient organization went hand in hand. Of course, rich districts had to be bought off with a flat aid provision so that even the rich that exceeded guaranteed levels received state aid.<sup>13</sup> This “foundations” system served as the Wisconsin school finance provision with some adjustments until the 1973 changes that brought about the litigation by wealthy districts and their patrons.

### Chains of Our Fathers

The litigious wealthy school districts and school board members that petitioned the Wisconsin Supreme Court to throw out the 1973 legislative modifications to public school finance argued for the original intent of state constitutional drafters.<sup>14</sup> Of course, the “intent of the framers” is one method of constitutional interpretation that appears to give us great comfort in that there is a rational, predictable, and reasoned sense to the law. It assumes that we can in fact determine the intent of the framers and that if they were in the present they would have the same intent. The nature of schooling in 1848 Wisconsin and 1973 Wisconsin, while maintaining some similarities, certainly occurred in a very different environment.

The one room school house, though persistent in Wisconsin well into the 20<sup>th</sup> century, was certainly less common in 1976.<sup>15</sup> K-12 districts greatly outnumbered K-8 and union high schools. Schools were graded. Teachers were college graduates with extensive training in pedagogy and certified by the state. The majority of people lived in cities or at least metropolitan areas and only a small number of people farmed for a living.<sup>16</sup> The interstate highway system completion allowed for commutes to inner city jobs from the suburbs or country-side.<sup>17</sup> The population had exploded from about 300,000 in 1850 to 4, 400,000 in 1970.<sup>18</sup> Much power had shifted to administrative elites trained in the schools of education at such highly respected places as the University of Wisconsin. The “business model” required school boards that acted more like corporate boards and let the managers employ scientific principles.<sup>19</sup> Dispute resolution had moved from face to face local mediation to the more distant court system as the administrative revolution sought to place school administration above politics and out of the hands of popular local boards.<sup>20</sup> School litigation nation-wide was about a case per million of population in 1846; about four cases per million in 1973.<sup>21</sup> The nature of the cases had changed and policy makers and school leaders knew about and were concerned with substantial cases. On January 7, 1972, Governor Lucey predicated the establishment of the Task Force on Educational Financing and Property Tax Reform, the group that made recommendations that lead to the challenged 1973 modifications in school finance, on “the courts have clearly indicated that the use of property tax for education financing violates the equal protection requirement of the 14th Amendment of the United States Constitution.”<sup>22</sup> Interestingly, only three case decisions had been reported by that time.<sup>23</sup> But a document dated January 1972 from the Lawyers Committee for Civil Rights Under the Law and found in the files of the task force indicates that at least twenty-five other cases had been filed around the country. Two cases had been filed in Wisconsin. One 1969 Wisconsin case filed on behalf of students and parents was delayed due to lack of funds to pursue the case. The Milwaukee case had just been filed in November, 1971.<sup>24</sup> School finance reform was a hot topic

nationally and part of national reform efforts.<sup>25</sup> Governor Lucey expected the U.S. Supreme Court to confirm *Serrano*, the leading case striking down school finance systems from California, as the law of the land.<sup>26</sup> In 1848, there was no 14th amendment to the U.S. constitution guaranteeing equal protection of the laws against state actions. The Wisconsin Constitution only affirmed that we all are born equally.<sup>27</sup>

While the times changed, the language of the Wisconsin State Constitution sections involved in the *Buse* case had not. The Wisconsin State Constitution mandates the legislature to establish “district schools, which shall be as nearly uniform as practicable; and such schools shall be free.”<sup>28</sup> Every “town and city shall be required to raise by tax, annually, for the support of common schools therein.”<sup>29</sup> The concern with uniformity continued with taxes such that the “rule of taxation shall be uniform.”<sup>30</sup>

The petitioners in *Buse* argued that the framers compromised two competing forces in the development of education in America. Those two competing forces were educational opportunity for all and the best education for their own children. Petitioners’ argument is that the state minimums and free schools would give opportunity and the districts, given a corporate existence separate and exempt from state control according to petitioners, could choose to do more for their own.<sup>31</sup> Respondents countered that in considering the mandate for uniform schools, conditions at the time of adoption should be considered, “but the changed social, economic and governmental conditions and ideals of the time as well as the problems which changes have produced must also logically enter into the consideration.”<sup>32</sup> “The status quo is always more attractive to the ‘haves’ than to the ‘havenots’, and what may be a virtue to one is a vice to another.”<sup>33</sup> Petitioners argued that the section 4 requirement for local taxes was intended to ensure local responsibility. The concern in 1848 was that the rich would use private schools and not support the public schools.<sup>34</sup> This was the case in much of the country at the time where free education had the stigma of charity schools for the poor.<sup>35</sup> Amici, which included the Wisconsin Education Association Council, League of Women Voters of Wisconsin, and Wisconsin Secondary School Administrators Association, pointed out that one of the changed circumstances was that there was no doubt that in 1976 local towns felt “deeply responsible for their schools.”<sup>36</sup>

### Breaking the Chains to Change

The intent of constitutional framers did not stop changes in Wisconsin’s public schools. A year after Michigan’s *Kalamazoo* decision upholding taxation for high schools, Wisconsin authorized the establishment of public supported high schools.<sup>37</sup> A state compulsory school attendance law passed in 1879. A state property tax was used in 1891 to provide state funds. Strayer and Haig’s foundation plan published in 1923 in New York<sup>38</sup> provided impetus for the state’s first attempt to equalize funding for schools in 1927 with the Callahan bill.<sup>39</sup> Flat grants were made per teacher with supplemental grants for low-property valued districts. The result was to prop up the many one–room school districts. In 1937-38 school year, Wisconsin’s 7,777 school districts included 6,181 one–room school districts.<sup>40</sup> The school consolidation campaign that started that year was fought fiercely for a decade over issues of local control and the strong symbolism local high schools had for local communities. The state succeeded by a carrot and stick approach. The stick involved less aid for certain small, non-comprehensive districts.<sup>41</sup>

The major changes of the 1949 foundation finance plan have previously been discussed. The school aid formula was a topic of constant study. One reason was that it provided neither uniform taxation nor uniform school finance. Taxpayers of Kohler could provide \$1600 per pupil with a tax rate of 9.5 mills while other parts of the state would have to tax at 20 mills to achieve the same amount. A \$30,000 home in Kohler was taxed \$255 and the same valued home was taxed \$600 for the rest of the state to provide the same amount of money per student.<sup>42</sup> West Allis could raise \$1074 per student with a 13 mill tax, but Franklin could only raise \$983 per student with an 18.91 mill tax.<sup>43</sup>

The petitioners in *Buse* were happy with these circumstances. They could keep lower taxes to attract more business and still provide good sums for public schools in their district. The active maintenance of the status quo served their interests. In their reply brief in *Buse*, they characterize the challenged negative aid provisions as “the most extreme departure from traditional Wisconsin state-local division of power since 1848.”<sup>44</sup> In fact, they wanted more aid from the state by arguing that significant increases in positive state aid would help equalize districts. Privilege from wealth differentiation would remain under the 1949 formula.

#### The Kellett Commission’s “Appalling” Financing Policies Task Force

During the 1960’s, education costs had soared. When Republican Governor Knowles appointed the Governor’s Commission on Education in January, 1969, he noted that 65 cents of every Wisconsin tax dollar went to some form of education. The massive commission was to look at all educational activity in the state and to recommend actions “to promote utilization of modern technology, improve educational results and increase efficiency.” The commission was to study in depth the “State’s financial and administrative relations at all levels.”<sup>45</sup>

The commission was headed William R. Kellett, a retired industrialist. The commission worked with a highly rationalized approach, described in a working policy memo as a “systems approach.”<sup>46</sup> This approach divided the commission into eight task forces, including one on financing education. All task forces were charged with obtaining “the highest possible educational value from the dollars invested in the educational system of the state.”<sup>47</sup> This rationalized, bottom-line approach is not surprising in reviewing the letterheads of letters in task force files from members. While task force participation likely involved many types of persons, there is a strong presence of bankers, investors, utility executives, and large law firm attorneys.<sup>48</sup> As such, the Financing Education Task Force recommendation that the Wisconsin Department of Public Instruction “adopt a Planning-Programming-Budgeting System (PPBS) in order to make spending decisions rational and efficient.”<sup>49</sup> PPBS is one of the reform techniques promoted by the revival of the “cult of efficiency in education during the 1960’s and 1970’s.”<sup>50</sup>

These business-oriented reformers irritated at least one representative of the educational establishment. Francis Jaeschke, past president and nine year member of the Kenosha school board, resigned after an initial draft of the financing task force was circulated. She sent a letter to Kellett saying that she found the “recommendations so appalling as to necessitate” her resignation not only from the task for but the commission too.<sup>51</sup> She issued a press release the next day alleging that the members of the finance task force “were not representative of those knowledgeable concerning education problems in the State of Wisconsin.”

So what did the financing task force recommend that was so appalling? This task force could not be accused of tinkering with the system. The recommendations included:

1. Freezing property taxes at 19 mills state wide and submitting all funds to the state.<sup>52</sup> Manipulations of the aid formula will not repair the great defects in the property tax system.<sup>53</sup> Eventually more reliance on income and other taxes is required. The exercise of local control does not require that funds be raised and spent locally. Local democratic control is essentially a myth when citizen participation is studied. People mostly react to money issues. These reforms will encourage democratic participation into the nature of schooling rather than just reactionary money politics.<sup>54</sup>
2. The legislature would appropriate \$940 for each elementary and \$1175 for each secondary student in the state. Education is a state matter.<sup>55</sup>
3. All Wisconsin children have the right to read, write, compute, observe, hear, speak, and manually perform the basic skills. Equal expenditure per pupil does not yield equal results. The monies should be budgeted to produce equal basic skills outcomes for all.<sup>56</sup>
4. Investments should add value and expected rates of returns. Cost-benefit analysis before and after is needed so accomplishment can be rewarded. Regular audits should maintain accountability. There should be systematic assessment of outcomes. Standardized tests are to be used or developed.<sup>57</sup>

Some may be surprised that business leaders would support these financial changes. Professor William H. Clune III of the University of Wisconsin Law School pointed out in 1972 that the owners of commercial and industrial properties in the poorer districts would support reform because in many poor districts where their property was located, taxes were high in order to try to provide a decent level of education.<sup>58</sup> He also points out how a potential coalition between business and the poor would be difficult given their traditional opposition to one another.

The full Governor's Commission on Education, facing public hearings and close scrutiny, did not accept the finance task force recommendations. The preliminary report was published in March of 1970.<sup>59</sup> After state-wide hearings, the final report was issued in November of 1970, state election time in Wisconsin. Both tinker with the system, glorify local control, and essentially blame the state for the inequalities. State aid was to be increased; better assessment was to occur, categorical aids expanded, and outcomes assessed. The final report maintained flat aids while the preliminary report recommended eliminating them.<sup>60</sup>

### The 1970 Election and the New Task Force

Patrick Lucey's election returned the Governorship to the Democrats.<sup>61</sup> Democrats gained a sizeable majority in the assembly of 67 to 33. The Kellett Commission was seen as Republican-tainted and even though Lucey agreed with many of the recommendations and his later task force would adopt many of the recommendations, the report of the Governor's Commission on Education of 1970 (Kellett) was largely ignored by all.<sup>62</sup> A year into his office, Governor Lucey felt pressure to address rising costs and taxes, disparities in taxation and funds

for schools, and the court rulings and pending lawsuits. On January 7, 1972, he appointed the Task Force on Educational Financing and Property Tax Reform.<sup>63</sup>

Unlike the Kellett Commission, this task force was relatively small and was headed by Ruth Doyle, President of the Madison School Board.<sup>64</sup> School boards and school administration were well represented. The task force chose to tinker with the aid formula.<sup>65</sup> The state was to blame for the educational spending inequities because the state formula allowed them to continue.<sup>66</sup> State aid would be increased to 40% of costs, some costs previously excluded from share would be included, and cost controls would be in place. Property tax relief would be granted. The tax rate would be determined by what the local district choose to spend. A state program for additional funds for special needs students would be expanded.<sup>67</sup> Equal educational opportunity for the task force meant eliminating wealth as a factor and assuring the quality of education and meeting student needs.<sup>68</sup> However, one aspect created controversy and litigation. The attempt to make equal tax effort result in equal spending meant that the wealthy districts would produce extra monies at any given tax rate. The task force required that these monies be paid to the state.<sup>69</sup> To soften the blow, the task force allowed a two year adjustment which the legislature extended out to ten years.<sup>70</sup>

The so-called negative aid districts were only 28 out of the 465 school districts. These districts organized, hired lobbyists, and pressured the legislature.<sup>71</sup> During the legislative process, The United States Supreme Court ruled in *Rodriguez*<sup>72</sup> and this gave some support to the reform opposition. However, Governor Lucey remained committed to the power equalization formula and the Milwaukee Journal criticized Rodriguez and supported efforts for the “political-legislative process” to fix the financing problem.<sup>73</sup> In any event, litigation was occurring in many states. The second waive of school finance litigation involved state constitutional equal protection challenges.<sup>74</sup>

### The Lawsuit

The Task Force on Educational Financing and Property Tax Relief issued its final report on February 23rd, 1973.<sup>75</sup> On August 2nd, 1973, the Governor signed his budget bill into law after the democratic process of legislation had concluded.<sup>76</sup> The bill included the so-called negative aid provisions. The negative aid provisions would start in the 1977-78 school year. On December 22nd, 1975, the wealthy school districts and their school board members-parent-tax payers filed a petition for original action against the state treasurer, the superintendent of public instruction, and the Department of Public Instruction in the Wisconsin Supreme Court which was granted in January, 1976.<sup>77</sup> The case of *Buse v. Smith* was decided November 30th, 1976, when four of the seven justices agreed that the negative aid provisions violated the uniform taxation provisions of the Wisconsin Constitution.<sup>78</sup> The wealthy petitioners had the resources to hire the big law firm of Quarles and Brady. Earlier suits by students and their families against the system of inequality supported by *Buse* petitioners had failed to proceed for lack of resources.

The Court could have drafted an opinion narrowly drawn based upon its specific conclusion concerning tax uniformity. However, activist courts of all political persuasions often feel the need to pontificate. The Wisconsin Supreme Court in *Buse* decided to discuss additional issues of whether the legislature has a duty to provide equal educational opportunity to all

children in the state under the nearly uniform school district provision of the Wisconsin Constitution and whether some measure of local control over primary and secondary education is required constitutionally.<sup>79</sup> Perhaps the Court needed to discuss these issues because the decision on tax uniformity is weak. The tax law applied to all districts in the state uniformly. The taxpayers' burden simply was not changed and there was no discrimination in taxing differently.<sup>80</sup> In fact, measures were taken to assure state-wide uniformity.

Before getting to those supplemental issues however, the Court had to decide whether the petitioners could even bring the suit. The school districts were dismissed because they are arms of the state and can not sue the state.<sup>81</sup> The individuals remained petitioners in the lawsuit with the Court simply stating, "They are directly affected in a financial personal way."<sup>82</sup> The dismissal of the districts as arms of the state is interesting given the Court's later argument that the district system was in effect at the time of the Constitution and therefore the districts have some powers and rights separate from and above the states.<sup>83</sup> Also, if the individual petitioners were all that remained, why is the Court addressing district rights and the rights of local control? The issue for individuals is how they would be directly affected as individuals. The Court denied that the individual equal protection and due process rights were violated even applying the strict scrutiny test which requires the state to show a compelling state interest in the classification scheme.<sup>84</sup>

The Court denies that equal educational opportunity is required by the reasonable uniformity of schools provision and endorses the two historical forces in U.S. educational history: equal educational opportunity for all, the best education that we can afford for our own.<sup>85</sup> Interestingly, historical observation of two contesting and contradictory forces in the development of schools became state constitutional law in Wisconsin. Hypocrisy has constitutional protection. The wealthy have maintained their privileged position in the name of equality. The third wave of school finance litigation nationally recognizes this permanent privilege as plaintiffs in lawsuits began to challenge systems based on the adequacy of schooling under state constitutional education clauses. Realizing that the rich will always have advantage monetarily, the issue becomes the type of schooling everyone else gets.

## Summary

In Wisconsin, the usual is anything but the norm. Most school finance suits in the 1960's and 1970's were brought by the poor claiming violation of the U.S. Constitutional rights to equal protection and due process. If they won, privileged people bemoaned the activist courts thwarting the democratic processes. In Wisconsin, the democratic process of citizen task force, legislation, and governor's signature created school finance reform. The privileged brought suit claiming group and individual right violations. The Wisconsin Supreme Court struck down actions of the representative branches of government and the work of a citizen's task force. Their opinion addressed matters well beyond the narrow basis of their ruling. Claims that courts are activist are not limited to leftist or liberal courts.

Each reform discussed included calls for standards, accountability, testing, measured outcomes, the most schooling for the least dollars, or other similar terms. Citizens were becoming less trustful of government institutions for many reasons. Soaring educational costs

and resulting tax increases enhanced calls for control and accountability. Even the third wave of educational finance cases is more concerned with resources related to the provisions of schooling needed in out times as opposed to mere equal spending.

The structure of inequality remains in tact. Drastic reforms simply do not make it through the system of power. And sometimes, even tinkering is too extreme to stand against hypocrisy made constitutional law.

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<sup>1</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

<sup>2</sup> *Dixon v. Alabama St. Bd. of Educ.*, 294 F. 2d 150 (5th Cir. 1961).

<sup>3</sup> *Serrano v. Priest*, 487 P. 2d 1241 (1971). The California Supreme Court ruled under the 14th Amendment of the U.S. Constitution that the California school finance system violated the equal protection clause. The Court held that wealth is a suspect classification and any state action discriminating on such basis must meet a compelling state interest given that education is a fundamental interest.

<sup>4</sup> E. David Cronon and John W. Jenkins, *The University of Wisconsin: A History 1945-1971: Renewal to Revolution* (Madison, Wis.: The University of Wisconsin Press, 1999), 554-55.

<sup>5</sup> Robert C. Nesbit and William F. Thompson (rev. and updated 2nd ed.), *Wisconsin: A History*. (Madison, Wis.: The University of Wisconsin Press, 1989), 498.

<sup>6</sup> Brief of Petitioners at 5, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976) (No. 75-552).

<sup>7</sup> *Buse v. Smith*, 247 N.W. 2d 141 (1976).

<sup>8</sup> David Kairys (ed.), *The Politics of Law: A Progressive Critique* 3rd ed. (New York: Basic Books, 1998), 7.

<sup>9</sup> Adam R. Nelson, *The Elusive Ideal: Equal Educational Opportunity and the Federal Role in Boston's Public Schools, 1950-1985*. (Chicago: University of Chicago Press, 2005), xiv, generally.

<sup>10</sup> Cronon and Jenkins, *The University of Wisconsin*, 522; Nesbit and Thompson, *Wisconsin*, 500.

<sup>11</sup> Terry G. Geske, "The Politics of Reforming School Finance in Wisconsin." PhD diss., University of Wisconsin-Madison, 1975, 60-61.

<sup>12</sup> Wis. Stat., ch. 600, 1949; Geske "Politics of Reforming," 44.

<sup>13</sup> Geske, "Politics of Reform," 45 (interview data).

<sup>14</sup> Brief of Petitioners at 24, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976) (No. 75-552).

<sup>15</sup> Nesbit and Thompson, *Wisconsin*, 528-29.

<sup>16</sup> *ibid.*, 500; Wisconsin Legislative Reference Bureau, *1981-82 Blue Book* (Madison, Wis: Dept. of Admin., 1982), 747-48.

<sup>17</sup> Nesbit and Thompson, *Wisconsin*, 502.

<sup>18</sup> Wisconsin Legislative Reference Bureau, *1981-82 Blue Book* (Madison, Wis: Dept. of Admin., 1982), 748.

<sup>19</sup> David Tyack, *The One Best System: A History of American Urban Education* (Cambridge, Mass.: Harvard University Press, 1974).

<sup>20</sup> David Tyack, Thomas James, and Aaron Benavot, *Law and the Shaping of Public Education, 1785-1954* (Madison, Wis.: The University of Wisconsin Press, 1987), 117.

<sup>21</sup> *ibid.*, 118.

<sup>22</sup> The Governor's Task Force on Educational Financing and Property Tax Reform, *Final Report* (Madison, Wis.: author, Feb. 1973), 1.

<sup>23</sup> *Serrano v. Priest*, 487 P.2d 1241 (1971); *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971); *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280 (W.D. Tex. 1971).

<sup>24</sup> The Lawyers Committee for Civil Rights Under Law, "Law Suits Challenging State School Finance Systems" (Washington D.C.: author, January 1972). The Wisconsin cases were *Bellow v. State of Wisconsin* filed in Racine County in 1969 and delayed due to lack of funds and *Stovall v. City of Milwaukee* filed in Milwaukee County in November 1971. There is no record that either case reported any further. Partial copies of the *Stovall* case, Milwaukee County Circuit Court No. 395-231 was in the task force files, Wisconsin Historical Society archives, Series 2187, box 3A, folder 2 along with the Lawyers Committee document. Also in the folder, was a paper with the Illinois case of *Blase v. State* summarized in which someone wrote in hand 'Serrano Tremers Reach Illinois' In the same folder was the December 20, 1971 Special Serrano Edition of the Legislative Review published by the Education Commission of the States that indicated that on October 16th, 1971, Lawyers from twenty-one states met in Washington "to plan a legal assault on local property taxes for school purposes." There was no report on where the lawyers planning an assault on the poor met.

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- <sup>25</sup> The Governor's Task Force on Educational Financing and Property Tax Reform, Series 2187, box 3A, folder 2, included a bibliography prepared by attorneys that represent defendants in Serrano type lawsuits. This bibliography reflects some of the incredible efforts going on that include the National Educational Finance Project, the National Education Association's Committee on Educational Finance, the Mondale Committee Hearings on Equal Educational Opportunity in the United States Senate, and many books and articles.
- <sup>26</sup> Patrick J. Lucey, "Governor's Budget Message, 1973-75," quoted in Geske, "Politics of Reform", 114.
- <sup>27</sup> Wis. Const. art I, § 1. The 14th Amendment to the United States Constitution was ratified July 9th, 1868.
- <sup>28</sup> Wis. Const. art. X, § 3.
- <sup>29</sup> *ibid.* § 4.
- <sup>30</sup> *ibid.* art. VIII, § 1.
- <sup>31</sup> Brief of Petitioners at 21-22, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976)(No. 75-552), citing James S. Coleman in John E. Coons, William H. Clune III, and Stephen D. Sugarman, *Private Wealth and Public Education* (Cambridge, Mass.: Belknap Pres of Harvard University, 1970), vii., also citing Lloyd Jorgenson, *The Founding of Public Education in Wisconsin* (Madison, Wis.: State Historical Society of Wisconsin, 1956).
- <sup>32</sup> Brief of Respondents at 10, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976)(No. 75-552), citing *Borgnis v. Falk Co.*, 147 Wis. 327, 348-349, 133 N.W. 209 (1911).
- <sup>33</sup> *ibid.* at 53, citing *State ex rel. Sonneborn v. Sylvester*, 132 N.W. 2d 249 (1965).
- <sup>34</sup> Brief of Petitioners at 26, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976)(No. 75-552).
- <sup>35</sup> William J. Reese, *America's Public Schools: From the Common School to "No Child Left Behind"* (Baltimore, Md.: The Johns Hopkins University Press, 2005), 11.
- <sup>36</sup> Brief of Amici Curiae at 12, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976)(No. 75-552).
- <sup>37</sup> Geske, "Politics of Reform", 38; *Stuart v. School District No. 1 of Kalamazoo*, 30 Mich. 69 (1874) upheld taxation for the support of high schools.
- <sup>38</sup> Listed as one of the significant events in school finance history in Robert Berne and Leanna Stiefel, "Concepts of School Finance Equity: 1970 to Present," 26. In *Equity and Adequacy in Education Finance: Issues and Perspectives*, edited by Helen F. Ladd, Rosemary Chalk, and Janet S. Hansen, 7-33. Washington, D.C.: National Academy Press, 1999.
- <sup>39</sup> Geske, "Politics of Reform", 38.
- <sup>40</sup> Nesbit and Thompson, *Wisconsin*, 528.
- <sup>41</sup> *ibid.*, 29.
- <sup>42</sup> Supplemental Brief of Respondent at 5, *Buse v. Smith*, 247 N.W. 2d 141 (Wis. S. Ct. 1976)(No. 75-552).
- <sup>43</sup> Brief of Respondent at 7, using stipulated facts, *Buse v. Smith*.
- <sup>44</sup> Reply Brief of Petitioner at 2, *Buse v. Smith*.
- <sup>45</sup> Governor's Commission on Education, *A Forward Look: Final Report of the Governor's Commission on Education* (Madison, Wis.: author, November 1970), i.
- <sup>46</sup> Draft Statement for Working Policy Group 07/14/1969, Wisconsin State Historical Society Archives, Series 2124, box 1, folder 10.
- <sup>47</sup> *ibid.*
- <sup>48</sup> Wisconsin State Historical Society Archives, Series 2124, box 1, folders 12, 13, and 14.
- <sup>49</sup> "Financing Policies Recommendations", Jan. 16, 1970. Wisconsin State Historical Society Archives, Series 2124, box 1, folders 12.
- <sup>50</sup> David Tyack and Larry Cuban, *Tinkering Toward Utopia: A Century of Public School Reform* (Cambridge, Mass.: Harvard Univ. Press, 1995), 115.
- <sup>51</sup> Letter and Press Release of Francis Jaeschke, Nov. 20, 1969, Wisconsin State Historical Society Archives, Series 2124, box 1, folder 13.
- <sup>52</sup> "Financing Policies Recommendations", Jan. 16, 1970, 8. Wisconsin State Historical Society Archives, Series 2124, box 1, folders 12.
- <sup>53</sup> *ibid.*, 16.
- <sup>54</sup> *ibid.*, 18-20.
- <sup>55</sup> *ibid.*, 8.
- <sup>56</sup> *ibid.*
- <sup>57</sup> *ibid.*, 1-3, 8-9.
- <sup>58</sup> William H. Clune III, "The Third Ring: Politics and Long-Run System Adjustments," 26, Wisconsin State Historical Society Archives, Series 2187, box 3A, folder 2.
- <sup>59</sup> Governor's Commission on Education, *A Preliminary Report* (Madison, Wis.: author, Mar. 1970).

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- <sup>60</sup> *ibid.*, 44; Governor’s Commission on Education, *A Forward Look: Final Report of the Governor’s Commission on Education* (Madison, Wis.: author, November 1970), 37.
- <sup>61</sup> Nesbit and Thompson, *Wisconsin*, 567.
- <sup>62</sup> Geske, “Politics of Reform”, 56.
- <sup>63</sup> Governor Patrick J. Lucey, Executive Order No. 29, in The Governor’s Task Force on Educational Financing and Property Tax Reform, *Final Report* (Madison, Wis.: author, Feb. 1973), 1-2.
- <sup>64</sup> The Governor’s Task Force on Educational Financing and Property Tax Reform, *Final Report* (Madison, Wis.: author, Feb. 1973), vii; Geske, “Politics of Reform”, 60.
- <sup>65</sup> The Governor’s Task Force on Educational Financing and Property Tax Reform, *Final Report* (Madison, Wis.: author, Feb. 1973), 30.
- <sup>66</sup> *ibid.*, 16.
- <sup>67</sup> *ibid.*, 43-48.
- <sup>68</sup> *ibid.*, 15.
- <sup>69</sup> *ibid.*, 30-32
- <sup>70</sup> *ibid.*, 33. Brief of Petitioners at 5, *Buse v. Smith*.
- <sup>71</sup> Geske, “Politics of Reform,” 120, 135-36, citing “Glendale Begins School Tax Fight,” *The Milwaukee Journal*, March 4, 1973 and Ralph Olive, “23 Districts Fight Lucey School Plan,” *The Milwaukee Journal*, March 22, 1973.
- <sup>72</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).
- <sup>73</sup> Editorial, *The Milwaukee Journal*, March 22, 1973.
- <sup>74</sup> The first wave of school finance litigation involved use of the U.S. Constitution’s 14th Amendment guarantees of equal protection and due process. This first wave ended with *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). The second wave of school finance litigation used state constitution seeking equality and focusing on such constitutional provisions. This has been referred to as the “new judicial federalism.” See Douglas S. Reed, *On equal terms: The Constitutional Politics of Educational Opportunity* (Princeton, N.J.: Princeton Univ. Press, 2001), 10. The third wave of school finance litigation looks at the education clauses within state constitutions and often focuses on the actual provisions and outcomes of schooling and adequacy of schooling. See William N. Evans, Sheila E. Murray, and Robert M. Schwab, “The Impact of Court-Mandated School Finance Reform.” In *Equity and Adequacy in Education Finance: Issues and Perspectives*, edited by Helen F. Ladd, Rosemary Chalk, and Janet S. Hansen, 72-98. Washington, D.C.: National Academy Press, 1999.
- <sup>75</sup> The Governor’s Task Force on Educational Financing and Property Tax Reform, *Final Report* (Madison, Wis.: author, Feb. 1973), v.
- <sup>76</sup> Geske, “Politics of Reform,” 184.
- <sup>77</sup> Brief of Petitioners at 2, *Buse v. Smith*.
- <sup>78</sup> *Buse v. Smith*, 247 N.W. 2d 141, 143 (1976).
- <sup>79</sup> *ibid.*, 146.
- <sup>80</sup> See opinion of dissenters in *Buse*, 156-168.
- <sup>81</sup> *ibid.*, 147.
- <sup>82</sup> *ibid.*
- <sup>83</sup> *ibid.*, 150.
- <sup>84</sup> *ibid.*, 155.
- <sup>85</sup> *ibid.*, 151.