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FUNDING THE EDUCATION OF ARKANSAS'S CHILDREN: A SUMMARY OF THE PROBLEMS AND CHALLENGES

*Dent Gitchel**

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Earl Warren.¹

Fifty years after Chief Justice Warren wrote the words set forth above, we remain engaged in the seemingly-eternal struggle to provide a decent education for all of our children. Virtually everyone agrees that the education of our children is an essential function—maybe the single most essential function—of government. Certainly, it is the most essential and the largest enterprise of state and local government. Approximately half of the state's budget in any given year is expended on public education.² The total budget of the Little Rock School District, the state's largest, is much larger than the budget of the City of Little Rock.³

For over a century, as the people of Arkansas have striven to provide education for our children, we have struggled to reach consensus on three basic issues. First, what components are necessary to provide a suitable system of education? Second, how should we distribute the financial resources

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1. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2. See Department of Finance and Administration, *Arkansas State Budget Facts*, available at <http://www.arkansas.gov/dfa/newsreleases/about.pdf> (last visited Aug. 12, 2004).

3. In the 2002–2003 school year, the Little Rock School District's total expenditures were over \$231 million. Little Rock School District, *Combined Statement of Revenues, Expenditures and Changes in Fund Balance for the Period Ended Dec. 31, 2002 and 2003*, at http://www.lrsd.org/Gen_Info/budget/Financials.htm (last visited July 27, 2004). In contrast, the City of Little Rock's total expenditures for 2003 amounted to only \$144 million. Department of Finance and Administration, *City of Little Rock: 2003 Annual Operating Budget*, available at http://www.accesslittlerock.org/word_files/budget2003/budget_2003.pdf (last visited Aug. 12, 2004).

that are devoted to education? And finally, how should we raise those financial resources?⁴

I. CONSTITUTIONAL PROVISIONS

The Arkansas Constitution, adopted by the people of Arkansas in 1874, contains several provisions that comprise the fundamental law setting forth the state's responsibility to educate our children. These provisions supply the legal basis for litigation regarding whether the state has discharged its constitutional responsibility with regard to public education.

The state's basic duty is set forth in Article 14, Section 1, which provides as follows:

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.⁵

Other provisions that delineate the extent of the state's responsibilities are found in the following sections of Article 2:

§ 2. Freedom and independence

All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness[.]⁶

§ 3. Equality before the law

The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color, or previous condition[.]⁷

§ 18. Privileges and immunities—Equality

4. For an exhaustive review of the history of school finance litigation nationally, the common issues upon which such litigation is founded, and a thorough analysis of the Arkansas Supreme Court's opinion in the *Lake View* case, see Brian E. Carter, Note, *Towards Intelligence and Virtue: Arkansas Embarks on a Court-Mandated Search for an Adequate and Equitable School Funding System*, 26 U. ARK. LITTLE ROCK L. REV. 143 (2003).

5. ARK. CONST. art. 14, § 1.

6. ARK. CONST. art. 2, § 2.

7. ARK. CONST. art. 2, § 3.

The General Assembly shall not grant to any citizen or class of citizens privileges or immunities, which upon the same terms shall not equally belong to all citizens.⁸

II. THE *DUPREE* CASE

In 1983 the Arkansas Supreme Court addressed the second basic issue facing Arkansans, i.e., how to distribute the resources that are devoted to education, in *Dupree v. Alma School District No. 30*.⁹ Relying on the foregoing constitutional provisions, the court held that “the right to equal educational opportunity is basic to our society.”¹⁰ Based on “undisputed evidence that there were sharp disparities between school districts in the expenditures per pupil and the educational opportunities available as reflected by staff, class size, curriculum, remedial services, facilities, materials and equipment,”¹¹ the court found the school funding formula, as it then existed, unconstitutional.¹² In other words, the Supreme Court held that a constitutional educational funding system must distribute the funds *equitably* among the school districts.

The first basic question, i.e., what level of financial support is constitutionally mandated, was neither argued nor decided.¹³ But since *Alma* there has been absolutely no question about the state’s constitutional duty to distribute educational funds in an equitable manner.

8. ARK. CONST. art. 2, § 18.

9. 279 Ark. 340, 939 S.W.2d 90 (1983). Litigation concerning the constitutionality of state school-funding systems is by no means unique to Arkansas. According to the Education Commission of the States, there were nineteen pending school finance cases in 2000. According to this source, the funding systems of eighteen states had been held unconstitutional in a final court decision, while the systems of eighteen others had been held to be constitutional (in some cases the decision holding the system constitutional was in the same state after remedial action to attain compliance). ECS StateNotes, *Finance Litigation*, Education Commission of the States, available at <http://www.ecs.org/clearinghouse/18/23/1823.pdf> (last visited August 31, 2004); see also Carter, *supra* note 4, at 151.

10. *Dupree*, 279 Ark. at 347, 651 S.W. 2d at 93.

11. *Id.* at 344, 651 S.W.2d at 92.

12. *Id.* at 340, 651 S.W.2d at 90.

13. The court alluded to the level of funding, but the issue of adequacy was never specifically addressed. Justice Hickman, in his concurring opinion, came closest by stating, “I cannot justify, on this record, any formula of distribution except on a per pupil basis. If there are not enough funds, using such a formula, to insure each student a decent educational opportunity, then the answer lies elsewhere and not in the unequal distribution of funds.” *Id.* at 351, 651 S.W.2d at 96 (Hickman, J., concurring).

III. AN ABBREVIATED HISTORY OF THE *LAKE VIEW* CASE¹⁴

Nearly twenty years after the *Alma* decision, in *Lake View School District No. 25 v. Huckabee*,¹⁵ the Arkansas Supreme Court answered the first question in no uncertain terms when it held that Article 14, Section 1 mandates that the state provide an *adequate* education by stating, “[T]he requirement of a general, suitable, and efficient system of free public schools places on the State an absolute duty to provide the school children of Arkansas with an adequate education.”¹⁶

The *Lake View* case began in 1992 when the Lake View School District, probably the poorest district in the state, filed suit alleging that the state’s formula for distributing funds to the public schools remained inequitable and violated the foregoing constitutional provisions, as well as the United States Constitution. The plaintiffs sought to enjoin the state from operating the unconstitutional system.¹⁷ In 1994 the trial court found that the system violated the state constitutional provisions, but not the United States Constitution. The court stayed enforcement of its order, however, for two years to give the Arkansas General Assembly (“General Assembly”) time to enact a constitutional school funding system.¹⁸ Over the next several years the General Assembly enacted a number of laws in an ongoing attempt to improve the state’s educational system and appropriated more money for education in each budget year.¹⁹ In 1996 the case became a class action when the court certified a class consisting of “all school districts in the state, school board members of all school districts, and school district taxpayers who support the system.”²⁰

After an unapproved attempt to settle the case in 1998, and reversal of an order dismissing the case, a compliance trial was finally held in 2000. At about that time the contours of the case dramatically changed when two of the wealthiest school districts in the state, Rogers and Bentonville, intervened and filed a cross-complaint against the state alleging that the school

14. For a more comprehensive history, see *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 41–45, 91 S.W.3d 472, 477–80 (2002) (*Lake View III*). For an even more exhaustive history of the case, see *Lake View Sch. Dist. No. 25 v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (2000) (*Lake View II*).

15. *Lake View III*, 351 Ark. at 31, 91 S.W.3d at 472. For an exhaustive discussion of the *Lake View* case, see Carter, *supra* note 4.

16. *Lake View III*, 351 Ark. at 77, 91 S.W.3d at 493.

17. *Id.* at 44, 91 S.W.3d at 478.

18. *Id.*, 91 S.W.3d at 478.

19. See, e.g., 1995 Ark. Acts 917; 1995 Ark. Acts 918; 1995 Ark. Acts 1194; 1997 Ark. Acts 1108; 1997 Ark. Acts 1307; 1997 Ark. Acts 1361; 1999 Ark. Acts 999; 1999 Ark. Acts 1392.

20. *Lake View III*, 351 Ark. at 44, 91 S.W.3d at 478.

funding system was *inadequate*, as well as inequitable.²¹ The state's largest school district, Little Rock, and several other districts also intervened. The trial court held the then-existing school funding system to be unconstitutional on both adequacy and equity grounds.²²

The Arkansas Supreme Court affirmed the trial court on both issues.²³ As to a remedy, the court held that its role is "limited to a determination of whether the existing school-funding system satisfies constitutional dictates and, if not, why not."²⁴ The court, therefore, left the remedy to the legislative and executive branches of government and stayed issuance of the mandate until January 1, 2004, to give the General Assembly time to enact appropriate legislation to correct the constitutional deficiencies.²⁵

During 2003 there was extensive debate concerning how to comply with the Supreme Court's directive. The General Assembly commissioned two adequacy studies and the governor proposed an extensive consolidation plan. Finally, in December, the governor called the General Assembly into special session to deal with these public education issues. The longest special legislative session in Arkansas history resulted in the enactment of a number of measures, including a law consolidating all school districts with less than 350 students,²⁶ a new funding system,²⁷ an appropriation to conduct a school facilities study,²⁸ a law raising minimum teacher salaries,²⁹ and what may be the largest single tax increase in the state's history.³⁰ Not surprisingly, the special legislative session extended beyond the January 1, 2004, deadline.

21. *Id.* at 45, 91 S.W.3d at 479.

22. *Id.*, 91 S.W.3d at 479.

23. The court did reverse on two specific points. The first was the trial court's ruling that the state must provide a system of pre-kindergarten education in order to provide an adequate education to children aged six and over. On this issue the court held that a system of early childhood education, although desirable, is not constitutionally mandated. *Id.* at 82, 91 S.W.3d at 502. The second issue involved whether school districts may apply excess money collected for debt service to satisfy the state-mandated minimum tax rate of twenty-five mills for maintenance and operation of the schools. An Arkansas statute authorized this, and the trial judge upheld the practice. *Id.* at 86, 91 S.W.3d at 504 (citing Ark. CODE ANN. § 26-80-204(18)(c) (LEXIS Supp. 2001)). The Arkansas Supreme Court held that the statute violated Amendment 74 to the Arkansas Constitution. *Id.* at 89, 91 S.W.3d at 506.

24. *Id.* at 75, 91 S.W.3d at 508.

25. *Id.* at 79, 91 S.W.3d at 511.

26. 2004 Ark. Acts 25; 2004 Ark. Acts 60; 2004 Ark. Acts 65; 2004 Ark. Acts 71; 2004 Ark. Acts 80; 2004 Ark. Acts 91.

27. 2004 Ark. Acts 17; 2004 Ark. Acts 27; 2004 Ark. Acts 28; 2004 Ark. Acts 43; 2004 Ark. Acts 59; 2004 Ark. Acts 60; 2004 Ark. Acts 65; 2004 Ark. Acts 69; 2004 Ark. Acts 79; 2004 Ark. Acts 80; 2004 Ark. Acts 89; 2004 Ark. Acts 105.

28. 2004 Ark. Acts 87.

29. 2004 Ark. Acts 59.

30. 2004 Ark. Acts 46, 94, 107.

In early January the plaintiffs filed a motion to hold the defendants in contempt and freeze all funding under the existing system. On January 22, 2004, the court withdrew the mandate and reassumed jurisdiction over the case.³¹ On February 3, 2004, the court issued an order appointing two masters³² to assess and evaluate the actions taken by the legislative and executive branches of government to comply with the constitutional mandate. The masters were directed "to examine and evaluate legislative and executive action taken since November 21, 2002, to comply with this court's order and the constitutional mandate"³³ When the UALR symposium was held in March 2004, the special masters were in the midst of accomplishing their task. After hearing testimony and examining thousands of pages of exhibits, the masters submitted their report on April 2, 2004.³⁴ The substance of that report is summarized in Section V of this article.

On June 18, 2004, the court surprised many people by releasing jurisdiction of the case and ordering that the mandate be issued.³⁵ The court did not find that the Arkansas school funding system had achieved constitutionality. The court, however, accepted the factual findings of the masters³⁶ and based on these findings concluded that substantial progress had been made. Because the majority found that "it is not this court's constitutional role to monitor the General Assembly on an ongoing basis over an extended period of time,"³⁷ the court ended the case but closed the opinion by warning that "this court will exercise the power and authority of the judiciary at any time to assure that the students of our state will not fall short of the goal set forth by this court."³⁸ Three of the seven justices dissented, arguing that the court should retain jurisdiction.³⁹

IV. THE LAKE VIEW DECISION

The Arkansas Supreme Court discussed the issues of adequacy and equity in separate sections of its *Lake View III* opinion. In each instance it made specific findings of fact and conclusions of law that must serve as

31. *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 01-836, 2004 WL 213203, at *1 (Ark. Feb. 3, 2004).

32. Retired Chief Justice Bradley D. Jesson and retired Justice David Newbern.

33. *Lake View*, 2004 WL 213203, at *1.

34. Bradley D. Jesson & David Newbern, *Special Masters' Report to the Supreme Court of Arkansas*, available at <http://courts.state.ar.us/lake%20view/report.pdf> (last visited September 15, 2004).

35. *Lake View Sch. Dist. No. 25 v. Huckabee*, Supplemental Opinion (June 18, 2004) ("Lake View IV").

36. *Id.* at 2.

37. *Id.* at 23.

38. *Id.* at 24.

39. *Id.*

guideposts for the other branches of government in seeking to achieve constitutional compliance.

A. Adequacy

The court held that “the requirement of a general, suitable, and efficient system of free public schools places on the State an absolute duty to provide the school children of Arkansas with an adequate education.”⁴⁰ The court found that the undisputed evidence in the record demonstrated clearly that the state had failed to discharge that duty.

1. *Adequacy Study*

The court first expressed its frustration that the State had not conducted a study to define adequate education.⁴¹ The State failed to conduct this study despite the 1994 trial court’s expression of concern that no study had yet been conducted to provide a definition for the term “general, suitable, and efficient.”⁴² Further, in 1995, the General Assembly had called for the Arkansas Department of Education to conduct an adequacy study, but such a study was never conducted. Even so, the court stated, the General Assembly had partially defined an adequate education in two statutes setting areas of required competence for Arkansas students and a mandatory assessment program.⁴³

The court cited with apparent approval the decision of the Supreme Court of Kentucky in *Rose v. Council for Better Education, Inc.*,⁴⁴ which had been relied on by the Arkansas trial court in both the 1994 and 2000 decisions. *Rose* defined an “efficient” education as being one that provides every student with:

- (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- (v) sufficient grounding in the arts to enable each student to appreciate

40. *Lake View III*, 351 Ark. at 69, 91 S.W.3d at 492.

41. *Id.* at 54, 91 S.W.3d at 486.

42. ARK. CONST. art. 14, §1.

43. 1997 Ark. Acts 1307, at §1 (codified at ARK. CODE ANN. § 6-20-302(c)(4)(A) (LEXIS Repl. 1999); 1997 Ark. Acts 1108, at § 3 (codified at ARK. CODE ANN. § 6-15-1003(a), (b), (c) (LEXIS Repl. 1999).

44. 790 S.W.3d 186 (ky. 1989).

his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.⁴⁵

2. *Student Competence*

If competence of students is a standard by which to determine whether a system of education is adequate—and the General Assembly has decided that it is—the evidence showed clearly that Arkansas students do not fare well by any comparison. The court cited a number of undisputed statistical facts to demonstrate that Arkansas's public schools do not produce competent adults, including below average scores on standardized tests;⁴⁶ less-than-average percentage of adults with high school diplomas; rank of forty-ninth in percentage of adults with college degrees; tie for fiftieth in percentage of adults with graduate degree; and a majority of Arkansas high school graduates needing remediation upon enrollment in college.⁴⁷ The court agreed with the trial judge that Arkansas has "a remarkably serious problem with student performance."⁴⁸

The court next neatly tied student competence to adequate teacher salaries, equipment, and facilities. The court began by categorically rejecting the argument that more money does not correlate to improved student performance. Calling the State's argument on this point "farfetched," the court quoted the language of the Supreme Court of Tennessee that "there is a 'direct correlation between dollars expended and the quality of education a student receives.'"⁴⁹ The court demolished the State's argument by summing up that "motivated teachers, sufficient equipment to supplement instruction, and learning in facilities that are not crumbling or overcrowded, all combine to enhance educational performance. All of that takes money."⁵⁰

45. *Id.* at 212.

46. The court was also concerned with the lack of funding for remediation or to train teachers in remediation after evaluations on mandated, standardized tests. *Lake View III*, 351 Ark. at 37, 91 S.W.3d at 488.

47. *Id.* at 59, 91 S.W.3d at 488.

48. *Id.* at 61, 91 S.W.3d at 489.

49. *Id.* at 77, 91 S.W.3d at 498 (quoting *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 141 (Tenn. 1993)).

50. *Id.*, 91 S.W.3d at 499.

3. *Teachers' Salaries*

The court found that Arkansas teachers' salaries were lower than those in any bordering state and twenty percent below the national average.⁵¹ The court further found serious disparities in teacher pay within the state.⁵² The court also recognized that low teachers' salaries make recruitment and retention of teachers difficult in the face of competition both from other states and from private-sector employment.⁵³

The court then tied the issues of student competence, remediation, and teachers' salaries together. The court found that testing of competence and correction of educational deficiencies "are dependent on quality teachers."⁵⁴ And, as the director of the Arkansas Department of Education testified at the trial,

In order to implement [Arkansas' testing and assessment program] you've got to have good teachers. . . . In order to have good teachers we've got to have more money . . . for teachers' salaries. And until we have more money for teachers' salaries, we jeopardize the efficiency, the suitability, and the quality of the [testing and assessment] program[.]⁵⁵

4. *Deficiencies in Buildings, Equipment, and Supplies*

The court next listed example after example of shocking deficiencies shown by the evidence to exist in school districts throughout the state in buildings, equipment, and supplies. The court cited many specific problems that exist in the poorer school districts,⁵⁶ but the problem is not confined to poorer school districts. Some districts in areas that have experienced rapid population growth—even though the districts may be among the wealthiest—do not have the funds to build the facilities, buy the equipment, and hire the teachers to provide for the influx of students.⁵⁷

51. *Id.* at 61, 91 S.W.3d at 489.

52. *Lake View III*, 351 Ark. at 61, 91 S.W.3d at 489.

53. *Id.*, 91 S.W.3d at 489.

54. *Id.* at 62, 91 S.W.3d at 489.

55. *Id.* at 39, 91 S.W.3d at 489. In the transcript, the testimony presented here in narrative form, was in question-and-answer form. Moreover, much of it was contained in leading questions by counsel with which the witness agreed. The author has not changed the substance, only the form for readability's sake.

56. The court discussed Lake View, Holly Grove, Phillips County, and Lee County as examples. *Id.* at 63, 91 S.W.3d at 489–90.

57. The Bentonville and Rogers school districts are examples. *Id.* at 41–42; 91 S.W.3d at 490. The rapid increase in students affects areas other than facilities and equipment. Many of the new students are Hispanic emigrants and have little or no knowledge of the English language. Recruiting and training teachers of English as a second language presents a major

5. *Funding*

The evidence showed that Arkansas is last among the states in total per capita expenditures per student.⁵⁸ Our expenditure per pupil at the time of trial was almost \$1,400 below the national average.⁵⁹ Every school listed on the 2001 academic distress list⁶⁰ was classified as poor.⁶¹

6. *Summary of Adequacy Concerns*

In reaching its conclusion that the State had not met the constitutional requirement to provide a general, suitable, and efficient school-funding system,⁶² the court was

troubled by four things: (1) The Department of Education has not conducted an adequacy study; (2) despite this court's holding in *Alma* . . . that equal opportunity is the touchstone for a constitutional system and not merely equalized revenues, the State has only sought to make revenues equal; (3) despite Judge Imber's 1994 order to the same effect, neither the Executive branch nor the General Assembly have taken action to correct the imbalance in ultimate expenditures; and (4) the State, in the budgeting process, continues to treat education without the priority and the preference that the constitution demands.⁶³

Therefore, the school-funding system violated Article 14, Section 1 of the Arkansas Constitution.⁶⁴

B. *Equality*

There is considerable overlap between considerations of equality and adequacy. The same evidence supports deficiencies on both grounds. For instance, the woeful shortcomings in facilities, salaries, and equipment in

problem in districts that were recently virtually all Anglo, but today are composed of almost twenty percent Hispanic children. See Chris Branam, *Education-Act Change Gains Teachers' Favor*, ARK. DEMOCRAT-GAZETTE, Feb. 29, 2004, at 1B.

58. *Lakeview III*, 351 Ark. at 59, 91 S.W.3d. at 488.

59. *Id.* at 60, 91 S.W.3d. at 488.

60. A district is placed on the list as a result of its students' deficient standardized test scores. *Id.* at 64, 91 S.W.3d. at 490.

61. *Id.*, 91 S.W.3d. at 490.

62. ARK. CONST. art. 14, § 1. After a rather lengthy discussion of whether the right to an education is fundamental, which finding would have required strict judicial scrutiny of legislative and executive acts that might abridge that right, the court found that such a finding was unnecessary. Since the state's constitutional duty is absolute, it has not been met no matter what level of judicial scrutiny is employed. *Lake View III*, 351 Ark. at 71, 91 S.W.3d. at 495.

63. *Lake View III*, 351 Ark. at 71, 91 S.W.3d. at 495.

64. *Id.* at 72, 91 S.W.3d. at 495.

Lake View and Holly Grove school districts that support a conclusion that those districts are inadequate also support a conclusion that they are unequal when they are compared with the facilities, salaries, and equipment in other districts. The court used as an example of disparity the “barebones” curricular offerings of Lake View and Holly Grove as compared with the “rich” curriculum offered in the Fort Smith School District.⁶⁵ The court specifically held that Arkansas “school districts are impermissibly classified on the basis of wealth,” that “a classification between poor and rich school districts does exist and that the State, with its school-funding formula, has fostered this discrimination based on wealth.”⁶⁶

1. *Distributing the Money*

In order to understand how such disparities come about, it is necessary to examine the school-funding scheme that existed in Arkansas at the time *Lake View* was decided. The money to operate the public schools in Arkansas comes from the following three sources: the federal government, the State of Arkansas, and local property taxes.⁶⁷

a. Local property taxes

Historically, local property taxes available to fund education have varied widely throughout the state. This disparity is primarily caused by two factors. First, some districts have taxed themselves at higher rates than others. Second, some districts contain property that is vastly more valuable than others. Because property taxation is based on value, the same level of taxation in those districts produces more revenue. For example, a district that has the good fortune to contain a major utility or industrial plant will be able to collect far more revenue from taxation at a particular rate than a rural district comprised mostly of farmland that taxes at the same rate. Likewise, an urban district typically contains property of much greater assessed value than rural districts.⁶⁸

65. *Id.* at 75, 91 S.W.3d at 497.

66. *Id.* at 77, 91 S.W.3d at 499.

67. As of 1994 the state furnished approximately sixty percent of the funds, the localities approximately thirty percent, and federal funds approximately ten percent. *Id.* at 47, 91 S.W.3d at 480. In 1983, when *Alma* was decided, the breakdown was approximately fifty-two percent from the state, thirty-eight percent from the localities, and ten percent from federal funds. *See DuPree v. Alma Sch. Dist. No. 30*, 279 Ark. 340, 343, 651 S.W.2d 90, 91 (1983).

68. These disparities are exacerbated by the fact that assessments of agricultural and timber lands are based on their “use” value, rather than their market value. All other property is assessed based on market value. “Use” valuation results in dramatically lower assessed values than does market valuation. In 1979 the Arkansas Supreme Court ruled that all prop-

The state does not have the power to make the property within a school district more or less valuable. But the state does have the power to mandate a minimum level of local taxation for public schools, and this it has done. At the time of the *Lake View III* opinion, a uniform minimum property tax of twenty-five mills was mandatory for all school districts in the state to be devoted to maintenance and operation of the schools.⁶⁹ Any school district may tax more heavily to enhance its programs, but no school district may tax less.

b. The school-funding formula

Quite apart from local taxes collected to support education, the General Assembly appropriates state money to support the public schools. The manner in which this money is distributed is the focal point of the *Lake View* case. As it existed when *Lake View III* was decided, the state's school-funding formula, which is about as complicated as the theory of relativity, was essentially based on the concept that the state should distribute whatever state revenues were available to the school districts on a relatively equal basis. The Department of Education first added all the state and local funds available to get a gross figure which it called "base level revenue." This figure was then divided by the number of students in the state (a number called "average daily membership"). This calculation yielded a base level of revenue per student.

The next step was to look at the assessed value of property in each school district and apply the twenty-five percent minimum millage rate to ninety-eight percent of the total assessed value. That calculation yielded the total local dollars available to each school district. That figure was divided by the "average daily membership" of students in the district to find the available local revenue per student.

Then the base level revenue per student was compared with the local revenue per student. If the local figure was less, the state made up the difference with "equalization aid." After applying the equalization aid, every school district then received the base level revenue per student.⁷⁰

erty must be assessed based upon its market value. *Pub. Serv. Comm'n v. Pulaski Co. Bd. of Equalization*, 266 Ark. 64, 582 S.W.2d 942 (1979). In 1980 the voters approved Amendment 59 to the Arkansas Constitution, which restored "use" value assessment for agricultural and timber property. ARK. CONST. amend. 59; see generally, *DuPree v. Alma School District No. 30*, 279 Ark. 340, 352-53, 651 S.W.2d 90, 96-97 (1983) (Hickman, J., concurring).

69. ARK. CONST. amend 74.

70. This explanation of school funding calculations in Arkansas is terribly oversimplified but essentially accurate. There are a number of other sources of revenue, such as grants and aid for students with special needs, additional base funding for poorer school districts, programs to assist with capital improvements, funding to assist with the purchase of equipment, and debt service assistance. See *Lake View III*, 351 Ark. 31, 48-49, 91 S.W.3d 472,

The evidence was clear that the actual per-student revenues available to school districts varied widely under the formula. The trial court earlier held that any constitutional funding formula must be based on actual money spent per student, rather than on the money made available to the school districts by the state.⁷¹ The inequality, the trial court held, violated the equal protection provisions of the Arkansas constitution,⁷² as well as the education provision.⁷³

c. The State's argument

The State argued that the inequalities imbedded in the school-funding formula were rationally related to two legitimate governmental purposes: "(1) the necessity to fund other state programs, and (2) local control of public schools[.]"⁷⁴

The first argument, that the necessity to fund other state programs constitutes a legitimate state purpose that justifies discrimination between school districts based on wealth, received only one dismissive sentence in the opinion, "[T]he State's claim that the General Assembly must fund a variety of state programs in addition to education and that this is reason enough for an inferior education system hardly qualifies as a legitimate reason."⁷⁵

The court sneeringly swept aside the State's other argument—that maintaining local control of school districts is a legitimate state interest. The court referred back to its 1983 decision in *Alma*, finding that in that case it had already "rejected the argument of local control . . . in no uncertain terms" and recalling that it had stated in *Alma* "that such reasoning was illusory because deference to local control has nothing to do with whether educational opportunities are equal across the state."⁷⁶ The court concluded that "deference to local control is not an option for the State when inequality

481. The court found that gross disparities in available funding continued to exist even with these programs. *Id.*, 91 S.W.3d at 481.

71. *Id.* at 72, 91 S.W.3d at 496.

72. ARK. CONST. art. 2, §§ 2, 3, 18.

73. ARK. CONST. art. 14, § 1.

74. *Lake View III*, 351 Ark. at 72, 91 S.W.3d at 496.

75. *Id.* at 78, 91 S.W.3d at 499–500.

76. *Id.*, 91 S.W.3d at 499. This was a paraphrase. In *Dupree*, the court actually said, "First, to alter the state financing system to provide greater equalization among districts does not in any way dictate that local control must be reduced." 279 Ark. 340, 346, 651 S.W.2d 90, 93 (1983). The court in *Dupree* then quoted from *Serrano v. Priest*, 557 P.2d 929, 948 (Ca. 1976) to the effect that "[t]he notion of local control was a 'cruel illusion' for the poor districts due to limitations placed upon them by the system itself." *Id.* at 346, 651 S.W.2d at 93.

prevails, and deference has not been an option since the *DuPree* decision.”⁷⁷

Lurking behind the local control issue is the 900-pound gorilla of public school financing—consolidation of school districts. Although the Arkansas Supreme Court did not mention consolidation in *Lake View III*, it is hard to conceive of a straight-faced argument that a suitably efficient educational system can be achieved by the state without some consolidation of school districts. Given the immense size and geographical characteristics of some of these districts, it is difficult to imagine a distribution formula that is both equitable and adequate which continues to support these districts without either leaving them in poverty or directing a completely unrealistic amount of support toward them. One superintendent recently described his district as “232 square miles of wilderness. I don’t have any private industry here. We have two small, old general stores and that’s the only business in the entire district.”⁷⁸ Indeed, the highly emotional issue of consolidation consumed most of the public discourse concerning school finance reform from the time of the *Lake View* decision until late in the 2003-2004 special session of the General Assembly. The governor initially proposed consolidation of all school districts with less than 1,500 students. The General Assembly finally passed a statute consolidating all districts with less than 350 students.⁷⁹ This consolidation will leave Arkansas with around 250 school districts.⁸⁰ Whether a constitutionally adequate education can be provided to all our children without more consolidation is a question awaiting decision. The Supreme Court did, however, allow itself to be used as the political scapegoat on this issue, as well as the issue of additional taxation to support public schools. Senators, representatives, and the governor can now point to the court and say, “They made us do it.”

C. The Ruling

The court summarized its ruling in the following language:

It is the State’s responsibility, first and foremost, to develop forthwith what constitutes an adequate education in Arkansas. It is, next, the State’s responsibility to assess, evaluate, and monitor, not only the lower elementary grades for English and math proficiency, but the entire spectrum of public education across the state to determine whether equal educational opportunity for an adequate education is being substantially

77. *Lake View III*, 351 Ark. at 79, 91 S.W.3d at 500; see Carter, *supra* note 4, at 173-74.

78. Laura Kellams, *Remote School Districts Split on Battling Consolidation*, ARK. DEMOCRAT-GAZETTE, Feb. 22, 2004, at 1B, 4B.

79. 2004 Ark. Acts 60.

80. This number is indefinite because some school districts may choose to consolidate although not required by law to do so.

afforded to Arkansas' school children. It is, finally, the State's responsibility to know how state revenues are being spent and whether true equality in opportunity is being achieved. Equality of educational opportunity must include as basic components substantially equal curricula, substantially equal facilities, and substantially equal equipment for obtaining an adequate education. The key to all this, to repeat, is to determine what comprises an adequate education in Arkansas.⁸¹

V. THE MASTERS' REPORT

In its February 3, 2004, order appointing special masters to report to the court on the legislative and executive actions taken to comply with the *Lake View III* directive,⁸² the court set out ten specific areas of inquiry for the special masters' report to address. These ten specific areas are set forth below, along with a brief description of the masters' findings with respect to each issue.⁸³ In addition, the masters offered several observations that were not specifically related to any of the ten questions. A summary of these observations is included at the end of this section.

A. Responses to the Court's Ten Concerns

1. *The Adequacy Study Prepared for the General Assembly and the Steps Taken by that Body To Implement the Study*

The General Assembly created a Joint Committee on Educational Adequacy in January 2003.⁸⁴ Two consultants were hired to conduct an adequacy study. The joint committee made its report, based largely on the adequacy study, to the General Assembly in September 2003.⁸⁵ The consultants' recommendations were considered by the General Assembly, but they were not followed in every instance. Among the recommended measures not adopted by the General Assembly is one that would reduce the maximum teacher-pupil ratio in kindergarten through third grade from 20-1 to 15-1.⁸⁶ The Joint Committee also recommended raising the average teacher salary by ten percent.⁸⁷ Although a law was passed raising the

81. *Lake View III*, 351 Ark. at 79, 91 S.W.3d at 500.

82. *Lake View Sch. Dist. No. 25 v. Huckabee*, No. 01-836, 2004 WL 213203 (Ark. Feb. 3, 2004) (per curiam).

83. The masters' report describes both the legislative and administrative actions that have been taken since the *Lake View* decision. See, e.g., *Reform Checklist*, ARK. DEMOCRAT-GAZETTE, Feb. 4, 2004, at 1A.

84. 2003 Ark. Acts 94.

85. Jesson & Newbern, *supra* note 34, at Question 1, Page 2.

86. *Id.* at Question 1, Page 3.

87. The consultants originally proposed a fifteen percent increase. *Id.* at Question 1, 12

minimum teacher salary, the ten percent recommendation was not followed.⁸⁸ The masters found that the adequacy study “seemed thorough in its approach.”⁸⁹ The adequacy study had suggested an increase of approximately \$680 million in appropriations for education to fund its proposals. The increases enacted by the General Assembly are forecast to produce approximately \$400 million additional revenue. The masters’ felt that the difference may be accounted for by the class ratio and salary recommendations not adopted.⁹⁰

2. *Steps Taken by the State To Put In Place a System To Assess, Evaluate and Monitor Public School Curricula Offered in all Primary and Secondary Schools in the State*

The Arkansas Department of Education was given greater enforcement powers in the 2003 regular session of the General Assembly.⁹¹ The position of Accountability Director was created in the department. This official is to report directly to the Board of Education, rather than to the director of the department.⁹² The masters summarized the many legislative and administrative measures that have been taken to develop, implement, review, and revise comprehensive curricular standards and standards for accrediting school districts, including minimum graduation requirements, emphasis on core courses, and elimination of “low-level, general education tracks.”⁹³ The masters found that although the General Assembly had adopted a policy of periodic review and revision of curricula and course content, the Department of Education had not yet developed guidelines and procedures for the process.⁹⁴ The masters further found that the state “has begun implementation of a statewide system of assessing, evaluating, and monitoring student achievement.”⁹⁵ They finally concluded that the state has made “a good beginning toward an effective system to assess, evaluate, and monitor public school curricula.”⁹⁶

n.8.

88. *Id.*

89. *Id.* at Question 1, 14.

90. *Id.* The difference may also be partially explained by the difference between the \$100 million recommended by the consultants to fund early childhood education and the \$40 million appropriated by the General Assembly. *Id.* The court specifically held in *Lake View III* that early childhood education is not constitutionally mandated. 351 Ark. 31, 82, 91 S.W.3d 472, 502 (2002).

91. Omnibus Quality Education Act, 2003 Ark. Acts 1467.

92. 2004 Ark. Acts 61.

93. Jesson & Newbern, *supra* note 34, at Question 2, 12–14.

94. *Id.* at Question 2, 16.

95. *Id.*

96. *Id.* at Question 2, 17.

3. *The Steps Implemented By the State To Assure a Substantially Equal Curriculum is Made Available to All School Children in this State*

The masters cited a long list of statutes and regulations aimed toward providing a substantially equal curriculum for all students. They stated that these measures can generally be classified into four areas: early-childhood education, technology, school choice, and administrative consolidation. Because these concerns are addressed in their responses to other questions or in their general remarks, the masters did not discuss them further in this section.⁹⁷

4. *The Steps Taken By the State To Assess and Evaluate Public School Buildings and Educational Equipment Across the State*

The General Assembly created a Joint Committee on Educational Facilities. The Committee, through a task force, recommended an appropriation of \$10 million to finance a statewide school facilities adequacy assessment.⁹⁸ The General Assembly appropriated that amount,⁹⁹ and a contractor has been hired to conduct the study. The facilities assessment report was due December 1, 2004. The General Assembly, therefore, cannot begin to address the problem until 2005. It will take a number of years to bring all school buildings in the state into an adequate state of repair.¹⁰⁰

As to equipment, which is specifically excluded from the facilities adequacy study, the masters found that “[t]he schools’ needs for unattached equipment, both short-term and long-term, must be addressed. These needs appear to have been overlooked or ignored at every step in the process and the State has failed to offer an explanation.”¹⁰¹

5. *The Steps Taken By the State To Implement Measures To Assure that Substantially Equal School Buildings and School Equipment are Available to all School Children in this State*

Little has been done, other than authorizing the facilities adequacy study, to address this issue. Hopefully, if the adequacy study is completed by December 2004, the General Assembly can begin to address the problem during its regular 2005 session. The Masters’ Report indicates that virtually

97. *Id.* at Question 3.

98. *Id.* at Question 4, 7.

99. 2004 Ark. Acts 87.

100. Jesson & Newbern, *supra* note 34, at Question 4, 7–8.

101. *Id.* at Question 4, 9.

nothing has been done to assure equality of access to educational equipment.¹⁰²

6. *The Measures in Place To Assure that Teacher Salaries are Sufficient To Prevent the Migration of Teachers from Poorer School Districts to Wealthier School Districts or to Neighboring States*

The masters found that the General Assembly had made substantial efforts to address this issue. For example, the new funding formula law raises the minimum first-year teacher's salary from \$21,860 to \$27,500 and increases the minimum pay scale. It does not affect teachers making more than the minimum.¹⁰³ The General Assembly has also demonstrated its intent to monitor the adequacy of teacher salaries,¹⁰⁴ has created non-monetary incentives for teachers,¹⁰⁵ and has created signing bonuses for teachers who agree to teach in high-priority districts.¹⁰⁶ The masters were unable to obtain current data on *average* teacher salaries. The most recent data available, for 2002–2003, showed that at that time Arkansas' average teacher salary was higher than those of three the six contiguous states. Some argued that the new salary increases only raised the bar and did nothing to address the inequality between poor and wealthy school districts.

The masters found that many efforts have been made to enact and implement legislation to stop teacher migration from poorer to wealthier districts within the state and from Arkansas to other states. Whether these efforts are sufficient simply cannot be known for at least another year.¹⁰⁷

7. *The Accountability and Accounting Measures in Place for the State to Determine Per-Pupil Expenditures and How Money is Actually Being Spent in Local Districts*

In 2003 the General Assembly created a program for identifying, assessing, and addressing school districts in fiscal distress.¹⁰⁸ Laws have been enacted that require the Department of Education to develop a better standardized accounting system, requiring local districts to use it, and requiring training for district bookkeepers.¹⁰⁹ The basis of the State's funding formula

102. *Id.* at Question 5, at 3–4.

103. 2004 Ark. Acts 59.

104. 2004 Ark. Acts 57.

105. 2004 Ark. Acts 59.

106. 2004 Ark. Acts 101.

107. Jesson & Newbern, *supra* note 34, at Question 6, at 18.

108. 2003 Ark. Acts 1467.

109. 2003 Ark. Acts 35; 2004 Ark. Acts 61.

has been changed from per-district calculations to per-student calculations.¹¹⁰

A Division of Public School Accountability has been created to report directly to the State Board of Education and to report annually to the General Assembly.¹¹¹ The director of the Department of Education has begun reporting monthly to the Legislative Council on the status of education reforms.¹¹² And finally, school districts are now required to account for all state funds used to support interschool extracurricular activities.¹¹³ This, of course, includes interscholastic athletics, the finances of which have previously been enshrouded in mystery.

The masters found that “these requirements should reasonably be expected, at a minimum, to enlighten local and state educators and administrators, as well as the General Assembly and the general public, about local expenditures.”¹¹⁴

8. *The Accountability and Testing Measures in Place to Evaluate the Performance and Rankings of Arkansas Students by Grade, Including In-state, Regionally, and Nationally*

The general assembly has enacted a number of measures related to testing and evaluating the progress of students. In fact, the masters found that “a principal achievement of the Regular and Special Sessions was the General Assembly’s accountability-related legislation.”¹¹⁵ The masters concluded:

Measures are certainly in place but much remains to be done to fully implement the system. Many of the enactments will be phased in; some will not be effective until the end of this decade. Rules must be promulgated, commissions must be appointed, people must be trained, assessment instruments must be developed. To say that “laws” are in place is easy; to say the “measures” are in place is perhaps premature.

110. 2003 Ark. Acts 59.

111. 2003 Ark. Acts 90.

112. Michael R. Wickline, *Panel Asks For Updates On Reform Of Schools*, ARK. DEMOCRAT-GAZETTE, Feb. 21, 2004, at 10B.

113. 2003 Ark. Acts 52.

114. Jesson & Newbern, *supra* note 34, at Question 7, at 8.

115. *Id.* at Question 8, 10.

9. *The Measures Taken by the General Assembly To Enact a School Funding Formula and To Fund it so that the School Children of this State are Afforded (a) an Adequate Education, and (b) a Substantially Equal Educational Opportunity so as to Close the Gap Between Wealthy School Districts and Poor School Districts*

The adequacy study recommended a “foundation” approach to state funding of education based upon the needs of individual schools. The general assembly adopted a new funding formula based on the needs of individual students, rather than schools.¹¹⁶ The general idea is that the same amount of money should be available for the education of each student in the state. The new school-funding formula increases state aid to public schools by approximately 400 million dollars. More money is sent to school districts for each low-income student, and districts with a higher percentage of low-income students will receive additional aid.¹¹⁷ A tax increase was enacted to fund these expenditures.¹¹⁸

The new funding formula in Act 59 attempts to equalize educational funding by supplementing districts’ funding to compensate for differences in local taxing resources.¹¹⁹ Additionally, there are many other programs in effect that endeavor to close the gap between wealthier and poorer school districts.¹²⁰ The masters basically concluded that the state is making substantial efforts to equalize school funding, but that as long as local districts have discretion over how the money is spent, actual equality will be “greatly impacted by decisions made at the local level.”¹²¹ Whether substantial equality can be achieved will depend on the ability of the Department of Education to monitor, assess, and remediate the practices of local school districts.¹²²

116. 2003 Ark. Acts 59.

117. 2003 Ark. Acts 59.

118. 2003 Ark. Acts 94, 107. The increase is primarily in sales tax, but also increases the corporate franchise tax. The sales tax is projected to raise approximately \$366 million per year. The corporate franchise tax is projected to raise approximately \$7 million per year. Masters’ Report, Question 9, at 12. Many feel that the regressive sales tax is itself inequitable. See, e.g., Paul Greenberg, *How To Help the Poor Stay That Way*, ARK. DEMOCRAT-GAZETTE, Feb 29, 2004 at 6B.

119. Jesson & Newbern, *supra* note 34, at Question 9, 12–13.

120. *Id.* at Question 9, 13.

121. *Id.*

122. *Id.*

10. *The Measures Taken by the General Assembly To Assure that Funding Education is the Priority in the Budgetary Process*

The masters found that the many legislative actions by the General Assembly demonstrated a determination to recognize the absolute duty of the state to make education the first priority of state government.¹²³ In addition, the General Assembly enacted a law that may be unprecedented. This new law creates an Educational Adequacy Fund, which consists of all revenues collected pursuant to statute to pay for education. The law then contains a “doomsday” provision that if those funds and other funds available are not sufficient to pay for the educational system, money is to be taken on a *pro rata* basis from other state accounts to pay for education.¹²⁴ Another law was enacted providing that money for other state agencies must be cut if there is not sufficient revenue to fund education under the funding formula.¹²⁵

B. The Masters’ Observations

In the masters’ report itself, the answers to the ten specific questions discussed above are contained in an appendix. The masters construed the court’s direction that they evaluate any issues they considered relevant to the matter of compliance with the court’s order as an invitation for them to express their opinions on matters other than those addressed by the ten specific questions.

1. *Adequacy*

The masters emphasized the difficulty of coming up with a succinct definition of what constitutes “adequacy.” Given the court’s mandate, however, they suggested the definition offered by one of the experts at the 1980 trial: “An amount of revenue per pupil enabling a student to acquire knowledge and skills specified by public officials as necessary to participate productively in society and to have an opportunity to lead a fulfilling life.”¹²⁶

2. *Closing the Gap*

Amendment 74 to the Arkansas Constitution permits school districts that levy more than the state-mandated twenty-five mills in local property taxes to retain the extra money. The masters observe that as long as

123. *Id.* at Question 10, 5–6.

124. 2003 Ark. Acts 108.

125. 2004 Ark. Acts 61.

126. Jesson & Newbern, *supra* note 34, at 5.

Amendment 74 permits wealthy school districts to raise and retain more local money, the disparity between rich and poor school districts will be difficult to erase. Specifically with regard to teacher salaries, as long as wealthy school districts are able to pay their teachers more by using local funds, migration of teachers from poor to wealthy school districts will continue.¹²⁷

3. *Adequacy and Equity*

The masters raised the question whether by the term "substantial equality" the court meant achievement of a basic level of adequacy for every school, leaving individual districts free to supplement that level by raising additional local funds, or really devoting substantially the same amount of resources to the education of each child, regardless of the source of the funds. If the latter definition is what the court meant, opined the masters, achievement of that objective will be quite difficult in light of Amendment 74's recognition of the right of school districts to levy and keep funds in excess of the twenty-five mill uniform rate.¹²⁸

4. *Consolidation*

Although consolidation of schools or school districts was not mentioned in either the *Lake View III* decision or the questions to the masters, they concluded that the issue cannot be ignored. Based on the evidence, there is little question that consolidation of school districts saves on administrative expenses. Further, particularly at the high school level, consolidation of schools permits larger class sizes which, in turn, saves money that can be used to diversify the curriculum, raise teacher salaries, or acquire more resources. The *Lake View III* decision is partially based on the Arkansas constitution's requirement that the state provide an "efficient" system of education.¹²⁹ Efficiency is clearly a component of adequacy. Arkansas simply does not have the money to disregard efficiency in its quest for an adequate system of education.¹³⁰

5. *Early Childhood Education*

The masters found that although the court had held that pre-kindergarten education is not constitutionally required, the question remains open whether substantial equality in educational opportunity can be

127. *Id.* at 6.

128. *Id.* at 6-7.

129. Ark. Const. art. 14, § 1.

130. Jesson & Newbern, *supra* note 34, 7-10.

achieved without it. The evidence clearly indicated that children who come to school unready to learn have a much poorer chance of succeeding. If a child is not “proficient” by the fourth grade, remediation is much less likely to be successful. The adequacy study recommended that the state spend \$100 million annually on early-childhood education. The General Assembly has made a provision for early-childhood education state policy by appropriating \$40 million dollars for early-childhood education¹³¹ and adopting a five-year plan to enroll all disadvantaged children in such programs.¹³² Without saying that they thought the court was wrong, the masters concluded that “the need to provide substantial equality as a goal for all children, including those at high risk of lacking proficiency in early childhood, is one with which the court should be concerned in assessing the progress toward constitutionality of Arkansas’s school system.”¹³³

VI. THE SUPREME COURT’S FINAL *LAKE VIEW* OPINION

The Arkansas Supreme Court finally laid the *Lake View* case to rest on June 18, 2004.¹³⁴ The court, however, did not lay the issue of public school financing to rest. The court expressly accepted all of the factual findings of the masters.¹³⁵ Then the court, with three of the seven justices dissenting, found that it is beyond the court’s constitutional role “to legislate, to implement legislation, or to serve as a watchdog agency, when there is no matter to be presently decided.”¹³⁶ First noting the masters’ finding that many of the court’s concerns had been addressed and that some time will be necessary to determine whether the measures undertaken will be sufficient, the court was careful to point out that other problems, “specifically funding measures and those relating to facilities and equipment,”¹³⁷ either “have not been brought to fruition”¹³⁸ or have not yet been addressed.

Several issues raised by the masters were specifically considered by the court. First, the court declined to adopt any definition of adequacy, choosing to leave the formulation of that definition to the General Assembly and the Department of Education.¹³⁹

The court, however, did clarify the definition of equity. The masters had asked whether equity means that the same amount of money, from

131. 2004 Ark. Acts 99.

132. 2004 Ark. Acts 49.

133. Jesson & Newbern, *supra* note 34, at 11.

134. *Lake View School Dist. No. 25 v. Huckabee*, No. 01-836, 2004 Ark. LEXIS 425 (Ark. June 18, 2004).

135. *Id.* at *2-3.

136. *Id.* at *37.

137. *Id.* at *39.

138. *Id.*

139. *Id.* at *4.

whatever source, must be spent on each student in the state or whether it means that some amount, determined to be sufficient to provide each child with an adequate education, be directed toward each student by the state. Under the first definition, local school districts would not be allowed to devote more resources to their own schools in order to raise them to a superior standard. Under the latter definition, local districts are free to spend as much as they want to enhance the educational opportunity of their own students beyond what is considered adequate. The court unequivocally adopted the second definition, finding that Amendment 74 to the Arkansas Constitution specifically allows additional local taxation beyond what is required by the state for local public schools.¹⁴⁰

The court refused to be drawn into the debate over consolidation, but it clearly left the door open for the issue to be presented in a future case. The court said it is "radiantly clear" that "if an adequate curriculum, adequate facilities, and adequate equipment cannot be afforded to the school children in the smaller school districts of this state due to a lack of sufficient economic resources, more efficient measures to afford that adequacy will be inevitable."¹⁴¹

Finally, in releasing jurisdiction and closing the *Lake View* litigation, the court made it clear that it was not abrogating its commitment to education and virtually invited future litigation if the state does not meet its responsibilities:

The resolve of this court is clear. We will not waver in our commitment to the goal of an adequate and substantially equal education for all Arkansas students; nor will we waver from the constitutional requirement that our State is to "ever maintain a general, suitable, and efficient system of free public schools[.]" Make no mistake, this court will exercise the power and authority of the judiciary at any time to assure that the students of our State will not fall short of the goal set forth by the court. We will assure its attainment.¹⁴²

VII. CONCLUSION

Adequacy and equity, like justice, are goals that can never be completely achieved once-and-for-all. Our collective concept of what constitutes adequacy and equity in our public schools will and must change as conditions in society change. Furthermore, these concepts, like beauty, are in the eye of the beholder. What seems adequate and equitable to one often seems

140. *Lake View*, 2004 Ark. LEXIS, at *28-29.

141. *Id.* at *32-33.

142. *Id.* at *40-41.

quite inadequate and inequitable to another. As is graphically demonstrated by the debate generated by *Lake View*, people of good will can hold widely differing opinions¹⁴³ as to what constitutes each of these essential components of a “general, suitable, and efficient system of free public schools.”¹⁴⁴

Nevertheless, there is one issue on which every Arkansan can agree: A decent education for our children is absolutely essential and must remain the first priority of state government. The search for adequacy and equity in public education must never end. The Arkansas Supreme Court has performed a valuable service to the children of Arkansas by placing the support of public education squarely at the center of public discourse. It can no longer be seriously questioned that the education of our children—no matter where they reside, whether they are rich or poor, or the hue of their skin—is *the* central responsibility of state government.

*It takes support of all the people to send all the kids to school
and if we don't care about all the kids, then ignorance will rule.
Every child is precious; each one deserves a chance
To jump into the mainstream and dance the American dance.*¹⁴⁵

This issue of the *UALR Law Review* is dedicated to continuing the lively and important debate over education funding in the State of Arkansas. Each year the *UALR Law Review* hosts the Ben J. Altheimer Symposium at the University of Arkansas at Little Rock William H. Bowen School of Law. The 2003–2004 symposium, Education Funding at the Crossroads, featured outside experts who have dealt with the controversial issue of education funding in other states. We hope this issue will advance the scholarly discourse on this topic and hopefully shed some new light on an important problem facing Arkansas.

143. For example, in its recent special session the General Assembly enacted reforms that will cost much less than the amount the consultants hired to perform the adequacy study for the General Assembly reported would be necessary for an adequate educational system. The State presented testimony to the masters from experts who testified that the measures enacted were sufficient to provide adequacy. See Michael Rowett, *State's School Reform Get Mixed Reviews*, ARK. DEMOCRAT-GAZETTE, Feb. 24, 2004, at 1A. These same expert witnesses had testified at the trial that the state's educational funding system as it existed then was inadequate. See Michael Rowett, *School-case Master Reject Contempt Plea*, ARK. DEMOCRAT-GAZETTE, Feb. 25, 2004, at 1A.

144. ARK CONST. amend 14, § 1.

145. MOLLY T. O'BRIEN, *THE BALLAD OF NATHAN DEROLPH* (2003) (noncommercial unpublished song). Nathan DeRolph was the named plaintiff in *DeRolph v. State*, 78 Ohio St. 3d 193, 677 N.E.2d 733 (1997), the Ohio school-finance case, cited in *Lake View* by the Arkansas Supreme Court and similar in many respects to *Lake View*.

