Public School Reform: Kentucky's Solution

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Lest there be any doubt, the result of our decision is that Kentucky's entire system of common schools is unconstitutional. There is no allegation that only part of the common school system is invalid, and we find no such circumstance. This decision applies to the entire sweep of the system—all its parts and parcels. This decision applies to the statutes creating, implementing, and financing the system and to all regulations, etc., pertaining thereto. This decision covers the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program. It covers school construction and maintenance, teacher certification—the whole gamut of the common school system in Kentucky.1

I. INTRODUCTION

I am not an expert in public school finance or administration, standards-based testing, or school finance litigation. What I can offer you as part of this symposium is a concatenation of events in Kentucky from the perspective of a primary historian, a lawyer who helped with Rose v. Council for Better Education, decided in 1989.2 Rose preceded a wave of similar litigation in over thirty other states that challenged the adequacy of school funding, its equity, or both.3

A. History of Public Education in Kentucky

Many current opponents of education reform in Kentucky lament that Kentucky once had a fine educational system until raddled reformers brought lawsuits, enacted the Kentucky Education Reform Act (KERA), and generally spoiled the little red schoolhouse forever. Objective data about the historical funding and performance of Kentucky's public schools shows, how-
ever, that this mythical little red schoolhouse never existed. To the contrary, before school reform in the 1990s, Kentucky had a poorly educated adult populace, public school students who consistently performed badly on standardized tests, and many miserable, depressing public schools that did little to prepare young people for a productive future. In addition, deep disparities existed among schools in Kentucky's local school districts, which, during the *Rose* litigation, numbered 178. Marked disparities existed from district to district and also within districts.

Nothing in Kentucky's history before 1988 suggested that this state would ever do anything original or even particularly energetic with its public schools, much less that it would become a national leader in education reform. To the contrary, Kentucky's historical attitude toward public education, particularly toward the financial effort required to fund it, was indifferent at best and hostile at worst.

Early in the state's history, the idea of free public education for all was not widely accepted in Kentucky or anywhere else. Education was for the elite: boys and whites. It was generally viewed as a luxury that the poor, women, or people of color neither needed nor were suited to receive. Societal and economic issues overwhelmed the state after the Civil War. Kentucky author John Ed Pearce observed the following about that era:

No state was more torn by the Civil War than Kentucky, and no state was more torn during the years following. The states to the south were united in defeat and misery, and in the knowledge that they had fought well; those to the north were united in victory and the promise of prosperity. Poor Kentucky had succeeded, at hideous cost, only in tearing itself apart and planting seeds of enduring hatreds, and now it turned and tore at itself again. Having stuck to the Union throughout the war, once the fighting was over it embraced the Confederate cause with an addled passion (partly because of the short-sighted and punitive policies of Union military commanders), leading one historian to remark that it was the only government in history to join the loser after the loss.

Kentucky's preeminent historian, centenarian Thomas D. Clark, describes public education in the post-Civil War era as hampered by lack of any vision that the state's economy might benefit from a more educated populace, by resistance to taxation, and by a poor infrastructure in public schools, which was characterized by shabby buildings, ill-qualified teachers, lack of supplies, and low enrollments.
Rose was not the first case in which Kentucky’s school funding arrangements had been challenged. In 1884, black taxpayers in Owensboro, Kentucky attempted to change the state’s public school funding system. They specifically cited a state statute that required taxes collected from white taxpayers to support schools for whites only and taxes collected from black taxpayers to support schools for blacks only. The court concluded that the statute was unconstitutional because it denied black citizens equal protection of the laws. The court further held, however, that it had no authority to issue orders as to how tax funds should be distributed.

In 1891 Kentucky’s General Assembly added section 183 to the state’s constitution. Section 183’s language is unadorned and inclusive: “The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.”

The constitution does not define “efficient system of common schools,” but the eloquent and impassioned constitutional debates that preceded section 183’s inclusion in the state constitution suggest that section 183’s authors envisioned public schools that were both adequate and equitable.

Delegate R. P. Jacobs, Chairman of the Committee on Education, said, in reference to the draft of Section 183, that the first section “is simply a declaration or statement that the Legislature shall, by proper legislation, provide for an efficient system of common schools throughout the Commonwealth.” Jacobs then elaborated upon the state’s system of funding public schools under the 1849 Constitution, noting presciently that the old system provided uneven and unequal funding among the school districts. Presumably, that problem was one that the General Assembly intended section 183 to rectify, with responsibility for doing so falling to the General Assembly.

Delegate W. M. Beckner, also a member of the Committee on Education, read the following in support of his own proposal for “common schools, open and free to every description of children”:

It is a system of practical equality in which the children of the rich and poor meet upon a perfect level, and the only superiority is that of the mind . . . . There is no check upon the aristocracy of wealth so effectual as the equal-

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10. Claybrook, 23 F. at 635.
11. 3 OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION ASSEMBLED AT FRANKFORT, ON THE EIGHTH DAY OF SEPTEMBER, 1890, TO ADOPT, AMEND, OR CHANGE THE CONSTITUTION OF THE STATE OF KENTUCKY 4456 (1890).
12. Id. at 4458.
ity of knowledge. A people well educated will never be the slaves of tyrants
nor the tools of demagogues.\textsuperscript{13}

Delegate L. T. Moore was so zealous in his support of the common
schools that he vehemently opposed funding for higher education if it would
draw funds from the common schools. The following excerpt from the de-
bates offers his rationale:

Common schools make patriots, and men who are willing to stand upon
a common level. The boys of the humble mountain home stand equally
high with those from the mansions of the city. There are no distinctions in
the common schools, but all stand upon one level. The great democratic
idea is there taught, that you are all equal in that nursery of citizens, and
that there are none superior.\textsuperscript{14}

Following this era of emphasis on public education, Kentucky began
the twentieth century with its public schools ranking favorably against the
ranking of states in the rest of the south. The state’s public schools soon began
to fall far behind those of nearly every other state, however, and they contin-
ued that trend for nearly ninety years.\textsuperscript{15} The problem extended to inadequate
schools, as well as disparities both among and within regions, with lingering
overtones of class and race.

B. The Beginnings of School Reform Nationally

In 1954 the United States Supreme Court in \textit{Brown v. Board of Educa-
tion} expressed sentiments that echoed those that characterized Kentucky’s
nineteenth-century constitutional debates.\textsuperscript{16} The \textit{Brown} court, like Ken-
tucky’s legislators in 1891, identified issues of class, economic disparity, and
the need for adequate public education:

Compulsory school attendance laws and the great expenditures for edu-
cation 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 profes-
sional training, and in helping him to adjust normally to his environment.

\textsuperscript{13} Id. at 4460–61 (quoting William T. Berry’s report to the Kentucky Legislature in
1822).
\textsuperscript{14} Id. at 4531.
\textsuperscript{15} See generally Richard Elliott Day, Each Child, Every Child: The Story of the Coun-
cil for Better Education, Equity and Adequacy in Kentucky’s Schools 42–84 (2003) (unpub-
lished Ph.D. dissertation, University of Kentucky) (on file with author).
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.17

With the Brown decision, the Supreme Court reversed the stand it had taken in the 1896 decision of Plessy v. Ferguson where it had endorsed a “separate but equal” philosophy.18 In Brown, the high court concluded that racially segregated schools were unequal and disqualifying.19 The Supreme Court in Brown stopped short, however, of declaring education to be a fundamental constitutional right, despite the opinion’s eloquent observation that an uneducated person cannot function in society.20 Hoping that the Supreme Court eventually would declare education to be a fundamental right under the federal constitution, aspiring reformers filed federal lawsuits challenging school financing statutes.21

Almost twenty years after Brown, the high court confirmed its position that education is not a fundamental federal constitutional right in the 1973 decision of San Antonio Independent School District v. Rodriguez.22 The Rodriguez decision left the door ajar, noting that even though education is not a constitutionally protected right, an equal protection claim might be made upon a showing that the state, having made school funding substantially dependent upon local resources, then so regulated the local districts’ taxing powers as to make it essentially impossible for them to better themselves.23 Nevertheless, the Rodriguez decision signaled the decline of school reform litigation based upon the federal constitution.

Undeterred, public school reformers continued battling at the state level throughout the 1970s and 1980s. By the time Rose was filed, similar lawsuits in states including West Virginia,24 New Jersey,25 and Arkansas26 had already been decided. California had also been engaged in a long strug-
gle over public school funding.\textsuperscript{27} Equalizing funding, with the concomitant increase in state control of schools, did not always improve the affected school systems.\textsuperscript{28} Sometimes, attempts at reform led to an unusual result, such as capping the fiscal efforts of wealthier districts so that poorer districts would not lag so far behind them.\textsuperscript{29}

C. Kentucky’s Crisis in Public Education

By the mid-1980s, Kentucky could no longer afford to do nothing while its public school system continued to decline. The evidence adduced at the trial of \textit{Rose v. Council for Better Education, Inc.}, which began on August 4, 1987, established conclusively that Kentucky’s public school system had been and remained one of the worst in the nation. A century after the 1891 General Assembly required itself through constitutional mandate to provide for an efficient system of common schools throughout the State,\textsuperscript{30} Kentucky’s public schools had produced the following: (1) the most illiterate citizenry in the country; (2) the highest percentage of counties with undereducated populations; (3) a functional illiteracy rate of 48.4\% in the state’s Appalachian counties; (4) a state ranking of 43rd in the nation in per pupil expenditures for education; (5) a state ranking of last place in the nation for citizens over twenty five years old with high school diplomas; (6) a state ranking of 49th in the nation with citizens over twenty-five years old with four or more years of college; (7) a state ranking of 47th in the nation in per capita expenditures of state and local government for public schools; and (8) students falling well behind national norms on standardized tests, with students in Appalachian districts scoring considerably lower than those in other districts.\textsuperscript{31}

Not only were Kentucky’s schools performing poorly compared to others in the nation in 1985, but enormous disparities still existed among them, just as they always had.\textsuperscript{32} Physical facilities ranged from modern, well-equipped buildings in affluent districts to dilapidated, unsound buildings in others.\textsuperscript{33} At the time \textit{Rose} was tried, kindergarten, fifth grade, and special education students in Appalachian Elliott County were attending classes in

\textsuperscript{27} Serrano v. Priest, 763 P.2d 852 (Cal. 1988).
\textsuperscript{28} PETER SCHRAG, FINAL TEST: THE BATTLE FOR ADEQUACY IN AMERICA’S SCHOOLS 78–79 (2003).
\textsuperscript{29} \textit{Id}. at 79.
\textsuperscript{30} Section 183 of the Kentucky Constitution provides as follows: \textit{General Assembly to provide for school system}– The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.
\textsuperscript{31} Brief for Appellees at 1–2, \textit{Rose v. Council for Better Educ., Inc.}, 790 S.W.2d 186 (Ky. 1989) (No. 88-SC-804-TG). Robert Sexton, Head of the Prichard Committee, provided this testimony at trial.
\textsuperscript{32} \textit{Rose v. Council for Better Educ., Inc.}, 790 S.W.2d 186, 197–98 (Ky. 1989).
\textsuperscript{33} Brief for Appellees at 3–4, \textit{Rose} (No. 88-SC-804-TG).
trailers salvaged from an eastern Kentucky flood.\textsuperscript{34} Students in other poor counties attended class in under-heated gymnasiums in rundown buildings the WPA (Works Progress Administration) had constructed.\textsuperscript{35} Leakage, falling plaster, and the continuous, futile expense of repairs were constant problems in facilities such as these.\textsuperscript{36} In one school, students spent their classroom time on rainy days moving buckets around the floor to catch leaks from the ceiling.\textsuperscript{37}

Even more distressing than inadequate physical facilities were the reduced academic programs the poorer districts were forced to offer. Poorer counties offered fewer courses overall than did their more affluent neighbors, with advanced courses limited or nonexistent despite the presence of talented students with a desire to take such classes.\textsuperscript{38} Poor counties had little funding for the arts. Their curricula tended to remain static. One county high school offered only one foreign language, had no advanced math courses, and could teach physics only in alternate years.\textsuperscript{39} Another poor county offered advanced science and math at only one of the district’s three high schools, even though half of the district’s students attended the other two high schools.\textsuperscript{40}

In 1984, the year before \textit{Rose} was filed, Kentucky’s most affluent school district had eight times more taxable property than did its poorest.\textsuperscript{41} During the 1984-1985 school year, the most affluent district had over $244,000 in assessed valuation of property per pupil in its school district as compared to less than $30,000 in the poorest district.\textsuperscript{42} The poorest county would have had to levy taxes at a rate over eight times greater than that of the most affluent county to produce the same revenue.\textsuperscript{43} As a practical consequence of disparities such as these, there was not an “efficient system of common schools” throughout Kentucky; instead, there were 178 separate but distinctly unequal districts.\textsuperscript{44}

\begin{thebibliography}{99}
\bibitem{34} Id at 3.
\bibitem{35} Id at 4.
\bibitem{36} Id.
\bibitem{37} Id.
\bibitem{38} Id. at 4–5 (recounting trial testimony provided by Frank Hatfield, former superintendent of Bullit County Schools, and other superintendents in poorer districts). Even the appellant, who more than implied that poor districts were poor largely due to waste and mismanagement, acknowledged that Superintendent Hatfield was an outstanding school administrator and financial manager.
\bibitem{39} Brief for Appellees at 4, \textit{Rose} (No. 88-SC-804-TG).
\bibitem{40} Id. at 5.
\bibitem{41} Findings of Fact, Conclusions of Law, and Judgment at 8, Council for Better Educ., Inc. v. Wilkinson, No. 85-CI-1759 (Franklin Cir. Ct., May 31, 1988).
\bibitem{42} Id.
\bibitem{43} See id.
\bibitem{44} \textit{Rose} v. Council for Better Educ., Inc., 790 S.W.2d 186, 216 (Ky. 1989) (Gant, J., concurring) (quoting KY. CONST. § 183).
\end{thebibliography}
D. School Finance Issues Prior to Rose

To be sure, by 1985 the General Assembly had moved the state’s public education system well beyond the one-room schoolhouse despite Kentucky’s national image. The state nevertheless gave public education less attention than it merited. In fact, throughout the twentieth century, Kentucky’s efforts to fund public schools had been a “one step up, two steps back” proposition. For example, former section 186 of the Kentucky Constitution required school funds to be apportioned per capita for each child from age five to age seventeen in a given district.\textsuperscript{45} This did not work for obvious reasons, so in 1930 the General Assembly attempted to ameliorate the effects of section 186 with an equalization program designed to raise the level of per pupil expenditures for education in districts with substandard educational opportunities.\textsuperscript{46} Within two years, however, the courts had struck down this salubrious statute, holding that the 1930 act violated the constitutional mandate of strict pro rata distribution.\textsuperscript{47} In 1941 the people amended section 1986 to allow ten percent of the state’s fund for education to be used for equalization, and in 1949, increased that amount to twenty-five percent.\textsuperscript{48} Eventually, section 186 was abolished, taking the strict per capita concept out of the state funding formula.\textsuperscript{49}

In 1954 the General Assembly created the Minimum Foundation Program for public schools. Districts could not participate in the Minimum Foundation Program unless they produced a required minimum sum through local tax levies.\textsuperscript{50} While most districts levied the maximum rates, some districts with a great deal of taxable property were, of course, able to levy less and still produce their required local effort.\textsuperscript{51} Exacerbating this inherently disequalizing problem, property in Kentucky at that time was universally assessed at far less than its fair market value, with the most spurious assessments often in districts that needed the funds most.\textsuperscript{52}

In its 1965 \textit{Russman v. Luckett} opinion, Kentucky’s highest court held that the state constitution required property to be assessed at 100% of its fair case value.\textsuperscript{53} The court noted that assessments at the time ranged from twelve and one-half percent to only thirty-three percent of actual fair cash

\begin{itemize}
\item \textsuperscript{45} \textit{Id.} at 194.
\item \textsuperscript{46} \textit{Id.}
\item \textsuperscript{47} Talbott v. Ky. State Bd. of Educ., 52 S.W.2d 727 (Ky. 1932).
\item \textsuperscript{48} \textit{Rose}, 790 S.W.2d at 194.
\item \textsuperscript{49} \textit{Id.}
\item \textsuperscript{50} \textit{Id.} at 194–95.
\item \textsuperscript{51} \textit{Id.}
\item \textsuperscript{52} \textit{Id.} at 195.
\item \textsuperscript{53} 391 S.W.2d 694, 700 (Ky. 1965).
\end{itemize}
value, with a state-wide median of twenty-seven percent.\textsuperscript{54} The Russman court upheld the right of the plaintiffs, who were taxpayers, parents of school children, and public school students, to maintain the suit, and directed the state's Revenue Cabinet to conform to the constitutional mandate of 100\% assessment.\textsuperscript{55}

This victory for public education proved short lived. The next year the governor called a special session of the General Assembly, which passed a law reducing state tax rates on property proportionately so as to offset the increase in assessment to fair cash value.\textsuperscript{56} With the passing of section 160.470, Kentucky's General Assembly ensured that inequities would persist among public school districts and legislatively created different maximum permissible tax rates for each of those school districts. Thus, political expediency once again overrode the entire concept of an efficient system of common schools throughout the state.

In 1972 the General Assembly helped the public school districts somewhat by expanding the definition of "net assessment growth" in order to allow some increase in taxes. In 1979, however, the Lieutenant Governor, in the Governor's absence, called an extraordinary session of the General Assembly in which House Bill 44 was passed. This law, which came to be called "the rollback law," required public school districts to reduce their tax rates on real property each year so that the current revenues could not exceed the previous year's revenues by more than four percent. After the General Assembly enacted this four percent growth law, the then existing tax rate eroded precipitously as the value of real property increased.

Meanwhile, in 1976, the General Assembly shifted to the state the responsibility for collecting school districts' required local tax effort. While this made it appear that the state's funding of public education had increased substantially, the difference was only in the method of levy and collection, not in the revenues produced.

E. Forces for Change

Against this backdrop, educators realized that Kentucky could no longer remain complacent in forty-ninth place because persons educated in its public schools could not meaningfully compete in the national economy. As noted above, by 1985 only a few other states had decided school finance cases, so Kentucky did not have the benefit of the hindsight available to current litigators in the field of school reform. For example, a prudent litigator preparing school finance litigation now would immediately realize that

\textsuperscript{54} Id. at 695.
\textsuperscript{55} Id. at 696–99.
\textsuperscript{56} See KY. REV. STAT. ANN. § 160.470 (LEXIS Supp. 2004).
long before litigation is filed, supporters of school reform must build relationships that will gain support for their proposals. The litigator would understand that the media's support is critical if legislators are to understand that their constituents really want public schools to be improved and are ready to hold their representatives accountable if the desired changes do not occur. He or she would recognize that proposing a remedy is a dangerous art and that originality and foresight will be required to ensure that if the case succeeds in court, the matter does not simply end there.

Even though none of this had been reduced to any sort of formula in Kentucky by 1985, a number of forces for change in public education began to coalesce along these very lines, almost as if some great intuition were at work. The Prichard Committee, the Council for Better Education's members, the law firms of Wyatt, Tarrant & Combs and of Theodore Lavitt, the courts, the media, and eventually—though at first quite reluctantly—the General Assembly, all played their discrete parts in overhauling Kentucky's public school systems.

Edward F. Prichard and Bert T. Combs, two of Kentucky's elder luminaries at the time, were of unique importance to the cause of education reform in Kentucky. By 1985 both were senior members of the Kentucky bar and had already had varied and high-profile careers. For both, public education would become a final public mission. A short glimpse of their lives, gathered from what I knew as their junior colleague at Wyatt, Tarrant & Combs, adds substantial color to the story of school reform in Kentucky.

Born in 1915, Prichard was an intellectual celebrity at both Princeton University, where he began his studies at age sixteen, and Harvard Law School. Prichard later served as law clerk to Supreme Court Justice Felix Frankfurter. To every appearance, Prichard had a brilliant career ahead of him and might have aspired to a high political position had he not forgotten that one should not irritate lions.

While Prichard was in Washington, he managed to anger FBI Director J. Edgar Hoover with his liberal views. Hoover set out to destroy Prichard, ultimately succeeding when Prichard handed Hoover the keys to Prichard's own undoing. In 1948 the promising young lawyer was indicted for stuffing a ballot box during an unremarkable senate race in his hometown of Paris, Kentucky. Ballot-box stuffing was a common crime in the region at the time. Nevertheless, a repentant Prichard confessed his crime to the local judge. The federal government swept in to prosecute and, before long,

57. Prichard is the subject of a fascinating comprehensive biography. See generally TRACY CAMPBELL, SHORT OF THE GLORY: THE FALL AND REDEMPTION OF EDWARD F. PRICHARD, JR. (2004). Tracy Campbell, the author, is an associate professor of history at Mars Hill College in North Carolina.

58. The judge later testified to the confession over Prichard's unsuccessful objection that he had been seeking legal assistance from the judge and attorney-client privilege barred
Prichard’s brilliant prospects had evaporated. He could not appeal his conviction to the Supreme Court because he knew too many of the justices, who had to recuse themselves.

Convicted for tampering with an election, Prichard was disbarred, served a prison term, received a pardon from President Truman, and pursued an erratic career characterized by flamboyance and humiliation. In 1966 Kentucky Governor Edward T. Breathitt appointed Prichard to the state’s council on higher education. As an advisor to Breathitt and other state leaders, Prichard used his influence to advance legislation protecting civil rights and enforcing mine safety. Prichard recognized that public education in Kentucky was in crisis and that without an adequate education most of the state’s citizens would find themselves curtailed in every aspect of their lives. In 1980 Prichard spearheaded the formation of the Prichard Committee, which was devoted to improving Kentucky’s public school system as “the pathway to a larger life.”

Coalition-building began, a critical step on Kentucky’s path toward school reform.

On November 15, 1984, the Prichard Committee sponsored simultaneous “town forums” in 145 locations throughout Kentucky that attracted a crowd of 20,000 people in the single night. This historic event sparked widespread interest in public education and started a grassroots movement for school reform. Prichard—blind, diabetic, and suffering from renal failure—died in a Lexington hospital soon afterward. The Prichard Committee continues the vital work that Prichard started.

Bert T. Combs, who after much persuasion became lead counsel in *Rose*, had kept to a steadier course than Prichard’s. It would fall to the energetic and influential Combs to take the cause of school reform to the courts and to discern the best way to do this without alienating the reigning political powers, the media, or the public. Shrewd and absolutely fearless, Combs was the perfect lawyer for the task.

Born in 1911 in Appalachian Clay County, Combs served as a captain in World War II. After the war, he was a justice on the Kentucky Court of Appeals, a trial judge in Kentucky’s state courts, and a justice on the United States Court of Appeals for the Sixth Circuit. He served as Kentucky’s governor from 1959 to 1963. During Combs’s term as governor, the General Assembly, with Combs’s endorsement, enacted a sales tax with public education as a portion of the monies. Although the sales tax proved fatal to Combs’s political career, significant and lasting achievements, including greater attention to public education, marked his brief time in office. Addi-

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59. This is still the Prichard Committee’s motto.
60. Combs had been a loyal friend to Edward Prichard, and in the years before his death, Prichard practiced law with Wyatt, Tarrant & Combs.
tionally, the following achievements were recognized during Combs's tenure: Kentucky Educational Television began, segregation in Kentucky's public schools ended, and the Mountain Parkway opened Kentucky's remote Appalachian counties to the larger world. By the 1980s, Combs was a respected senior partner in Wyatt, Tarrant & Combs, a major regional law firm, and was also one of Kentucky's most beloved and widely recognized citizens. He had largely retired from public life and devoted himself to his law practice and his farm in rural Powell County.

While the Prichard Committee was launching its first town forum and Combs was enjoying the rewards of a long career, Arnold Guess had just lost his job. New State Superintendent Alice McDonald fired the outspoken Guess, who decided to use his new-found spare time to organize meetings for state school superintendents with a view toward developing a consensus about how public education in Kentucky might be improved. Guess specifically wanted the superintendents to consider whether the General Assembly had addressed the severe disparities that existed among Kentucky's schools. Guess did not think they had, and he did not think McDonald would improve matters. Guess's efforts were the beginning of the Council for Better Education, a non-profit corporation open to any school districts that cared to join.61 The Council's original purpose was to discuss public education with solutions to its myriad problems in mind. The Council later became the vehicle through which Rose traveled through the courts.

While the Prichard Committee's initial efforts generated grassroots approval for improving Kentucky's schools, both the General Assembly and the State Superintendent Alice McDonald displayed hostility toward the Council for Better Education from the outset. Council leader Jack Moreland commented, "I testified before a joint session of the Senate and House Education Committees one day. This was before the lawsuit was filed. We were just kind of rattling the chains a little... and those legislators were just absolutely hostile."62 Moreland's day did not improve after this unpleasant meeting. Moreland recalled that when the superintendents proposed their ideas concerning school reform, which included a passive allusion to the possibility of litigation, Superintendent McDonald told us, essentially, that she would own our houses if we went into this. It was just a lonesome time there when the Senate and House were all mad as hell at us. And Alice McDonald was mad as hell at us and it was a time

61. Membership numbers have fluctuated over the years. When Rose v. Council for Better Education was filed, there were sixty-six district members in the Council for Better Education.
when you either stood up and were counted or you went home. The mood at that time was just really nasty.\textsuperscript{63}

At that point, Moreland and the Council decided that they needed first rate legal counsel if they were ever to advance their cause. Remembering Bert Combs's bold contributions to Kentucky's public education system when he was governor and recognizing his position as one of the state's most prominent lawyers and respected citizens, the Council undertook to enlist his aid. Joining a crusade to improve public education was the last thing on Bert Combs's mind at the time. At a speech given at a testimonial banquet in his honor in August 1990, the seventy-eight year old Combs recounted that when Council members approached him to request representation, he was doing quite well practicing law in Louisville and "had forgotten that I had ever been governor of this state. At least I was trying to forget it." The Council members reminded him of his professed concern for public education when he had been governor and explained that the students in Kentucky's public schools were being cheated out of an adequate education in violation of the state's constitutional mandate. Combs acknowledged that he knew all of this, but "had ignored it, as had most of the people in Kentucky."\textsuperscript{64}

Combs, highly principled but politically astute, readily foresaw many possibly disastrous outcomes for the Council's proposed school reform litigation. He politely put his visitors off, encouraged them to think about matters, and promised that he would do the same. Combs recounted, "[A]nd they left. And I was hoping they would go away." Combs recognized that if he joined the Council's cause, he had considerable credibility to lose and "needed to sue the Governor and the General Assembly about as much as a hog needs a sidesaddle."\textsuperscript{65} Considering Kentucky's situation further, however, Combs decided to take the risk. In the fall of 1984, he announced that he would represent the Council, but he obviously had not forgotten the risks. When he asked me to work on the case with him, he stated bluntly that the case would not be popular, that we would not get paid, and that we probably would not win either. Even after the Kentucky Supreme Court's stunning decision in \textit{Rose}, Combs did not suffer from the selective memory that plagued many. As he said upon learning of the decision and often repeated later, "We asked for a thimbleful but got a bucketful."

\begin{footnotes}
\item[63] Id. at 93.
\item[64] The author attended this banquet and heard Bert Combs make this speech, which reiterated points he had made many times previously. Richard Day, whose dissertation is mentioned above, notes in that work that he possesses a tape recording of this speech by Bert T. Combs. Day, \textit{supra} note 15, at 94.
\end{footnotes}
F. How *Rose* Took Shape

Throughout the summer of 1985, we met with Arnold Guess, Jack Moreland, and the Council for Better Education's other founders. They tutored us in school finance, introduced us to leading experts in the field, such as Kern Alexander and Richard Salmon, and educated us about the severe disparities that existed among Kentucky's public schools. University of Kentucky constitutional law professor Thomas Lewis consulted with us on initial drafts of the complaint before recusing himself from the case because he was working for the University and feared a conflict of interest. After I had researched the question of whether we had a case under the federal constitution as well as under the state constitution, we decided that while we should plead both state and federal claims, we should obviously emphasize the state claims in the wake of the *Rodriguez* decision and should file the lawsuit in state court to minimize the inevitable procedural attacks.

While we were developing a strategy for litigation, the General Assembly, in an obvious effort to forestall litigation, convened on July 8, 1985, to begin a Special Session largely devoted to amending Kentucky's school finance laws. School finance expert Kern Alexander, then with the College of Education at the University of Florida, analyzed the 1985 Special Session's impact on Kentucky's school districts. He reported to Frank Hatfield, the Bulleitt County Superintendent then leading the Council, that Kentucky's public schools would not be receiving significantly more money as a result of any action the General Assembly took during the 1985 Special Session. In fact, according to Alexander, the disparities among districts would likely grow worse.\(^{66}\) Despite the General Assembly's blandishments that the 1985 Special Session had mooted all of the Council's concerns, litigation now seemed inevitable.

Because the defendants were all state officers, the proper venue for our lawsuit was the Franklin Circuit Court at Frankfort, Kentucky, the state capital. I drove to Frankfort to file the complaint on November 20, 1985, and arranged for service of process on the defendants, some of whom were already quite testy about the litigation. The plaintiffs were the Council for Better Education, which then consisted of sixty-six out of Kentucky's 178 school districts, several children from those districts suing through their parents as next friends, and seven school boards from property-poor districts. Defendants were the Governor, the State Board of Education, the State Treasurer, the Speaker of the State House of Representatives, and the President Pro Tempore of the State Senate. By random assignment, the case fell to Judge Ray Corns, an amiable jurist who had once written a book about school finance.

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\(^{66}\) Letter from Kern Alexander, Professor at the University of Florida, to Frank Hatfield, Superintendent, Bulleitt County (Sept. 3, 1985) (on file with author).
Before I filed the complaint, Judge Combs spoke with several, if not all, of the named defendants to offer them the courtesy of advance notice. I know that he met with Governor Martha Layne Collins for this purpose, for I was with him at the capitol when he ducked into her office quite casually, with no prior appointment, to discuss the matter with her. Afterward, Judge Combs said that Governor Collins had received his news calmly and had said she would be interested in seeing what relief the plaintiffs were seeking. Collins had been a public school teacher in Kentucky and knew about the funding difficulties public education faced. She had tried to promote a school reform package of her own, but the General Assembly had refused to support her in this endeavor.67

The case began with procedural volleys. The defendants claimed that the plaintiffs had no standing, that school districts could not sue their creator, the General Assembly, and that even if they could sue the General Assembly, they could not spend state money to defray the costs of litigation.68 Once past these hurdles, the parties conducted discovery, gathered evidence, and commenced trial of the case without a jury in the Franklin Circuit Court's handsome, wood-paneled courtroom.

The defendants' main themes in Rose were that (1) the poor districts did not perform well because corruption and mismanagement characterized their administrations, and (2) if all districts behaved like central Kentucky's Woodford County, they too would have adequate schools with minimal tax effort.69 These arguments were bound to fail simply as a matter of logic. The defense offered no proof that the poorer districts made significantly more mistakes in handling their funds than did the richer districts. Moreover, Woodford County, though small and rural, was a strikingly incongruous district to use for comparison. Unlike most of the districts in the Council for Better Education, Woodford County contains some of the world's best farmland. Its population has among the highest per capita income in the state, and it consistently ranks among the lowest in unemployment statistics.70 It is very

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67. Despite the state's less than stellar public school system, Collins had persuaded Toyota Motor Manufacturing to build an automobile assembly plant in Scott County, Kentucky. Toyota is now one of the state's leading employers and most supportive corporate citizens.

68. The Rose case was largely a pro bono contribution by Wyatt, Tarrant & Combs with the plaintiffs paying costs and expert witness fees.

69. After Judge Combs issued his May 31, 1988 decision holding to the contrary, the General Assembly dispatched the state auditor to examine the sixty-six districts that were members of the Council for Better Education. Bob Babbage, the state auditor, managed to avoid alienating the districts, most if not all of which ultimately believed he had performed the audits fairly and spared them what could have been a serious act of retaliation by the General Assembly.

70. Woodford County Workforce, at http://www.thinkkentucky.com/edis/cmnty/cwll7/Workforce.htm (last visited Jan. 19, 2005); Woodford County Demographics, at
close to Lexington, where gainful work is more readily available than it is in the more remote counties. Additionally, Woodford County schools are not faced with the costly difficulties poorer schools face, such as transporting students long distances over ruined roads. Even with a minimal tax effort, Woodford County, with its high property values, could raise more funds than the poorer districts could possibly have raised even at a much higher rate.

During the late summer and fall of 1987, Judge Corns presided over the Rose trial. The trial’s general atmosphere was genial and relaxed, as witnesses presented themselves at the Franklin Circuit Court’s library, which for convenience was used more often for this trial than was the courtroom. Of enormous help to the Council for Better Education was the trial testimony of John Brock, the new head of the state’s department of education. Brock explained that the agency, although named as a defendant, had no disagreement with the Council for Better Education’s position. The expert opinions of Dr. Kern Alexander and Dr. Richard Salmon, who demonstrated that funding does make a difference in the quality of public education, were also critical.

G. The Trial Court’s Decision

On May 31, 1988, Judge Ray Corns issued Findings of Fact, Conclusions of Law, and the Judgment, in which he held that education was a fundamental right under Kentucky’s constitution and that the General Assembly had failed to create an “efficient system of common schools throughout the state.” At the heart of the eighteen-page opinion was the following:

Kentucky’s current method of school finance fails to provide all of Kentucky’s Common School students the substantially equal educational opportunities which should be afforded in an efficient system of Common Schools throughout the state. Under the present method of public school finance, students in the property poor Districts are offered an inferior minimum level of educational opportunities, which are below the educational opportunities offered to students in the relatively more affluent districts. Kentucky’s current method of school finance invidiously discriminates against a substantial percentage of the state’s Common School students on the basis of their place of residence. This is an unnatural distinction with no reasonable relationship to the state’s duty to provide all Common School students with a substantially equal, free public education. The evidence reflects that two (2) primary reasons for

this dilemma is [sic] the low value placed on education and a fear that
the cure would kill the doctor.\textsuperscript{72}

On June 7, 1988, Judge Corns issued a supplemental judgment in
which he appointed a Select Committee of five prominent Kentuckians to
provide a report to the court as to what should be done to make Kentucky’s
educational system “an efficient system of common schools” throughout the
state.\textsuperscript{73}

The Supplemental Judgment so upset the General Assembly that
named legislative parties Rose and Blandford, the only two defendants who
appealed the Franklin Circuit Court’s decision, immediately sought a writ of
prohibition in the Kentucky Court of Appeals. They wanted the court of
appeals to order Judge Corns to disband the Select Committee and to forbid
him to cause state money to be spent on the Select Committee’s activities.\textsuperscript{74} At
the hearing, the appellate judges digressed to the issue of how much the Select
Committee had spent. Arnold Guess, sitting in the back of the courtroom
observing the proceedings, volunteered eleven dollars. The Court of Appeals
denied Rose and Blandford’s application for a writ of prohibition,
concluding that that issue could be raised, along with others, when the entire
case was appealed.\textsuperscript{75} Because it was obvious that the Kentucky Supreme
Court would eventually hear the case anyway, the appellants made an unop-
posed motion that Rose and Blandford’s appeal would go straight to the
supreme court for a final decision instead of to the appellate court for an
intermediate decision. The supreme court granted the motion on October 27,
1988.\textsuperscript{76}

H. Kentucky Supreme Court Proceedings and the \textit{Rose} Opinion

In early November 1989, the clerk of the Kentucky Supreme Court
called to say that the briefs in \textit{Rose v. Council for Better Education} would
be due on November 28, 1988, just after Thanksgiving, that the court would
waive its usual fifty page limit for briefs, and that the case would be argued
on December 7, 1988. On June 8, 1989, the Kentucky Supreme Court issued its
startling decision in \textit{Rose}, the key holding of which begins this article.\textsuperscript{77}

\textsuperscript{72} \textit{Id.}
\textsuperscript{73} Supplemental Order at 1, Council for Better Educ., Inc. v. Wilkinson, No. 85-CI-
1759 (Franklin Cir. Ct., June 7, 1988).
\textsuperscript{74} Petition for Writ of Prohibition at 1, Rose v. Corin, No. 88-CA-1391-OA (Franklin
Cir. Ct., July 5, 1988).
\textsuperscript{75} Order Denying Petition for Writ of Prohibition at 1, Rose v. Corin, No. 88-CA-1391
\textsuperscript{76} Order Granting Transfer, Setting Expedited Briefing Times, and Scheduling Oral
In an interview with this author and the Prichard committee’s Executive Director, Bob Sexton, on December 15, 2001, Robert F. Stephens, who had been the Kentucky Supreme Court’s Chief Justice and who had written the Rose opinion, told us that before he became a judge, he had observed the disparities among Kentucky’s public schools firsthand. He had gone to a good school in Northern Kentucky’s affluent Beechwood district but had traveled the state extensively while serving as its Attorney General. He noted that several of his colleagues on the Kentucky Supreme Court bench had come from affluent districts and that only one of them, eastern Kentuckian Joseph Lambert, instructively recognized that disparities among districts unquestionably existed. Stephens pointed out that another member of the majority vote in Rose, Dan Jack Combs, had recently been elected to the Kentucky Supreme Court when Rose was argued. Combs replaced the incumbent, Justice James B. Stephens. Former Chief Justice Stephens felt that Justice Combs was more attuned to the plaintiffs’ position in Rose than Justice James B. Stephens would have been. Former Chief Justice Stephens commented, “Maybe the god of elections was on the side of the Council.”

Stephens said that after the Kentucky Supreme Court’s majority had decided for the plaintiffs, and after he had already written the first draft of the opinion, a bout of insomnia, which he treated with vodka and tonic, made him rethink the case. He went to work before sunrise the next day to rewrite the Rose opinion in broader terms.

The court in the Rose opinion provided three significant conclusions. It concluded that school boards not only can sue on behalf of their districts but also in some instances have a duty to do so, “Perforce a lawsuit to declare an education system unconstitutional falls within the authority, if not the duty, of local school boards to fulfill their statutory responsibilities, no matter who the defendants are.” The court also concluded that the Council for Better Education “beyond cavil” has the legal authority to sue the Kentucky General Assembly. The court then concluded that to bring the General Assembly before the court, it is only necessary to sue its leaders, not each member of the General Assembly.

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78. The Prichard Committee has the original tape of this interview, which was recorded on a cold, bright day in Lexington not long before Justice Stephens died.
79. Justice Stephens told the author and Bob Sexton during the interview that it took him 325 hours to write the Rose opinion and that he wrote the original draft by hand.
80. This same Dan Jack Combs was on the Court of Appeals’ bench when Rose and Blandford tried to get a writ of prohibition against Judge Combs's supplemental judgment appointing an advisory committee.
81. Rose, 790 S.W.2d at 201.
82. Id.
83. Id. at 204–05.
Previous Kentucky state court opinions concerning section 183 of the constitution indicate that the General Assembly is mandated to create and maintain a system of common schools throughout the state. The General Assembly’s carrying out of this duty is vital and critical to the state’s well-being; the system of common schools must be efficient—free and equal educational opportunities for all students. The state must control and administer the system, and the system must be “if not uniform, substantially uniform” with respect to the state as a whole.\textsuperscript{84}

In its opinion, the court listed nine characteristics of an efficient system of common schools: (1) Common schools are established, maintained and funded by the Kentucky General Assembly; (2) Common schools are free to all; (3) Common schools are available to all Kentucky school children; (4) Common schools are substantially uniform throughout the state; (5) Common schools provide equal educational opportunities regardless of a student’s residence or economic circumstances; (6) The General Assembly monitors common schools to assure that they operate without waste, duplication, mismanagement, or political influence; (7) Common schools in Kentucky exist because all children have a constitutional right to an adequate education; (8) The General Assembly is to provide adequate funding to ensure an adequate education for each child in Kentucky; and (9) An efficient system of common schools must, at the very least, provide every child with the following seven capacities:

(a) Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;

(b) Sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;

(c) Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;

(d) Sufficient self-knowledge and knowledge of his or her mental and physical wellness;

(e) Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

(f) 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]

\textsuperscript{84} \textit{Id.} at 208.
(g) Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academic or in the job market[.]

The court stated that an adequate education is one that developed the above-listed capacities.

The supreme court recognized that the burden it had placed upon the General Assembly to recreate Kentucky's schools systems would be difficult and time-consuming. The court therefore withheld Rose's finality until ninety days after the General Assembly's regular session adjourned in 1990.

I. The General Assembly's Decision to Cooperate

In the months following the Kentucky Supreme Court's decision, many who had bitterly opposed the lawsuit for its duration suddenly embraced its result with an almost evangelical zeal. Some even suggested that education reform had long been their idea, their dream, and that they wondered why it had taken the Council so long to get busy.

The media, with their support for Rose and commentaries on the flaws in Kentucky's public school system, were doubtlessly instrumental in effecting these conversions. Between November 12, 1989, and December 15, 1989, the Lexington Herald-Leader published its Cheating Our Children series, a collection of articles about Kentucky's flawed public education system. Subjects included nepotism, political corruption in the schools, intimidation of teachers, harm to the public schools caused by the tax structure and collection practices, and conflicts within school boards. The series was both widely read and controversial, provoking an avalanche of responses from readers. Throughout the litigation, all of the state's major newspapers had been primarily sympathetic to the need for school reform. The Herald-Leader's timely series and others like it helped to educate the public about the issues, as well as to show the General Assembly that its constituents were paying attention.

Moreover, although in the Rose decision the Supreme court had been careful not to blame anyone for Kentucky's dismal history in public education, its directive to the General Assembly was clear:

This decision has not been reached without much thought and consideration. We do not take our responsibilities lightly, and we have decided

85. Id. at 212–13.
86. Id. at 213.
87. Rose, 790 S.W.2d at 216.
this case based on our perception and interpretation of the Kentucky Constitution. We intend no criticism of any person, persons, or institutions. We view this decision as an opportunity for the General Assembly to launch the Commonwealth into a new era of educational opportunity which will ensure a strong economic, cultural and political future.\footnote{\textit{Rose}, 790 S.W.2d at 216.}

Despite its previous grumbling, the General Assembly chose to act, immediately appointing a task force of prominent educators and other experts to study the situation. The task force, larger but in other ways like Judge Corns's Select Committee which Rose and Blandford had so opposed, proposed intelligent and comprehensive reforms. Before the 1990 session closed, the General Assembly approved House Bill 940, also called the Kentucky Education Reform Act (KERA).\footnote{The KERA was passed as House Bill no. 940, General Assembly, Commonwealth of Kentucky, Regular Sess. (1990). The act is codified in KY. REV. STAT. ANN. § 156.000 et. seq (LEXIS Supp. 2004).} Governor Wallace Wilkinson signed the bill into law on April 11, 1990.

\section{J. The Kentucky Education Reform Act}

KERA had some interesting features. Its primary school concept completely replaced grades one through four with an ungraded program. KERA mandated preschool programs for four year olds determined to be at risk of educational failure. It also required family resource centers and youth services centers to be developed near schools in culturally deprived areas, and it increased the age for compulsory school attendance from sixteen to eighteen. The Act required that a Commissioner of Education become the chief state school officer, assuming most of the powers once held by the Superintendent of Public Instruction, and provided for school-based decision-making, whereby a council composed of parents, teachers and administrators, were to adopt the district's policies concerning instructional materials and curriculum. KERA established the Support Education Excellence In Kentucky (SEEK) fund, which guaranteed a certain amount of money per pupil throughout Kentucky as a minimum. It included provisions abolishing nepotism, a widespread problem in Kentucky's districts where the school board was often the largest employer. The Act mandated outcome-based assessments of schools and accountability for students' progress. The Act also required a sophisticated, standardized testing program for students. Additionally, the Act required provisions for substantial funding of technology and for educators' continuing professional development.\footnote{\textit{The Prichard Committee for Academic Excellence, Gaining Ground: Hard Work and High Expectations for Kentucky's Schools} 13 (1999), available at http://www.prichardcommittee.org/pubs/gground.pdf (last visited Jan. 19, 2005). Kentucky's...}
Between 1992 and 1998 Kentucky public school students’ test scores showed strong progress in mathematics at all levels, and tremendous improvement in reading at both elementary and high school levels. State funding for Kentucky’s schools increased to more than sixty percent during that period, and local support jumped almost one-hundred-nine percent. Kentucky began to be viewed as a state with a model infrastructure for public education and a national leader in the field. Author Peter Schrag commented on Kentucky’s public school system in his book *Final Task: The Battle for Adequacy in America’s Schools*:

The very fact that a poor state like Kentucky had accomplished such a broad sweep of reforms in such a short time helped get attention. President George H.W. Bush called it a model for the country; the *New York Times* lauded it as “the most sweeping education package ever conceived by a state legislature”; the increasingly reform-minded business community embraced it; and in state after state education reformers began to speak of Kentucky as the beacon. (KERA, said the Family Foundation, no doubt with unintended irony, “is a religion”).

Kentucky’s General Assembly has received generous credit for the state’s progress in public education:

Forward-looking initiatives enacted by the Kentucky General Assembly have, for the first time in history, made it possible for the state to begin emerging from the dark shadow of low educational attainment and the low economic status it creates. These initiatives represent promises that have been made to all Kentuckians that they can create a better future—for themselves and their children—and that their state will support them in that effort.

The progress made to date has been significant. Kentucky has healthier children who are better prepared to learn when they start school. Improved test scores show that Kentucky students are becoming more competitive with or surpassing students in other states. Kentucky has higher graduation rates and record enrollments in postsecondary institutions. Thousands more Kentuckians are earning their GED or participating in family literacy programs, and Kentucky’s per capita income growth is among the highest in the nation.

students’ scores on the National Assessment For Educational Progress (“NAEP”) test in 1998 showed Kentucky students passing the national average for reading and coming close to it in math and science. *Id.* at 16.

92. See *id.* at 16–17.
93. *Id.* at 21.
94. *SCHRAG, supra* note 28, at 72.
95. *Id.*
96. *THE PARTNERS FOR KENTUCKY’S FUTURE, PROMISE, PROGRESS, AND PRIDE:*
Neither the *Rose* court nor KERA suggested how the General Assembly might continuously monitor the effectiveness of the state’s public schools, and neither created any consequences if the General Assembly failed to do so. School reform, however, is not a static, one-time achievement, but a continuously evolving process. After fourteen years with KERA, disparities in funding and achievement remained.97

In January of 2003, Theodore H. Lavitt, who had assisted with the *Rose* case, filed a lawsuit on behalf of students in the Campbellsville Independent District and in Adair, Casey, Cumberland, Green, Marion, Russell, and Washington Counties.98 This lawsuit asked the court to once again declare Kentucky’s educational funding system unconstitutional and to produce a more equalizing budget for public schools.99

The Council for Better Education, once again represented by Wyatt, Tarrant & Combs, decided not to join in that lawsuit, but on September 17, 2003, it filed its own lawsuit in Franklin Circuit Court, alleging that Kentucky’s public education system is underfunded, that money allocated for public education has actually diminished since KERA was passed, and that Kentucky’s public school system is inadequate overall.100 The Franklin Circuit Court has consolidated the two cases for decision by Judge William Graham, who sat as judge in Division II of the Franklin Circuit Court when Judge Corns was presiding over the *Rose* case in Division I. The plaintiffs have withstood a motion to dismiss and have filed a motion of a scheduling order to be entered. Affluent Ft. Thomas Independent, Beechwood Independent, and Boone Counties have moved for leave to file an amicus curiae brief to the trial court, arguing that KERA’s SEEK formula is unconstitutional because it has eroded funding in the wealthier districts, depends too heavily upon local funding, and penalizes districts that achieve good results.

Judge Corns has retired from the bench but sometimes serves as a substitute judge and also works as a mediator. A significant change in the Council has occurred since it was formed in 1985. When it prosecuted the *Rose* case, the Council had only sixty-six school districts as members. Now, all but twelve of the state’s 176 public school districts are members, including the state’s largest district, Jefferson County. Jefferson County is participating in the current litigation.
II. CONCLUSION

In Kentucky's new school finance litigation, the plaintiffs should realize that the tenor of the times is different. Not only might they fail to see their victory in Rose repeated, but they may also give the current regime the ammunition it needs to undermine KERA. According to Senate President David Williams, the court could declare this system unconstitutional, and it could have to start all over again.101 Starting over would require dealing with a different bunch of legislators than they were dealing with in 1990.102 The newly elected administration in Kentucky's state government has announced that it will commission a study to determine whether there is a positive correlation between a district's available funding per pupil and its students' performance on standardized tests.103 The implication, of course, is that more money will make no difference in the adequacy of the state's schools.

Losing ground after fourteen years of progress with KERA is a genuine danger in the current political climate. As Bob Sexton, Executive Director of the Prichard Committee, noted in a recent article, "Before 1990 poor schools were the enemy, the source of outrage."104 After 1990 the reformers became the enemy, although for a different outraged constituency.105 Having made such a huge step forward in 1990, and sustaining a tremendous amount of public focus upon and support for public education, Kentucky cannot afford to once again take up its tired old dance with two steps back. As the court in Rose noted:

Moreover, most of the witnesses before the trial court testified that not only were the state's educational opportunities unequal and lacking in uniformity, but that all were inadequate. Testimony indicated that not only do the so-called poorer districts provide inadequate education to fulfill the needs of the students but the more affluent districts' efforts are inadequate as well, as judged by accepted national standards.106

102. Id.
103. Id.
The testimony in the current case is likely to be much the same. This does not suggest that nothing has been done, only that more remains to be accomplished. There is no “little red school house” to which to return.