University of Miami Law Review

Volume 78 | Number 1 Article 7

10-31-2023

Inconsistencies in State Court Decisions Regarding Public School Financing Are Violating the Constitutional Rights of Citizens: Why the Nevada Court in Shea v. State Should Have Intervened

Corinne Milnamow
University of Miami School of Law.

Follow this and additional works at: https://repository.law.miami.edu/umlr

 Part of the Constitutional Law Commons, Education Law Commons, Law and Politics Commons, Law and Society Commons, and the Supreme Court of the United States Commons

Recommended Citation

Corinne Milnamow, *Inconsistencies in State Court Decisions Regarding Public School Financing Are Violating the Constitutional Rights of Citizens: Why the Nevada Court in Shea v. State Should Have Intervened*, 78 U. MIA L. Rev. 227 (2023)
Available at: https://repository.law.miami.edu/umlr/vol78/iss1/7

This Note is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact mperezm@law.miami.edu, library@law.miami.edu .

Inconsistencies in State Court Decisions Regarding Public School Financing Are Violating the Constitutional Rights of Citizens: Why the Nevada Court in *Shea v. State* Should Have Intervened

CORINNE MILNAMOW*

In 1973, the Supreme Court decided the landmark case, San Antonio Independent School District v. Rodriguez*, which held there was no fundamental right to education under the United States Constitution. In the years that have followed* Rodriguez, *state courts across the country have been left to decide issues related to public school financing. Many plaintiffs in these cases will argue that education is a fundamental right under their state's constitution and that their respective state's public school financing structure—one that heavily relies on local property taxes—is unconstitutional because of the discrepancies in the quality of education one will receive in a low poverty versus high poverty school district. Unfortunately, courts across the country frequently reach different and inconsistent conclusions regarding whether education is a fundamental right under their state's constitution and whether this issue is justiciable.*

* J.D. Candidate 2024, University of Miami School of Law; M.B.A. 2018, B.S. 2016, State University of New York at Oswego. I want to thank Professor Bernard Perlmutter for his help in developing this Comment. I would also like to thank my friends and family for all their support and guidance throughout law school—specifically my parents, Scott and Cyndi, who have always been my biggest fans.

Recently, the Nevada Supreme Court had to address the issue of adequate public school financing in Shea v. State*. While this court held that the issue of public school financing was a nonjusticiable political question, the highest courts in other states have held the opposite. This Comment argues that the court in* Shea *reached the incorrect conclusion and that the issue of public school financing is justiciable. Additionally, this Comment discusses how, in its holding, the* Shea *court ignored the fundamental right to education that the Nevada Constitution provides.*

INTRODUCTION

Currently, funding for public schools primarily comes from local, state, and federal sources.[1] On average, forty-four percent of a school's budget comes from local sources—primarily local property tax.[2] Unfortunately, as property values vary vastly between high poverty and low poverty areas, the quality of education can also vary greatly from each school district.[3]

The Supreme Court's landmark decision in *Brown v. Board of Education* highlighted the importance of public school education in the United States and paved the way for progress in the civil rights movement.[4] The civil rights movement and President Lyndon B. Johnson's war against poverty allowed for legislation to be passed in hopes of closing the inequality gaps between minorities and low-income individuals.[5] However, after the Supreme Court in *San Antonio Independent School District v. Rodriguez* held that there was

---

[1] Grace Chen, *An Overview of the Funding of Public Schools*, PUB. SCH. REV. (June 22, 2022), https://www.publicschoolreview.com/blog/an-overview-of-the-funding-of-public-schools.

[2] *Id.*

[3] Corey Turner et al., *Why America's Schools Have A Money Problem*, NPR (Apr. 18, 2016, 5:00 AM), https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem.

[4] *See* Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

[5] *See The Civil Rights Movement and Its Connection To Poverty*, GLOB. CITIZEN (Jan. 18, 2015), https://www.globalcitizen.org/en/content/the-civil-rights-movement-and-its-connection-to-po/; *see also* Daphne Kenyon et al., *Public Schools and the Property Tax: A Comparison of Education Funding Models in Three U.S. States*, LINCOLN INST. OF LAND POL'Y (Apr. 12, 2022), https://www.lincolninst.edu/publications/articles/2022-04-public-schools-property-tax-comparison-education-models.

no fundamental right to education, individual states have been left to resolve issues regarding public school financing.[6]

Courts in almost every state have addressed issues relating to public school financing.[7] However, there is a lack of uniformity in these state court decisions.[8] While some courts have held that the education clauses of their state's constitution creates a fundamental right to education,[9] others have held the opposite.[10] Additionally, many states have held that the issue of public school financing is a nonjusticiable political question and that it is the role of the legislature to resolve funding issues.[11]

Until recently, Nevada has been one of only a handful of states that had not been subject to school financing litigation, despite continuously failing to adequately fund their public schools.[12] In fact, according to a recent survey, Nevada ranked last in the country for providing adequate school funding.[13] However, in 2020, a complaint was filed[14] by parents of students in Nevada public schools, alleging that the education clauses of their state's constitution guaranteed the right for citizens to have a sufficient education, which the state was failing to provide.[15] In *Shea v. State*, Nevada's highest court refused to address the issue of school funding, claiming the adequacy of public school financing is a nonjusticiable political question.[16] In doing so, the court in *Shea* ignored the fundamental

---

[6] *See* San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 37, 58 (1973).

[7] *See* Turner et al., *supra* note 3.

[8] *See* Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1264 (Wyo. 1995); *see also* Bonner *ex rel.* Bonner v. Daniels, 907 N.E.2d 516, 518 (Ind. 2009).

[9] *Campbell*, 907 P.2d at 1257.

[10] *See Bonner*, 907 N.E.2d at 522.

[11] Shea v. State, 510 P.3d 148, 150 (Nev. 2022).

[12] *See* K. Nicholas Portz, Note, *Education Reform Litigation in Nevada: Is the Nevada Legislature Neglecting Its Constitutional Duties?*, 11 NEV. L.J. 849, 872 (2011).

[13] Kim Passoth, *Nevada gets failing grade for public school funding*, FOX 5 VEGAS (Dec. 15, 2022, 2:05 AM), https://www.fox5vegas.com/2022/12/15/nevada-gets-failing-grade-public-school-funding/.

[14] *See generally* Complaint for Declaratory and Injunctive Relief, Shea v. State, 510 P.3d 148 (Nev. 2022) (No. 82118) [hereinafter Complaint].

[15] *Shea*, 510 P.3d at 150.

[16] *Id.*

right to a basic education that the Nevada State Constitution provides.[17]

Today, there is a dire need for consistency in state court decisions regarding public school financing as there are still vast differences in the quality of education a student will receive solely based on the zip code in which they reside.[18] Though the Court in *Rodriguez* held that there was no fundamental right to education,[19] it might be time for plaintiffs to restructure their arguments to prevail in federal court. This was made evident by the more recent decision in *Gary B. v. Whitmer*, where a Sixth Circuit panel held that "the Constitution provides a fundamental right to a basic minimum education."[20] While this decision was ultimately vacated by the full court,[21] had the court recognized a fundamental right to a basic minimum education implied in the Constitution, there would not be vastly different conclusions reached by various state courts surrounding public school financing issues.

Part I of this Comment discusses the history of public school financing litigation, starting with the Supreme Court's decision in *Brown v. Board of Education* and the civil rights movement, and then discusses the Court's holding in *San Antonio Independent School District v. Rodriguez*.[22] Part II examines the different conclusions many state courts reach while deciding public school financing cases.[23] Part III discusses the recently decided Nevada Supreme Court case, *Shea v. State*, where that court, like many others, decided the issue of public school financing was a nonjusticiable political question.[24] Lastly, Part IV analyzes the court's holding in

---

[17] *See id.* at 156 (Cadish, J., dissenting).

[18] *See* Turner et al., *supra* note 3.

[19] *See* San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 37 (1973).

[20] Gary B. v. Whitmer, 957 F.3d 616, 642 (6th Cir. 2020).

[21] David Dorsey, *Education is still (for now) not a fundamental right under the U.S. Constitution*, KAN. POL'Y INST. (Sept. 17, 2020), https://kansaspolicy.org/education-is-still-for-now-not-a-fundamental-right-under-the-u-s-constitution.

[22] *See* discussion *infra* Part I.

[23] *See* discussion *infra* Part II.

[24] *See* discussion *infra* Part III.

Shea, and discusses why the court failed to recognize the constitutional rights of Nevada's citizens by concluding this issue was a nonjusticiable political question.[25]

I. THE HISTORY OF PUBLIC SCHOOL FINANCING LITIGATION

A. *The Effect of* Brown v. Board of Education

The Supreme Court's holding in *Brown v. Board of Education* highlighted the significance of quality education in the United States.[26] For years, public schools had been racially segregated, but the Court in *Brown* held that "where the state has undertaken to provide [education], [it] is a right which must be made available to all on equal terms."[27] The Court's holding declared racial segregation in public schools unconstitutional,[28] which paved the way for progress in the civil rights movement.

In 1964, President Lyndon B. Johnson signed the Civil Rights Act into law, which prohibited "discrimination on the basis of race, color, religion, sex or national origin."[29] In addition, Congress passed further legislation, like Title I of the Elementary and Secondary Education Act, to provide federal funds to public schools in low-income communities so that all children had access to a quality education.[30] Unfortunately, despite efforts to reduce poverty and promote equality, the discrepancies in the quality of education between high poverty and low poverty schools remained.[31] This was vastly the result of a public school funding structure that relied heavily on local property taxes.[32] In the 1970s, "the relative size of local tax bases . . . [that led] to differences in the level and quality of public

---

[25] *See* discussion *infra* Part IV.

[26] *See* Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

[27] *Id.*

[28] *Id.* at 495.

[29] *Legal Highlight: The Civil Rights Act of 1964*, U.S. DEP'T OF LAB., https://www.dol.gov/agencies/oasam/civil-rights-center/statutes/civil-rights-act-of-1964 (last visited Dec. 31, 2022).

[30] *See About Title I*, ESEA NETWORK, https://www.eseanetwork.org/about/titlei (last visited Dec. 31, 2022).

[31] *See* Kenyon et al., *supra* note 5.

[32] *See id.*

services ignited a national debate about the importance of equal access to educational opportunity."[33]

B. *No Fundamental Right to Education*

In 1973, families in Texas "brought a class action on behalf of schoolchildren throughout the [s]tate who [were] members of minority groups or who [were] poor and reside[d] in school districts [that had] a low property tax base."[34] The lawsuit alleged that under the Equal Protection Clause of the Fourteenth Amendment, property tax revenue-based funding for public schools was unconstitutional because students in high poverty school districts did not have the same quality of education as students in low poverty school districts.[35] These high poverty school districts lacked books, certified teachers, and some schools had dangerous learning conditions.[36]

The district court held that under the Equal Protection Clause of the Fourteenth Amendment, the Texas financing system had violated the plaintiffs' constitutional rights.[37] The defendants argued that the court should apply a rational basis test, and the court stated that when reviewing state economic regulation, a rational basis test is typically applied.[38] However, the court reasoned that more was required than mere rationality because the Texas school finance system affected the plaintiffs' fundamental interest, "or which is based upon wealth."[39] The court cited several cases on public school financing that supported its reasoning.[40] Further, the court cited *Brown v. Board of Education*,[41] stating that "[b]ecause of the grave

---

[33] *Id.*

[34] *See* San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 5 (1973).

[35] *See id.* at 4–6, 19.

[36] *See* Turner et al., *supra* note 3.

[37] *Rodriguez II*, 411 U.S. at 6.

[38] Rodriguez v. San Antonio Indep. Sch. Dist. (Rodriguez I), 337 F. Supp. 280, 282 (W.D. Tex. 1971).

[39] *Id.*

[40] *See id.* In addition, the court stated that "[t]hese two characteristics of state classification, in the financing of public education, were recognized in *Hargrave v. McKinney*[,] . . . *Hargrave v. Kirk*[,] . . . [and] *Askew v. Hargrave* . . . ." *Id.*

[41] The court cited *Brown* to further justify applying a more arduous test than a rational basis test, reasoning that "[f]urther justification for the very demanding test which this Court applies to defendants' classification is the very great signif-

significance of education both to the individual and to our society, the defendants must demonstrate a compelling state interest that is promoted by the current classifications created under the financing scheme."[42]

In addition, the defendants argued that public school financing was a nonjusticiable political question,[43] but the court rejected this argument.[44] The court distinguished the case at issue from other sister court decisions because the plaintiffs, here, were not arguing that educational spending be equal for every child; instead, they argued that "fiscal neutrality" should be applied.[45] Fiscal neutrality "requires that the quality of public education may not be a function of wealth, other than the wealth of the state as a whole."[46]

The court stated that the defendants could not demonstrate compelling state interests—or even a rational basis—for their classifications which were based upon wealth.[47] The court found in favor of the plaintiffs stating that:

> Having determined that the current system of financing public education in Texas discriminates on the basis of wealth by permitting citizens of affluent districts to provide a higher quality education for their children, while paying lower taxes, this Court concludes, as a matter of law, that the plaintiffs have been denied equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Article 7, § 3 of the Texas Constitution and the sections of the Education Code

---

icance of education to the individual. The crucial nature of education for the citizenry lies at the heart of almost twenty years of school desegregation litigation." *Id.* at 283 (quoting Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954)).

[42] *Id.*

[43] Defendants argued that similar to *McInnis v. Ogilive*, the court lacked judicially manageable standards to resolve this complex issue. *Id.* at 283. However, the court rejected this argument, stating that the "[p]lantiffs in *McInnis* sought to require that educational expenditures in Illinois be made solely on the basis of the 'pupils' educational needs.'" *Id.* Here, plaintiffs were not demanding that "educational expenditures be equal for each child." *Id.* at 283–84.

[44] *See Rodriguez I*, 337 F. Supp. at 283.

[45] *Id.* at 283–84.

[46] *Id.* at 284.

[47] *Id.*

> relating to the financing of education, including the Minimum Foundation Program.[48]

The defendants appealed the decision, and on appeal, the Supreme Court reversed the lower court's holding.[49] The Court rejected the district court's conclusion that wealth was a suspect classification under the facts in this case and the conclusion that there is a fundamental right to education.[50] Based on prior precedent, in order for wealth to be a suspect classification, a group of individuals have "shared two distinguishing characteristics: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit."[51] The Court stated that the appellees, in this case, did not demonstrate either of the criteria for wealth as a suspect classification because they did not show that the system specifically disadvantages a class of people living below the poverty line.[52] In addition, the appellees failed to show that due to a lack of resources, they suffered a complete deprivation of the benefit sought.[53]

Further, the Court examined the district court's conclusion that education is a fundamental right that would require a strict scrutiny analysis.[54] The Court again rejected the lower court's conclusion that education was a fundamental right, stating that education is not a right explicitly stated in the Constitution, nor is there evidence that education is an implicit right protected under the Constitution.[55] Therefore, the constitutional challenge brought by the appellees should not be reviewed under a strict scrutiny standard.[56] However,

---

[48] *Id.* at 285.

[49] *See* San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 6 (1973).

[50] *See id.* at 18, 22.

[51] *Id.* at 20.

[52] *Id.* at 22–23.

[53] *Id.* at 23. "For these two reasons—the absence of any evidence that the financing system discriminates against any definable category of 'poor' people or that it results in the absolute deprivation of education—the disadvantaged class is not susceptible of identification in traditional terms." *Id.* at 25.

[54] *See id.* at 29–31.

[55] *See Rodriguez II*, 411 U.S. at 35.

[56] *See id.* at 37–39.

the Court stated that its decision would not solely rest "on the inappropriateness of the strict-scrutiny test[,]" as the Equal Protection Clause supports a rational basis review as well.[57] Nonetheless, the Court concluded that it lacked the knowledge and expertise to resolve local taxation and education policy issues, and the Texas school financing system passed a rational basis analysis.[58]

In summary, the Court stated that there was an obvious need for reform in school financing, but that this issue should be left to the legislative branches of individual states to resolve.[59] In this five-to-four decision, several justices dissented.[60] In Justice Brennan's dissent, he expressed that the Texas funding system lacked a rational basis.[61] He also disagreed with the majority that a fundamental right is only one that is either explicitly stated or implied in the Constitution.[62] Justice Brennan expressed that in his opinion, education could be linked to the rights guaranteed under the First Amendment, thereby making education a fundamental right that would require the Texas funding scheme to be reviewed under a strict scrutiny analysis.[63] In Justice Brennan's conclusion, he stated that under strict scrutiny review, the Texas funding scheme would be unconstitutional.[64]

Additionally, Justice White dissented and argued that the Texas financing system lacked a rational basis, reasoning that Texas' reliance on local property tax to fund their schools discriminated against those who resided in school districts with a low property tax base.[65] Further, Justice Marshall dissented and argued that the Texas funding scheme should be reviewed under a strict scrutiny standard and

---

[57] *Id.* at 40.

[58] *Id*. at 41–42, 55.

[59] *Id.* at 58.

[60] *See* Turner et al., *supra* note 3.

[61] *Rodriguez II*, 411 U.S. at 62 (Brennan, J., dissenting).

[62] *Id.* ("As my Brother [Thurgood] Marshall convincingly demonstrates, our prior cases stand for the proposition that 'fundamentality' is, in large measure, a function of the right's importance in terms of the effectuation of those rights which are in fact constitutionally guaranteed.").

[63] *Id.* at 63.

[64] *Id.*

[65] *Id.* at 64–69 (White, J., dissenting).

emphasized the "historic commitment to equality of educational opportunity."[66] Justice Marshall went on to say:

> The Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside. The majority's decision represents an abrupt departure from the mainstream of recent state and federal court decisions concerning the unconstitutionality of state educational financing schemes dependent upon taxable local wealth. More unfortunately, though, the majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens. The Court does this despite the absence of any substantial justification for a scheme which arbitrarily channels educational resources in accordance with the fortuity of the amount of taxable wealth within each district.[67]

More recently, in *Gary B. v. Snyder*, plaintiffs in federal court once again used the Fourteenth Amendment to allege that Detroit had violated their students' constitutional right to a minimally adequate education.[68] However, this case differed from *Rodriguez*, as plaintiffs were stating that they had a fundamental right of access to literacy,[69] whereas in *Rodriguez*, plaintiffs alleged that the constitutionality of Texas' funding scheme denied them of the fundamental right to education.[70]

However, the district court rejected the plaintiffs' argument and granted the defendants' motion to dismiss.[71] The court stated that there is no fundamental right to a minimally adequate education, and

---

66 *See id.* at 71, 99 (Marshall, J., dissenting).
67 *Rodriguez II*, 411 U.S. at 70–71 (Marshall, J., dissenting).
68 Gary B. v. Snyder, 329 F. Supp. 3d 344, 348 (E.D. Mich. 2018).
69 *See id.* at 363–65.
70 *See id.* at 365.
71 *Id.* at 366–69.

therefore, it could not conclude that access to literacy was a fundamental right.[72] Because the plaintiffs failed to assert that the defendants violated a fundamental right, the court reviewed the defendants' actions under a rational basis test.[73] The court held that the plaintiffs had not "plausibly pled the irrationality" of the defendants' decisions.[74] As a result, the court held that the plaintiffs were unable to state an equal protection claim.[75]

On appeal, the Sixth Circuit distinguished the case at issue from prior Supreme Court precedent and ruled in favor of the plaintiffs.[76] The majority held that the plaintiffs had "been denied a basic minimum education, and thus have been deprived of access to literacy."[77] The Supreme Court has never decided whether there is a fundamental right to a basic education, but the court explained that "[a]fter employing the reasoning of these Supreme Court cases and applying the Court's substantive due process framework, we recognize that the Constitution provides a fundamental right to a basic minimum education."[78]

However, while the appeal was in progress, Michigan had begun settlement efforts with the plaintiffs in the suit.[79] Because of the effect that the appellate court's decision could have had on Supreme Court precedent, the case was voted to be reheard by the full Circuit Court of Appeals.[80] The full Circuit Court of Appeals vacated the decision, and after the plaintiffs reached a settlement agreement, they filed a motion to dismiss the case, which was granted.[81]

While *Gary B.* could have allowed plaintiffs with future school funding suits to prevail in federal court, the Court's decision in *Rodriguez* meant that inequalities in public school financing would be

---

72 *Id.* at 367.
73 *Id.* at 368.
74 *Gary B*, 329 F. Supp. 3d at 368.
75 *Id.* at 368–69.
76 Dorsey, *supra* note 21.
77 Gary B. v. Whitmer, 957 F.3d 616, 621 (6th Cir. 2020).
78 *Id.* at 642.
79 Dorsey, *supra* note 21.
80 *Id.*
81 *Id.*

left to the individual states.[82] In the years since this decision, "dozens of lawsuits have been filed in state courts, arguing that their funding systems are either unfair, inadequate[,] or both."[83] However, different state courts have reached different—and many times inconsistent—conclusions regarding the constitutionality of their state's public school financing structure.[84]

II. THE DIFFERENCES IN THE CONCLUSIONS REACHED BY VARIOUS STATE COURTS SURROUNDING PUBLIC SCHOOL FINANCING ISSUES

Almost every state in the country has had the adequacy of their public school funding challenged in court since the Supreme Court's decision in *Rodriguez*.[85] Prior to the *Rodriguez* decision, many plaintiffs filed "equity" suits—claiming that under the Equal Protection Clause of the United States Constitution, every student is entitled to an equal education.[86] After the *Rodriguez* decision, many plaintiffs filed lawsuits under an equity theory, but more narrowly focused on their state constitutions' equality guarantee clauses.[87] In more recent years, the focus for plaintiffs has been filing lawsuits under an "adequacy" theory.[88] Under this theory, plaintiffs have argued that their states' public school financing systems are inadequate, which violate the education clauses of their state constitutions.[89]

In public school financing suits, defendants often argue that the issue of public school financing is a nonjusticiable political question that should be left to the legislative branch to resolve.[90] While some

---

[82] *See* San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 58 (1973).

[83] Turner et al., *supra* note 3.

[84] *See* Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1264 (Wyo. 1995); *see also* Bonner *ex rel.* Bonner v. Daniels, 907 N.E.2d 516, 522 (Ind. 2009).

[85] Turner et al., *supra* note 3.

[86] Carlee Poston Escue et al., *Some Perspectives on Recent School Finance Litigation*, 268 EDUC. L. REP. 601, 602 (2011).

[87] *Id.*

[88] *Id.* at 603.

[89] *Id.*

[90] *See, e.g.*, Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1264 (Wyo. 1995).

state courts agree, others do not and have held that education is a right protected by their state's constitution.[91] However, some state courts have held the opposite, stating that their state constitution does not provide students with a constitutional right to an adequate public education.[92]

A. *Public School Financing Held Unconstitutional*

1. *CAMPBELL COUNTY SCHOOL DISTRICT V. STATE*

In 1992, several school districts in Wyoming challenged the constitutionality of their state's public school financing structure in *Campbell County School District v. State*.[93] Under the education clause of Wyoming's Constitution, the legislature had the duty to provide "a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade . . . and the means of the state allow, and such other institutions as may be necessary."[94]

The district court found three out of four elements of the defendants' funding structure unconstitutional.[95] On appeal, the court reviewed three issues: (1) whether this issue was a nonjusticiable political question; (2) the appropriate standard of review; and (3) whether the challenged components of Wyoming's public school financing structure were constitutional.[96]

In determining whether this issue was a nonjusticiable political question, the court stated that defendants will typically argue that "the judiciary's determination of the nature and extent of the constitutional right to a quality education violates the separation of powers doctrine."[97] The court disagreed with this argument and opined that the judiciary is tasked with the job of interpreting the language of statutes imposed by the legislature.[98]

---

[91] *See id.* at 1279–80.

[92] *See, e.g.*, Bonner *ex rel.* Bonner v. Daniels, 907 N.E.2d 516, 522 (Ind. 2009).

[93] *Campbell*, 907 P.2d at 1243.

[94] WYO. CONST. art. 7, § 1.

[95] *Campbell*, 907 P.2d at 1244.

[96] *Id.*

[97] *Id.* at 1264.

[98] *Id.* at 1265. The court cited a Kentucky Supreme Court case to support its argument, which stated:

In examining the appropriate standard of review, the court analyzed whether this issue should be reviewed under a rational basis test or strict scrutiny.[99] Defendants argued that the language in Wyoming's Constitution supported a rational basis analysis; however, the court disagreed.[100] The court stated that its previous case, *Washakie County School District No. One v. Herschler*, taught the court that it "will review any legislative school financing reform with strict scrutiny to determine whether the evil of financial disparity . . . has been exorcized from the Wyoming educational system."[101] While the primary issue in *Washakie* was wealth-based discrepancies, the court held that it would extend the *Washakie* decision to other causes of inconsistencies—not just wealth-based discrepancies.[102]

Lastly, the court reviewed the constitutionality of Wyoming's public school financing structure.[103] The court stated that Wyoming's Constitution has nearly an entire article specifically discussing education, which shows the framers' intent of how they viewed the importance of education.[104] After reviewing the elements of Wyoming's school funding structure, the court determined that it was unconstitutional.[105] The court reasoned that when "considering all

---

> The judiciary has the ultimate power, and the duty, to apply, interpret, define, construe all words, phrases, sentences and sections of the Kentucky Constitution as necessitated by the controversies before it. It is *solely* the function of the judiciary to so do. This duty must be exercised even when such action serves as a check on the activities of another branch of government or when the court's view of the constitution is contrary to that of other branches, or even that of the public.

Id. at 1264–65 (citing Rose v. Council For Better Educ., Inc., 790 S.W.2d 186, 209 (Ky. 1989)).

[99] *Id.* at 1265.

[100] *Id.* at 1266. Defendants argued that in school financing cases, the standard of review should be "whether the legislature has provided a 'complete and uniform . . . thorough and efficient system of public schools.'" *Id.*

[101] *Campbell*, 907 P.2d at 1266 (Wyo. 1995) (citing Washakie Cnty. Sch. Dist. No. One v. Herschler, 606 P.2d 310, 335 (Wyo. 1980)).

[102] *Id.*

[103] *Id.* at 1270.

[104] *Id.*

[105] *Id.* at 1279–80.

of these various factors, the legislature must first design the best educational system by identifying the 'proper' educational package each Wyoming student is entitled to have[,]" regardless of where a student lives.[106] The court stated that the legislature would need time to reform the school funding structure, but that it must do so in order to be constitutional.[107]

2. *ABBEVILLE COUNTY SCHOOL DISTRICT V. STATE*

Similarly, in South Carolina, parents, students, and taxpayers challenged the constitutionality of South Carolina's public school funding structure in *Abbeville County School District v. State*.[108] On appeal, the South Carolina Supreme Court addressed four issues: (1) if the case was moot; (2) if South Carolina's education system provided plaintiffs with the opportunity to receive a minimally adequate education; (3) if this was an issue the court could resolve; and (4) if the court could issue a remedy.[109]

The court first addressed the issue of mootness.[110] The defendants argued that because of changes made to education funding since oral argument, the case was now moot.[111] However, the court disagreed, stating that regardless of changes the defendants have made, these changes did not significantly change the "baseline funding mechanisms."[112] As a result, the plaintiffs "may validly argue that the overall funding scheme continues to disadvantage them in the same fundamental way,"[113] and therefore, the case at issue was not moot.[114]

Next, in determining whether the defendants provided the plaintiffs with a "minimally adequate education" as required by the South Carolina Constitution, the court addressed whether this issue was a nonjusticiable political question.[115] "Article XI, [S]ection 3 of the

---

106 *Id.* at 1279.
107 *Campbell*, 907 P.2d at 1280.
108 *See* Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 624–25 (S.C. 2014).
109 *Id.* at 628.
110 *Id.* at 629.
111 *Id.*
112 *Id.* at 631.
113 *Id.* (citing Northeastern Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville, 508 U.S. 656, 662 (1993)).
114 *Abbeville*, 410 S.C. at 631.
115 *Id.* at 631–32.

South Carolina Constitution mandates the General Assembly to 'provide for the maintenance and support of a system of free public schools open to all children in the state.'"[116] The court stated that "[n]othing in the text of the article precludes the judiciary from exercising its authority over the article's provisions, or intervening when the [d]efendants' laudable educational goals fall short of their constitutional duty."[117]

The court concluded that the issue of determining whether the plaintiffs had a minimally adequate education was an appropriate question for the judiciary to address.[118] However, to answer this question, the court compiled the evidence presented at the trial court into two groups: (1) inputs, or "the instrumentalities of learning and resources provided to the [p]laintiff [d]istricts, including money, curriculum, teachers, and programming;"[119] and (2) outputs, or "the success of students within the [p]laintiff [d]istricts as demonstrated primarily by test scores and graduation rates."[120]

After an extensive review of these factors, the court held that the defendants had denied the plaintiffs of a minimally adequate education.[121] However, the court explained that while it can determine that the defendants deprived the plaintiffs of a constitutionally protected minimally adequate education, the court cannot suggest solutions—which is an issue for the General Assembly to resolve.[122] The court found in favor of the plaintiffs, stating that the "[d]efendants and the [p]laintiff [d]istricts must identify the problems facing students in the [p]laintiff [d]istricts, and can solve those problems through cooperatively designing a strategy to address critical concerns and cure the constitutional deficiency evident in this case."[123]

---

116 *Id.* at 632–33.
117 *Id.* at 633.
118 *Id.* at 633–34.
119 *Id.* at 634.
120 *Abbeville*, 410 S.C. at 634.
121 *Id.* at 651.
122 *Id.* at 653.
123 *Id.* at 662.

B. *Public School Financing Held a Nonjusticiable Political Question*

1. *WOONSOCKET SCHOOL COMMITTEE V. CHAFEE*

In *Woonsocket School Committee v. Chafee*, the plaintiffs alleged that Rhode Island's public school funding formula was unconstitutional because it violated the standards provided in Article 12, Section 1 of Rhode Island's Constitution, the education clause.[124] The education clause provided that:

> The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.[125]

In *Chafee*, the court examined a previous decision, *City of Pawtucket v. Sundlun*, where it "addressed the issue of whether the General Assembly is constitutionally obligated to establish a system of public schools that provides the opportunity for an equitable, adequate education for all children in the state."[126] However, in *Sundlun*, the court cited to a provision of the Rhode Island Constitution, which had since been repealed.[127] As a result, the plaintiffs argued that the court "now ha[d] 'the Constitutional responsibility to review legislative action more closely.'"[128] The court, however, disagreed with the plaintiffs' contention and held that regardless of the repealed provision, the court agreed with its previous decision in

---

[124] *See* Woonsocket Sch. Comm. v. Chafee, 89 A.3d 778, 781–82 (R.I. 2014).

[125] R.I. CONST. art. 12, § 1.

[126] *Chafee*, 89 A.3d at 789.

[127] *Id.* The repealed provision stated "[t]he general assembly shall continue to exercise the powers it has heretofore exercised, unless prohibited in this Constitution." *Id.* at 789–90 (citing City of Pawtucket v. Sundlun, 662 A.2d 40, 50 (R.I. 1995)).

[128] *Id.* at 790.

Sundlun that the duty to promote public schools remains with the General Assembly.[129]

Further, the court stated that the "plaintiffs have asked us to declare that the legal framework established by the General Assembly for regulating and funding public education creates unattainable mandates and, therefore, fails to 'promote' public schools."[130] However, the court concluded that doing so would require the court to interfere with the judgment of the legislative branch.[131] The court declined, stating that interfering with the role of the General Assembly would violate the separation of powers doctrine.[132]

2. *CITIZENS FOR STRONG SCHOOLS, INC. V. FLORIDA STATE BOARD OF EDUCATION*

Similarly, the plaintiffs in *Citizens for Strong Schools, Inc. v. Florida State Board of Education* attempted to render Florida's K–12 public education system unconstitutional.[133] The plaintiffs argued that Florida had not complied with Article IX, Section 1(a) of its Constitution,[134] which stated:

> The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . . .[135]

---

129 *See id.* at 792.

130 *Id.* at 793.

131 *Id.*

132 *See Chafee*, 89 A.3d at 793.

133 Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ., 262 So. 3d 127, 128 (Fla. 2019).

134 *Id.*

135 *Id.* at 129 (citing FLA. CONST. art. IX, § 1(a)).

The plaintiffs contended that Florida breached its "paramount duty to make adequate provision for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education."[136]

This provision of the Florida Constitution was added in 1998, mainly in response to *Coalition for Adequacy & Fairness in School Funding, Inc. v. Chiles*, where the plaintiffs asked the court to declare adequate education a fundamental right.[137] In *Chiles*, the plaintiffs "focused on purported inadequacies in funding and disparities relating to certain subgroups of students, including '[e]conomically deprived students,' disabled students, and '[s]tudents in property-poor counties.'"[138] At the trial court level, the court dismissed with prejudice—which the Florida Supreme Court upheld—stating that it lacked judicially manageable standards to intervene.[139]

The court in *Citizens* stressed that the case at issue had many similarities to *Coalition*.[140] The plaintiffs' complaint in *Citizens* cited the 1998 amendment to Article IX, Section 1 to emphasize that students have the right to a "high quality" education—which in their opinion, Florida had failed to provide.[141] The defendants moved to dismiss the complaint, arguing that this issue was a nonjusticiable political question.[142] The trial court denied the defendants' motion,[143] stating that *Coalition* was "no longer binding authority[,]" as the decision was made prior to the amendment of Article IX, Section 1.[144]

---

[136] *Id.*

[137] *Id.* (citing Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 402 (Fla. 1996)).

[138] *Id.* (citing *Chiles*, 680 So. 2d at 402).

[139] *See Citizens*, 262 So. 3d at 129 (citing *Chiles*, 680 So. 2d at 402, 407).

[140] *Id.*

[141] *Id.* at 130.

[142] *Id.*

[143] After the trial court denied the defendants' motion, the defendants petitioned a writ of prohibition to the first district, arguing that the trial court lacked jurisdiction over the issue. *Id.* at 130–31 (citing Haridopolos v. Citizens for Strong Schs., Inc., 81 So. 3d 465, 470 (Fla. Dist. Ct. App. 2011). The appellate court denied the defendants' petition but "noted that [r]espondents' arguments regarding the political question doctrine would remain available on appeal." *Id.* at 131 (citing *Haridopolos*, 81 So. 3d at 471).

[144] *Id.* at 130. The previous version of Article IX, Section 1, stated that "[a]dequate provision shall be made by law for a uniform, efficient, safe, secure,

After a bench trial in 2016, the trial court entered a final judgment against the plaintiffs.[145] The court reasoned that despite the 1998 provision, the additional words "high quality" and "efficient" still do not provide the judiciary with manageable standards to resolve this issue.[146] The plaintiffs appealed, and on appeal, the appellate court affirmed the lower court's holding, following the trial court's reasoning that the plaintiffs' issue was a nonjusticiable political question.[147] However, the appellate court did recognize "'that courts in other states have sometimes purported to define' similar concepts in their education articles," but the appellate court "instead agreed with other courts that have declined to impose upon the legislature the court's view of 'adequacy, efficiency, and quality.'"[148]

On appeal, the issue for the court to address was whether it had a judicially "manageable standard for assessing . . . [if] the [s]tate has made 'adequate provision' for an 'efficient' and 'high quality' system of education 'that allows students to obtain a high quality education' under [A]rticle IX, [S]ection 1(a) of the Florida Constitution."[149] The court explained that despite the 1998 amendment, this case had many similarities to the plaintiffs' "adequacy" argument in *Coalition*.[150] The court held that although "high quality" was added to Article IX, Section 1(a), those words do not provide the court with a standard to determine the adequacy of Florida's public school education.[151]

The court stated the plaintiffs' main argument was "that the constitutional test 'for measuring whether the [s]tate is providing an opportunity for a high quality education' should be based solely on the assessment results that measure whether students have learned the core content standards established by the [l]egislature."[152] The court

---

and high quality system of free public schools . . . ." *Id.* at 129 (citing FLA. CONST. art. IX, § 1).

145 *Citizens*, 262 So. 3d at 132.

146 *Id.*

147 *Id.* at 134.

148 *Id.* (quoting Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ., 232 So. 3d 1163, 1172 (Fla. Dist. Ct. App. 2017)).

149 *Id.* at 135.

150 *See id.* at 140–41.

151 *See Citizens*, 262 So. 3d at 141 (citing Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 408 (Fla. 1996)).

152 *Id.*

rejected this argument and reasoned that the plaintiffs did not ask the court to define what "high quality" meant.[153] Instead, the court stated that the plaintiffs, here, asserted "that the [l]egislature itself has already defined 'high quality' and how to measure it."[154] Thus, the plaintiffs "allege that the educational system is constitutionally inadequate because the 'assessment results show low achievement and wide disparities,' particularly 'for children experiencing poverty or attending school in poorer school districts.'"[155] According to the court, nothing in Article IX, Section 1(a) of Florida's Constitution supported the plaintiffs' argument.[156] The court further reasoned that even if it determined that this issue was justiciable, the plaintiffs would not prevail on their claim, as the trial court concluded that the plaintiffs did not show that there was a causal relationship between low student performance and that additional funding would improve student performance.[157]

In a dissenting opinion, Justice Pariente stated that the majority failed to undertake its judicial duty when it refused to interpret the words "uniform," "efficient," and "high quality," in Article IX, Section 1(a) of Florida's Constitution.[158] Justice Pariente also argued that Florida had failed to uphold its constitutional duty to provide students with an adequate education, and that the majority failed to allow the plaintiffs to seek an appropriate remedy in holding this issue presented a nonjusticiable political question.[159]

In an additional dissenting opinion, Justice Lewis argued that the majority reached an incorrect conclusion in determining that the plaintiffs' issue was nonjusticiable.[160] Justice Lewis stated that it is the court's responsibility to interpret the meaning of Article IX, Section 1(a), and that a high quality education is a right protected by Florida's Constitution.[161] Justice Lewis explained "that courts regularly define and interpret broad, principled constitutional language on politically sensitive issues, regardless of appropriations

---

153 *Id.*
154 *Id.*
155 *Id.*
156 *Id.* at 142.
157 *Citizens*, 262 So. 3d at 143.
158 *Id.* at 145 (Pariente, J., dissenting).
159 *See id.* at 146.
160 *Id.* at 157 (Lewis, J., dissenting).
161 *See id.*

and policy concerns, even in the absence of bright-line mathematically precise standards."[162]

C. *Public School Financing Structure Held Constitutional*

1. *BONNER* EX REL. *BONNER V. DANIELS*

In *Bonner* ex rel. *Bonner v. Daniels*, the plaintiffs—students of Indiana public schools—alleged "that the Indiana Constitution imposes an enforceable duty on state government to provide a standard of quality education to public school students and that such duty is not being satisfied."[163] The education clause of the Indiana Constitution stated that:

> Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; *it shall be the duty of the General Assembly to* encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and *to provide, by law, for a general and uniform system of Common Schools,* wherein tuition shall be without charge, and equally open to all.[164]

The plaintiffs, here, argued that the education clause inflicts a duty on the government to provide students in Indiana public schools with a satisfactory education, and that Indiana's public school financing structure denied students of their constitutional right to achieve this standard.[165]

The court stated that there are no words in the education clause that suggests there is a standard for education quality.[166] Additionally, the court examined the framers' intent surrounding the creation of the education clause to affirm its conclusion that the "Indiana Constitution does not impose upon government an affirmative duty

---

[162] *Id.* at 161.
[163] Bonner *ex rel.* Bonner v. Daniels, 907 N.E.2d 516, 518 (Ind. 2009).
[164] *Id.* at 520 (quoting IND. CONST. art. 8, § 1).
[165] *Id.*
[166] *Id*. at 521.

to achieve any particular standard of resulting educational quality."[167] In summary, the court concluded that there was no constitutional right to receive an adequate education imposed by Indiana's Constitution, and the court affirmed the trial court's decision to grant the defendants' motion to dismiss.[168]

III. *SHEA V. STATE*

Public schools in Nevada are among the most poorly funded in the country.[169] The state ranks poorly in funding levels, funding distribution, and funding efforts.[170] Funding distribution is "[a] central feature of fair school funding [and its responsibility] is providing higher levels of funding to districts serving large concentrations of students from households with incomes below the federal poverty line."[171] Funding distribution is particularly important because it measures the differences in funding between high poverty and low poverty school districts.[172] According to a recent study, Nevada ranks last in the nation for funding distribution.[173]

In a 2020 study, researchers found that low poverty school districts in Nevada received $12,898 in per-pupil funding, while high poverty school districts received $9,382.[174] This meant that high poverty school districts in Nevada received twenty-seven percent less per-pupil funds than low poverty school districts.[175] Despite these significant discrepancies, for years, Nevada was one of only a few states that had not been subject to school financing litigation.[176]

---

167 *Id.* at 522.

168 *Id*. at 522–23.

169 Ana Gutierres, *Nevada public schools are most poorly funded in U.S., study finds*, 8NEWSNOW (Dec. 15, 2022, 12:45 PM), https://www.8newsnow.com/news/local-news/nevada-public-schools-are-most-poorly-funded-in-u-s-study-finds/.

170 *Id.*

171 DANIELLE FARRIE & DAVID G. SCIARRA, MAKING THE GRADE 13 (2022), https://edlawcenter.org/assets/files/pdfs/publications/Making-the-Grade-2022-Report.pdf.

172 *Id.*

173 *Id.* at 14.

174 *Id.*

175 *Id.*

176 *See* Portz, *supra* note 12, at 872.

However, in 2020,[177] parents of students attending Nevada public schools filed a complaint against "the State of Nevada, the Nevada Department of Education, Jhone Ebert, in her official capacity as Nevada Superintendent of Public Education, and the Nevada State Board of Education."[178]

A. *The Lower Court's Holding*

The complaint alleged "that Nevada's system of public education has failed its students, as evidenced by the State's ongoing poor rankings and continued failure to achieve the standards that . . . are required for a sufficient, basic education under Article 11, Sections 1, 2, and 6 of the Nevada Constitution."[179] Further, the plaintiffs claimed that the legislative branch had created a funding structure that was inadequate.[180] At the time the complaint was filed, fifty-seven percent of public education funds came from local sources, thirty-four percent from state sources, and nine percent from federal sources.[181]

Additionally, the plaintiffs argued that Nevada's public school funding structure "created a public education system that fails to meet the standards of a basic, sufficient, uniform, and constitutional education by continually failing to provide adequate physical facilities and classrooms, access to adequate learning instrumentalities, adequate teaching in classes of appropriate size, and reasonably current basic curriculum."[182]

The plaintiffs stated that under Article 11, Sections 1, 2, and 6 of Nevada's Constitution, the state had failed to provide students with a "qualitatively and quantitatively sufficient education . . . ."[183] The plaintiffs requested that the district court hold that under the Nevada Constitution, sufficient education is a right.[184] Additionally, the plaintiffs asked the court to declare Nevada's current public

---

177 *See generally* Complaint, *supra* note 14, at 1–37.
178 Shea v. State, 510 P.3d 148, 150 (Nev. 2022).
179 *Id.*
180 *Id.*
181 *See* Complaint, *supra* note 14, at 27.
182 *Shea*, 510 P.3d at 150.
183 *Id.* at 151.
184 *Id.*

school funding structure unconstitutional by failing to provide students with a sufficient education, enjoin the state from enacting a school finance system that does not meet the sufficiency standard, and allow the court to retain jurisdiction over school financing issues until Nevada provides students with a sufficient education.[185]

Article 11, Section 1 of the Nevada Constitution states that "[t]he legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements . . . ."[186] Section 2 states that "[t]he legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district . . . ."[187] Section 6, in part, states: "In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law."[188]

The defendants in *Shea* moved to dismiss the complaint, arguing that the plaintiffs had failed to state a claim because this issue presented a nonjusticiable political question.[189] The district court granted the defendants' motion with prejudice, holding that "Article 11 of the Nevada Constitution textually commits Nevada's education policy to the Legislature."[190] The district court reasoned "that the Nevada Constitution grants the Legislature discretion to (1) appropriate the amount of money it deems to be sufficient to fund public school operations and (2) determine what programs and processes should be adopted to provide for a uniform system of public education in Nevada."[191] In addition, the district court stated that the education clause does not require the state to provide a specific quality of education.[192] The plaintiffs appealed this decision.[193]

---

185 *Id.*
186 NEV. CONST. art. 11, § 1.
187 NEV. CONST. art. 11, § 2.
188 NEV. CONST. art. 11, § 6(1).
189 *Shea*, 510 P.3d at 151.
190 *Id.*
191 *Id.*
192 *Id.*
193 *Id.*

B. *The Majority Opinion by the Nevada Supreme Court*

The Nevada Supreme Court examined whether the plaintiffs' claims were nonjusticiable political questions.[194] The court stated that Nevada's education clauses provide the legislative branch with a textually demonstratable commitment to public education.[195] The court reasoned that "the Nevada Constitution contains two distinct duties set forth in two separate sections of Article 11—one to encourage education through all suitable means (Section 1) and the other to provide for a uniform system of common schools (Section 2)."[196]

The court further reasoned that the framers of Nevada's Constitution intended to provide the legislative branch with broad discretion to provide students with a public school education by the use of the words "all suitable means" in Section 1 of the education clause[197] and the "duty to maintain a uniform public school system" in Section 2.[198] Additionally, the court stated that there is nothing in the text of Section 6 of the education clause that "requires public education be funded at a certain level or to achieve certain educational outcomes."[199] The court asserted that "the Legislature is not required to . . . fund[] education at any particular level."[200] The court affirmed the district court's motion to dismiss, reasoning that the education clauses clearly grant the legislative branch the sole authority over education policy.[201]

---

194 *Id.* at 152.

195 *Shea*, 510 P.3d at 153.

196 *Id.* (quoting Schwartz v. Lopez, 382 P.3d 886, 898 (Nev. 2016)).

197 *Id.* (citing *Schwartz*, 382 P.3d. at 897).

198 *Id.* (quoting *Schwartz*, 382 P.3d at 898).

199 *Id.* at 154.

200 *Id.* (quoting Rogers v. Heller, 18 P.3d 1034, 1038 (Nev. 2001)).

201 *Shea*, 510 P.3d at 155. The court further reasoned that "even if couched in terms of judicial review, opining as to the adequacy of public education funding and the allocation of resources in this state would require us to venture into issues that entail quintessential value judgments that the Nevada Constitution expressly entrusts to the . . . Legislature." *Id.* (citing Heller v. Legislature, 93 P.3d 746, 753 (Nev. 2004)).

C. *Differences in the Dissent's Approach*

In a dissenting opinion, Justice Cadish disagreed with the majority's conclusion that the plaintiffs' issue presented a nonjusticiable political question.[202] Justice Cadish argued that the framers of the Nevada Constitution intended to provide Nevada citizens not just with the right to a basic education,[203] but an "an affirmative mandatory duty upon the legislature" that the judiciary can enforce.[204] Justice Cadish argued that the court recognized this duty previously in *Schwartz v. Lopez*, where the court stated that "[t]he legislative *duty* to maintain a uniform public school system is not a ceiling but a floor upon which the legislature can build additional opportunities for school children."[205]

In his dissent, Justice Cadish emphasized how it is the responsibility of the judiciary to determine what the law says.[206] Justice Cadish argued that the education clauses in Nevada's Constitution provides citizens with a right to a basic education, which the majority rendered meaningless if the legislature has the power to provide inadequate public school funding with no judicial recourse.[207] While Justice Cadish agreed *Shea* had "political" overtones, he did not believe this case was a political question that the court could not review.[208] According to the dissent, the educations clause of Nevada's Constitution:

> (1) establish[es] a right to a basic education, (2) impose[s] a duty on the Legislature to reach this "floor" of a basic education while providing the Legislature with broad authority to build upon the floor, and (3) establish[es] the Legislature's ability to provide whatever funding it deems to be sufficient to fund

---

202 *Id.* at 156–57 (Cadish, J., dissenting).

203 *See id.* at 156 (citing Guinn v. Legislature of Nev. (Guinn II), 76 P.3d 22, 32 (Nev. 2003)).

204 *Id.* (citing Guinn v. Legislature of Nev. (Guinn I), 71 P.3d 1269, 1275 (Nev. 2003)).

205 *Id.* (quoting Schwartz v. Lopez, 382 P.3d 886, 898 (Nev. 2016)).

206 *Id.* (citing Marbury v. Madison, 5 U.S. 137, 177 (1803)).

207 *Shea*, 510 P.3d at 155 (Cadish, J., dissenting) (citing Cruz-Guzman v. State, 916 N.W.2d 1, 9 (Minn. 2018)).

208 *Id.*

> public education, but which must at least be adequate to provide a basic education.[209]

While Justice Cadish agreed that the court could not determine the amount of money that is necessary to provide students with a basic education, he argued that the court has a duty to ensure that the legislative branch is following its constitutional duty to provide citizens in Nevada with a basic education.[210]

IV. PUBLIC SCHOOL FINANCING ISSUES ARE JUSTICIABLE AND ADEQUATE: EDUCATION SHOULD BE A FUNDAMENTAL RIGHT FOR CITIZENS

As evident by the various state court opinions examined, the highest courts of many states are split on how to address public school financing cases.[211] While many states have similar education clauses, there is almost no uniformity in how a specific state will address a school funding issue.[212] However, with the Nevada Supreme Court's failure to address this issue in *Shea*, the court allowed an already failing public school education system to continue, while simultaneously ignoring the constitutional rights of citizens in Nevada.[213]

A. *The* Shea *Court Ignored the Constitutional Rights of Nevada Citizens*

The Supreme Court in *Rodriguez* held that there was no fundamental right to education by reasoning that education is not a right explicitly stated in the Constitution, and that there is no evidence that education is an implicitly protected right under the Constitution.[214] However, a major difference between the United States Constitution and each state constitution is that there is an education

---

209 *Id.*

210 *Id.* (citing *Marbury*, 5 U.S. at 177).

211 *See* Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1279–80 (Wyo. 1995).

212 *See id.*

213 *See Shea*, 510 P.3d at 155; *see also* Passoth, *supra* note 13.

214 San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 35 (1973).

clause in all fifty state constitutions.[215] The presence of the education clauses should create a constitutional right to a basic education.[216]

The *Campbell County School District v. State* court recognized this right and held that "[t]he fundamental right of education expressly recognized by the Wyoming Constitution is declared in Art. 1, § 23."[217] Additionally, in *Abbeville County School District v. State*, the court held that the South Carolina Constitution provided citizens with the opportunity to receive a minimally adequate education.[218] Similarly, the Nevada Constitution also creates a right to education that the Nevada Supreme Court has recognized.[219]

While the courts in *Chafee* and *Citizen*s ultimately reached the same conclusion as the *Shea* court, those cases are different. The court in *Chafee* explicitly held that the "Rhode Island Constitution does not provide a fundamental right to education,"[220] despite the language in Rhode Island's education clause that states "[t]he diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools . . . ."[221] Additionally, in *Citizens*, the plaintiffs did not argue that Florida citizens had a basic right to education; instead, they argued that high quality education was a fundamental right.[222]

---

[215] Molly A. Hunter, *State Constitution Education Clause Language*, EDUC. L. CTR., https://edlawcenter.org/assets/files/pdfs/State%20Constitution%20Education%20Clause%20Language.pdf (last visited Jan. 4, 2023).

[216] *See Shea*, 510 P.3d at 157 (Cadish, J., dissenting) (citing Guinn v. Legislature of Nev. (Guinn I), 71 P.3d 1269, 1275–76 (Nev. 2003)).

[217] Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1257. Article 1, § 23 of the Wyoming State Constitution stated that "[t]he right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts." *Id.* (citing WYO. CONST. art. 1, § 23).

[218] Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 632–33, 651 (S.C. 2014).

[219] *Shea*, 510 P.3d at 156 (Cadish, J., dissenting) (citing *Guinn I*, 71 P.3d at 1275).

[220] Woonsocket Sch. Comm. v. Chafee, 89 A.3d 778, 794 (R.I. 2014) (citing City of Pawtucket v. Sundlun, 662 A.2d 40, 55 (R.I. 1995)).

[221] *Id.* at 782 (citing R.I. CONST. art. 12, § 1).

[222] *See* Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ., 262 So. 3d 127, 129 (Fla. 2019).

The majority in *Shea* failed to recognize the constitutional right to a basic education that the education clauses present.[223] While the courts in *Chafee* and *Citizens* held that public school financing issues were nonjusticiable political questions, those courts also held that there was not a constitutional right to education imposed by the education clauses.[224] Further, the *Bonner* court did not hold that the issue of public school financing was nonjusticiable; instead, it concluded that there was not a fundamental right to education in the Indiana Constitution.[225]

These cases are much different from *Shea*, as the Nevada court has already recognized that there is a right to education in the Nevada Constitution.[226] As a result, *Shea* is more similar to *Campbell* and *Abbeville*, which both held that there was a fundamental right to education, and further held that the state was not fulfilling its constitutional obligations.[227] Instead, the court in *Shea* ignored the constitutional rights of its citizen, holding that "the education clauses of the Nevada Constitution do not permit the courts to participate in decisions as to what constitutes an adequate education or what level of education funding is sufficient."[228]

Additionally, the majority in *Shea* made the argument that there is nothing in Nevada's Constitution that requires education to be funded at a specific level.[229] While the court might be correct in that conclusion, there is still a constitutional duty for Nevada to provide their its citizens with a basic education.[230] If school districts are unable to provide students with a basic education due to a lack of funding, it is arguably the role of the legislature to provide additional funding to fulfill its constitutional requirements that the court can enforce. Therefore, the court in *Shea* ignored the constitutional

---

223 *See Shea*, 510 P.3d at 156 (Cadish, J., dissenting).

224 *See Chafee*, 89 A.3d at 794 (citing *Sundlun*, 662 A.2d at 55); *see also Citizens*, 262 So. 3d at 129 (per curiam), 158 (Lewis, J., dissenting).

225 *See* Bonner *ex rel.* Bonner v. Daniels, 907 N.E.2d 516, 522 (Ind. 2009).

226 *See Shea*, 510 P.3d at 156 (Cadish, J., dissenting) (citing Guinn v. Legislature of Nev. (Guinn I), 71 P.3d 1269, 1275 (Nev. 2003)).

227 *See* Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1258, 1280 (Wyo. 1995); *see also* Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 651, 653 (S.C. 2014).

228 *Shea*, 510 P.3d at 151.

229 *Id.* at 154.

230 *See id.* at 156 (Cadish, J., dissenting).

rights of citizens in Nevada by refusing to address the issue of education adequacy.[231]

B. *The* Shea *Court Incorrectly Held That the Issue of Receiving an Adequate Education Was a Nonjusticiable Political Question*

By holding that there is no fundamental right to education in the United States Constitution, the *Rodriguez* Court left the responsibility of public school financing reform to each individual state.[232] Every state constitution in the country has an education clause that requires each state to provide their citizens with a public school education.[233] In many state constitutions, the responsibility of providing a public school education is delegated to the legislative branch.[234]

Article 11, Section 1 of the Nevada Constitution states that "[t]he legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements . . . ."[235] Section 2 tasks the legislature with the duty of providing "for a uniform system of common schools . . . ."[236] And finally, Section 6 of the education clause states that "the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law."[237]

While there is a clear duty for the legislature to provide and fund public school education for its citizens, the judiciary has the power to review whether a state is depriving its citizens of their constitutional rights.[238] This was evident by the courts' decisions in *Campbell County School District v. State* and *Abbeville County School*

---

231 *See id.* at 156–57.

232 *See* San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 35, 68 (1973).

233 EMILY PARKER, CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION 1 (Educ. Comm'n of the States 2016), https://files.eric.ed.gov/fulltext/ED564952.pdf.

234 *Id.*

235 NEV. CONST. art. 11, § 1.

236 NEV. CONST. art. 11, § 2.

237 NEV. CONST. art. 11, § 6(1).

238 Shea v. State, 510 P.3d 148, 156 (Nev. 2022) (Cadish, J., dissenting).

District v. State. One of the issues present in both *Campbell* and *Abbeville* was whether their school funding issues were nonjusticiable political questions.[239] However, both courts held that their school funding issues were justiciable,[240] whereas the court in *Shea* reached the opposite conclusion.[241]

In *Campbell*, the court quickly concluded that the Wyoming Constitution assigned the legislature with the duty to provide "a complete and uniform system of public instruction."[242] However, the court concluded that "[o]ur proper role is interpreting the meaning of the language of §§ 1 and 9 of Art. 7 in order to determine the duties those provisions impose upon the legislature."[243] Additionally, the *Abbeville* court held that "the South Carolina Constitution mandates the General Assembly to 'provide for the maintenance and support of a system of free public schools open to all children in the state.'"[244] However, "[n]othing in the text of the article precludes the judiciary from exercising its authority over the article's provisions . . . ."[245]

While the education clauses in Nevada's Constitution clearly assign the legislative branch with the duty to provide citizens with an education—as do the education clauses in Wyoming's and South Carolina's Constitutions—the court was incorrect in concluding that it cannot interpret the language of the education clauses or enforce the duties assigned to the legislature in the Nevada Constitution.[246] As Justice Cadish's dissenting opinion in *Shea* stated, since the Court's decision in *Marbury v. Madison*, the judiciary has the responsibility to determine what the law says.[247] While the majority may be correct in its conclusion that the framers of Nevada's Constitution intended to provide the legislature with broad discretion over education policy, nothing precludes the court from enforcing

---

[239] Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1244 (Wyo. 1995); Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 632–33 (S.C. 2014).

[240] *See Campbell*, 907 P.2d at 1274; *see also Abbeville*, 410 S.C. at 632–33.

[241] *Shea*, 510 P.3d 148 at 155.

[242] *See Campbell*, 907 P.2d at 1246 (quoting WYO. CONST. art. 7, § 1).

[243] *Id.* at 1265.

[244] *Abbeville*, 410 S.C. at 632–33.

[245] *Id*. at 633.

[246] *See Shea*, 510 P.3d at 156 (Cadish, J., dissenting) (citing Marbury v. Madison, 5 U.S. 137, 177 (1803)).

[247] *See id.*

the duty of the legislature; in fact, the court has the duty to do as much.[248]

The arguments made by the courts in *Chafee* and *Citizens* were that the courts did not have judicially manageable standards for intervening on issues relating to the adequacy of public school education.[249] Similarly, the majority in *Shea* reached the same conclusion.[250] However, these courts seemed to ignore the fact that the judiciary does not need to offer solutions for providing adequate funding throughout schools. Instead, that role can be primarily left to the legislative branch, but it is the duty of the courts to determine whether the legislatures are upholding their constitutional obligations in rendering policy decisions that affect the states' citizens.

While the courts in *Campbell* and *Abbeville* held that the issue of adequate public school financing was justiciable, neither court stated how the legislature needs to provide adequate funding.[251] Instead, the court in *Campbell* stated that the legislature "must . . . design the best educational system by identifying the 'proper' educational package each Wyoming student is entitled to have . . . ." regardless of where a student lives.[252] Additionally, in *Abbeville*, the court stated that while it could conclude that the legislature failed to provide its citizens with the constitutional duty of an adequate education, the court could not suggest solutions on how the legislature should resolve these issues.[253]

This argument is similar to the argument in *Shea*'s dissent that the majority seemed to ignore.[254] Justice Cadish stated that the court cannot give the legislature an amount of money that would provide students with a basic education, but it is the court's responsibility to

---

248 *See id.* at 153 (majority opinion).

249 *See* Woonsocket Sch. Comm. v. Chafee, 89 A.3d 778, 793 (R.I. 2014); *see also* Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ., 262 So. 3d 127, 141 (Fla. 2019) (citing Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 408 (Fla. 1996)).

250 *See Shea*, 510 P.3d at 155.

251 *See* Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995); *see also* Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 655–56 (S.C. 2014).

252 *Campbell*, 907 P.2d at 1279.

253 *Abbeville*, 410 S.C. at 655–56.

254 *See Shea*, 510 P.3d at 157 (Cadish, J., dissenting).

determine whether the legislative branch is following its constitutional duty.[255] Therefore, the court in *Shea* should not have reached the conclusion that the issue of adequate public school financing was a political question.[256] Instead, the court should have held that this issue was justiciable, but it is within the legislature's duty to determine how it would provide funds to school districts to meet its constitutional obligations.

C. *The Future of Public School Financing Litigation and a Need for Consistency*

It is evident from the different conclusions reached by different state courts that there is a need for consistency in public school financing cases. While almost all fifty states have had lawsuits challenging the constitutionality of their public school funding structures, there is almost no way of predicting how a court will rule.[257] It might be time for federal courts to reexamine whether there is a fundamental right to education.

Many times, plaintiffs will file lawsuits claiming that the financing system of their state fails to provide their citizens with an adequate education[258]—which was the argument made by the plaintiffs in *Shea*.[259] While some state courts have held that there is a fundamental right to education in their state constitutions,[260] we know by the Court's holding in *Rodriguez* that there is no federally recognized fundamental right to education.[261] However, in *Gary B. v. Snyder*, the plaintiffs filed a lawsuit in federal court, alleging that Detroit schools had such poor and inadequate conditions "that they have not received even a minimally adequate education," claiming this was "in violation of their rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution."[262]

---

[255] *Id.*

[256] *Id.* at 156.

[257] *See* PARKER, *supra* note 233, at 1.

[258] *See* Portz, *supra* note 12, at 856.

[259] *See Shea*, 510 P.3d at 151.

[260] *See* Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1266 (Wyo. 1995); *see also* Abbeville Cnty. Sch. Dist. v. State, 410 S.C. 619, 632–33 (S.C. 2014).

[261] San Antonio Indep. Sch. Dist. v. Rodriguez (Rodriguez II), 411 U.S. 1, 37 (1973).

[262] Gary B. v. Snyder, 329 F. Supp. 3d 344, 348 (E.D. Mich. 2018).

This argument had success at the appellate level, where the Sixth Circuit concluded that the Constitution does provide "a fundamental right to a basic minimum education,"[263] which is slightly different from the Supreme Court's holding in *Rodriguez* that there is no fundamental right to education.[264] While this decision was ultimately vacated,[265] plaintiffs may be able to prevail in federal court moving forward with similar arguments. There is an obvious need for federal courts to intervene in public school financing cases due to all of the inconsistencies in state court decisions.

Further, Nevada, for example, consistently fails to fund their public schools.[266] The fact that the court in *Shea* did not intervene allows the legislature to continue to not provide public schools with the funding needed to provide students with a basic education. While people in the state of Nevada can vote for officials that can work to improve the funding structure, there will still not be any enforceability or accountability by the courts, unless the Nevada Supreme Court were to revisit and overturn its decision in *Shea* or the Supreme Court were to rule in the future that there is a right to a basic minimum education.

The individuals hurting the most due to inconsistent state court decisions are, of course, the students from impoverished zip codes who are educated in inadequate classrooms and conditions. Today, there is still a strong correlation between living in a high poverty school district and having access to fewer educational opportunities.[267] It is proven that "[s]tudents in high poverty schools have less experienced instructors, less access to high level science, math, and advanced placement courses, and lower levels of state and local spending on instructors and instructional materials."[268] This means

---

263 Gary B. v. Whitmer, 957 F.3d 616, 642 (6th Cir. 2020).

264 *See Rodriguez II*, 411 U.S. at 37.

265 Dorsey, *supra* note 21.

266 *See* FARRIE & SCIARRA, *supra* note 171, at 11.

267 Jude Schwalbach, *High Quality 'Public' Schools Don't Want Low-Income Students*, REASON (Mar. 24, 2022, 3:20 PM), https://reason.com/2022/03/24/high-quality-public-schools-dont-want-low-income-students/.

268 *Unequal Opportunities: Fewer Resources, Worse Outcomes for Students in Schools with Concentrated Poverty*, THE COMMONWEALTH INST., https://thecommonwealthinstitute.org/research/unequal-opportunities-fewer-resources-worse-outcomes-for-students-in-schools-with-concentrated-poverty/ (last visited Jan. 18, 2023) [hereinafter *Unequal Opportunities*].

that many students are stuck attending low-performing schools if their parents cannot afford to move to a home in a better school district.[269]

The students suffering the most are students of color.[270] One study that surveyed the largest 100 cities in the United States revealed that in about half of those cities, "most African American and Latino students attend schools where at least [seventy-five] percent of all students qualify as poor or low-income under federal guidelines."[271] While the Court's decision in *Brown* declared racial segregation in schools unconstitutional, some suggest that children in public schools "are more racially isolated now than at any point in the past four decades."[272] The education quality gap between low and high poverty schools needs to close, and courts need to address these issues, as the legislatures in many states have failed to provide students with a basic education.

CONCLUSION

The decision in *Shea* was upsetting for several reasons: the court ignored the right to a basic education as expressed in the Nevada Constitution, and the court allowed a poorly funded education system created by the legislature to continue to have no judicial accountability.[273] As evidenced by recent reports, "Nevada has consistently placed near the bottom on national rankings that look at school funding, and critics have argued that even though state lawmakers approved a new K-12 funding formula in 2019, it needs a

---

269 *See* Schwalbach, *supra* note 267.

270 *See Unequal Opportunities*, *supra* note 268.

271 Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, THE ATL. (Feb. 29, 2016), https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414/.

272 *See What Was Brown v. Board of Education?*, LEGAL DEF. FUND, https://www.naacpldf.org/case-issue/landmark-brown-v-board-education/ (last visited Jan. 18, 2023).

273 *See* Shea v. State, 510 P.3d 148, 156 (Nev. 2022) (Cadish, J., dissenting); *see also* FARRIE & SCIARRA, *supra* note 171, at 11.

significant infusion of money to actually improve student learning."[274]

While Nevada's Constitution does give authority to the legislative branch to provide citizens with a public school education, the court in *Shea* incorrectly held that it cannot enforce the constitutionally mandated duties of the legislature.[275] As Justice Cadish stated in the *Shea* dissent, the legislative branch's duty is meaningless if the legislature has the power to provide inadequate public school funding with no recourse.[276]

The quality of education one receives should not be dependent on the zip code in which they reside. The Court in *Brown* stated, "where the state has undertaken to provide [education], [it] is a right which must be made available to all on equal terms."[277] Many states fail to provide education equally due to their poor funding structures. Perhaps it is time for the right to a basic education to be uniformly recognized in the United States so that state courts can stop reaching different and inconsistent conclusions regarding public school financing issues.

---

[274] Jackie Valley, *Nevada Supreme Court upholds dismissal of education funding lawsuit*, THE NEV. INDEP. (May 26, 2020, 3:13 PM), https://thenevadaindependent.com/article/nevada-supreme-court-upholds-dismissal-of-education-funding-lawsuit.

[275] *Shea*, 510 P.3d at 156 (Cadish, J., dissenting).

[276] *Id.* at 157 (citing Cruz-Guzman v. State, 916 N.W.2d 1, 9 (Minn. 2018)).

[277] Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).