

Buying Equality: How School Finance Reform and Desegregation Came to Compete in Connecticut

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INTRODUCTION

Since its inception, the nationwide movement for school finance reform has been deeply connected with school desegregation.¹ In the late 1960s and early 1970s, advocates of equal educational opportunity who were growing frustrated with the slow progress of school desegregation began to seek out new avenues of reform.² Many turned to school finance reform and the goal of equalizing resources as a fresh way to improve the educational opportunities of poor or minority students. Today, as federal district courts around the country declare unitary status in school desegregation cases³ while battles over school finance continue to rage,⁴ it would seem that the shift from school desegregation to school finance litigation is almost complete.

Connecticut complicates that story, as advocates of equal educational opportunity have continued to press for both desegregation and school finance reform, often on behalf of different constituencies of students. While Connecticut witnessed a successful school finance suit in the late 1970s,

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1. See James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 253-55 (1999); see also Molly S. McUSIC, *The Law's Role in the Distribution of Education: The Promises and Pitfalls of School Finance Litigation*, in LAW & SCHOOL REFORM: SIX STRATEGIES FOR PROMOTING EDUCATIONAL EQUITY 88, 102 (Jay P. Heubert ed., 1999).

2. See Ryan, *supra* note 1, at 253.

3. In the 1990s, courts closed desegregation cases in numerous cities, including Buffalo, see *Arthur v. Nyquist*, 904 F. Supp. 112, 119 (W.D.N.Y. 1995); Denver, see *Keyes v. Congress of Hispanic Educators*, 902 F. Supp. 1274, 1308 (D. Colo. 1995); Oklahoma City, see *Dowell v. Bd. of Educ.*, 778 F. Supp. 1144, 1196 (W.D. Okla. 1991), *aff'd*, 8 F.3d 1501 (10th Cir. 1993); Savannah, see *Stell v. Bd. of Pub. Educ.*, 860 F. Supp. 1563, 1585 (S.D. Ga. 1994); and Wilmington, see *Coalition to Save Our Children v. State Bd. of Educ.*, 901 F. Supp. 784, 785 (D. Del. 1995), *aff'd* 90 F.3d 752 (3d Cir. 1996). Courts have issued "exit plans" in other cities. See Wendy Parker, *The Future of School Desegregation*, 94 NW. U. L. REV. 1157, 1157-58 (2000).

4. For a list of pending cases, see James E. Ryan & Thomas Saunders, *Foreword to Symposium on School Finance Litigation: Emerging Trends or New Dead Ends?*, 22 YALE L. & POL'Y REV. 463, 464 n.14 (2004).

Horton v. Meskill,⁵ some advocates never gave up on desegregation and the integrative vision of equality underlying it. In the late 1980s, plaintiffs brought suit under the state constitution challenging the de facto racial and socio-economic segregation of the Hartford public schools. The filing of *Sheff v. O'Neill*⁶ made clear that more than increased funding was needed for urban students to achieve equality of educational opportunity.⁷

Though many in the state turned their attention to *Sheff* and racial desegregation during the 1990s, others remained focused on monetary resources. Filed in 1998, *Johnson v. Rowland* sought to ensure that the mandate of *Horton v. Meskill* continued to be enforced and that students in school districts with low or moderate property wealth received an adequate education.⁸ Though the case was withdrawn in 2003, in turning back to school finance litigation as a way of achieving equal educational opportunity, *Johnson* highlighted important questions about the efficacy of desegregation efforts and the relationship between desegregation and school finance litigation.

This Essay seeks to understand why Connecticut has followed an alternating path between school finance and desegregation litigation, what that path reveals about the goals and limitations of each type of litigation, and how the two approaches to achieving equality of educational opportunity interact when pursued alongside one another.

Parts I, II, and III examine Connecticut's three major cases. Each Part explores the conditions that necessitated bringing suit, the goals the plaintiffs pursued, how the litigation unfolded, and the lessons to be learned from how the State responded to each case. Each of the suits became necessary because without the pressure of litigation, there was insufficient political will to remedy the problems each sought to address. But even as they relied on the same provisions of the Connecticut Constitution to support their claims for equal educational opportunity, the suits targeted different problems. While *Horton* and *Johnson* focused on the amount of state funding afforded to school districts, *Sheff* sought to reduce the racial isolation of the Hartford public schools. Though *Horton* and *Sheff* had different goals, given the opportunity to devise a remedy, state actors responded to the suits in a strikingly similar way: They sought to "buy" equality.

The remedies the General Assembly enacted conformed to the political and budgetary realities of the times, even if they departed to some extent from how the court identified the constitutional infirmity in each case. After *Horton*, this

5. *Horton v. Meskill* (*Horton I*), 376 A.2d 359 (Conn. 1977).

6. *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996).

7. See James E. Ryan, *Sheff, Segregation, and School Finance Litigation*, 74 N.Y.U. L. REV. 529, 532 (1999).

8. *Johnson v. Rowland*, No. CV-98-0492103-S (Conn. Super. Ct., filed Mar. 26, 1998). The complaint in *Johnson* was withdrawn on October 7, 2003.

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meant directing more money toward urban districts even as major disparities remained between plaintiff's suburban school district and wealthier districts. After *Sheff*, it meant targeting state dollars toward improving the quality of urban education and building new magnet schools, even though the Connecticut Supreme Court identified the way school district lines were drawn as the single greatest factor contributing to racial isolation.⁹ In this way, remedying a desegregation suit became as much about spending state dollars as shuffling students. By "buying" desegregation, the State put pressure on the education budget and created a trade-off between responding to *Sheff* and fixing a distorted school finance formula. A new round of school finance litigation ensued when plaintiffs filed suit in *Johnson*.

Part IV explores the significance of the State's "purchase" of the *Sheff* remedy and the resulting competition between addressing the educational ills of the racially isolated urban poor and providing adequate state funding for property-poor municipalities throughout the state. Though advocates of school finance reform and desegregation both aim to achieve equal educational opportunity, in some cases they employ different means and work to help different children. To the extent that finite dollars are needed to solve both problems, however, one vision of equal educational opportunity may be traded for another. Which one should yield is a profoundly difficult and consequential question.

Before turning to these theoretical issues, we begin with Connecticut's first school finance case, *Horton v. Meskill*.

I. *HORTON V. MESKILL*

The first of Connecticut's three major education cases was a school finance equity suit.¹⁰ In a state that relied heavily on local property taxes rather than state monies to fund education, and where property wealth among school districts varied dramatically, property-poor school districts could not provide the same educational resources to their students as wealthier school districts. *Horton v. Meskill* challenged the balance between state and local education funding. It did not address the racial isolation of the State's urban areas, nor did it focus on the poor achievement levels of some Connecticut students compared to others. Nevertheless, the remedy the political branches devised yielded financial gains for the cities, especially Hartford.¹¹ That these financial benefits

9. See *Sheff*, 678 A.2d at 1274.

10. In the traditional typology of school finance cases, *Horton v. Meskill* (*Horton I*), 376 A.2d 359 (Conn. 1977), falls most neatly into the "second wave" of cases during which plaintiffs challenged the equity of state school finance systems under state constitutions' equal protection and education clauses. See Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151, 1152 (1995) (explaining the wave metaphor).

11. See Douglas S. Reed, *Democracy v. Equality: Legal and Political Struggles over School Finance Equalization* 104, 111 (1995) (unpublished Ph.D. dissertation, Yale University) (on file with the

were not enough to avert the need for *Sheff* raises questions about the limitations of school finance litigation. At the same time, by shifting funding toward needy urban schools, the legislature's response to *Horton* provides an early glimpse of how a combination of political expediency and limited resources can yield a trade-off between increasing funding for urban education and promoting equity across school districts statewide.

A. *An Early Lesson in Political Will*

When Wesley Horton brought suit against state officials in 1974, the state's school finance system was ripe for a lawsuit. During the 1970s, local property taxes in Connecticut made up approximately 70% of school funding, while the State contributed only about 20-25%.¹² By comparison, nationwide, local governments paid an average of 51% of school funding, while states covered 41%.¹³ The State's meager contribution to education in Connecticut came in the form of a flat grant of only about \$250 per pupil.¹⁴ This meant that state funding played no role in equalizing expenditures between property-rich and property-poor towns. Regardless of how wealthy a school district was, it received the same amount of state funds per pupil as its neighbor. A study by the National Education Finance Project ranked Connecticut last among the fifty states in the equalizing impact of its state aid.¹⁵

The State's failure to provide more aid led to massive disparities in school district expenditures. In the 1972-1973 school year, while suburban Greenwich—then the wealthiest town in Connecticut—had \$156,564 in property wealth per pupil, rural Sterling—the poorest town—had only \$17,441 per pupil.¹⁶ That same year, Greenwich spent \$1,429 per pupil, while Sterling

Yale Law School Library). While the shift of funds to predominantly minority urban schools after *Horton* can be explained by political factors, it is admittedly somewhat unusual. Indeed, it is often difficult for minority districts to persuade legislatures to enact effective school finance remedies even when the minority districts themselves win school finance suits. See James E. Ryan, *The Influence of Race in School Finance Reform*, 98 MICH. L. REV. 432, 458-63 (1999). That the Connecticut legislature passed school finance reform that benefited urban districts when a white suburban district brought suit speaks to the powerful role that the governor's political agenda played in shaping the *Horton* remedy. See *infra* Section I.D.

12. *Horton I*, 376 A.2d at 366. The remaining five percent of funding came from the federal government. *Id.*

13. *Id.*

14. *Id.* at 369. Connecticut may have relied more heavily on property taxes than other states at this time in part because it did not have an income tax until the early 1980s. Cf. Stephen C. Tracy, *School Finance Reform in Connecticut: The Role of a State Education Agency in the Policy Making Process 19-20* (1984) (unpublished Ed.D dissertation, Harvard University) (on file with the Yale Law School Library).

15. See Note, *A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars*, 81 YALE L.J. 1303, 1322 (1972).

16. DONNA E. SHALALA ET AL., *EQUALIZING EDUCATIONAL OPPORTUNITY IN CONNECTICUT: REPORT TO THE CONNECTICUT COMMISSION TO STUDY SCHOOL FINANCE AND EQUAL EDUCATIONAL OPPORTUNITY* 19 tbl.4 (1975). The median amount of property wealth per pupil in the state was \$42,746. *Id.*

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spent \$709 per pupil.¹⁷ Meanwhile, Sterling residents were taxing themselves at a rate nearly four times that of Greenwich residents.¹⁸

The disparities arose for several reasons. First, then and now, Connecticut school district lines for the most part tracked town lines.¹⁹ In a system that relies heavily on property taxes to fund education, inequalities in town wealth will manifest themselves in unequal school district expenditures. Indeed, the wealth and characteristics of Connecticut's towns and cities varied dramatically in the 1970s, as they do today. Former Commissioner of Education Gerald Tirozzi used to speak of "the two Connecticuts, separate and unequal. You had affluent Connecticut, and you had the poor urban and rural districts."²⁰ Tirozzi's depiction oversimplified Connecticut's demography in some important ways.²¹ For example, it failed to take account of suburban towns that were not affluent and had weak property tax bases.²² Nevertheless, Tirozzi's characterization captured two important elements of the state's demography. First, the term "separate" reflected the racial segregation between the cities on the one hand, and the suburbs and rural areas on the other.²³ Second, the word

17. *Id.* at 15 tbl.3.

18. *Id.* at 29 tbl.7, 30.

19. There are 166 school districts in Connecticut. See LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMM., CONN. GEN. ASSEMBLY, CONNECTICUT'S PUBLIC SCHOOL FINANCE SYSTEM, 24 n.2 (2002), available at <http://www.cga.state.ct.us/pri/archives/2001psreport.htm> [hereinafter LPRIC REPORT]. Of these districts, only seventeen are regional, meaning that they encompass from two to six towns. *Id.* Regional school districts generally arise where towns have too few students to have their own school. In *Sheff v. O'Neill*, 678 A.2d 1267, 1274 (Conn. 1996), the Connecticut Supreme Court identified the 1909 law making town and school district lines co-terminus, see CONN. GEN. STAT. § 10-240 (2003), as the primary cause of de facto segregation in Connecticut. Insofar as school district funding was determined almost entirely by town wealth before *Horton*, it seems that the same law also contributed heavily to inequality in school finance.

20. Telephone Interview with Gerald Tirozzi, former Commissioner of Education, State of Connecticut, now Executive Director, National Association of Secondary School Principals (Dec. 16, 2002) [hereinafter Tirozzi Interview].

21. Today, "the two [Connecticuts] is closer to three or four or five, but the two are still very real." Interview with Theodore Sergi, former Commissioner of Education, Connecticut, in Hartford, Conn. (Dec. 20, 2002) [hereinafter Sergi Interview]. At the time the interview was conducted, Sergi was still the Commissioner of Education for Connecticut; he has since retired. Sergi provided the following rough typology of Connecticut's towns and cities, breaking down the state into five categories: (1) affluent suburbs, concentrated largely in southwestern Connecticut's Fairfield County; (2) cities like Hartford, New Haven, and Bridgeport with high concentrations of poverty; (3) "run-down mill towns" of Northeastern Connecticut with low to medium property-wealth; (4) property-poor rural areas, especially in Northwestern Connecticut; and (5) "inner-ring suburbs" like West Hartford, Bloomfield, Hamden and Stratford, that are experiencing population shifts as they become more racially and ethnically diverse and less wealthy.

22. For example, Canton, the suburb of Hartford where Wesley Horton lived when he brought *Horton v. Meskill*, had far less property wealth than Darien, which could spend much more on school funding. See *Horton I*, 376 A.2d at 368. Tirozzi's model oversimplified in another way as well: by failing to distinguish between types of poverty. For example, even though Connecticut's cities had the highest concentration of impoverished individuals, the cities themselves were not necessarily property poor. See Note, *supra* note 15, at 1328 ("[T]he 'poor' tend to live in districts which are actually 'wealthier' in terms of commercial and industrial property.").

23. The racial dynamics of Connecticut will be discussed at greater length below in Section II.A. Today, while the cities remain predominantly minority, many suburbs, especially "inner-ring" suburbs surrounding cities, are becoming increasingly racially diverse. See Mike Swift & Robert A. Frahm, *The*

“unequal” captured the disparities that existed in a state that still today has, among other communities, some extremely wealthy suburbs (especially those in Fairfield County in the southwestern corner of the state), several impoverished cities (especially Hartford, New Haven, and Bridgeport), and numerous property-poor rural communities and mill towns (especially in northwestern and northeastern Connecticut).

State officials were hardly unaware of the disparate expenditures among Connecticut’s school districts. In the early 1970s, several state-sponsored reports detailed the disparities and called for change.²⁴ Moreover, state officials had been sued on at least three occasions before *Horton v. Meskill* in challenges to the school finance system.²⁵

Despite such widespread awareness of the problem, the governor and legislature did little in the years leading up to *Horton I* to reform the system of school finance. In 1975, a year after *Horton I* was filed, the General Assembly adopted a more equitable guaranteed tax base (GTB) formula on top of the flat grant, but the change was merely symbolic.²⁶ It was not until after the supreme court decision in *Horton I* that the political branches finally acted to reform Connecticut’s school finance system.

B. *The Horton Litigation*

In 1977, the Connecticut Supreme Court forced the legislature to face the inequities in the state’s system of school finance when it declared the system unconstitutional under the state constitution.²⁷ Wesley Horton, a lawyer, school board member, and father, brought suit against Governor Meskill and other state officials on behalf of his son Barnaby, a kindergartener in the Canton public schools.²⁸ At the time, Canton was a small “bedroom community for

Suburbs Are Not as White as When Lawsuit Was Filed, HARTFORD COURANT, July 10, 1996, at A12.

24. See FINANCING CONNECTICUT’S SCHOOLS: FINAL REPORT OF THE COMMISSION TO STUDY SCHOOL FINANCE AND EQUAL EDUCATIONAL OPPORTUNITY i (1975); SHALALA ET AL., *supra* note 16; 2 GOVERNOR’S COMM’N ON TAX REFORM, THE REPORT OF THE GOVERNOR’S COMMISSION ON TAX REFORM 53 (1972).

25. Unlike *Horton v. Meskill*, these suits were brought in federal court and none of them succeeded. At least two of the suits, *Jelliffe v. Berdon*, 345 F. Supp. 773 (D. Conn. 1972), and *Peebles v. Sanders*, referenced in INTERIM REPORT OF THE COMMISSION TO STUDY SCHOOL FINANCE AND EQUAL EDUCATIONAL OPPORTUNITY 3 (1974), appear to have been either dismissed or withdrawn by the plaintiffs after the Supreme Court held that inequality in school finance did not violate the federal Equal Protection Clause. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). A third suit, *Athanson v. Grasso*, 411 F. Supp. 1153 (D. Conn. 1976), which was brought by City Council members in Hartford, was dismissed on grounds of standing.

26. The new formula was funded at such a low amount that in 1975-76, eligible towns received only \$12.50 per pupil in aid above the flat grant amount. CONN. STATE BD. OF EDUC. & CONN. SCH. FIN. ADVISORY PANEL, A PLAN FOR PROMOTING EQUAL EDUCATIONAL OPPORTUNITY IN CONNECTICUT 22 (1979).

27. *Horton v. Meskill* (*Horton I*), 376 A.2d 359 (Conn. 1977).

28. In reality, it was a junior colleague of Horton’s named Maurice FitzMaurice who filed the motions, tried the case, and argued the appeal, as Horton did not think it appropriate for him to do so when his son was the named plaintiff. See Wesley W. Horton, *Memoirs of a Connecticut School Finance*

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Hartford,” which had become “relatively depressed” after the town’s main industries moved abroad.²⁹ It had little property wealth with which to fund its schools. Canton was almost entirely white.³⁰

Horton filed a short complaint in state court in 1974, alleging that the existing school finance system violated the federal equal protection clause,³¹ the state constitution’s equal protection clauses,³² and the state constitution’s education clause.³³ According to the complaint, the state’s reliance on local property taxes, combined with Canton’s comparatively low tax base, meant that Canton could not provide the same educational services as wealthier towns and could not compete effectively for teachers.³⁴

Horton’s overall litigation strategy was to “keep it simple.”³⁵ This strategy manifested itself in two important ways. First, typical of other early school finance cases, Horton focused exclusively on disparities in monetary inputs. In this way, his was purely a claim of inequality in funding, not inadequacy in student achievement.³⁶ Thus, at trial, Horton sought to “compare apples and apples”;³⁷ he called to the witness stand the superintendent of Canton and the superintendent of another predominantly white—but wealthy—suburban school district to testify to the size of their respective budgets.³⁸

Second, Horton sought to keep the cities out of the lawsuit by convincing Hartford and others not to intervene, at least at the trial stage.³⁹ In Horton’s words, “The general principle that the Connecticut Constitution has something to say about school finance had to be decided first.”⁴⁰ In part, Horton wanted to

Lawyer, 24 CONN. L. REV. 703, 706 (1992). However, it is clear that Horton himself was at all times the driving force behind the suit. *See id.*

29. Interview with Wesley Horton, Partner, Horton, Shields & Knox, in Hartford, Conn. (Dec. 10, 2002) [hereinafter Horton Interview].

30. In 1978-79, for example, Canton’s population was only 1.5% minority. 2 CONN. STATE BD. OF EDUC., THE CONDITION OF PUBLIC ELEMENTARY AND SECONDARY EDUCATION IN CONNECTICUT, FISCAL YEAR 1978-1979, at 42 (1980).

31. U.S. CONST. amend. XIV, § 1.

32. CONN. CONST. art. I, § 1 (“All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.”); CONN. CONST. art. I, § 20 (“No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry, or national origin.”).

33. CONN. CONST. art. VIII, § 1 (“There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.”)

34. Second Substituted Complaint at 2, *Horton v. Meskill*, 332 A.2d 113 (Conn. Super. Ct. 1974) (No. 185283) (complaint filed Sept. 4, 1974).

35. Horton, *supra* note 28, at 707.

36. While the differences in inputs were “dramatic,” Horton considered outputs such as academic achievement “hard to measure” and worried that the evidence of a relationship between inputs and outputs would have been hard to prove. Horton Interview, *supra* note 29.

37. *See* Horton, *supra* note 28, at 708.

38. *See id.* at 707.

39. While the cities did not intervene at the trial stage, they did ultimately intervene when Horton challenged the legislature’s remedy. *See Horton v. Meskill* (Horton II), 445 A.2d 579 (Conn. 1982).

40. Horton, *supra* note 28, at 709 n.13.

avoid the issue of municipal overburden, which threatened to muddy the relationship between property wealth and expenditures.⁴¹ More pertinently, he wanted to avoid the issue of race. "I saw Hartford as being a race issue," Horton explained in an interview. "And why do you want to mix up race with school finance constitutionally?"⁴² While he did not envision *Sheff v. O'Neill* per se, he imagined a race-related suit sometime down the road that could contend with the problems of racial isolation in the cities.⁴³

Horton's desire not to "mix up" race and school finance helps explain why the plaintiffs in *Sheff* ultimately found the conception of equality of educational opportunity in *Horton I* wanting.⁴⁴ While focusing on money could alleviate problems of financial disparities, it could not address the realities of racial isolation. Horton recognized the trade-off he was making in focusing on disparities in wealth between property-rich and property-poor suburban school districts but believed that the principle that school funding should be equalized was not only important in and of itself, but also would be a useful predicate for a later suit addressing urban racial isolation.⁴⁵

The *Horton* trial lasted four weeks, and the plaintiffs prevailed.⁴⁶ Judge Jay Rubinow held that there was no violation of the federal equal protection clause,⁴⁷ but that the defendants had violated both the state education clause and the state equal protection clauses. The existing school finance system ran afoul of the education clause because a system that yields "disparities in educational opportunity" is, by definition, not based on "appropriate legislation."⁴⁸ It violated the state equal protection clauses because the education clause established education as a fundamental right, and defendants had failed to proffer a compelling interest that could justify the violation of that right.⁴⁹

In a four-to-one vote, the Connecticut Supreme Court affirmed on direct appeal, approving of the trial court's reasoning.⁵⁰ Rather than ordering a

41. *Id.* at 707 n.10. Municipal overburden refers to the problem that cities often encounter of not having sufficient funds to pay for the many services they must provide on a large scale, including police, fire, and sanitation. In the context of school finance, the existence of municipal overburden often means that even where cities appear to have high property values and thus large amounts of funds for education, they actually have insufficient funds because their money must go to funding other municipal services. This appears to have been the case in Connecticut prior to the *Horton* litigation, as documented in Note, *supra* note 15, at 1329.

42. Horton Interview, *supra* note 29.

43. *Id.*

44. See *infra* Part II.

45. Horton Interview, *supra* note 29.

46. 332 A.2d 113 (Conn. Super. Ct. 1974).

47. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

48. *Horton*, 332 A.2d. at 118. See *supra* note 33 for the text of the education clause.

49. *Id.* at 118-19. The trial court explicitly ruled that fostering local control of public schools was not a compelling interest. *Id.*

50. See *Horton I*, 376 A.2d at 372-74.

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specific remedy, the court deferred to the General Assembly to develop a solution, finding that this duty was the “proper function of the legislative department” and was assigned to the legislature by the education clause.⁵¹ While the court did not recommend a particular solution, it noted that the constitution did not require total state financing of education, the abandonment of local control, or bringing all schools to the level of the highest-spending district.⁵² In short, the constitution required a system that was more equal but not completely equal.

C. The State’s Response and Subsequent Litigation

Following the supreme court decision, the School Finance Advisory Panel (SFAP), a group representing the Commissioner of Education, members of the General Assembly, members of the State Department of Education, and other officials, set to work developing a remedy to the state constitutional violations identified in *Horton I.*⁵³ Relying heavily on SFAP’s recommendations, the General Assembly ultimately passed responsive legislation in 1979. Public Act 79-128 established a revised GTB formula, the full funding of which would be phased in over five years, a minimum expenditure requirement (MER) to ensure that towns did not absorb all of the new state funds in the form of tax relief, and a sliding scale based on a town’s property wealth for funding of special education and transportation.⁵⁴ Initially, *Horton* did not challenge the legislation: “It was long on words and short on money. But it was a good start and we saw little reason to create friction immediately after passage.”⁵⁵

However, Connecticut underwent a period of fiscal crisis in the early 1980s, and the General Assembly quickly began amending Public Act 79-128 to lower the State’s education costs and delay full implementation of the GTB formula.⁵⁶ In a series of ten bills passed between 1980 and 1984, the General Assembly chipped away at the legislation, providing an early indication of the difficulty of sustaining political will for increases in state education aid when faced with tight economic conditions.⁵⁷

51. *Id.* at 374-75.

52. *Id.* at 375-76.

53. For a detailed discussion of the composition of SFAP and its political machinations, see Tracy, *supra* note 14, at 48-65.

54. An Act Concerning Equalization of Educational Financing and Equity in Educational Opportunity, Pub. Act 79-128, 1979 Conn. Acts 99 (Reg. Sess.) (codified in scattered sections of CONN. GEN. STAT. tit. 10). The new GTB formula was based on the product of a town’s property wealth, tax effort, and need, as measured by indicators of the individual wealth of a town’s residents. For a more detailed description of the legislation, see CONN. STATE BD. OF EDUC., ACCESS TO EXCELLENCE 1980-1985, at 2 (1980). The legislation did not eliminate the \$250 per pupil flat grant as a minimum state expenditure for each town, but the effect of the GTB formula was to ensure that many cities and towns received far more than \$250 per pupil.

55. *Horton*, *supra* note 28, at 717.

56. DOUGLAS S. REED, ON EQUAL TERMS 80 (2001); Reed, *supra* note 11, at 131-41.

57. For more on the General Assembly’s changes, see Reed, *supra* note 11, at 140. Section III.C,

Because of these amendments, Horton returned to court in 1980 seeking compliance with the supreme court's mandate. When the trial court finally heard the case in 1984,⁵⁸ Judge Arthur Spada upheld the constitutionality of the GTB formula, but found the recent amendments unconstitutional. On appeal, the supreme court affirmed the constitutionality of the GTB formula, but remanded to the trial court to reassess the constitutionality of the amendments under a different standard.⁵⁹ Because the formula was finally fully funded in 1986—a time when the Connecticut economy was booming again—the plaintiffs did not press for re-hearing by the trial court.⁶⁰ Indeed, by the end of the 1980s, Wesley Horton had shifted his focus to a new suit: *Sheff v. O'Neill*.

D. Horton's Lessons

In the end, *Horton v. Meskill* satisfied neither the goals of its expected beneficiaries—white students in property-poor suburban districts—nor the needs of its unexpected beneficiaries—minority students in cities like Hartford. As the executive and legislative branches crafted a politically saleable remedy, attention shifted from equalizing resources between property-poor and property-rich suburbs to devoting more resources to urban schools. But as the later need for the *Sheff v. O'Neill* lawsuit shows, money alone would not solve the problems of Hartford's racially isolated students.

Before turning to those critiques, it is important to recognize the case's accomplishments. *Horton* forced an apathetic governor and legislature to confront the school finance problem after years of ignoring compelling evidence of inequity.⁶¹ It also ensured that the burden of school finance would no longer fall as heavily on local school districts. Between 1979-1980 and 1989-1990, the local share of funding dropped from 60.7% to 51.1%, while the state share rose from 31.7% to 44.7%.⁶² In one scholar's words, *Horton* "cut the Gordian knot of school finance reform in Connecticut. By forcing the

infra, returns to the theme of how economic conditions can affect political will in its discussion of more recent budgetary constraints.

58. The long delay between filing and when the trial court ruled is due to a series of battles over towns and cities attempting to intervene in the litigation. See *Horton v. Meskill* (*Horton II*), 445 A.2d 579 (Conn. 1982).

59. See *Horton v. Meskill* (*Horton III*), 486 A.2d 1099 (Conn. 1985). Under the new standard, the plaintiffs first had to make a prima facie showing that disparities in educational expenditures were more than de minimis in that the disparities continued to jeopardize the plaintiffs' fundamental right to education. If they made that showing, the burden would then shift to the state to show that the disparities advanced a legitimate state policy and were not so great as to "emasculate the goal of substantial equality." *Id.* at 1107. Justice Ellen Peters, who would later write the majority opinion in *Sheff v. O'Neill*, 678 A.2d 1267 (Conn. 1996), also wrote for the majority in *Horton III*.

60. See *Horton*, *supra* note 28, at 719.

61. See *supra* notes 24-26 and accompanying text.

62. See STATE OF CONN. DEP'T OF EDUC., BUDGET BRIEF 1992-93, at 2 (1991). After 1990, however, the trend began to reverse. Section III.A, *infra*, explores that decline. Importantly, the state share has never fallen below its pre-*Horton* level.

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legislature to address the issue of school finance reform, the court helped transform what had been an almost exclusively local issue—the financing of elementary and secondary education—into a statewide issue.⁶³ In addition, the overall amount of funding for education in Connecticut increased dramatically in the decade-and-a-half after *Horton*, a fact that may or may not be attributable to *Horton*.⁶⁴ Between 1977 and 1986, the median expenditure on education rose from \$833 to \$4,095 per pupil.⁶⁵

At the same time, however, Wesley Horton's central goal of reducing disparities in expenditures between property-poor and property-rich districts was barely achieved. Indeed, the level of inequality between districts dropped by only sixteen percent between 1977 and 1986.⁶⁶ In the same years, the gap between the lowest and highest spending districts as measured in absolute dollars grew significantly.⁶⁷

To understand why vast inequalities in expenditures persisted, it is useful to look to the executive and legislative branches' responses to *Horton*.⁶⁸ Douglas Reed's study of the era attributes the lack of equalization to two factors: weak political will and extensive deal-making. Rather than committing enough state funds to property-poor districts so that they could begin to approach the levels

63. Reed, *supra* note 11, at 80.

64. See William N. Evans et al., *The Impact of Court-Mandated School Finance Reform*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE 72, 80-81 (Helen F. Ladd et al. eds., 1999); James W. Guthrie & Richard Rothstein, *Enabling "Adequacy" to Achieve Reality: Translating Adequacy into State School Finance Distribution Arrangements*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE 209, 212 tbl.7-1 (Helen F. Ladd et al. eds., 1999). Scholars disagree over how much of this increase to attribute to *Horton*, as many states experienced a rise in funding for education in the early to mid-1980s. Compare Michael Heise, *State Constitutional Litigation, Educational Finance and Legal Impact: An Empirical Analysis*, 63 U. CIN. L. REV. 1735, 1758 (1995) (declining to attribute the rise in expenditures to *Horton*); with Bradley W. Joondeph, *The Good, The Bad, and the Ugly: An Empirical Analysis of Litigation-Prompted School Finance Reform*, 35 SANTA CLARA L. REV. 763, 801 (1995) ("Per pupil expenditures in Connecticut school districts grew at a rate that substantially outpaced the nation as a whole.").

65. REED, *supra* note 56, at 25. That the expenditures of the highest spending districts, which did not benefit from post-*Horton* legislation, also increased may suggest that *Horton* cannot account for the overall growth in education spending. On the other hand, if one believes that some districts want to continue spending more in order to maintain an advantage for their children in competing for higher education, as Peter Enrich has suggested, one could argue that higher spending districts increased their expenditures in order to stay ahead of those who benefited from *Horton*, and that *Horton* therefore did cause the overall pie to expand. See Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 158 (1995).

66. REED, *supra* note 56, at 29 (using the Gini coefficient, a common measure of inequality). The gains may actually have been greater than this figure suggests, however, as real estate inflation in the 1970s and 1980s probably would have made the disparity even greater without the countervailing impact of the new formula. See Reed, *supra* note 11, at 164-65.

67. See REED, *supra* note 56, at 23 fig.2.1.

68. Certainly one might also blame the supreme court, which stated in *Horton I* that the State did not have to sacrifice local control or bring all districts up to the level of the highest spending district in order to meet the court's constitutional mandate. See *Horton I*, 376 A.2d at 375. One might also be tempted to attribute the lack of more equalization to towns putting their new school finance money toward tax relief rather than greater school funding. However, this explanation does not appear to hold up, as the minimum expenditure requirement (MER) limited the ability of towns to channel school finance aid into tax relief.

of their richer neighbors, the executive and legislative branches consistently tried to keep down the cost of responding to *Horton I*.⁶⁹

Relying heavily on the work of Stephen Tracy,⁷⁰ Reed also points to political bargaining to explain why greater equalization did not occur. According to Tracy and Reed, Governor Ella Grasso used the supreme court's mandate to respond to *Horton* as a way of paying back urban leaders to whom she owed political favors from the last election.⁷¹ Thus, the GTB formula was designed to direct significant funds to urban schools, especially in Hartford.⁷² Grasso appeased the wealthy suburbs by ensuring that every school district received at least \$250 per pupil from the State under the flat grant.⁷³ But with so much attention paid to the cities and wealthy suburbs, poorer suburbs like Canton failed to see their own school funding increase dramatically relative to their wealthier counterparts. Reed concludes, "The political pressures of the school finance issue turned the reform effort away from equalization and towards a political distribution of benefits."⁷⁴ In this way, the legislative and executive branches' response to *Horton I* resulted in a trade-off of funds that impaired property-poor school districts' efforts to achieve greater parity with wealthier districts. This is only the first such trade-off we will see.

While Reed offers two explanations for the trade-off, there may be a third: According to various indicators, students in urban schools were poorer and therefore needed extra state education aid. Though Canton had little property wealth, only 2.7% of its students were considered "economically disadvantaged" by the State's school district profiles for the 1978-79 school year.⁷⁵ By contrast, 75.7% of Hartford's students were given this label.⁷⁶ To the extent that there is a correlation between concentrated poverty and educational need, Hartford students required more state dollars than Canton students to achieve the same outcomes. Former Commissioner Sergi, who helped coordinate the State Department of Education's response to *Horton* from behind the scenes, explained that the Department's strategy was that "all the new additional money would go to the places with the greatest need."⁷⁷ As SFAP's recommendations were translated into a legislative response, this strategy appeared to take hold.

Regardless of what caused the shift in focus, the point remains the same:

69. See Reed, *supra* note 11, at 131-41.

70. Tracy, *supra* note 14.

71. *Id.* at 141; Reed, *supra* note 11, at 104-15.

72. This outcome was achieved by heavily weighting the "need" component of the formula, which was measured by indicators of individual poverty. See Reed, *supra* note 11, at 107-08.

73. Reed, *supra* note 11, at 110-11.

74. *Id.* at 106.

75. 2 CONN. STATE BD. OF EDUC., *supra* note 30, at 42.

76. *Id.* at 118.

77. Sergi Interview, *supra* note 21.

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While *Horton v. Meskill* was brought to vindicate the rights of white students in Canton whose schools had less funding than their wealthy suburban counterparts, once the remedy was in the hands of the legislature, the goal changed. Therefore, when asked what core issue *Horton* addressed, former Commissioner of Education Tirozzi responded, “the fact that we were underfunding urban schools in Connecticut.”⁷⁸ That the case is remembered this way despite its origins in Canton points to the power of the political process to shape a remedy that suits political, economic, and social realities. Had the General Assembly strayed too far from the court’s mandate, one would have expected the supreme court to keep it in check. However, the court in *Horton III* seemed content to allow the political process to have its way.⁷⁹

Though cities benefited financially from *Horton*, students in urban schools also may have been harmed by the suit in a different way. Civil rights advocate Edythe Gaines captured the problem when she wrote in 1980, “[R]ecent legislative initiatives and vigor with respect to the equity issues of school finance and education of the handicapped have in no way been matched or even approached with respect to the issue of equity for racial minorities.”⁸⁰ A lone voice in the Connecticut education literature of the time, Gaines observed that the focus on school finance had drawn attention away from the perpetuation of racial segregation in the cities.

When the *Sheff v. O’Neill* plaintiffs filed suit in 1989, they took on the issue that Wesley Horton deliberately avoided in *Horton v. Meskill*. That *Sheff* was necessary despite the fact that the cities received significantly more state funding as a result of *Horton* may suggest, as Professor James Ryan has contended, that school finance litigation, insofar as it focuses exclusively on increasing expenditures, is “ineffective in improving student achievement” in high-poverty urban districts.⁸¹ *Horton* may have produced a more equitable school finance formula than the flat grant that preceded it, but *Sheff* reminds us that school finance litigation aimed at redressing interdistrict disparities in wealth is not a panacea, especially for students in racially isolated schools. As John C. Brittain, who was once lead counsel in *Sheff* explained, “However you could construe the most maximum success of *Horton v. Meskill* in equalizing educational finances and other support for education between rich and poor, it didn’t touch the racial and the ethnic segregation.”⁸² We turn now to *Sheff* and

78. Tirozzi Interview, *supra* note 20.

79. *Horton III*, 486 A.2d at 1110 (substituting a more deferential standard of review for strict scrutiny analysis).

80. Edythe L. Gaines, *Advancing Equal Educational Opportunity and Access to Quality Integrated Education in the Public Schools of the State of Connecticut*, in CRITICAL ISSUES IN CONNECTICUT EDUCATION 67 (1980).

81. Ryan, *supra* note 7, at 532.

82. Telephone Interview with John C. Brittain, Counsel in *Sheff v. O’Neill* and currently Professor, Thurgood Marshall School of Law (Dec. 17, 2002) [hereinafter Brittain Interview]. Since that interview, Brittain has publicly stated that he is considering abandoning his advocacy of integrated schools in favor

efforts to address the problem of segregation.

II. *SHEFF v. O'NEILL*

Even while the *Horton* remedy was still being litigated in the early 1980s, others in the state were setting their eyes on a different conception of equal educational opportunity: desegregation.⁸³ By 1989, when Brittain's team filed *Sheff v. O'Neill*, Hartford's population was 90.5% minority.⁸⁴ Yet just as the political branches were slow to respond to school finance inequities before *Horton*, it would take a court case for the political branches to contend with the problem of de facto segregation. And even once the supreme court compelled them to act, the response not only did little to ameliorate the plaintiffs' problem, but also deepened the trade-off between directing funds to urban schools and reducing school funding inequalities statewide.

A. *De Facto Segregation in Connecticut Schools: The Historical Context*

Like in other Northeastern states, the story of rising de facto segregation in Connecticut dates to the 1950s, when the cities experienced an influx of African-Americans and whites fled to the suburbs.⁸⁵ As a result of these changes and other factors,⁸⁶ some schools in Connecticut's major cities—Hartford, New Haven, and Bridgeport—were already predominantly black by the 1960s.⁸⁷ The problem of growing racial isolation did not go unnoticed in this era, however.⁸⁸ In 1964, New Haven undertook a mandatory racial balance program,⁸⁹ and three years later, the General Assembly passed legislation

of investing resources to improve even "one-race, non-white schools." Stan Simpson, *An Advocate of Integration Reconsiders*, HARTFORD COURANT, Feb. 18, 2004, at A1 (quoting Brittain). Others involved in the *Sheff* litigation, including City Councilwoman Elizabeth Horton Sheff, mother of lead plaintiff Milo Sheff, have decried Brittain's change in position. As Sheff stated, "If that's John's position for the record, then John needs to divorce himself from the Sheff case." *Id.*

83. Then-University of Connecticut law professor John Brittain and others considered bringing a school desegregation suit in Connecticut in the early 1980s but ultimately decided to wait due to a lack of popular support for the idea and increasing barriers to bringing federal desegregation suits. *Id.*

84. Revised Complaint at 10, *Sheff v. O'Neill*, 1995 WL 230992 (Conn. Super. Ct. 1995) (No. CV 89-0360977S) (complaint filed Nov. 23, 1994) [hereinafter Revised Complaint].

85. See DAVID M. ROTH, CONNECTICUT 209-11(1979).

86. One might also look to exclusionary zoning laws as another reason for the concentration of minorities in Connecticut's urban centers. See generally Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047 (1996). In 1990, the Connecticut General Assembly enacted legislation designed to combat exclusionary zoning by permitting expedited judicial appeals by any developer of an affordable housing project. See CONN. GEN. STAT. § 8-30g(f) (2003). For an appraisal of the legislation's efficacy, see Terry J. Tondro, *Connecticut's Affordable Housing Appeals Statute: After Ten Years of Hope, Why Only Middling Results?*, 23 W. NEW ENG. L. REV. 115 (2001).

87. ROTH, *supra* note 85, at 210 (noting that at least one Hartford school was ninety-five percent black).

88. The United States Civil Rights Commission published a report in the mid-1960s detailing rising segregation. See Revised Complaint, *supra* note 84, at 18.

89. The program bused seventh and eighth grade students between predominantly white and minority schools. It was upheld in *Guida v. Board of Education*, 213 A.2d 843 (Conn. Super. Ct. 1965).

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creating Project Concern, a voluntary program that bused students from the three major cities to nearby suburban schools.⁹⁰

But it was not until the late 1980s—when the issue of school finance was temporarily settled—that the State Department of Education again took up the issue of desegregation. In 1988, Commissioner Tirozzi's office issued a ground-breaking report, which concluded that “[a] trend is developing in Connecticut's public schools that is causing, according to the dictionary definition of segregation, the ‘isolation of the races . . .’ with ‘divided educational facilities.’”⁹¹ The report included a series of recommendations for how the legislature could begin to contend with the problem.⁹² A second report soon followed.⁹³

Despite their urgent tone, Tirozzi's reports “fell on deaf ears,” and thus “were a little like the initial school finance reports.”⁹⁴ They had little effect because, as former Commissioner of Education Sergi explained, “There wasn't the political will to move them, especially in the Governor's Office.”⁹⁵ While the State committed about \$2-\$3 million to allow districts to develop voluntary interdistrict plans, the funds were, in Sergi's words, “a drop in the bucket.”⁹⁶ The State took more substantial action in 1993 with the passage of legislation requiring communities to participate in a regional planning process to talk about decreasing segregation.⁹⁷ Without any enrollment goals, however, the talks had little practical effect. Like with school finance, it would take a

90. Project Concern continued through the next decades on a very small scale, until it was subsumed into the Open Choice program following the *Sheff* decision. At its peak in the mid-1970s, Project Concern served 1300 students. COMM. ON RACIAL EQUITY, A REPORT ON RACIAL/ETHNIC EQUITY AND DESEGREGATION IN CONNECTICUT'S PUBLIC SCHOOLS 8 (1988). In addition, in 1969, the General Assembly passed a law that required school districts to ensure that each school reflected the racial makeup of its district. An Act Concerning Racial Imbalance in the Public Schools, 1969 Conn. Pub. Acts 773 (current version at CONN. GEN. STAT. §§ 10-226a to 10-226e (2003)). Because this Act was limited to racial balance *within* each individual district, it said nothing about the growing segregation *between* districts, which *Sheff* aimed to address.

91. COMM. ON RACIAL EQUITY, *supra* note 90, at 1.

92. *Id.* at 11-20. Among the recommendations were: (1) starting with voluntary measures but empowering the State Board of Education to impose a mandatory plan; (2) making financial incentives available for voluntary interdistrict plans; (3) having the State Department of Education provide technical assistance to develop plans; and (4) having the State Department of Education engage in “broad-based planning with other agencies concerned with housing, transportation and other factors that contribute to segregation in the public schools.” *Id.* at 19.

93. In 1989, the State Department of Education called for the creation of magnet schools, interdistrict school construction, and the recruitment of more minority teachers. See CONN. STATE DEP'T OF EDUC., QUALITY AND INTEGRATED EDUCATION: OPTIONS FOR CONNECTICUT 27, 32 (1989). The plaintiffs in *Sheff* relied on both reports to prove that the State was aware of the problem.

94. Sergi Interview, *supra* note 21.

95. *Id.*

96. *Id.*

97. See An Act Improving Educational Quality and Diversity, 1993 Conn. Acts 263 (Reg. Sess.) (repealed in part 1998); KATHRYN A. MCDERMOTT, CONTROLLING PUBLIC EDUCATION: LOCALISM VERSUS EQUITY 31-33 (1999); see also EDUC. IMPROVEMENT PANEL, REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY iv (1997).

supreme court decision to force greater change.⁹⁸

B. *The Sheff Litigation*

Having abandoned efforts to bring a desegregation suit in the early 1980s, John Brittain, along with the NAACP Legal Defense Fund, the ACLU, the Connecticut Civil Liberties Union Foundation (CCLU), the Puerto Rican Legal Defense Fund, and others, began anew later in the decade. Invigorated by the Tirozzi reports,⁹⁹ in which the State admitted the existence of severe racial isolation, Brittain and his “dream team” brought Wesley Horton on board as local Connecticut counsel and solicited eighteen plaintiffs.¹⁰⁰ Most of the plaintiffs, including fourth-grade lead plaintiff Milo Sheff, were African-American or Latino/a students from Hartford, but a few were white West Hartford residents. In April 1989, they filed suit in state court against Governor O’Neill, Commissioner Tirozzi, and other state officials.

The plaintiffs’ original complaint contained five main legal claims, all of which rested on state constitutional or statutory provisions.¹⁰¹ The first claim, and the one on which the plaintiffs ultimately prevailed, was what Brittain described as a “garden variety *Brown v. Board of Education* school desegregation claim.”¹⁰² The plaintiffs argued that Hartford’s schools were racially and ethnically segregated and that “[s]eparate educational systems for minority and non-minority students are inherently unequal.”¹⁰³ They relied on the same constitutional provisions that the plaintiffs in *Horton* had invoked—the two equal protection provisions (one of which expressly forbids “segregation”),¹⁰⁴ and the education clause.¹⁰⁵ These provisions, the plaintiffs claimed, outlawed even de facto segregation in Connecticut’s schools.

Their second claim was more novel, as it introduced the problem of concentrated poverty and the notion that there is a link between racial and socio-economic segregation. Plaintiffs claimed that racial segregation,

98. Interestingly, even the 1993 regional planning legislation can be attributed to *Sheff*. As former Commissioner Sergi recalls, Governor Weicker “was watching the *Sheff* trial on Cable Access TV” when he decided to call for the State to take action on desegregation in his State of the State address. Sergi Interview, *supra* note 21.

99. Brittain Interview, *supra* note 82 (“When that report hit, everything mushroomed.”).

100. *Id.* at 82.

101. The following formulation of the five claims is influenced by my interview with John Brittain, during which he laid out the claims and distinguished among them. *Id.* While the Revised Complaint, *supra* note 84, also lays out four counts (the fifth was dropped, as explained *infra* note 111), Brittain’s oral description clarified the fine differences among them.

102. Brittain Interview, *supra* note 82. While the goal of *Sheff* might have echoed that of *Brown*, the claims were, of course, different insofar as *Sheff* focused on de facto, not de jure, segregation.

103. Revised Complaint, *supra* note 84, at 27.

104. CONN. CONST. art. I, §§ 1, 20. See *supra* note 32 for the full text of these provisions. Article First, § 20, the anti-segregation provision, was added to the constitution during the constitutional convention of 1965.

105. CONN. CONST. art. VIII, § 1. See *supra* note 33 for the full text of this provision.

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combined with high concentrations of poverty, and the concomitant burdens of educating students who are socio-economically deprived, rendered Hartford unable to provide equal educational opportunities, as required by the same three constitutional provisions.¹⁰⁶

Their third claim again relied on these constitutional provisions, but read as a school finance claim. Plaintiffs claimed that disparities in both educational inputs (e.g., facilities, equipment, supplies, and teacher quality) and outputs (as measured by achievement on standardized tests) between Hartford's schools and surrounding suburban schools deprived Hartford's students of an equal educational opportunity and a minimally adequate education.¹⁰⁷ The plaintiffs thus relied on *Horton v. Meskill*, where the right to equal educational opportunity had been established, but also moved beyond it to press for a right to an adequate education.

While this third claim suggests that *Sheff* was both a school desegregation and a school finance case, that conclusion misconceives the purpose of the school finance claims. As Brittain explained, *Sheff* was always fundamentally about desegregation, and the school finance claims were simply in service of the "garden variety" desegregation claim.¹⁰⁸ In Brittain's view, forty years after *Brown*, it was not enough to show that there was racial isolation; to convince a court and the public that a constitutional violation was occurring, one also had to show that there was actual inequality in resources and achievement.¹⁰⁹ This third claim served that purpose. Wesley Horton confirmed that the school finance claims were "not . . . serious The serious claim was Equal Protection. That's the one that won."¹¹⁰ The fourth and fifth claims drew less attention, and one of them was dropped before trial.¹¹¹

106. During the 1987-88 school year, 47.6% of Hartford students were on AFDC, 40.9% had limited English proficiency, and 51% came from a single parent family. Revised Complaint, *supra* note 84, at 12.

107. *See id.* at 28-29. While the plaintiffs had a strong adequacy claim given the low achievement levels of Hartford's students, they faced an uphill battle on the equity claim, because in 1991-92, Hartford was spending more on education on average than surrounding suburban districts. Ryan, *supra* note 7, at 540.

108. Brittain Interview, *supra* note 82.

109. Brittain used the following example to illustrate why the school finance claims were needed to bolster the segregation claim:

If Diana Ross, Colin Powell, Julio Inglesias, and others like them lived in Greenwich, Connecticut . . . and they all sent their children to the same elementary school and it was overwhelmingly non-white but equally affluent as they are, would there be any claim of racial segregation? Perhaps. Would there be any claims of inequality . . . ? Probably not. Therefore, we had to show both segregation as well as actual inequality.

Id.

110. Horton Interview, *supra* note 29.

111. The fourth claim was that plaintiffs were denied equal educational opportunity under CONN. GEN. STAT. § 10-4a(1) (2003) ("[E]ach child shall have . . . equal opportunity to receive a suitable program of educational experiences."), and the due process clauses of the state constitution, CONN. CONST. art. I, §§ 8, 10. The fifth claim alleged that housing segregation by the state had perpetuated school segregation. Plaintiffs dropped this claim before trial, however, because the State said it would take too long to prepare discovery. Brittain Interview, *supra* note 82.

The *Sheff* trial lasted thirty-five days in the winter of 1992-1993. When Judge Harry Hammer finally ruled in 1995, he held for the State on the grounds that there was no state action.¹¹² One year later, however, the Supreme Court of Connecticut reversed the trial court in a narrow, and ground-breaking, 4-3 holding.¹¹³ The court first held that *Horton I* had created “an affirmative constitutional obligation to provide children in public schools throughout the state with a substantially equal educational opportunity”—an obligation that the State had not met since it had not acted to remedy the existence of racial and ethnic segregation in Hartford’s schools.¹¹⁴ Thus, even though *Horton* itself did not address the problem of segregation, it provided an indispensable constitutional precedent for *Sheff*.

The court then turned to the plaintiffs’ constitutional claims and quickly indicated that it needed only to reach the plaintiffs’ first claim—the “garden variety” school desegregation claim—to find a constitutional deprivation.¹¹⁵ Reading the three constitutional provisions “conjunctly,” the court concluded “that the existence of extreme racial and ethnic isolation in the public school system deprives schoolchildren of a substantially equal educational opportunity and requires the state to take further remedial measures.”¹¹⁶ The court reasoned from the text of the provisions, their history, policy considerations, and precedent.

Following its approach in *Horton I*, the court did not impose a remedy, but rather deferred to the legislative and executive branches to develop a

112. See *Sheff v. O’Neill*, No. CV89-0360977S, 1995 WL 230992, at *29 (Conn. Super. Ct. Apr. 12, 1995). In a baffling unpublished opinion, Judge Hammer rested his legal analysis almost entirely on the dissenting opinions of Justice Douglas in several federal school desegregation cases. For a critique of Judge Hammer’s reasoning, see Adam Schwartz, Note, *Sheff v. O’Neill: Will the “Constitution State” Desegregate?* 38 *HOW. L.J.* 693, 716-21 (1995).

113. *Sheff v. O’Neill*, 678 A.2d 1267 (Conn. 1996). In the larger context of school desegregation litigation, the opinion was groundbreaking in numerous ways. Two deserve mention here. First, after years of firmly established precedent that de facto segregation did not violate the federal Constitution and was, therefore, effectively untouchable, the Connecticut court found that de facto segregation violated its own constitution and required a remedy. See Wesley W. Horton & Susan Cormier, *1996 Connecticut Appellate Review*, 71 *CONN. B. J.* 1 (1997) (“There is no case anywhere in the country like *Sheff*.”). Second, while *Milliken v. Bradley (Milliken I)*, 418 U.S. 717 (1974), had foreclosed the possibility of moving students between urban and suburban schools to remedy even de jure segregation, the *Sheff* decision suggested that no such barrier existed under the state constitution. Indeed, the court found that the “single most important factor contributing to the present concentration of racial and ethnic minorities in the Hartford public school system,” was the state’s districting statute that established town boundaries as the dividing line between school districts. *Sheff*, 678 A.2d at 1274. The court seemed to imply that it was inevitable that students would in some way have to be moved between urban and suburban areas to remedy the constitutional deprivation.

114. *Sheff*, 678 A.2d at 1277.

115. The court specifically withheld judgment on the second and third claims regarding the effects of concentrated poverty and the disparities in inputs or outputs. *Id.* at 1281. Nevertheless, Justice Berdon, in concurrence, reached the question of whether Hartford’s students were receiving an adequate education and concluded that “a racially and ethnically segregated educational environment also deprives schoolchildren of an adequate education as required by the state constitution.” *Id.* at 1291 (Berdon, J., concurring).

116. *Id.* at 1281 (majority opinion).

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solution.¹¹⁷ The court provided no guidance as to the contours of an appropriate remedy; it only required that the political branches “put the search for appropriate remedial measures at the top of their respective agendas.”¹¹⁸ In leaving it up to the State to respond to *Sheff*, the court again opened the door for political factors to shape the remedy.

In a lengthy dissent, Justice Borden, joined by two other justices, sharply rebuked the majority opinion. In his view, the majority had reached

a result driven conclusion based on a theory of constitutional liability that was never presented to the trial court or to this court, is ungrounded in the text and history of Connecticut’s constitutional provisions regarding the rights to public education and equal protection of the laws and is wholly at odds with the factual record in this case. The majority’s conclusion, moreover, is contrary to the teaching of *Horton v. Meskill*. . . .¹¹⁹

Scholars have also questioned the majority’s reasoning, especially its justification for reading the three constitutional provisions “conjunctively.”¹²⁰ In light of these criticisms and how unexpected the majority opinion was, some commentators have speculated that the identities of the judges—particularly Chief Justice Peters—may help explain the result. *Sheff* was Peters’s last major decision before her September 1996 retirement and some have characterized it as her “swan song”¹²¹—a final opportunity to correct injustice before leaving her post.¹²² Regardless of what ultimately motivated the majority, however, the State had a constitutional duty after *Sheff* to take action.

C. The State’s Response

Soon after the supreme court’s decision, Governor John Rowland issued Executive Order No. 10, establishing the Educational Improvement Panel to

117. *Id.* at 1290-91.

118. *Id.* at 1290. For a critique of the court’s failure to specify the defendants’ affirmative obligations under *Sheff* in greater detail, see Justin R. Long, Comment, *Enforcing Affirmative State Constitutional Obligations and Sheff v. O’Neill*, 151 U. PA. L. REV. 277, 309-10 (2002).

119. *Sheff*, 678 A.2d at 1295 (Borden, J., dissenting).

120. See, e.g., David J. Armor, *Facts and Fictions about Education in the Sheff Decision*, 29 CONN. L. REV. 981 (1997); Michael Besso, *Sheff v. O’Neill: A Research Note*, 34 CONN. L. REV. 315 (2002); Christine H. Rossell, *An Analysis of the Court Decisions in Sheff v. O’Neill and Possible Remedies for Racial Isolation*, 29 CONN. L. REV. 1187 (1997); Ryan, *supra* note 7, at 544-46.

121. Rachel F. Moran, *Milo’s Miracle*, 29 CONN. L. REV. 1079, 1097 (1997).

122. See Lynne Tuohy, *Ruling in Sheff vs. O’Neill Reflects a Clash of Strong Convictions*, HARTFORD COURANT, July 14, 1996, at A1. Tuohy, a knowledgeable observer of the Connecticut Supreme Court, suggests that Peters’s convictions in *Sheff* may be rooted in her experience of fleeing Nazi Germany with her parents: “This landmark ruling is not only authored by her. It is very much about her.” *Id.* Tuohy quotes Judge Guido Calabresi, a close friend of Peters and himself a refugee of Mussolini’s dictatorship, who, in a tribute to Peters commented, “First and foremost, Ellen Peters is an immigrant, a refugee I think this is a crucial fact. It teaches one always to look to strangers, to those who are apart, to those who are not always cared for. If you have been a stranger, you look toward doing justice.” *Id.* Tuohy concludes that in Peters’s last major opinion, “the incisive, intellectual analysis that is her hallmark” gives way to a passion for righting the wrongs done to strangers. *Id.*

begin preparing a response to *Sheff*.¹²³ The Panel was chaired by former Commissioner Sergi and was composed of education leaders from the executive and legislative branches, as well as community leaders and interest groups from around the state. Over the course of five months, the Panel conducted fourteen meetings, including at least eleven public sessions, before issuing a report to the Governor and General Assembly.

The Panel's report included fifteen recommendations, the most important of which involved promoting voluntary integration and improving the quality of urban education by dedicating targeted funds to specific programs.¹²⁴ Notably absent were proposals to mandate interdistrict busing, to redraw school district lines so as to create more diverse school districts, or to combine these solutions and create a metropolitan area-wide school district around Hartford across which students would be bused.¹²⁵ Their absence was significant because such measures can be the most direct and expedient ways of achieving desegregation, and the *Sheff* majority had identified the 1909 districting statute that made school district and town lines co-terminus as "the *single most important factor* contributing to the present concentration of racial and ethnic minorities in the Hartford public school system."¹²⁶ While the court did not explicitly declare the provision unconstitutional, one could easily conclude that the State needed to reconsider the way school district lines were drawn in order to comply with the decision.

However, in Executive Order No. 10, Governor Rowland effectively took these measures off the table from the start, calling for a solution "based on voluntary measures emphasizing local and parental decision-making as opposed to state-imposed mandates such as 'forced bussing' [sic]."¹²⁷ Other

123. John G. Rowland, Exec. Order No. 10 (July 25, 1996), available at <http://www.ct.gov/governor/cwp/view.asp?A=1328&Q=255922> [hereinafter Executive Order No. 10].

124. EDUC. IMPROVEMENT PANEL, *supra* note 97, at 34-35 (1997). The Panel's key recommendation in the area of improving the quality of education in urban schools was to "provide urban school districts with additional state aid targeted for increasing instructional time, improving young students' reading skills, ensuring safe schools, providing alternative and transitional programs, and enhancing the use of technology." *Id.* at 34. In the area of reducing racial isolation, the key recommendations were to "provide for interdistrict public school choice," and to "make a long-term commitment to supporting interdistrict magnet schools and significantly expand state support for these schools in the next five years." *Id.* at 35.

125. There were, however, five Panel members who submitted a proposal to the Panel calling for "all students to freely access any public school in the state." YVONNE P. DUNCAN ET AL., A PROPOSAL TO THE EDUCATION IMPROVEMENT PANEL 2 (1997). The proposal sought to eliminate residency as a requirement for school access and allow students to attend any school in the state. *Id.* at 3. One of the signatories of the proposal eventually submitted a dissenting opinion to the Panel's official report in which he criticized the Panel for "decid[ing] early that 'local control' of schools was more important than obeying the court decision." EDUC. IMPROVEMENT PANEL, *supra* note 97, at 38 (statement of J.P. Brown).

126. *Sheff*, 678 A.2d at 1274.

127. Executive Order No. 10, *supra* note 123. Rowland was quoted as stating, with respect to busing, "As long as I'm Governor, that is not one of the solutions." Richard Weizel, *Integration Suit: 7 Years Later*, N.Y. TIMES, July 14, 1996, § 13 (Conn.), at 1.

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state leaders, including Attorney General Richard Blumenthal and Senate Majority Leader James Fleming, also made clear that the State would not adopt a solution that threatened “local control.”¹²⁸

The Education Improvement Panel, which appears to have entertained all possibilities even if only cursorily, also rejected mandatory measures, reporting that students, teachers, and parents in urban, suburban, and rural schools had all “rejected quota-based busing and redistricting as options for reducing racial isolation.”¹²⁹ In the end, then, with mandatory busing and redistricting off the table, what remained in the Panel’s report were voluntary integration measures and efforts to improve the quality of urban education through targeted aid—both of which would demand significant state funding to have any hope of being effective.

Once the decision moved to the General Assembly, the central debate was not over whether to adopt mandatory versus voluntary integration programs—that issue was essentially settled¹³⁰—but rather over whether to focus on voluntary integration or increasing funding for urban schools. In debating the issue, factions of the General Assembly split along intriguing lines. Urban Democrats, including the Black and Hispanic Caucus, were divided on the best solution.¹³¹ While some favored voluntary integration, a significant number preferred increasing resources for urban schools over integration.¹³² Among the latter group, many felt offended by the idea that minority children should have to attend school next to white children to be able to learn; instead, they simply needed more resources.¹³³ By contrast, many suburban Republicans were hesitant to invest more funds in urban schools without greater accountability.¹³⁴ This faction complained that the large amount of state aid already flowing to

128. See Robert A. Frahm, *Court Orders Desegregation; Rowland Rules Out Busing, Vows To Keep Local School Control; Legislature, Governor Left To Manage Remedy*, HARTFORD COURANT, July 10, 1996, at A1 (quoting Senate Majority Leader James T. Fleming as stating “[w]e will not support dismantling local control of education”); Weizel, *supra* note 127 (noting that Connecticut Attorney General Richard Blumenthal “indicated after the ruling that he would fight to insure that local control of the school system is preserved”).

129. EDUC. IMPROVEMENT PANEL, *supra* note 97, at v.

130. When interviewed, State Senator Gaffey, State Representative Staples, and former State Representative Mattiello all agreed that mandatory busing was never truly on the table because it was almost uniformly opposed. Interview with Thomas P. Gaffey, Co-Chair, Education Committee, Connecticut General Assembly, in Hartford, Conn. (Mar. 5, 2003) [hereinafter Gaffey Interview]; Interview with Brian Mattiello, former ranking Republican member on the Education Committee, Connecticut General Assembly, now Undersecretary, Policy Development and Planning Division, State of Connecticut Office of Policy and Management, in Hartford, Conn. (Mar. 5, 2003) [hereinafter Mattiello Interview]; Interview with Cameron Staples, Co-Chair, Education Committee, Connecticut General Assembly, in New Haven, Conn. (Dec. 19, 2002) [hereinafter Staples Interview].

131. Mattiello Interview, *supra* note 130.

132. Staples Interview, *supra* note 130; cf. Robert A. Frahm, *Poll: Education, Rather than Integration; Study Reveals Black Parents Want More Emphasis on School Quality*, HARTFORD COURANT, July 29, 1998, at A1 (reporting on a national survey finding that black parents were turning against integration and calling for better quality schools without integration).

133. Staples Interview, *supra* note 130.

134. Mattiello Interview, *supra* note 130.

Hartford through the weighted need component of the school finance formula was not producing results. They instead advocated for choice programs.¹³⁵ Some Republicans favored choice because it represented a market solution to the problem of failing schools; for others, it was a way to ensure that a *Sheff* remedy would have little impact on their children.¹³⁶ Representative Staples confessed: “[I]t was the reverse of what I would have imagined. I would have suspected that the suburban Republicans would have opposed integration, and the urban Democrats would advocate for integration, and it became somewhat the reverse.”¹³⁷

In the end, the legislature enacted a compromise solution in Public Act 97-290.¹³⁸ With respect to voluntary integration, the State established an interdistrict choice program known as “Open Choice,” which would allow students in certain urban school districts to transfer to suburban schools where space was available. The legislation also created a grant program to encourage the creation and construction of racially diverse interdistrict magnet schools.¹³⁹ In addition to these two core programs, the legislation established a preference in charter school enrollment for students from priority school districts,¹⁴⁰ promised a grant for the creation of a lighthouse school in Hartford,¹⁴¹ and set up an interdistrict cooperative grant program, which would encourage school districts to come together for activities where their students would have an opportunity to interact with diverse others.¹⁴²

Besides the programs aimed at reducing racial isolation, the legislation also promised new grants to “priority school districts” to improve the quality of education.¹⁴³ Earlier legislation defined priority school districts as those that served the state’s eight most populous towns, the eleven districts with the most students on welfare, and the eleven towns that had the highest proportion of students on welfare.¹⁴⁴ These districts received special categorical grants, which were supplemental to the state money all districts received under the school finance formula adopted after *Horton*. In subsequent legislation passed in 1997 and 1998, the General Assembly targeted hundreds of millions of

135. Staples Interview, *supra* note 130.

136. Gaffey Interview, *supra* note 130 (“The suburbanites were looking for as minimal action as possibly could occur.”).

137. Staples Interview, *supra* note 130.

138. An Act Enhancing Educational Choices and Opportunities, 1997 Conn. Acts 290 (Reg. Sess.) (codified in scattered sections of CONN. GEN. STAT. tit. 10).

139. *Id.* § 16.

140. *Id.* § 7(c).

141. *Id.* § 18. A lighthouse school is an existing public school that adopts a specialized focus and curriculum in order to improve inter- and intradistrict choice. Unlike magnet schools, lighthouse schools are not explicitly required to be racially diverse; they are primarily aimed at increasing school choice.

142. *Id.* § 12.

143. *Id.* § 22.

144. See CONN. GEN. STAT. § 10-266p (2003). Because many of these categories overlap, today there are sixteen priority school districts in the state.

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dollars in categorical aid to these districts to improve school readiness for preschoolers, foster early reading success, extend school hours, provide for summer school, purchase new library books, and repair school buildings.¹⁴⁵

In addition to Public Act 97-290, the General Assembly also passed legislation in 1997 requiring the State to take over the Hartford school district.¹⁴⁶ This move was viewed by many as a crucial step in changing the culture of the Hartford school system. After years of nepotism and mismanagement, “[t]he governance of the school district was basically in meltdown.”¹⁴⁷ The state takeover aimed to ensure sweeping structural and administrative change.¹⁴⁸

While both redistricting and busing would have been administratively complex and controversial, their financial costs likely would have been small compared to the state funds needed to construct new magnet schools and meaningfully invest in targeted educational programs. By 1998, the State had increased total education funding by about \$200 million over the level in the year before *Sheff* came down.¹⁴⁹ Of that funding, the vast majority went toward targeted grants aimed at improving education in the priority school districts. In this way, the State had effectively adopted a school finance-oriented solution to the problem of desegregation—a problem that *Horton* had already shown dollars alone could not solve. The consequences of that decision became clear in 1998 when the *Sheff* plaintiffs went back to court.

D. Subsequent Litigation and Settlement

Dissatisfied by Public Act 97-290’s lack of specific guidelines for the desegregation of the Hartford schools and the slow pace at which desegregation was proceeding, the *Sheff* plaintiffs returned to superior court in 1998 seeking to compel the State to comply with the supreme court’s 1996 decision. Although the plaintiffs did not oppose directing more resources to needy

145. See *Sheff v. O’Neill*, 733 A.2d 925, 936-37 (Conn. Super. Ct. 1999) (describing these programs and citing relevant legislation); Memorandum from Theodore S. Sergi, to the Connecticut State Board of Education (April 5, 2002), Defense Exhibit No. 344, *Sheff v. O’Neill*, No. X03-CV-0492119S (Conn. Super. Ct. 2002) (detailing the amount of money spent or budgeted by the state on each of these programs from 1997-1998 through 2002-2003) [hereinafter Sergi Memorandum].

146. An Act Concerning the Hartford Public Schools, 1997 Conn. Acts 4 (Spec. Sess.).

147. Gaffey Interview, *supra* note 130.

148. By most accounts, the takeover, which ended in December 2002 with the transfer of power back to the local school board, was a success. Improvements in achievement in Hartford schools outpaced the statewide average, and graduation rates rose slightly. See Jeff Archer, *Hartford Reshuffles as Lead Actors Exit*, EDUC. WEEK, Dec. 4, 2002, at 1. Indeed, eight Hartford residents sued to extend the takeover, arguing that more time was needed to fully realize the goals Connecticut legislators set when they authorized the takeover in 1997. See Jeff Archer, *Judge in Hartford, Conn., OKs End to State Takeover*, EDUC. WEEK, Dec. 11, 2002, at 4. The court dismissed the suit, stating that the court could not “second-guess the will of the legislature” and “ignore the voters of the city of Hartford.” *Id.*

149. *Sheff*, 733 A.2d at 937; see also Sergi Memorandum, *supra* note 145 (providing an annual breakdown of *Sheff*-related state funding).

schools as a policy matter and had included a school finance claim in their initial complaint, they viewed evidence that the state had directed dollars toward improving urban education as legally irrelevant when there had been no simultaneous reduction in racial isolation.¹⁵⁰ By 1998, the concentration of minority students in Hartford schools had actually *increased* over the levels of 1989, when the suit was filed, to ninety-five percent of the student population.¹⁵¹

After surveying the range of programs the State had enacted in response to *Sheff*, Judge Julia Aurigemma, who took over the case from Judge Hammer, rejected the plaintiffs' claim. She held that the State had complied with the supreme court's order to develop a remedy, that "the plaintiffs failed to wait a reasonable time," and that their return to court was "premature."¹⁵² Notably, Judge Aurigemma also expressed approval of using voluntary over mandatory desegregation, finding that voluntary measures are "superior . . . because they promote integration of more lasting duration with a minimum of opposition and disruption."¹⁵³

By the 1999-2000 school year, only six percent of Hartford schoolchildren had access to integrated schools through participation in Open Choice or attendance at interdistrict magnet schools, prompting the plaintiffs to return to court again in December 2000.¹⁵⁴ In the view of one member of the plaintiffs' legal team, the pace of desegregation up to that point had been "the same kind of deliberate speed that gave *Brown* a bad name."¹⁵⁵ Nevertheless, the plaintiffs did not challenge the two primary means the State had chosen to reduce racial isolation. Rather, they challenged the programs' "scale and scope."¹⁵⁶ For the first time, plaintiffs submitted their own detailed plan, setting out specific numeric goals and yearly guidelines for achieving desegregation of the

150. See *Sheff*, 733 A.2d at 936 ("Curiously, at the hearing before this court, the plaintiffs' counsel repeatedly objected to and labeled irrelevant evidence of the numerous efforts and initiatives aimed at improving the quality of education.") As the court went on to point out, while the plaintiffs may have been justified in expecting greater progress in reducing racial isolation, it is probably going too far to say that directing funds to improve urban education is irrelevant to that goal. To the extent that the success of interdistrict magnet schools located in Hartford depends on attracting suburban students to urban areas, there is a connection between improving urban education (in a way that is either real or perceived) and reducing racial isolation. *Id.*

151. Robert A. Frahm, *Critics: Choice Plan is Failing*, HARTFORD COURANT, Sept. 9, 1998, at A1.

152. *Sheff*, 733 A.2d at 938.

153. *Id.* at 942.

154. See Motion for Order Regarding the Implementation of the Project Choice Program and the Interdistrict Magnet School Program in the Hartford Region at 3, *Sheff v. O'Neill*, No. X03-CV89-0492119S (Conn. Super. Ct., filed Dec. 28, 2000). Two percent of Hartford schoolchildren went to racially balanced interdistrict magnet school, and four percent went to suburban schools through Open Choice. *Id.* at 2.

155. Interview with Philip Tegeler, former Legal Director, Connecticut Civil Liberties Union Foundation, in Hartford, Conn. (Dec. 20, 2002).

156. Plaintiffs' Description of the Case, Causes of Action and Relief Sought, and Estimate of Time Required for Trial at 2, *Sheff v. O'Neill*, No. X03-CV-0492119S (Conn. Super. Ct., filed Mar. 18, 2002).

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Hartford schools using the State's voluntary methods.¹⁵⁷ The "Stevens Plan" rested on the premise that thirty percent of Hartford students should attend desegregated schools within four years and set out concrete steps to reach that goal.¹⁵⁸

A hearing began before Judge Aurigemma in April 2002, and after three weeks of testimony the judge hinted that she would not accept either the State's or the plaintiffs' plans as they then existed.¹⁵⁹ This prompted the two sides to begin negotiating, and in January 2003, after months of talks, they reached a settlement agreement. According to the terms of the settlement, the State will aim to ensure that by June 2007, thirty percent of Hartford students will be educated in an environment of reduced isolation.¹⁶⁰ It will do so by building eight new magnet schools in the Hartford area (two per year for four years), ensuring the gradual increase of students participating in Open Choice, and increasing funding for cooperative grant programs.¹⁶¹ The settlement's exclusive focus on Hartford is consistent with the plaintiffs' longstanding position that while they "hoped and expected the case to have a beneficial impact on [N]ew Haven and Bridgeport," the *Sheff* decision applied only to Hartford.¹⁶²

The State will spend \$45 million to operationalize these programs, and will provide an estimated \$90 million more for the construction of new magnet schools or the conversion of existing schools to magnets.¹⁶³ Though the

157. Prepared by Leonard B. Stevens, Ed.D., this plan marked the first time the plaintiffs had set out any kind of concrete numeric goals and a plan for how to reach them. Interview with Dennis Parker, then Attorney, NAACP Legal Defense Fund, in New Haven, Conn. (Dec. 2, 2002).

158. Report of Leonard B. Stevens (Jan. 2002), Plaintiff Exhibit No. 15, *Sheff v. O'Neill*, No. X03-CV-0492119S (Conn. Super. Ct. 2002).

159. Robert A. Frahm, *Sheff vs. O'Neill Lawsuit Settled*, HARTFORD COURANT, Jan. 22, 2003, at A1; Sergi Interview, *supra* note 21.

160. See Stipulation and Order at 3, *Sheff v. O'Neill*, No. X03-89-0492119S (Conn. Super. Ct. Jan. 22, 2003). The stipulated agreement calculates the percentage of students being educated in settings of "reduced isolation" by dividing the percent of minority public school students residing in Hartford who are either attending public schools outside of Hartford through Open Choice or attending interdistrict magnet schools, by the total number of minority public school students residing in Hartford. The numerator of the fraction can also rise by a small amount every time the State grants \$50,000 of state dollars to Hartford for interdistrict cooperative programs. See *id.*

161. *Id.* at 4-6.

162. E-mail from Philip Tegeler, former Legal Director, Connecticut Civil Liberties Union Foundation, to Lauren Wetzler (Apr. 20, 2003, 09:05:03) (on file with author). While the plaintiffs never objected to the 1997 legislation's expansion of *Sheff* programs to Bridgeport and New Haven, they worried that doing so would slow the pace of desegregation in Hartford—the focus of their case. Thus, in the 1998 and 2002 hearings, they strenuously objected to the State's introduction of evidence about desegregation programs it was implementing outside of the Hartford region. *Id.* The judge overruled the objections, even though her opinion indicates that she agreed that the case was ultimately about Hartford. *E.g.*, *Sheff v. O'Neill*, 733 A.2d 925, 938 (Conn. Super. Ct. 1999) ("Certainly one method of assessing the efficacy of the state's efforts to reduce racial and ethnic isolation in the Hartford schools is to wait a reasonable amount of time to see how many students in Hartford are still attending schools in which they are racially or ethnically isolated.").

163. Robert A. Frahm, *Legislators Approve Sheff Settlement; House Votes 87-60 for Integration Plan*, HARTFORD COURANT, Feb. 26, 2003, at B1.

settlement was not “the vision we started with 14 years ago,” said Elizabeth Horton Sheff, mother of lead plaintiff Milo Sheff, it was, in her words, “a giant step forward.”¹⁶⁴ After two trips back to court, the plaintiffs had achieved some assurance of relief.¹⁶⁵

E. Sheff's Lessons

Like the programs the General Assembly enacted after *Sheff*, the settlement wears an expensive \$135 million pricetag. In Part III, we will begin to understand the significance of the State's reliance on an expensive solution and how dollars devoted to *Sheff* have come to compete with dollars needed to redress problems with Connecticut's regular school finance system. For now, it is useful to inquire in more depth into how the State ended up with a costly solution that focused on a combination of priority school district grants and voluntary integration. The reason is familiar: Left by the court to respond, the State devised a remedy that accorded with political realities, even if that meant departing from the court's conception of the constitutional infirmity.

In responding to *Sheff*, legislators did not feel inhibited by the court's definition of the constitutional infirmity—the existence of de facto segregation. Instead, they translated the suit into an opportunity to remedy what they perceived to be the state's educational ills. Former ranking Republican member of the Education Committee, Brian Mattiello, explained that his initial reaction to the case was to “separate what the Constitution or what the judicial branch was saying from what I thought we should be doing in education.”¹⁶⁶ Rather than feeling limited to the words of the *Sheff* opinion, it was “the spirit of *Sheff*,” which Mattiello understood as a mandate “to do more,” that guided him and other legislators in designing a remedy.¹⁶⁷ For example, for Senator Gaffey, the Education Committee Co-Chair, even though the supreme court opinion spoke of racial and economic isolation, the suit represented “an amazing opportunity, particularly in leadership . . . to leverage new funding for our towns” through categorical grants. As he went on to explain, “That's exactly

164. Robert A. Frahm, *Sheff Turns Ahead; Settlement: A Four-Year Effort Begins to Help Undo Hartford's School Segregation*, HARTFORD COURANT, Jan. 23, 2003, at A1. Commentators have already expressed additional concerns about the settlement, above all, what will happen to the seventy percent of students left behind in racially concentrated schools. See, e.g., Rachel Gottlieb & Daniela Altimari, *Reaction: What About the Kids Who Get Left Out?*, HARTFORD COURANT, Jan. 23, 2003, at A1.

165. There is already cause for concern, however, that the State may not fully comply with the terms of the settlement. Due to a shortfall in the Hartford school budget, the two magnet schools that the State was obligated to open by September 2003 under the terms of the settlement did not open in permanent buildings, and one had only ninety-one students enrolled, seven of whom were from the suburbs. See Letter from Philip Tegeler et al., *Sheff* Plaintiffs' Co-Counsel, to Attorney General Richard Blumenthal I (Oct. 27, 2003) (on file with author). Given that the settlement puts an obligation on the State to open the schools, it seems that Hartford's budgetary troubles cannot legally justify the delay of the two schools.

166. Mattiello Interview, *supra* note 130.

167. *Id.*

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what happened. The school readiness program, the early reading program, new money for library books, for maintenance . . . That all happened because *Sheff* opened up a door for us.”¹⁶⁸ Legislators quickly concluded that to make the remedy politically palatable across the state, it would have to be a statewide solution that covered more than the Hartford schools.¹⁶⁹ Leaders of the Education Committee also apparently felt that developing a statewide remedy would help forestall future *Sheff*-like suits elsewhere in the state, or at least serve as a defense if such suits arose.¹⁷⁰

Aiming to fulfill “the spirit of *Sheff*” in the way they saw fit, legislators were guided by political realities and the context of a limited budget.¹⁷¹ The strong tradition of local control in Connecticut and the extremely controversial nature of busing help explain why such approaches were quickly dismissed. In a state that is so fiercely attached to town-based local control that it lacks any form of county government,¹⁷² a plan that threatened to break down existing school district boundaries and create regional districts would have been “political suicide” for suburban legislators.¹⁷³ And given the immediate public outcry against mandatory busing from all sides, busing would have been equally lethal for most legislators.

While it is difficult to pin down the precise reasons why busing was so unpopular,¹⁷⁴ a few factors seem salient. It is likely that most white suburban parents opposed it because they objected to moving their children from what they perceived to be successful neighborhood schools to under-performing schools farther away. Others may have had less benign, even racist reasons, such as wanting to keep their children from interacting with minorities. Many minority parents also opposed busing, however, preferring to have their

168. Gaffey Interview, *supra* note 130. Both Senator Gaffey and Representative Staples, who were then—and now—co-chairs of the Education Committee, represented some of the priority school districts that would benefit from the new targeted grants. (Staples represented New Haven, and Gaffey represented Meriden and Middletown.) Senator Gaffey’s comment that *Sheff* created an opportunity, “particularly in leadership,” to direct new funds to “our towns” is best understood in this context.

169. Mattiello Interview, *supra* note 130.

170. Gaffey Interview, *supra* note 130.

171. Mattiello Interview, *supra* note 130 (“It was necessary for a group of moderates to put together the best plan in the context of a limited budget and within the context of political realities.”).

172. Only one other state, Rhode Island, lacks county government. See Swift, *supra* note 85.

173. Gaffey Interview, *supra* note 130. Politicians’ rhetoric notwithstanding, in theory, redrawing district lines does not have to sacrifice local control. New local boards of education could always be created in the redrawn districts such that parents could still influence educational decision-making. However, to the extent that local control in Connecticut shades into “localism”—fondness for one’s town—redrawing school district lines would disrupt local control. Because Connecticut lacks county government, the Connecticut town does seem to take on an especially important role for residents of the state.

174. In a survey of 500 Connecticut residents conducted after *Sheff*, fifty-nine percent reported that they opposed busing, while twenty-seven percent favored it. Robert A. Frahm, *Residents As Divided as Court on Sheff*; *Courant-ISI Connecticut Poll*, HARTFORD COURANT, Aug. 16, 1997, at A1; see also Rick Green et al., *Word of Court’s Decision ‘Moved Like Lightening’ Through Community*, HARTFORD COURANT, July 10, 1996, at A13.

children remain in nearby neighborhood schools rather than sending them on long bus rides.¹⁷⁵ Some reportedly felt offended by the notion that their children had to be sent into white suburbs to be able to learn.¹⁷⁶ Many Latino parents worried that their children would lose bilingual programs they had fought to bring to neighborhood schools.¹⁷⁷ In addition, it seems that the memory of Boston's violent experience with busing loomed large in people's minds. As Senator Gaffey explained, "I didn't favor [busing] because if it didn't work in South Boston, I didn't think it was going to work here. It was a failed, miserable experiment."¹⁷⁸

Executive and legislative officials may have felt especially comfortable dismissing busing and redistricting because they did not think the supreme court would ever require their adoption after Justice Peters retired and was replaced with a more conservative justice.¹⁷⁹ Some commentators have suggested that Peters' anticipated retirement and the expectation that the new justice would tip the vote 4-3 in favor of the dissent if the case ever returned to the supreme court on a compliance motion might have weakened the opinion's mandate in the eyes of some officials.¹⁸⁰

Regardless of why busing and redistricting were rejected, their dismissal left voluntary integration as the remaining solution for reducing racial isolation.¹⁸¹ The two main voluntary proposals involved interdistrict choice and

175. Staples Interview, *supra* note 130.

176. According to Representative Staples, "The particular opponents of [busing] were urban minority advocates because they found it condescending to suggest that the only way their child[ren] could learn was by sitting next to a white child." *Id.* For a more thorough analysis of why many black parents oppose busing, see John M. Vickerstaff, *Getting Off the Bus: Why Many Black Parents Oppose Busing*, 27 J.L. & EDUC. 155 (1998).

177. Parker Interview, *supra* note 157.

178. Gaffey Interview, *supra* note 130.

179. Rowland appointed Francis M. McDonald Jr. to fill Peters' vacancy. As reported by the *Hartford Courant*, "McDonald is viewed as a conservative who will shift the balance on many of the kind of issues that drew 4-3 rulings last session." Lynne Tuohy, *Callahan Takes Supreme Court Helm; Native of Norwalk Vows to Address Civil Case Backlog*, HARTFORD COURANT, Aug. 30, 1996, at A3. Rowland also appointed Justice Callahan, a dissenter in *Sheff*, to be the new Chief Justice.

180. See, e.g., Jonathan Rabinovitz, *Hartford School Integration Panel Formed*, N.Y. TIMES, July 11, 1996, at B2; Lynne Tuohy, *Majority Says City's System Unconstitutional*, HARTFORD COURANT, July 10, 1996, at A1 (describing the *Sheff* ruling as "fragile" and commenting, "The imminent retirement of Peters from the court . . . could jeopardize the ruling.").

181. In addition to the political factors militating for voluntary integration, legislators' opinions may have been shaped by evidence, trumpeted by two of the state's expert witnesses in the *Sheff* trial, that voluntary integration plans were more successful than mandatory plans in terms of providing a stable and productive remedy. See DAVID ARMOR, FORCED JUSTICE 113 (1995); CHRISTINE H. ROSSELL, THE CARROT OR THE STICK 32-33 (1990); Rossell, *supra* note 120; Christine H. Rossell & David J. Armor, *The Effectiveness of School Desegregation Plans, 1968-1991*, 24 AM. POL. Q. 267, 298 (1996). According to Rossell, voluntary plans are more successful because: "1) they produce dramatically less white and middle class black and Hispanic flight than mandatory reassignments; 2) they produce the same or more interracial exposure; and 3) they are the preferred desegregation technique of parents of all races." Rossell, *supra* note 120, at 1218-19. Judge Aurigemma concluded that voluntary methods were superior to mandatory ones after the first *Sheff* compliance hearing. See *Sheff v. O'Neill*, 733 A.2d 925, 942 (Conn. Super. Ct. 1999).

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interdistrict magnet schools. Dramatically increasing the Open Choice interdistrict busing program was unlikely to be effective on a broad scale for several reasons. First, because suburban parents would tend not to send their children to Hartford, it would never be more than a one-way movement of students. Therefore, unless suburban districts were willing to open up huge numbers of new seats in their schools, its scope would always be limited. The reality was that while many suburban schools opened up seats, others either truly lacked room or felt a “deep reserve”—some might call it a racist aversion—to having “Hartford minority kids coming into [their] school district.”¹⁸² This put significant pressure on magnet schools to carry the day in reducing racial isolation. But as the *Sheff* settlement shows, constructing magnet schools is expensive, particularly when they must be attractive enough to lure suburban students away from successful schools closer to home. It would, therefore, take a huge commitment of state funds to effectuate any measureable integration.

Thus, just as the political branches translated *Horton* from a case about disparities in expenditures into a way to direct more money to urban schools, in 1997, legislators transformed *Sheff* from a mandate to desegregate into an opportunity to leverage funds to “do more” for Connecticut’s students in the ways they saw fit. Consequently, for some legislators, the legacy of *Sheff* is what it has done for school funding. As Senator Gaffey boasted, “Look at all the things we’ve done. Look at all the money associated with these programs. . . . Yes, we always did recognize the constitutional obligation to provide an equal educational opportunity, and this is how we did it.”¹⁸³

However, the decision to adopt a costly remedy to *Sheff* has had consequences not just for the success of desegregation, but also for statewide school finance equity. In *Horton*, a trade-off arose between channeling funds to urban schools through the need component of the GTB formula and achieving greater equalization of funding for the state’s property-poor suburban schools.¹⁸⁴ Likewise, by relying on money to respond to *Sheff*, the State has pitted achieving desegregation against adhering to *Horton*’s mandate to provide equal educational opportunity in terms of statewide school expenditures. The next case, *Johnson v. Rowland*, suggests how that trade-off arose.

III. JOHNSON V. ROWLAND

In 1998, school finance litigation returned to Connecticut. Students in a diverse group of working-class and middle-class towns and cities filed suit

182. Gaffey Interview, *supra* note 130 (“Anyone who suggests that’s not true isn’t telling the truth.”).

183. *Id.*

184. See *supra* Section I.D.

against the State for failing to provide them with an equal or adequate education. While the complaint in *Johnson v. Rowland* was withdrawn due to a lack of funds to prosecute the suit, the case served as a reminder that while the State strived to meet the obligations imposed by *Sheff* to reduce racial isolation, it had a continuing duty to fulfill the financially-oriented vision of equal educational opportunity embodied in *Horton*. The suit further suggested that in a world of limited resources and political will, the State had allowed its second duty to lag; fixing problems with the state's school finance formula had lost the competition for state dollars and attention.

A. *The School Finance Formula from Horton to Johnson*

One of the crucial developments arising from *Horton* was the switch from a flat per pupil grant to a guaranteed tax base (GTB) formula for funding the State's share of education costs. In 1988, the formula changed again, this time to a foundation formula known as the Education Cost Sharing (ECS) grant. The essential innovation of ECS was the establishment of a "foundation amount," which constituted the base aid each town would receive before adjustments were made to account for differences in need. In theory, the foundation amount represented "the minimum amount of money necessary to provide an adequate education for an average student on a per-pupil basis."¹⁸⁵ In addition to the ECS grant, which supplied regular education funds, the State continued to provide separate funding for special education and transportation on a sliding scale according to district wealth, as well as targeted categorical grants such as priority school district grants.

For several years after the adoption of the new formula, interdistrict disparities declined.¹⁸⁶ But starting in the early 1990s, the State began making adjustments to the formula in order to lower its education costs.¹⁸⁷ By 1997, interdistrict disparities were again on the rise.

The General Assembly made two particularly important cost-cutting changes to the ECS formula soon after it was adopted—changes that later would form the basis for the complaint in *Johnson v. Rowland*. First, faced with years of budget deficits and looking to lower state education costs, legislators in 1992 imposed a cap on how much additional aid a district could receive from the state from year to year. This meant that even if a district experienced rapid population growth, its funding could only increase by a low, fixed percentage each year.¹⁸⁸ Second, in 1993, the legislature froze the foundation amount

185. LPRIC REPORT, *supra* note 19, at 33.

186. *See id.* at 20-22.

187. For a complete summary of the changes made to the formula and their impact, see *id.* at app. C. In the following paragraph I will highlight only a few of the most significant changes. Unless otherwise noted, the information contained herein derives from *id.*

188. Initially, funding could only increase by a maximum of two percent per year. Today, it can

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rather than allowing it to grow with the rising costs of education, as had originally been intended. The foundation thus became disconnected from actual education spending; if a district wanted to spend as much as the original formula predicted was needed “to provide an adequate education,” the district itself would have to make up the difference. While the foundation amount has been raised since 1993, it has not kept pace with the rising costs of education.¹⁸⁹

Besides these two cost-cutting measures, the General Assembly also implemented a “hold harmless” provision in 1989 to protect towns from experiencing a sudden drop in aid from one year to the next. While this change helped many districts, it hurt those districts that were experiencing rapid population growth, as it meant that funding that might otherwise have been reallocated to them remained temporarily with districts whose need for funding had declined.

As a result of these and other distortions, the State’s contribution to education peaked at 45.5% of all funding in 1989-90 and has never again returned to that level.¹⁹⁰ In 2003, the State provided only thirty-nine percent of school funding,¹⁹¹ making Connecticut more reliant on local property taxes for K-12 education than any other state.¹⁹² In light of this trend, municipalities that relied on ECS funding, yet failed to receive as much state aid as the original formula would have allowed, began to question whether the State had forgotten about the mandate of *Horton v. Meskill*.

The towns that spoke out most forcefully against the distortions were a mixture of urban and working-class suburban communities. The mayors of Bridgeport and East Hartford, along with Robert DeCrescenzo, the former Mayor of East Hartford and by 1998 an attorney in private practice, conceived of bringing suit against the State to challenge the changes to the ECS formula.¹⁹³ Though the named plaintiffs were students, it was their towns and cities that were underwriting the cost of the litigation.¹⁹⁴

increase by six percent per year for some districts. *Id.*

189. In 1995, the foundation amount was increased, but only to compensate for building the state’s special education funding into the formula. For the past five years, it has stood at \$5,891 per pupil. If the foundation amount had risen in accordance with actual costs, as originally intended, it would have been \$7,900 per pupil in October 2003. REPORT OF THE STATE OF CONN., BLUE RIBBON COMMISSION ON PROPERTY TAX BURDENS AND SMART GROWTH INCENTIVES 26 (2003) [hereinafter BLUE RIBBON REPORT], available at http://www.ccm-ct.org/advocacy/2002-2003/blue_ribbon_commission_report-oct2003.pdf.

190. *Id.* at 26.

191. *Id.*

192. *Id.* at 20.

193. Telephone Interview with Robert DeCrescenzo, Attorney, Updike, Kelly & Spelacy (Dec. 18, 2002) [hereinafter DeCrescenzo Interview].

194. It was necessary to have the named plaintiffs be the students and not the towns because in Connecticut a city lacks standing to sue its creator, the State. See *Waterford v. Conn. State Bd. of Educ.*, 169 A.2d 891, 895 (Conn. 1961).

Many of the towns, like East Hartford and West Haven, were “inner-ring suburbs”—suburbs immediately surrounding cities that, though historically middle-class, were experiencing rapidly changing demographics and wealth characteristics, including rising poverty and declining property tax capacity.¹⁹⁵ With a cap on the growth in their state funds, a hold harmless provision in place,¹⁹⁶ a low foundation amount, and a host of other distortions to the formula that reduced state funding,¹⁹⁷ these communities argued that the state was not fulfilling its constitutional obligation under *Horton I*.

But the towns that joined the *Johnson* suit were not the only ones suffering from the ECS distortions. Indeed, because many of the *Johnson* plaintiffs were from priority school districts that had benefited from post-*Sheff* funding, they may not have been the best spokespersons for their cause.¹⁹⁸ Other districts in the state, such as property-poor mill towns in Northeastern Connecticut that have not benefited from priority school district grants and are under-funded through the distortions to ECS, would seem to have a stronger claim. To former Commissioner Sergi, these towns, which are predominantly white, have relatively little property wealth, and whose achievement scores hover just above those of the urban schools, are the best candidates for a successful adequacy suit.¹⁹⁹ Senator Gaffey agreed: “If a case was brought by those Northeastern poorer communities that haven’t had the benefit of the priority school district and categorical monies, they possibly would have a far more persuasive case that could win the day in court.”²⁰⁰ Such towns might claim that even though the State was spending money on magnet schools and improving education in priority school districts to remedy *Sheff*, it could not forget its duty to fund all of Connecticut’s schools at a level that ensures some degree of equal educational opportunity—or, as the *Johnson* plaintiffs would have it, adequacy. Given that the mill towns have not filed suit, however, *Johnson* at least provides a second-best way of illustrating the desperation of towns across the state that felt squeezed as an increasing fraction of the state’s education budget went to fund the *Sheff* remedy.

195. *Id.*

196. The hold harmless provision would have helped the *Johnson* plaintiffs if their populations were decreasing. Instead, however, they were increasing.

197. The plaintiffs also cited distortions to the Income Adjustment Factor, the Guaranteed Wealth Level, the Minimum Expenditure Requirement, and the Special Education Reimbursement Grant. *See* Second Amended Complaint at 15-16, *Johnson v. Rowland*, No. CV-98-0492103-S (Conn. Super. Ct., filed Mar. 8, 2001) [hereinafter Second Amended Complaint]. I have focused on the cap, hold harmless, and foundation amount because based on interviews, these appear to be the most significant distortions.

198. On the other hand, to the extent that the plaintiffs’ districts have experienced rapid population growth, they are well-suited to complain about specific distortions to the school finance formula such as the cap.

199. Sergi Interview, *supra* note 21.

200. Gaffey Interview, *supra* note 130.

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B. *The Johnson Litigation*

In March 1998, the *Johnson* plaintiffs filed their school finance suit against Governor Rowland, former Commissioner Sergi, and other state officials, claiming that they were being “deprived of a suitable and substantially equal educational opportunity.”²⁰¹ The plaintiffs made several allegations, two of which warrant special attention. The plaintiffs first charged that the State’s ECS formula had failed to provide a foundation that accurately reflected the true cost of educational expenditures.²⁰² They cited the State’s failure to update the formula to keep pace with rising costs and the higher amount they would have been receiving if the foundation amount had stayed up to date. In their view, the foundation amount failed “to accurately reflect the cost of [a] suitable and substantially equal public education”²⁰³ and had a “disproportionately negative impact on plaintiffs’ school districts where property wealth is low and declining, student populations are growing, special education costs are rising and high property taxes effectively eliminate further property tax increases as a revenue source to compensate for the deficient foundation amount.”²⁰⁴

The plaintiffs next charged that the combination of the cap and hold harmless provisions denied them a “suitable and substantially equal educational opportunity,” as these distortions deprived them of the full amount of State funding they would have received under an undistorted ECS formula.²⁰⁵ Since the measures were put in place, they alleged, many school districts had lost staggering amounts of state funds: “Bridgeport - \$118,675,173; East Hartford - \$41,212,148; Meriden - \$35,601,427; New Britain - \$58,231,254.”²⁰⁶

The plaintiffs’ legal claims relied on the same constitutional provisions used in *Horton* and *Sheff*.²⁰⁷ The *Johnson* plaintiffs thereby situated their case as the next to vindicate the right to equal educational opportunity in Connecticut. Even as the complaint spoke of “equal educational opportunity,” however, it also pressed a different kind of school finance claim: an adequacy claim.²⁰⁸ According to DeCrescenzo, the *Johnson* suit “follow[ed] from the side of *Sheff* that wasn’t pursued”²⁰⁹—the adequacy claim that the supreme court in *Sheff* never reached. However, because *Sheff* focused on race while *Horton* was

201. Second Amended Complaint, *supra* note 197, at 2.

202. *Id.* at 11-13.

203. *Id.* at 12.

204. *Id.* at 13.

205. *See id.* at 13.

206. *Id.* at 14.

207. *Id.* at 22 (citing article I, sections 1 and 20, and article VIII, section 1, of the Connecticut Constitution). The third claim was an exception; it invoked another education provision, article VII, section 4.

208. In shifting from equity to adequacy, *Johnson* reflects a broader trend in school finance litigation. For a comprehensive account of this trend, see Heise, *supra* note 10.

209. DeCrescenzo Interview, *supra* note 193.

a school finance case, *Johnson* is best understood as “the modern day version of *Horton v. Meskill*.”²¹⁰ Like in the pre-*Horton* era, the State had begun to over-rely on local property taxes to fund education when the State itself had a constitutional obligation to provide all children in Connecticut with an equal educational opportunity. But whereas “*Horton v. Meskill* was largely an education equity case,” according to DeCrescenzo, “[*Johnson* is] really an education adequacy case, meaning that the *outcomes* of the education system need to be equalized.”²¹¹ The *Johnson* plaintiffs’ central argument was that due to distortions to the ECS formula, the State was not providing enough funding to enable them to receive an adequate education.

What the plaintiffs did not acknowledge in their complaint is that some of their school districts were priority school districts that had benefited from significant categorical funding after *Sheff*. Thus, while they might have been receiving less funding through ECS than the original formula would have provided, the State had augmented other sources of funding in recent years—perhaps so much so that the plaintiffs that came from priority school districts were receiving more than they would have if the formula had been fixed.²¹² This might have constituted a powerful defense at trial.

But *Johnson* will never go to trial. The school districts that were underwriting the litigation could not afford to continue paying DeCrescenzo’s legal bills, and the suit was dropped in October 2003.²¹³ As DeCrescenzo explained, “It’s kind of a Catch-22: if they’re not getting the money they need to fund their schools, it’s hard for them to fund this lawsuit.”²¹⁴ With most of the public interest organizations that might have been interested tied up with *Sheff*, DeCrescenzo was unable to gain their financial support for the suit. What, then, is the significance of a suit that never went to trial?

C. *Johnson’s Lessons*

On a practical level, *Johnson* is important because it prompted Governor Rowland to convene a task force on school finance in 1998 to study the modifications to the ECS formula. Responding to the task force’s recommendations, in 1999, the General Assembly passed legislation calling for

210. *Id.*

211. *Id.*

212. Gaffey Interview, *supra* note 130 (“If I was arguing against *Johnson*—if I was the State arguing this case—I would take a look and say, ‘Okay, Meriden you’re a plaintiff? Let’s look at what you get with ECS, and let’s take a look at what you’re getting with all the priority school district money—all the categorical money. . . . You’re getting more in the categorical funding, the priority school district grant coupled with the ECS grant money you’re receiving—that’s a larger increase than if you took away the cap.’”).

213. See Natalie Missakian, *Coalition Drops Lawsuit Over School Funding*, NEW HAVEN REG., Oct. 9, 2003, at A4; see also Oshrat Carmiel, *Funding Lawsuit Foundering; Plaintiffs’ Ranks Reduced by Cost*, HARTFORD COURANT, Sept. 25, 2002, at A21.

214. DeCrescenzo Interview, *supra* note 193.

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a phase-out of the ECS cap and a slight increase in the foundation level.²¹⁵ However, the state's recent budget crisis delayed that plan.²¹⁶ Moreover, state-sponsored reports published in 2002 and 2003 confirmed that serious problems with ECS still remain.²¹⁷ Like the unheeded reports of the early 1970s, the most recent report called on the State to share the burden of education funding more equitably with the towns and cities.²¹⁸

On a more symbolic level, in raising awareness about the State's need to maintain equal and adequate school funding even while responding to *Sheff*, *Johnson* reminded the State that it retains a constitutional obligation from *Horton v. Meskill* to provide equal educational opportunity in terms of both racial balance *and* financial expenditures. In this way, much as *Sheff* staked a claim for the importance of desegregation litigation after *Horton*, *Johnson* exposed the continued relevance of school finance litigation after *Sheff*.

Most significantly, *Johnson* forces us to confront the possibility that in responding to *Sheff* through categorical and school construction grants, the State traded off money that it otherwise could have used to sustain adequate ECS funding for many municipalities. In this way, it illustrates the consequences of translating desegregation into a primarily financial endeavor.

Before exploring evidence of a trade-off, it is important to respond to two possible objections. First, in a complex state budget, it is always risky to say that a particular dollar taken from *X* program was reallocated to *Y* program, for "[e]very dollar competes with one another."²¹⁹ Programs that responded to *Sheff* were hardly the only budget items that competed with updating and correcting the distortions to ECS; the costs of special education, prisons, and Medicaid—to name just a few programs—have also been rising in recent years in Connecticut and putting pressure on state education funding.²²⁰ Nevertheless, there is reason to believe that lawmakers and members of the education bureaucracy sometimes framed their decisions on how to allocate a finite education budget as a choice of what to do when "you only get one last dollar and can spend it in one place."²²¹ As former Commissioner Sergi stated, "Give me two dollars and I think we have an obligation to continue to support all schools in the state through the ECS grant. . . . But if I only have the one dollar I go with the categorical grant."²²² Similarly, former legislator Brian Mattiello indicated that "we did make some conscious choices" between easing the

215. LPRIC REPORT, *supra* note 19, at app. C.

216. See Missakian, *supra* note 213.

217. See generally BLUE RIBBON REPORT, *supra* note 189; LPRIC REPORT, *supra* note 19.

218. See BLUE RIBBON REPORT, *supra* note 189, at 8, 26-27.

219. Mattiello Interview, *supra* note 130.

220. Telephone Interview with Rich Carmelich, Government Finance Analyst, Connecticut Conference of Municipalities (Feb. 26, 2003) [hereinafter Carmelich Interview].

221. Sergi Interview, *supra* note 21.

222. *Id.*

property tax issue underlying ECS and funding categorical programs like early reading success.²²³ This is not to say that legislators consciously thought of responding to *Sheff* as a decision not to fix ECS, or that fixing ECS did not generate a political debate independent of *Sheff*.²²⁴ There undoubtedly are independent reasons why ECS has not been completely fixed, such as its great expense and the political controversy that ensues whenever some towns stand to gain more from a piece of legislation than others.²²⁵ However, it does suggest that in the face of a finite budget, decisions favoring one education issue over another were made.

Second, after *Horton v. Meskill*, the ECS formula itself heavily redistributes funds from districts with fewer needy students to districts with needier students. It can, therefore, be difficult to discern the extent to which some districts would still feel that they are receiving insufficient state aid relative to districts with needier students irrespective of post-*Sheff* legislation. Nevertheless, both empirical and anecdotal evidence suggest that even if *Sheff* did not create the tension between targeting funds to priority school districts and funding the rest of the state, it certainly sharpened it.

To bring the ECS foundation level up to date and fix its distortions would have been an expensive endeavor at any time, even in the late 1990s when the State had plenty of money.²²⁶ But *Sheff* exacerbated the problem.²²⁷ Indeed, starting in 1997 when the legislature passed its post-*Sheff* remedial legislation, which leaned heavily on categorical grants and money for the construction of magnet schools, the State began to shift the focus of its funding away from the ECS formula and toward categorical and construction grants. From 1996-2000, categorical and construction grants increased 60% and 160%, respectively, while funding for ECS increased by only 8%.²²⁸ As a result, ECS declined as a share of state aid for education from 82% to 67% from 1996 to 2000, while categorical and construction grants increased as a share of state aid from 8% to 13%, and from 10% to 19%, respectively.²²⁹ In roughly the same period, state grants for *Sheff*-related programs, including the main priority school district grant as well as grants for early childhood programs, interdistrict magnet

223. Mattiello Interview, *supra* note 130.

224. *Id.* The *Blue Ribbon Report*, *supra* note 189, illustrates one way in which reforming the ECS formula plays a role in other debates, including the issue of "Smart Growth." The report calls for school finance reform, not explicitly to achieve greater equality of educational opportunity, but rather to reduce the property tax burden and thereby alleviate one cause of suburban sprawl.

225. Mattiello Interview, *supra* note 130.

226. Gaffey Interview, *supra* note 130. The *Blue Ribbon Report*, *supra* note 189, at 26, estimates that just bringing the foundation up to date would cost the State at least \$500 million. *Id.*

227. See Sergi Memorandum, *supra* note 145, at 2. Between 1997-1998 and 2000-2001, the State spent \$521.1 million on *Sheff*-related programs, including categorical grants to improve the quality of education and programs aimed at reducing racial isolation. *Id.* Between 2001-2002 and 2002-2003, another \$356.8 million was budgeted. *Id.*

228. LPRIC REPORT, *supra* note 19, at 10.

229. *Id.*

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schools, Open Choice, and other programs rose from \$64.3 million in 1997-1998 to \$177.8 million in 2000-2001.²³⁰ While the absolute amount of money spent on *Sheff* remedies would not have made up for the shortfall in ECS, it could have gone a long way toward that goal.²³¹

Turning to anecdotal evidence, DeCrescenzo hinted at the existence of a trade-off when he offered one reason why it proved difficult to obtain the support of public interest organizations for the *Johnson* case. Some organizations believed that the State would, in the end, choose between committing funds to desegregation and to reforming the system of school finance: “There’s a finite number of state dollars available to address these issues, and to the extent that money needs to be spent on *Sheff* or us, it may come at the expense of the *Sheff* remedies.”²³² Philip Tegeler, former Legal Director of the Connecticut Civil Liberties Union Foundation (CCLU) and a lead *Sheff* attorney, refutes the idea the State can only afford to respond either to *Sheff* or to *Johnson*.²³³ Indeed, Tegeler hoped that *Johnson* would “expand the pie” of resources available for education.²³⁴ Even so, when members of the *Johnson* team approached CCLU about taking on a new school finance suit after *Johnson* was withdrawn, CCLU declined.²³⁵ As Tegeler conceded, for “CCLU to take on *Johnson*-style litigation at the same time we are prosecuting the *Sheff* remedy would set up an artificial dilemma, where we are basically forced to compete against ourselves.”²³⁶

Comments by former Commissioner Sergi confirm that state officials perceived there to be competition between ECS and post-*Sheff* funding:

I’d have no doubt that the fact that we did more categoricals in the last five years, and had to respond to *Sheff v. O’Neill*, particularly around magnet schools is our biggest investment—we’re up to \$45 million in magnet schools—that’s a significant bill in this little state that doesn’t like to spend money. . . . Certainly that competes with ECS right now.²³⁷

Without greater political will to further expand state education funding, Sergi suggested, remedying ECS has had to take a backseat to the immediate need of responding to *Sheff*. Former State Representative Brian Mattiello of Torrington also “concede[d] that [among] what was available for education spending, we

230. Sergi Memorandum, *supra* note 145.

231. See *supra* note 227 for spending on post-*Sheff* programs. The Connecticut Conference of Municipalities, a lobbying group for the state’s towns and cities, estimates that between 1995 and 2002, the cap on ECS alone cost municipalities more than \$800 million in lost state aid. Connecticut Conference of Municipalities, *Major Issues in Financing Local Public Education* 4 (Oct. 30, 2002) (on file with the author).

232. DeCrescenzo Interview, *supra* note 193.

233. Telephone Interview with Philip Tegeler, former Legal Director, Connecticut Civil Liberties Union Foundation (Nov. 11, 2003).

234. *Id.*

235. *Id.*

236. *Id.*

237. Sergi Interview, *supra* note 21.

placed an emphasis on *Sheff* funding.”²³⁸

Some Connecticut residents also perceived the existence of a trade-off. As the General Assembly began to debate solutions to *Sheff*, many Torrington residents wondered, “What [resources] are we losing for them to gain?”²³⁹ This “us/them”²⁴⁰ dynamic reflected the fear that if *Sheff* meant investing more resources in urban schools, suburban and rural school districts might lose out. In the northeastern Connecticut mill towns, where property values tend to be low, there has been grumbling since *Sheff* about a trade-off in who receives state funds. As former Commissioner Sergi explained, “The people of northeastern Connecticut feel they’ve been cut out of the state education pie because of *Sheff*.”²⁴¹ One fears that the perception that white children in property-poor mill towns are losing in order for minority children to gain could augment some of the same racial prejudices that may quietly underlie the segregation of the state.

In January 2003, with the State committing millions to the *Sheff* settlement while also running a \$650 million budget deficit and expecting a \$2 billion budget gap for the next fiscal year,²⁴² the trade-off became starker and more public. Asking rhetorically, “Is [paying for the settlement] going to take [money] away from other communities?” Rowland responded, “Absolutely.”²⁴³ As one newspaper reported, Rowland has “warned that paying for [the settlement] would most likely force the state to cut money for core programs, including public transportation and education grants that the state’s cities and towns count on.”²⁴⁴ Indeed, Rowland’s March 2003 budget proposed cutting \$20 million in ECS funding.²⁴⁵ Some, like New Haven Board of Education President Carlos Torre, have lamented the trade-off: “It’s a shame that the state pits one city against another.”²⁴⁶

IV. TRADE-OFFS

Scholars and practitioners continue to debate the relative merits of school

238. Mattiello Interview, *supra* note 130.

239. *Id.*

240. *Id.*

241. Sergi Interview, *supra* note 21; see also Rick Green, *Schools Want Fair Share of Funding Pie; Small Districts Call for Change*, HARTFORD COURANT, Jan. 14, 1999, at A3 (quoting Alan Chapin, the first selectman of Washington and president of the Council of Small Towns, as asking, “How is it possibly equal when Cornwall gets \$35 [in state education aid] and Hartford gets \$6,500?”).

242. Paul von Zielbauer, *It’s Gridlock in Hartford over Budget and Layoffs*, N.Y. TIMES, Jan. 29, 2003, at B6.

243. Natalie Missakian & Gregory B. Hladky, *Sheff Settlement to Cost \$45 Million*, NEW HAVEN REGISTER, Jan. 23, 2003, at 1.

244. Paul von Zielbauer, *Hartford Plan Would Further Integration*, N.Y. TIMES, Jan. 23, 2003, at A22 (citing Governor Rowland as predicting that “[t]he cuts could force many local governments to increase property taxes to balance their school budgets.”).

245. MaryEllen Fillo, *Cities, Towns Take a Hit*, HARTFORD COURANT, Mar. 5, 2003, at A11.

246. Missakian & Hldaky, *supra* note 243.

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finance litigation and desegregation as vehicles for achieving equal educational opportunity. However, this debate has so far failed to take account of a central insight of this Essay: that because of political realities, it is likely that desegregation will have to be purchased where it is pursued. This insight and the consequent trade-off between reducing racial isolation and achieving systemic school finance reform have important implications when the goals of each effort and the constituencies each seeks to help are different. Because remedying desegregation and enacting school finance reform both rely on state money, in a world of limited resources, a decision to pursue one vision of equal educational opportunity may mean shortchanging the other.

A. *Buying Desegregation*

Scholars have only recently begun to explore the influence of race on school finance reform. So far, the literature has largely concentrated on how the race of plaintiffs challenging a school finance system can affect their chances of success or failure both in the courts and legislative arena.²⁴⁷ Connecticut's experience suggests a second way in which race can influence school finance reform: When racial isolation necessitates desegregation litigation, the desegregation is likely to be purchased, and where resources are limited, may come to compete with funds needed to fix an inequitable or inadequate system of school finance.

The political realities that shaped the legislature's response to *Sheff* are hardly unique to Connecticut. Popular opposition to mandatory measures has arisen in other northern and western states where courts ordered busing rather than leaving the remedy to the legislature. For example, in California, the only other state where a court found de facto segregation of a city's public schools unconstitutional,²⁴⁸ the voters responded to the court's busing order by passing a constitutional amendment restricting California courts from interpreting the state constitution to be more permissive than the federal Constitution in allowing the use of busing to achieve school desegregation.²⁴⁹ In Boston, white residents resisted court-ordered busing more violently, leading to what is perhaps the most notorious chapter in the history of northern school desegregation.²⁵⁰ By contrast, other northern courts turned straight to expensive voluntary plans in part to avoid predictable popular resistance.²⁵¹ As one

247. See Ryan, *supra* note 11.

248. The city was Los Angeles. See *Crawford v. Bd. of Educ.*, 551 P.2d 28 (Cal. 1976).

249. See CAL. CONST. art. I, § 7. The United States Supreme Court upheld the constitutionality of the provision in *Crawford v. Board of Education*, 458 U.S. 527 (1982).

250. See generally J. ANTHONY LUKAS, COMMON GROUND: A TURBULENT DECADE IN THE LIVES OF THREE AMERICAN FAMILIES (1985) (providing a comprehensive account of Boston's desegregation experience, including the backlash against the busing remedy).

251. See, e.g., *Arthur v. Nyquist*, 547 F. Supp. 468, 470 (W.D.N.Y. 1982) (describing large-scale voluntary program implemented in the Buffalo public schools); *Pa. Human Relations Comm'n v. Sch.*

scholar has observed, the battle over money “does not begin to match, in intensity or violence, the controversy caused by desegregation.”²⁵²

Given the movement away from mandatory desegregation among voters, legislatures, and courts, Connecticut’s experience after *Sheff* seems a strong predictor of how efforts to reduce racial isolation will play out in the future, if such efforts continue.²⁵³ Of course, some factors will always distinguish one state from the next. For example, Chief Justice Peters’ retirement and the legislature’s knowledge that compliance motions would be heard by a more conservative supreme court might have reduced the impact of the court’s mandate in *Sheff*.²⁵⁴ However, given the strength of the opposition to busing and redistricting, it is hard to imagine the legislature having adopted these measures under any circumstances.

In fact, the General Assembly’s response to *Sheff* is consistent with a broader historical trend in desegregation litigation away from mandating integration and toward relying on remedial funding.²⁵⁵ In *Milliken I*, the Supreme Court held that courts could not order interdistrict urban/suburban busing where the suburbs did not themselves engage in de jure segregation.²⁵⁶ In so doing, it ensured that the line between urban and suburban schools remained sacrosanct. A few years later in *Milliken II*, the Court approved a desegregation plan that required the state of Michigan to help fund remedial and compensatory education programs for racially isolated Detroit students.²⁵⁷ In this way, desegregation at the federal level became as much about spending money as moving students. The legislature’s response to *Sheff* follows this trend—a trend that risks pitting desegregation against school finance reform in the competition for state funds.

B. Competing Approaches to Realizing Equal Educational Opportunity

That the remedies to *Horton* and *Sheff* both focused on increasing state

Dist. of Phila., 374 A.2d 1014 (Pa. Commw. Ct. 1977), *aff’d*, 390 A.2d 1238 (Pa. 1978) (implementing a voluntary desegregation plan for the Philadelphia public schools).

252. Ryan, *supra* note 7, at 566.

253. As consent orders from federal desegregation cases are being dismantled, *see supra* note 3, the question is whether more desegregation suits will be brought in state court. In Professor Ryan’s view, the fact that only two other states besides Connecticut (Hawaii and New Jersey) have an explicit segregation clause is not an obstacle to pursuing desegregation under state constitutions, as in *Sheff*. He contends that litigants could draw on state constitutions’ education clauses to argue that an adequate education is one that is free from racial and ethnic segregation. *See id.* at 549. However, one such effort in New York recently failed. *See Paynter v. New York*, 797 N.E.2d 1225 (N.Y. 2003) (dismissing complaint of students in the Rochester City School District (RCSD) who sued state officials claiming they were being deprived of a “sound basic education” because of the concentration of poor and minority students in RCSD on the grounds that the state had no responsibility, under the New York Constitution, to change the demographic composition of student bodies).

254. *See supra* notes 179 & 180 and accompanying text.

255. *See Ryan, supra* note 1, at 261-62.

256. *Milliken v. Bradley* (Milliken I), 418 U.S. 717 (1974).

257. *Milliken v. Bradley* (Milliken II), 433 U.S. 267 (1977).

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education funding should not obscure the differences in the suits' underlying goals. While *Horton*, *Sheff*, and *Johnson* all sought to achieve equality of educational opportunity, Connecticut's experience shows that they aimed to do so in different ways and, to some extent, on behalf of different children.

In *Horton v. Meskill*, Wesley Horton understood his case as being aimed at a fundamentally different problem than that which plagued the state's urban schools. To Horton, who deliberately sought to keep Hartford from intervening in his suit, Hartford's problem lay in its racial isolation. Later, as a member of the *Sheff* litigation team, he and others sought to persuade the court that achieving equality of educational opportunity would require integrating Hartford's predominantly African-American and Latino student population with white suburban students. By contrast, Canton students' deprivation of equality of educational opportunity arose from the state's failure to provide enough money to equalize educational spending across school districts. Canton students lacked the resources of wealthier suburbs because the State over-relied on local property taxes to fund education. Given the difference between the problems underlying *Horton* and *Sheff*, it is not surprising that even though the General Assembly's remedy for *Horton* was heavily weighted toward giving needy urban students more funding, *Sheff* was still necessary to address Hartford's racial isolation.

At the same time, it is also not surprising that *Sheff* failed to obviate the need for *Johnson v. Rowland*, for just as *Horton* was not intended to reduce the racial isolation of urban students, *Sheff* was never intended to reduce the State's over-reliance on local property taxes to fund education. In criticizing the State's failure to update and fix ECS, the *Johnson* suit was concerned with the fact that municipalities were having to shoulder more of the burden for funding education than the original formula would have required.²⁵⁸ To the extent that the *Johnson* school districts lacked the property wealth to support their existing need, the *Johnson* plaintiffs argued, they were being denied equality of educational opportunity.

While it may be difficult to sympathize with *Johnson* plaintiffs who came from priority school districts and thus received supplemental state funds, it is easier to understand the importance of fixing ECS for property-poor mill towns that have not received extra money from *Sheff*, and whose achievement levels are barely above those of urban districts. For mill town residents, school finance litigation may be an effective way to ensure that the State fulfills its constitutional obligation to provide equality of educational opportunity. It also may be a useful way of guaranteeing enough funding for an adequate

258. Mattiello Interview, *supra* note 130 (stating that *Johnson* is "about a cost-sharing. It's an inter-governmental issue between state and local."); see also BLUE RIBBON REPORT, *supra* note 189, at 20 ("Connecticut is more reliant on property taxation for funding K-12 education than all other states in the nation.")

education. As former Commissioner Sergi, a named defendant in *Johnson*, admitted while still serving as commissioner, "I don't think there's any question from where I sit that there would be some advantage to having *Johnson v. Rowland* succeed in at least pushing the issue of adequacy."²⁵⁹

Ultimately, *Sheff* could not have been expected to prevent the need for *Johnson* because—like *Horton* and *Sheff*—*Sheff* and *Johnson* were aimed at different problems and sought to ensure equality of educational opportunity in different ways. Indeed, far from supplanting school finance litigation as a way of achieving equal educational opportunity, desegregation, insofar as it involved spending money that otherwise could have been used to fix ECS, appears to have made school finance litigation more pertinent. School finance and desegregation litigation strive for different conceptions of equality of educational opportunity, often on behalf of different constituencies; however, because today's political realities make them both rely on increased state funding to achieve their goals and state officials perceive them as competing against each other, to pursue one is to impair the other.

The remaining question, then, is whether there is a way out of this trade-off. Two theoretical solutions exist, but the prospects for both are bleak. The first is to relieve one of the demands on state education dollars, for example by reorienting the State's approach to desegregation away from high-cost measures and toward a less expensive redistricting solution. Given the intensity of the opposition to mandatory measures, this solution has no real hope.

The second would require either spending existing education resources more efficiently or expanding the total pie of state resources available for education to accommodate both visions of equal educational opportunity. Expanding the pie requires political will and a strong economy. If Governor Rowland's recent warnings about the effect of the *Sheff* settlement on general education funding are any indication, such an expansion is extraordinarily unlikely. The current economic climate is surely a factor.²⁶⁰ Facing a \$650 million budget shortfall, in February 2003 the General Assembly approved a budget that cut \$41 million of municipal aid.²⁶¹ As the history of education litigation from *Horton* to *Sheff* to *Johnson* shows, the legislature has rarely acted on its own, without the impetus of a supreme court holding, to effect a major improvement in equality of educational opportunity.²⁶² It took both

259. Sergi Interview, *supra* note 21.

260. See Christopher Keating, *State's Bond Rating Drops; Debts to Cost Millions More*, HARTFORD COURANT, July 3, 2003, at A1 (describing "[t]he state's worst fiscal crisis since 1991").

261. Don Stacom, *Cities, Towns Feel Shortchanged*, HARTFORD COURANT, Feb. 28, 2003, at B1.

262. The notable exception is the passage of the Educational Enhancement Act in 1986, which committed \$300 million in new funding to equalize teacher salaries around the state. In then-Commissioner of Education Gerald Tirozzi's view, this legislation was possible because "the stars were aligned." Tirozzi Interview, *supra* note 20. Specifically, the combination of the publication of *A Nation at Risk* and the fact that the state was flush with money catalyzed the legislation. *Id.*

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Horton and *Sheff* to force an apathetic General Assembly to confront the problems of school finance inequity and segregation. With *Johnson* unable to make it to trial because of financial troubles, it seems doubtful that the General Assembly will independently find the will and resources to fix ECS in addition to funding the *Sheff* settlement.²⁶³ For now, at least, achieving meaningful desegregation *and* school finance reform in Connecticut seems unlikely.

CONCLUSION

This Essay set out to understand why Connecticut has followed an alternating path from school finance litigation, to desegregation, and back again to school finance litigation, and what that unique path can teach us about the relative merits of each approach and how they interact when pursued alongside each other. *Sheff* became necessary even after a victorious school finance suit because while *Horton* ended up providing increased resources for urban schools, it could not solve the problem of racial isolation. For this reason, Connecticut's experience suggests that to the extent that school finance litigation remains focused exclusively on dollars, it may never be a panacea for the educational ills of a state that is segregated by race and class.

Later, *Johnson* became necessary even after the plaintiffs' victory in *Sheff* in part because of how political exigencies shaped the *Sheff* remedy. Because the State responded by spending millions on voluntary integration and grants to improve the quality of education, in a world of limited state education dollars, the *Sheff* remedy came to compete with the State's ability to fix its distorted school finance formula. Thus, rather than helping to relieve the problem underlying the *Johnson* complaint—the State's over-reliance on local property taxes to fund education—it only exacerbated it. Connecticut's experience thus points to an unexpected and indirect way in which race can influence school finance reform. Moreover, it suggests that the two approaches to realizing equality of educational opportunity, which chase after different goals, may come to clash in a world of finite resources and limited political will.

We have also seen that court cases can play a pivotal role in pushing an intransigent state legislature to act to correct inequities of which it was already aware and that political exigencies can transform a constitutional mandate once the legislature is given an opportunity to fashion a remedy. This Essay further reveals the role that economic and budgetary constraints can play in determining the scope of a remedy, and the difficulty of cash-strapped school districts trying to fund their own school finance lawsuit.

Ultimately, Connecticut's experience reaffirms that desegregation and school finance litigation are deeply connected, but not just as part of a historical

263. Some legislators have balked at the \$135 million cost of the *Sheff* settlement alone. See Frahm, *supra* note 163.

narrative where one method ceded to the other.²⁶⁴ In Connecticut, the two methods have been interwoven through three decades of litigation, with each method simultaneously highlighting the importance of the other and competing with it for limited state dollars. As advocates of equal educational opportunity develop innovative litigation strategies that combine claims for more dollars and less racial isolation, they must remain attuned to the complex and unexpected ways in which their claims may interact. When Connecticut's three cases are viewed together, they provide a cautionary tale. Considered individually, however, each case holds out promise for what can be achieved through the relentless pursuit of equal educational opportunity in its many forms.

264. See *supra* text accompanying notes 1 & 2 (recounting the historical transition from desegregation to school finance litigation in the late 1960s and early 1970s).