

**REFORM OF NEW JERSEY’S PUBLIC SCHOOLS:
TOWARDS REGIONALIZATION**

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“Once more unto the breach, dear friends, once more”¹

I. INTRODUCTION

One need look no further than the recently shuttered Glen Gardner School District to see the conflict between home rule of local school districts and reform of New Jersey’s public schools rearing its head once again. It is a tempest that may be closer to resolution than ever before. Glen Gardner is a tiny hamlet of about 1,900 persons² set in picturesque Hunterdon County,³ reminding passersby why New Jersey’s license plates still bear the epithet, “Garden State.”⁴ The idyllic town features foliage worthy of New England, horses, farms, and until June 30, 2009, a school district classified as “non-operating.”⁵

Prior to June, the Glen Gardner School District still had a school board, a business administrator, and even a few hundred students; however, there was no school facility, nor any teachers.⁶ Rather, the Glen Gardner School District sent its students to neighboring Clinton School District.⁷ By ordering Glen Gardner to merge with Clinton

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1. WILLIAM SHAKESPEARE, *KING HENRY THE FIFTH* act 3, sc. 1.

2. See *About Borough of Glen Gardner*, BOROUGH OF GLEN GARDNER, <http://www.glengardnernj.org/about/index.php> (last visited Aug. 27, 2010).

3. See *Hunterdon County Map*, HUNTERDON COUNTY, STATE OF N.J., <http://www.co.hunterdon.nj.us/map.htm> (last visited Aug. 27, 2010).

4. See *Garden State and Other New Jersey State Nicknames*, STATE OF N.J., <http://www.state.nj.us/njfacts/garden.htm> (last visited Aug. 27, 2010).

5. See Press Release, *13 Non-Operating School Districts Eliminated*, STATE OF N.J. DEPARTMENT OF EDUC. (July 1, 2009), <http://www.state.nj.us/education/news/2009/0701nonops.htm>.

6. See Laura Craven, *Clinton, Glen Gardner School Districts Merge*, NJ.COM (July 9, 2009, 6:41 PM), http://www.nj.com/news/local/index.ssf/2009/07/clinton_glen_gardner_school_di.html.

7. See *id.* But cf. George James, *In Defense of Districts Without Schools*, N.Y. TIMES, Feb. 1, 2004, at 14NJ 6. This article discusses the attempt by then-Governor McGreevey to reduce property taxes by pointing to the inefficiencies of non-operating school districts. *Id.* Through a semi-profile of the Glen Gardner School District and its Business Administrator, the author defends the existence of such districts, pointing to its efficient business practices of shared-services, and the relatively minimal savings that would result from any merger. *Id.* However, the article ignores the point that an

School District,⁸ then-Governor Corzine and the state legislature were finally taking the first baby steps toward a radical, and necessary, reshaping of New Jersey's public schools.

New Jersey's public schools rank among the top in the nation.⁹ This would seem to be in accord with the state's constitutional mandate of a "thorough and efficient" education.¹⁰ However, such success has allowed the economic inefficiencies of a relatively small state having so many school districts to continue, mostly unabated.¹¹ Indeed, with a population estimated at 8.7 million,¹² New Jersey currently has 602 school districts.¹³ Compared to neighboring Pennsylvania (population 12.6 million¹⁴ with 501 school districts¹⁵), and New York (19.5 million¹⁶ with 698 school districts¹⁷), one may objectively question why a state like New Jersey, with such a smaller geographic area,¹⁸ would have so many more public school districts.

The economic inefficiencies are a product of the "home rule" mindset that permeates the horde of local governments in the state—maintaining local control over a small turf trumps the concomitant cost.¹⁹ On the school district level, this results in each district having

efficient redundancy is still a redundancy, and endemic of similar ones throughout New Jersey's public schools whose termination may actually have a noticeable tax benefit. *See id.*

8. *See Craven, supra* note 6.

9. *See Table 228, Educational Attainment by State: 1990 to 2007*, U.S. CENSUS BUREAU (2010), <http://www.census.gov/compendia/statab/2010/tables/10s0228.pdf> (last visited Aug. 27, 2010).

10. N.J. CONST. art. VIII, § 4, ¶ 1.

11. Evidence of this fact is that only in 2010, when Governor Christie cut massive amounts of state aid from virtually all school districts, did the populace at large begin to appreciate how dysfunctional the school districts are. *See infra* Part VI.

12. *State and County QuickFacts, New Jersey*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/34000.html> (last revised Aug. 16, 2010, 9:09 AM).

13. *New Jersey Public School Statistics: 2009-2010 School Year*, N.J. SCH. BOARD ASS'N, http://www.njsba.org/schoolstats/bmrwebstats_schooldist.html (last visited Aug. 27, 2010) (listing 615 districts, but noting that that figure "does not represent the elimination of 13 of New Jersey's 26 non-operating districts, effective July 1, 2009").

14. *State and County QuickFacts, Pennsylvania*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/42000.html> (last revised Aug. 16, 2010, 9:09 AM).

15. Anya Sostek & Eleanor Chute, *Pa.'s 501 School Districts Could be Cut to 100*, PITTSBURGH POST-GAZETTE, Feb. 5, 2009, at A-1.

16. *State and County QuickFacts, New York*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36000.html> (last revised Aug. 16, 2010, 9:09 AM).

17. *Directory of School District Websites*, N.Y. ST. EDUC. DEPARTMENT, <http://www.oms.nysed.gov/oas/directory.html> (last updated Apr. 27, 2010).

18. *2000 Census of Population and Housing*, U.S. CENSUS BUREAU, Apr. 2004, at Table 17 (listing the total square mileage of New York as 54,556, Pennsylvania as 46,055, and New Jersey as 8,721), <http://www.census.gov/prod/cen2000/phc3-us-pt1.pdf>.

19. *See* discussion *infra* Part II.

a large amount of administrative overhead: superintendents, assistant superintendents, business administrators, supervisors, principals, and vice-principals. Most of these positions earn between \$95,000-\$208,000 in salary, plus benefits.²⁰ As of January 2008, there were at least 3,592 school administrative positions in the state, at a cost of over \$382 million in base salary alone.²¹

Additionally, for every district, school building or not, there is a duly elected school board.²² Putting aside the taxpayer expense of running an election,²³ all school boards are required by law to pay dues to the New Jersey School Board Association (“NJSBA”).²⁴ In 2009, that figure was approximately \$7.6 million.²⁵ The more districts, the more dues that may be collected.

The final problem of many New Jersey public school districts is that a large number are not K-12; districts may be K-6, K-8, 7-12, and 9-12.²⁶ This results in duplication of services between the elementary level districts that feed the upper and high school districts in the form of administration overlap as well as school board

20. *New Jersey Administrative Salaries*, N.J. DEPARTMENT OF EDUC., <http://www.state.nj.us/education/finance/fp/ufb/salaries.xls> (last visited Aug. 27, 2010). Moreover, these positions come with higher salaries commensurate with educational level. *Id.* This has led to some administrators pursuing Masters and other degrees through somewhat less than conventional means; see Alan Guenther, *N.J. Educators Free to Use Diploma Mills*, ASBURY PARK PRESS, Aug. 17, 2008, at C1.

21. See *New Jersey Administrative Salaries*, *supra* note 20. Additionally, taxpayers paid administrators \$8,783,606 in “allowances,” \$1,626,148 in bonuses, \$946,934 in stipends, \$3,192,470 in “District Contributions to Insurance, Medical and Reimbursement Plans,” \$2,508,171 in “District Contributions to Retirement Plans,” and \$36,430,870 in “Contractual Post-Employment Benefits.” See *id.*

22. See N.J. STAT. ANN. § 18A:10-1 (West 2010).

23. Another inefficiency exists here: school board elections, and concurrent school budget votes, occur in April. Some critics find this to be the reason that voter turnout is so low for school budget votes, and have proposed moving these to November with the other state and national voting days; see Editorial, *Bring Out the Vote: Election Shift Boosts Democracy*, STAR-LEDGER, Jan. 11, 2010, at 98.

24. See N.J. STAT. ANN. § 18A:6-45 (West 2010) (establishing a statutory “body corporate and politic,” called the New Jersey School Boards Association, and commanding that “[a]ll boards of education of the various school districts in this State shall be members of the association”); N.J. STAT. ANN. § 18A:6-50 (West 2010) (stating that “the various district boards shall pay the necessary expenses incurred by its delegates,” of which there is one from each school board, and that “[d]ues shall be payable by the custodian of school moneys of the school district to the treasurer of the association”).

25. N.J. SCH. BDS. ASS’N, REPORT OF AUDIT ON THE FINANCIAL STATEMENTS OF THE NEW JERSEY SCHOOL BOARDS ASSOCIATION FOR THE YEARS ENDED JUNE 30, 2009 AND 2008 11 (2009), available at <http://www.njsba.org/ec/October%2014,%202009/NJSBA%20Audit%20Report%202009.pdf>.

26. See *New Jersey Public School Statistics*, *supra* note 13 (listing seventy-one K-6, 272 K-8, 220 K-12, seventeen 7-12, thirty-three 9-12, twenty-five non-operating, eight Special Services Districts, and twenty-one Vocational Districts (one for each county)).

level staffing and transportation.²⁷

In June 2007, Governor Corzine signed into law N.J.S.A. § 18A:7-8 (“ECS Act”).²⁸ The goals included: “reduc[ing] local school district costs . . . through consolidation of administrative services . . . , elimination of school districts that do not operate schools,” increased “oversight of school district budgets, . . . and assumption of certain services on behalf of local school districts.”²⁹ To effectuate these purposes, newly minted executive county superintendents were tasked to create a plan for consolidating all non-K-12 school districts, through elimination or regionalization, and to close all 26 non-operating districts.³⁰ The reforms that may have emerged could have had the potential to finally revolutionize the state’s schools through regionalization of school districts.

However, a new Governor and administration has thus far demonstrated that a different approach is intended. Through unprecedented budget cuts, to outright attacks on the teachers’ unions, to a decision to ignore the requirements of the ECS Act, the new administration’s actions still portend reform despite starvation of state aid to public schools, which could push districts to regionalize out of necessity.

This Note will explore the previous efforts to fix the public school system in light of the current economic problems, and examine whether the most recent legislative effort³¹ will effectively deal with New Jersey’s thoroughly inefficient management of its public school system by creating regional, rather than purely local, school districts.

Part II considers “home rule” as it has developed in New Jersey. The origins of home rule are briefly explored, as are its economic costs. Part III addresses the important role that New Jersey’s courts have played in the reformation of the state’s schools. This part focuses on two sets of constitutional challenges that took place over the past four decades and led to major changes in how New Jersey’s schools are funded.

Part IV looks at the concept of regionalization—combining multiple school districts within a common geographic area into one regional school district. This part looks to how this idea has been implemented in other states and New Jersey’s judicial efforts at regionalization. Additionally, the New Jersey Legislature has a history of commissioning studies of school regionalization. This note

27. See, e.g., *infra* note 217.

28. N.J. STAT. ANN. § 18A:7-8 (West 2010).

29. LEGIS. BUDGET AND FIN. OFFICE, LEGIS. FISCAL ESTIMATE: S. NO. 10 STATE OF NEW JERSEY 212TH LEGISLATURE (N.J. Dec. 27, 2006).

30. See N.J. STAT. ANN. § 18A:7-8(g)-(h) (West 2010).

31. N.J. STAT. ANN. § 18A:7-8 (West 2010).

will discuss the findings and recommendations of a recent attempt and how it has influenced the ECS Act.

Part V analyzes the ECS Act. An important statute, this is the vessel through which large-scale regionalization may finally be accomplished. This part examines the Legislature's intended effect, and what has already been accomplished through implementation. Finally, Part VI discusses the current political developments and their impact on the ECS Act. The actions of the administration since the state's gubernatorial change will have a major effect on the potential for regionalization.

II. THE PROBLEM OF "HOME RULE"—THE COSTS OF STUBBORNESS

The efficiency problem created by the multitude of school districts in New Jersey, with excessive administrative spending, has its roots in what is known as "home rule."³² Home rule is the term used to describe how the locus of control in New Jersey lies in the hundreds of small towns, most of which have their own school districts.³³ The concept has been described as "multiple municipal madness,"³⁴ "a religion,"³⁵ a "political third rail,"³⁶ and its application to local school districts as "sacrosanct."³⁷ The problem exists because the "tendency towards smaller and smaller units is a central part of New Jersey's political tradition."³⁸ Indeed, New Jersey features more municipalities per capita than any other state.³⁹ The history of how this concept developed in New Jersey and the economic costs it has wrought are fascinating.

A. *The Origins of Home Rule—Roads, Railways, Reading, Rum, and Racism.*

Historically, home rule arose as a natural response to the economic threats faced by the large neighbors of Pennsylvania and New York.⁴⁰ The regard given to the territory by the British has

32. See Andrew J. Bruck & H. Joseph Pinto, III, *Overruled by Home Rule: The Problems with New Jersey's Latest Effort to Consolidate Municipalities*, 32 SETON HALL LEGIS. J. 287, 294-95 (2008) (citing ALAN KARCHER, *NEW JERSEY'S MULTIPLE MUNICIPAL MADNESS* (1998)).

33. *Id.*

34. *Id.* (quoting ALAN KARCHER, *NEW JERSEY'S MULTIPLE MUNICIPAL MADNESS* (1998)).

35. *Id.* at 295.

36. See Paul L. Tractenberg, *Beyond Educational Adequacy: Looking Backward and Forward Through the Lens of New Jersey*, 4 STAN. J. C.R. & C.L. 411, 440 (2008).

37. Jeffrey L. Reiner, *Racial Imbalance and Municipal Boundaries—Educational Crisis In Morristown*, 24 RUTGERS L. REV. 354, 355 (1970).

38. See Bruck & Pinto, *supra* note 32, at 295.

39. See *id.* at 289.

40. *Id.* at 305-06.

been described as “little more than a corridor for connecting more important colonies.”⁴¹ And while the various peoples who settled there sought freedom from governmental controls, they remained united by fear of subjugation by the powerful regional authorities.⁴²

As the state developed, the intentional lack of a constitutional, centralized authority begat many problems such as maintenance of the state’s many roads.⁴³ This resulted in multiple layers of delegation, down to individual citizens who lived near the roads in need of repair.⁴⁴ Eventually, these actions led to an aggregation of power by those who were parochially elected to be road commissioners, and served to strengthen individual towns.⁴⁵

Similarly, the proliferation of railroads created “doughnut hole[]” towns.⁴⁶ This phenomenon occurred when a railroad company would purchase the area around a rail station, develop it, and then incorporate it into its own town.⁴⁷ The original town would now fully surround the new one.⁴⁸ Moreover, throughout the late 1800s, legislation was passed which allowed, and encouraged, boroughs as small as two square miles to control basic services.⁴⁹ This taste of power resulted in yet more incorporated towns.⁵⁰

The inevitable issue of school funding “emerged almost accidentally, the result of a poorly written statute that would precipitate the most remarkable burst of incorporation in New Jersey’s history.”⁵¹ The Township School Law of 1894 mandated consolidation of the multitude of school districts that existed within individual townships.⁵² However, it contained a provision requiring each borough, town, and city to have its own school district.⁵³ This gave wealthy townspeople—who wanted to keep their own district and have all their own money stay within exclusive groups—all the incentive they needed to make their own borough.⁵⁴ The result was “Boroughitis.”⁵⁵ The loophole was closed in 1897, when “emergency

41. *Id.* at 305.

42. *Id.* at 305-06.

43. *See id.* at 306-07.

44. *See id.* at 307.

45. *Id.*

46. *See id.* at 307-08.

47. *Id.* at 308.

48. *Id.*

49. *Id.* at 311 (discussing the Borough Acts of 1878 and 1882).

50. *See id.*

51. *Id.* at 311-12.

52. *See id.* at 312 (discussing 1894 N.J. Laws 506, 512).

53. *See id.*

54. *See id.*

55. *Id.* (quoting Kevin Wright, *Punkin Duster Finds the Woodchuck Borough: A*

measures” were passed limiting the creation of new boroughs to legislative grants.⁵⁶ But, the damage was done.

Other factors, such as a desire to eschew local bans on alcohol and municipal freedom to racially discriminate through land use and zoning regulations, furthered the fragmentation.⁵⁷ This culminated with “[t]he 1917 Home Rule Act, which detailed the powers and rights of municipalities, [and] gave local government broad powers to ensure the health, safety, and welfare of their residents.”⁵⁸

In the mid-twentieth century, following World War II and huge population growth, it became clear to state leaders that the administrative nightmare created by home rule was becoming untenable.⁵⁹ Studies were conducted.⁶⁰ Recommendations of mergers and consolidation went unheeded, as local leaders preferred the politically palatable option of “shared services.”⁶¹ By working with other towns to pick-and-choose the few services to share, such as sewer or waste management, it allowed towns to maintain local control and still claim some small cost savings.⁶²

B. *The Economic Costs of Home Rule*

The problems that New Jersey’s schools face today are directly related to the economic costs of home rule. Beyond schools, each individual municipality has to pay for numerous basic services—roads, police, firefighters, sewers and more.⁶³ However, the lion’s share of a typical municipality’s property taxes is allocated to schools.⁶⁴ In an effort to prevent consolidation and loss of local control due to the high cost of redundant services, some

Centennial Review of Bergen County Fever 1894-95, BERGEN COUNTY HIST. SOC’Y, <http://www.bergencountyhistory.org/Pages/part1.html> (last visited Aug. 27, 2010) (term used to describe wealthy township residents’ frequent use of the Borough Acts to form new boroughs, leading to the proliferation of new communities throughout the state)).

56. *See id.*

57. *See id.* at 313-14.

58. *Id.* at 314 (citing 1917 N.J. Laws 319).

59. *See id.* at 319-29.

60. *Id.* at 318-21.

61. *Id.* at 321.

62. *Id.*

63. *Id.* at 295-96. Indeed the authors note, “Wildwood Island, a 4.5 square mile resort community with four municipalities, has nine firehouses and more fire trucks than Trenton . . . [and] the seventy towns in Bergen County own more equipment than all of New York City, despite having one-tenth the population.” *Id.*

64. *See* Letter from Robert Bouwman, Mayor of Township of Branchburg, to residents of Township of Branchburg (2005), available at http://www.branchburg.nj.us/index.php?option=com_docman&task=down&bid=274 (last visited Aug. 27, 2010) (indicating that the 2004 Tax Dollar Allocation for the Branchburg Board of Education is 68%, while only 10% went to fund the township’s municipal services).

municipalities attempt to enter into shared-services contracts with regional establishments or neighboring towns.⁶⁵

Nonetheless, the state continues to have some of the highest property taxes in the nation.⁶⁶ Moreover, the fragmented municipal composition “reinforces residential segregation,” and encourages the promulgation of “land-use regulations [that] have transformed a heterogeneous state into smaller, less diverse entities with widely varying levels of municipal services.”⁶⁷ The more money in the tax base, the better the services. New Jersey’s Supreme Court has been proactive in addressing the effects of home rule in these arenas,⁶⁸ but only the legislature and the voters can cure the problem.

With home rule—and the myriad school districts it creates—comes an equal number of local teachers unions.⁶⁹ When the issue of property taxes is discussed relative to educational spending, critics are quick to point to the teachers’ unions.⁷⁰ This criticism has led to talk of repeal of legislative protections for unions in negotiations between the local teacher associations and local school boards.⁷¹ In

65. See Bruck & Pinto, *supra* note 32, at 297.

66. See Kevin Post, *Property Taxes, Education Rank High in New Jersey*, PRESS OF ATLANTIC CITY, Sept. 26, 2009; see also Joshua Barro, *Background Paper: 2009 State Business Tax Climate Index*, TAX FOUNDATION, Oct. 2008, at 9, available at <http://www.taxfoundation.org/files/bp58.pdf> (listing New Jersey as the state with the highest property taxes).

67. Bruck & Pinto, *supra* note 32, at 300-01.

68. *Id.* at 303 (citing the landmark decisions of *Abbott v. Burke*, 643 A.2d 575 (N.J. 1994); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Abbott v. Burke*, 495 A.2d 376 (N.J. 1985) (school funding reform); *S. Burlington County NAACP v. Mt. Laurel*, 456 A.2d 390 (N.J. 1983); *S. Burlington County NAACP v. Mt. Laurel*, 336 A.2d 713 (N.J. 1975) (land-use regulations)); see *infra* Part III.B.

69. The New Jersey Education Association (“NJEA”), the affiliate of the National Education Association (“NEA”), has a membership of over 203,000 that includes current and retired teachers, educational service professionals, student members and general subscribers; see *NJEA Fact Sheet*, N.J. EDUC. ASS’N, <http://www.njea.org/about/who-we-are/fact-sheet> (last visited Aug. 27, 2010). Additionally, the American Federation of Teachers represents some districts, the largest of which is the Newark Teachers union with nearly 5,400 members; see *Meet the NTU*, NEWARK TEACHERS UNION, http://www.ntuافت.com/Meet_the_NTU/meet_the_ntu.html (last updated Aug. 31, 2010).

70. See *NJEA’s Motto: Teachers First*, ASBURY PARK PRESS, Jan. 8, 2010, at 5 (“The New Jersey Education Association is either blind to how defensive and self-serving it appears to the citizens of New Jersey. Or it just doesn’t care.”); Michael Rispoli, *N.J. Educational System Examined in Documentary ‘The Cartel’*, N.J. COM (May 29, 2009, 8:06 PM), http://www.nj.com/news/index.ssf/2009/05/nj_educational_system_examined.html (“The movie also criticizes teachers unions and the tenure process, charging both protect bad teachers. One former administrator interviewed in the film says 40 percent of the staff at his former school should have been replaced.”).

71. Governor Christie’s administration has considered re-allowing the concept of “Last, Best Offer,” barred by the New Jersey Legislature in 2003, as a tool for school boards to use in negotiations with unions; see Rita Giordano, *Christie Advisers Call for*

the face of these criticisms, the National Education Association recently reported that New Jersey's teachers' salaries, while among the highest in the nation,⁷² actually declined 5.6% against inflation over the past ten years.⁷³

Teachers' unions are not the only groups with whom local school boards contract for services. Superintendents, business administrators, principals and supervisors all negotiate contracts that contain hidden bonuses and perks, as well as heavy payouts for unused sick days.⁷⁴ These administrators, especially superintendents, are frequently treated as CEOs of major companies—offered taxpayer-subsidized perks and benefits in exchange for much-hyped “Strategic Action Plans” and promises of higher test scores.⁷⁵ Additionally, the variance between administrator salaries and teacher salaries has increased three-fold,⁷⁶ creating an incentive for talented teachers to leave the

Tough New School Rules, PHILA. INQUIRER, Feb. 4, 2010, at A01. In New Jersey, however, public employee strikes are illegal as a matter of public policy, so fears of rampant teacher strikes are absurd; see *Passaic Twp. Bd. of Educ. v. Passaic Twp. Educ. Ass'n*, 536 A.2d 1276, 1278 (N.J. Super. Ct. App. Div. 1987) (affirming the common law that “New Jersey public employees do not have the right to strike”). In the rare event that teachers have gone on strike, the consequences are severe; see Andrew Jacobs & Robert Hanley, *Anger Grows in Middletown Over Teachers' Strike*, N.Y. TIMES, Dec. 7, 2001, at D1 (discussing the event in which many striking teachers were arrested and jailed for the illegal strike, and the outrage of a community against them).

72. New Jersey's teacher salaries, at an average of \$56,635, rank third in the nation; see *Teachers Salaries by State*, EMP. SPOT, <http://www.employmentspot.com/employment-articles/teacher-salaries-by-state/> (last visited Aug. 27, 2010).

73. NAT'L EDUC. ASS'N, RANKINGS & ESTIMATES: RANKINGS OF THE STATES 2009 AND ESTIMATES OF SCHOOL STATISTICS 2010 x (NEA Research Dec. 2009); see also Part VI.B.

74. See Alexi Friedman, *School Superintendent Contracts Still Laden with Perks*, N.J.COM (June 29, 2008 10:12 AM), http://www.nj.com/news/index.ssf/2008/06/school_superintendent_contract.html (reporting that at least one retiring superintendent collected over \$740,000, in addition to pension distributions, for cashing in unused sick and vacation days, among other perks).

75. Strategic plans usually involve a series of meetings between parents, community residents, school board members, and students to get input on a vision for the school district's next five years. See *Branchburg School District to Discuss Strategic Planning, OFAC Report This Week*, SOMERSET REP. (Nov. 10, 2009 9:06 AM), http://www.nj.com/reporter/index.ssf/2009/11/branchburg_school_district_to.html (reporting on the “Strategic Planning Kick-Off Meeting” of the K-8 district, as well as the report by a State agency, “detail[ing] numerous allegations against the school district's previous business administrator and the management of the district's special education program”). A Google search of “NJ school strategic action plan” reveals the ubiquity of these mechanisms throughout New Jersey schools.

76. See *Table 250, Average Salary and Wages Paid in Public School Systems: 1985-2008*, EDUC. RES. SERVICE, www.census.gov/compendia/statab/2010/tables/10s0250.xls (last visited Aug. 27, 2010).

classroom after as few as five years.⁷⁷ The Legislature attempted to address these excesses and provide some transparency to the process when it passed Accountability Standards in 2007.⁷⁸

Constitutional challenges to these regulations reining administrative pay have met with failure. In a pair of cases brought by groups representing school business officials and administrators, the Appellate Division held that there is no vested "property interest in the terms and conditions of any contracts they may execute in the future," and therefore there is no deprivation of due process or unjust taking under the new regulations.⁷⁹

C. *Obstacles to Change*

Bruck and Pinto identify "five barriers" to municipal consolidation which are equally applicable to school districts.⁸⁰ First, procedural barriers stem from the necessity for voter input in the form of participation in consolidation studies, as well as approval at the polls.⁸¹ Second, a philosophical argument exists "involv[ing] a value judgment about the nature of . . . government."⁸² The theory here is that "[w]hen towns consolidate . . . the unit of government becomes less accessible, less accountable, and less responsive."⁸³

Third, and very appropriate for a discussion of school district consolidation, is the political barrier of administrators and "elected officials [who] fear that consolidation will put them out of work."⁸⁴ The ability of consolidation to remove redundant and frequently high-paying municipal positions is a threat to these officials' incomes.⁸⁵ However, this theory maintains despite elected school

77. See Cynthia Kopkowski, *Why They Leave*, NEA TODAY (Apr. 2008), <http://www.nea.org/home/12630.htm> ("After they've been teaching a few years, they don't see a rewarding career path ahead of them. The only way to advance is to leave and go into administration or just leave altogether."). Frequently, these teachers leave to become administrators after taking courses in educational leadership and administration that are reimbursed by their school board employer.

78. See N.J. STAT. ANN. § 18A:30-3.5 (West 2010) (setting a cap on accumulated unused sick days at \$15,000); N.J. STAT. ANN. § 18A:30-9 (West 2010) (allowing unused vacation days to carry over to the following year only); see also N.J. ADMIN. CODE § 6A:23A-3.1 (2009) (empowering executive county superintendents to review superintendent contracts so that they meet the statutory requirements).

79. *New Jersey Ass'n of Sch. Adm'rs v. Schundler*, 999 A.2d 535, 546 (N.J. Super. Ct. App. Div. 2010); *New Jersey Ass'n of Sch. Bus. Officials, v. Davy*, 978 A.2d 295, 311 (N.J. Super. Ct. App. Div. 2009) (applying the same reasoning to challenges brought by school business administrators).

80. See Bruck & Pinto, *supra* note 32, at 334.

81. *Id.*

82. *Id.* at 335.

83. *Id.*

84. *Id.*

85. *Id.* at 335-36; see Ronald Smothers, *New Jersey Senate Passes Two Bills Meant*

board members being volunteers. Power is not lessened for lack of remuneration. Fourth, psychology is equally relevant with resistance to school district mergers because “communities feel threatened if they believe that the consolidation will reduce the quality of children’s education, or if the merger will integrate the region racially or socio-economically.”⁸⁶ These fears usually have no rational basis but are incredibly powerful.⁸⁷

Finally, and what the scholars call the “largest obstacle to reform,” is the barrier of practicality.⁸⁸ This concern encompasses both a market-based policy in favor of tiny towns and the more town-specific issues of how services and taxes would be redistributed among the residents of the newly merged town.⁸⁹

D. Conclusion

Overall, the efficiency issues that home rule presents for New Jersey’s schools in the form of duplication of services, and the costs of negotiating with the consequent number of unions are destructive. On the national and international scale, however, the trend has been for governments implementing austerity provisions to deal with fiscal crises to look at giving local authorities more power, rather than take it away.⁹⁰ But it remains a truism that “[l]ocalism may strengthen not just the selfless ([for example], people who want to build a village hall) but also the selfish (who want to stop any new building in their backyard).”⁹¹ This is a verisimilitude that also echoes through New Jersey’s past.

III. THE MANDATE OF “THOROUGH AND EFFICIENT”—JUDICIAL REFORM

The parochialism that bred New Jersey’s litter of public school districts is at odds with the state constitution. The New Jersey Constitution commands that “[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free

to *Cut Costs*, N.Y. TIMES, Jan. 23, 2007, at B5.

86. Bruck and Pinto, *supra* note 32, at 336-37.

87. See, e.g., Evan Goldfine, “Call Me Racist, I Don’t Care”: The Controversy Over School Desegregation In Englewood, New Jersey (March 2000) (unpublished undergraduate honors thesis, Rutgers University) (used with permission and on file with author) (giving the perspective of a student leader in Tenafly, N.J., a municipality with eighteen residents, who vehemently fought against regionalization efforts, but later comes to the realization of the racial component of the resistance to which he had been blind as a high school student).

88. Bruck & Pinto, *supra* note 32, at 337.

89. See *id.* at 337-38.

90. See *Don’t Mess with British Bins*, ECONOMIST, July 31, 2010, at 45.

91. *Id.*

public schools for the instruction of all the children in the State between the ages of five and eighteen years.”⁹² Attempts at school reform have gone through the state’s courts, which have not hesitated to exercise their provenance to interpret the phrase “thorough and efficient.”⁹³ The “thorough” mandate is the subject of decades of litigation and scholarship regarding school funding formulae,⁹⁴ racial inequalities,⁹⁵ and detailed historical analysis to divine the legislative intent of its inclusion in the constitution.⁹⁶

The idea to litigate the equality of school funding under state constitutions arose after the rejection of an equal protection theory under the Federal Constitution by the United States Supreme Court.⁹⁷ The history of New Jersey’s school funding litigation closely follows the simplification of Newton’s Third Law of Motion: “To every action, there is always opposed an equal reaction.”⁹⁸ Each time the New Jersey Legislature has adopted a school funding formula, its constitutionality has been challenged and it has been ultimately struck down.⁹⁹

A. *Robinson v. Cahill*

The existence of a state constitutional mandate was announced in *Robinson v. Cahill*.¹⁰⁰ There, the New Jersey Supreme Court held

92. N.J. CONST. art. VIII, § 4, ¶ 1.

93. *Id.* However, scholars have noted that the word “education” is notably absent from this clause; see Tractenberg, *supra* note 36, at 420.

94. See, e.g., *Robinson v. Cahill*, 303 A.2d 273, 285 (N.J. 1973); *Robinson v. Cahill*, 287 A.2d 187, 189 (N.J. Super. Ct. Law Div. 1972); see also Harold J. Ruvoldt, Jr., *Educational Financing in New Jersey: Robinson v. Cahill and Beyond*, 5 SETON HALL L. REV. 1, 1 (1973).

95. See *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990) (holding Public School Education Act of 1975 unconstitutional as applied to poorer, urban school districts); *Jenkins v. Morris Twp. Sch. Dist.*, 279 A.2d 619 (N.J. 1971) (holding that to avoid racial imbalances, Commissioner of Education had power to avoid segregation in fact); see also Reiner, *supra* note 37, at 354.

96. See Peter J. Mazzei, *New Light on New Jersey’s “Thorough and Efficient” Education Clause*, 38 RUTGERS L.J. 1087 (2007) (containing a searching analysis of the legislative history behind how the clause ended up in the New Jersey Constitution in its current form).

97. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28, 37, 47 (1973) (rejecting an equal protection claim that Texas’s public school funding methodology was violative because the school districts with lower property values were not a “suspect class”, there is no “fundamental right” to education, and local control interest by government provided a reasonable basis for the inequalities in funding); see also Tractenberg, *supra* note 36, at 415 n.23.

98. ISAAC NEWTON, *PHILOSOPHIAE NATURALIS PRINCIPIA MATHEMATICA* 13 (Florian Cajori trans., University of California Press 1960) (1686).

99. See discussion *infra* Part III.B.

100. *Robinson v. Cahill*, 303 A.2d 273, 294 (N.J. 1973).

that the state's funding scheme, the State School Aid Law,¹⁰¹ was a "patchy product reflecting provincial contests rather than a plan sensitive only to the constitutional mandate" of a thorough education.¹⁰² "[T]he entire *Robinson* litigation focused more on the intricacies of school funding formulae and their resource equalization effects across school district lines than on the educational dimensions of 'thorough and efficient' education."¹⁰³

Following *Robinson*, the Legislature enacted the Public School Education Act of 1975.¹⁰⁴ This was an attempt "to equalize the disparity between the rich and poor districts by providing a guaranteed tax base" that each school district could levy against and "collect revenue, regardless of the total property value of the district."¹⁰⁵ However, the Supreme Court found that the Legislature neglected to fully fund the Act and enjoined all school expenditures until New Jersey enacted its first income tax.¹⁰⁶ Due to various provisions, such as heavy taxation in poorer districts and limited funding by the State, the Act failed to contain the inequalities between the districts.¹⁰⁷

B. *Abbott v. Burke*

The consequent wave of school funding litigation would last for almost twenty-five years.¹⁰⁸ It used the constitutional mandate of a "thorough and efficient" education and applied it to the racial inequities produced by the numerous districts in different geographical areas.¹⁰⁹ *Abbott v. Burke* was brought on behalf of urban school children in New Jersey.¹¹⁰ After the litigation was first bounced from the New Jersey Supreme Court to an administrative law judge, it wended its way back as *Abbott II*.¹¹¹

There, Chief Justice Wilentz recognized the problem at hand went beyond how schools received funding:

101. N.J. STAT. ANN. § 18A:58-1 (West 2010) (repealed 1975).

102. *Robinson*, 303 A.2d at 297.

103. Trachtenburg, *supra* note 36, at 418.

104. N.J. STAT. ANN. §§ 18A:7A-1 to -52 (West 2010); see Nicolas S. Warner, *Towards Parity in Education: Abbott v. Burke and the Future of New Jersey School Systems*, 5 TEMP. POL. & CIV. RTS. L. REV. 183, 186 (1996).

105. Warner, *supra* note 104, at 186.

106. *Robinson v. Cahill*, 358 A.2d 457, 459 (N.J. 1976); see also *id.* at 186-87.

107. Warner, *supra* note 104, at 187.

108. *History of Abbott*, EDUC. L. CENTER, <http://www.edlawcenter.org/ELCPublic/AbbottvBurke/AbbottHistory.htm> (last visited Aug. 27, 2010).

109. See *Abbott v. Burke*, 495 A.2d 376, 389 (N.J. 1985) (*Abbott I*); see also Trachtenburg, *supra* note 36, at 418-25; *History of Abbott*, *supra* note 108.

110. *History of Abbott*, *supra* note 108.

111. See *Abbott v. Burke*, 575 A.2d 359, 375 (N.J. 1990) (*Abbott II*).

The central issue is here joined, including whether a thorough and efficient education requires that children with greater needs are entitled to greater resources. Whatever else the evidence shows, it is clear that the reverse is the fact: in New Jersey today, as we assume in the United States, the greater the students' needs, the less their education. And this raises yet another issue: to what extent does the requirement of thorough and efficient education impose on the schools the responsibility to account for and attempt to remedy the problems students bring with them to the schools, intractable problems, problems never dreamed of in the past as being within the schools' responsibility, problems created not by the schools but by society?¹¹²

Abbott II resulted in the creation of so-called *Abbott* districts that received a larger share of state money to compensate for the low property values and consequent poor schools.¹¹³

Following *Abbott II*, the Legislature enacted the Quality Education Act of 1990,¹¹⁴ with subsequent amendments the following year.¹¹⁵ The resultant widening of disparity within the poorer districts was challenged in *Abbott III* for again failing to "guarantee funding sufficient to *pay* for the authorized level of spending."¹¹⁶ A core problem was that the court could find "no mechanism presently . . . in place to control, regulate or monitor the uses of the additional funding made available to the special needs districts pursuant to *Abbott*."¹¹⁷

Next, Governor Whitman ordered the creation of the Education Funding Review Commission.¹¹⁸ The Commission's recommendations led to the Comprehensive Educational Improvement and Financing Act of 1996.¹¹⁹ In *Abbott IV*, this was subsequently held to be unconstitutional for "fail[ure] to assure expenditures sufficient to enable students in [*Abbott*] districts to meet" specified educational content standards.¹²⁰ The court also ordered the creation of a special master.¹²¹ In *Abbott V*, the special master's recommendations that the administration of *Abbott* districts be substantially reformed were

112. *Id.*

113. *See Abbott Districts*, EDUC. L. CENTER, <http://www.edlawcenter.org/ELCPublic/AbbottvBurke/AbbottDistricts.htm> (last visited Aug. 27, 2010).

114. N.J. STAT. ANN. §§ 18A:7D-1 to -37 (West 2010) (repealed 1991-1996).

115. Warner, *supra* note 104, at 190-91.

116. Warner, *supra* note 104, at 191; *see also* *Abbott v. Burke*, 643 A.2d 575, 577 (N.J. 1994) (*Abbott III*).

117. *Abbott III*, 643 A.2d at 578.

118. Warner, *supra* note 104, at 192.

119. N.J. STAT. ANN. § 18A:7F-1 to -63 (West 2010).

120. *See Abbott v. Burke*, 693 A.2d 417, 420-21 (N.J. 1997) (*Abbott IV*).

121. *Id.* at 445.

followed.¹²²

Almost ten years later, in 2008, the State brought the School Funding Reform Act (“SFRA”)¹²³ before the court.¹²⁴ The SFRA was the product of five years of state effort to put an end to the *Abbott* reforms.¹²⁵ Finally, following another special master’s report, in *Abbott XVIII* the court held that the SFRA had done the heretofore unthinkable—passed constitutional muster.¹²⁶

C. Conclusions

All of this litigation failed to cure the ultimate problem—there are simply too many school districts in the state to ever create a truly normative funding base. The term “efficient” has not been the catalyst for change through litigation in the state, although some argue that this is the next step to create a more efficiently diverse education.¹²⁷ With the massive cuts of state aid to school districts,¹²⁸ school funding will continue to be a catalyst for litigation for years to come.

IV. REGIONALIZATION OF SCHOOL DISTRICTS

It is clear that the judicial reforms have succeeded at their limited aims of equalizing student learning through funding reform. However, those efforts did not even attempt to address the overarching problem of district multiplicity. Even with the home rule issue, it is still possible to craft a solution. Regionalization is that answer.

Regionalization is a process wherein various municipalities that have their own individual school districts lower their arbitrary

122. See *Abbott v. Burke*, 710 A.2d 450, 456-57 (N.J. 1998) (*Abbott V*) (adopting the remedial recommendations of the chancery judge and special master).

123. N.J. STAT. ANN. § 18A:7F-43 to -63 (West 2010).

124. See *Abbott v. Burke*, 960 A.2d 360, 364-69 (N.J. 2008) (*Abbott XVI*).

125. See Chanta Jackson, *State Suit Puts Abbott System in the Balance*, N.J.COM (Sept. 22, 2008, 6:55 AM), http://www.nj.com/newark/index.ssf/2008/09/state_suit_puts_abbott_system.html.

126. See *Abbott v. Burke*, 971 A.2d 989, 992 (N.J. 2009) (*Abbott XVIII*). For a full list of all of the *Abbott* litigation, see Tractenberg, *supra* note 36, at 423 n.64.

127. See Tractenberg, *supra* note 36, at 425-45. *But see id.* at 445 n.135 (“Filing a separate law suit might raise some procedural issues, however. The state defendants might move to consolidate such a new case with the ongoing school funding litigation since they arise from the same state constitutional provision, albeit with an emphasis on different words and concepts. Alternatively, the state defendants might seek to have the new action dismissed on the theory that the ‘efficient system’ issues could have been raised in the ongoing litigation.”); *see also* Bruck & Pinto, *supra* note 32, at 304 n.81.

128. See discussion *infra* Part VI.

borders to form a regional school district.¹²⁹ This process does not present the same problems of a municipality losing its character or local control. A school board can still be comprised of representatives of the constituent municipalities. In this form it is also possible to maintain most or all of the facilities, teaching staff, and faculty. However, in some situations, referred to as consolidations, it may involve closing facilities that would be redundant in the newly created regional district.

A. *Regionalization Experiences of Other States*

In many states, school districts began as neighborhood schools.¹³⁰ Students would walk to the school building that was in their neighborhood.¹³¹ As towns grew and suburbs sprawled, towns turned to buses to transport students.¹³² Although this evolution can be seen in the makeup of many of New Jersey's school districts,¹³³ not all states allowed such fragmentation to occur.

In the 1960s and 1970s the Pennsylvania Legislature mandated regionalization.¹³⁴ It did so by force. In some districts where regionalization was ordered, the state built a central high school, "but then they bulldozed the two other high schools to make sure they would never be used again."¹³⁵ This salting of the earth was not necessarily well-received by the affected communities at the time,¹³⁶

129. See Michael F. Kaelber, *The Legal Issues of Regionalization*, N.J. SCH. BOARDS ASS'N SCH. LEADER (Jan./Feb. 2009), <http://www.njsba.org/school-leader/janfeb09.html#legal>.

130. See MEYER WEINBERG, RACE AND PLACE: A LEGAL HISTORY OF THE NEIGHBORHOOD SCHOOL 2-5 (1967), available at http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED023751&ERICExtSearch_SearchType_0=no&accno=ED023751.

131. *Id.*

132. See N.J.S.A. § 18A:39-1 (West 2010) ("Whenever in any district there are elementary school pupils who live more than two miles from their public school of attendance or secondary school pupils who live more than 2 1/2 miles from their public school of attendance, the district shall provide transportation to and from school for these pupils.").

133. For example, Lyndhurst, New Jersey is a 4.65 square mile town in Bergen County, yet has six elementary schools and one high school. *Lyndhurst, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Lyndhurst-New-Jersey.html> (last visited Aug. 27, 2010); see also LYNDHURST SCHOOLS, <http://www.lyndhurstschools.net> (last visited Aug. 27, 2010).

134. See N.J. GEN. ASSEMBLY, ASSEMBLY TASK FORCE ON SCHOOL DISTRICT REGIONALIZATION, FINDINGS AND RECOMMENDATIONS 20 (Feb. 25, 1999) [hereinafter ASSEMBLY TASK FORCE], available at www.njleg.state.nj.us/legislativepub/reports/school.pdf.

135. *Id.* (quoting Eugene Keyek, Ed.D).

136. See *id.*

but such districts have functioned well in the ensuing decades.¹³⁷

Other states have similarly dealt with districting issues in their own public schools. For example, in North Carolina and Maryland, each district contains one or more whole counties.¹³⁸ All district functions throughout the county, from curriculum planning to hiring, are centralized.¹³⁹ Were this technique employed in New Jersey, the state would contain only twenty-one districts.

Additionally, states that favor regionalized districts can have student populations over 13,000.¹⁴⁰ This is not necessarily a negative, as it can create a more vibrant and diverse school community, which was precisely what the New Jersey Supreme Court has attempted.¹⁴¹

B. *New Jersey's Judicial Attempts at Regionalization*

1. Racial Balancing

A primary motivation for regionalization and consolidation efforts in New Jersey was racial balancing.¹⁴² With its roots in the Civil Rights movement of the 1960's, "[t]he same argument used to strike down racially imbalanced neighborhood schools [was] employed to have municipal boundary lines ignored where their

137. Compare NORTH PENN SCH. DIST., 2008-2009 ANNUAL REPORT 3-12, available at <http://www.npenn.org/557775128142538/lib/557775128142538/NPSD%202008-2009%20Annual%20Report.pdf?557775128142538Nav=|&NodeID=4155> (last visited Aug. 27, 2010) (detailing a Pennsylvania district having very high student achievement and having total expenditures of \$188,053,380), and *Facts and Figures*, NORTH PENN SCH. DIST., <http://www.npenn.org/557775128142538/blank/browse.asp?a=383&BMDRN=2000&BCOB=0&c=52078&557775128142538Nav=|&NodeID=157> (last visited Aug. 27, 2010) (North Penn School District serves nearly 13,000 students and covers forty-two square miles) with *User Friendly Budgets 2009, Bergen-Lyndhurst Township*, STATE OF N.J., DEPARTMENT OF EDUC., <http://www.state.nj.us/education/finance/fp/ufb/reports/03-2860.html> (last visited Aug. 27, 2010) (2,023 students in Lyndhurst and \$33,391,560 in total expenditures), and LYNDHURST SCHOOLS, *supra* note 133 (4.65 square miles).

138. See *NC State Board of Education Districts*, PUB. SCH. OF N.C. <http://www.ncpublicschools.org/stateboard/about/districts> (last visited Sept. 27, 2010) (listing North Carolina's eight districts, each encompassing numerous counties); *School Systems*, MD. STATE DEPARTMENT OF EDUC., <http://www.marylandpublicschools.org/MSDE/schoolsystems/> (last visited Sept. 27, 2010) (listing twenty-four "Maryland Local Education Agencies," one for each county).

139. See *NC State Board of Education Districts*, PUB. SCH. OF N.C. <http://www.ncpublicschools.org/organization/orgchart/> (last visited Sept. 27, 2010) (organizational chart for the administration of education in North Carolina); *School Systems*, MD. STATE DEPARTMENT OF EDUC., <http://www.marylandpublicschools.org/MSDE/divisions/> (last visited Sept. 27, 2010) (overview of the State Department of Education, which manages statewide implementation of curriculum and general administration).

140. See *Facts and Figures*, *supra* note 137.

141. See discussion *infra* Part IV.B.

142. See, e.g., *Jenkins v. Twp. of Morris Sch. Dist.*, 279 A.2d 619, 624 (N.J. 1971); *Booker v. Bd. of Educ.*, 212 A.2d 1 (N.J. 1965); *Reiner*, *supra* note 37, at 356-60, 362.

retention [would have caused] racial imbalance within a municipality's schools."¹⁴³

Jenkins v. Township of Morris School District is a confluence of race, economics and a touch of judicial activism.¹⁴⁴ A district having a send-receive relationship with a neighboring district sought to withdraw its students from the receiving town's high school.¹⁴⁵ The New Jersey Supreme Court was asked to determine the power of the Commissioner of Education to enjoin such a withdrawal and to instead order the districts to take steps towards merging their students.¹⁴⁶

The case involved Morristown and Morris Township, which existed as separate entities, but shared some services.¹⁴⁷ Morris Township sent its mostly white students to Morristown's more diverse high school.¹⁴⁸ The towns were a classic "doughnut hole,"¹⁴⁹ with Morris Township virtually surrounding Morristown.¹⁵⁰ The districts maintained separate elementary schools, but Morris Township sent its students to Morristown High School.¹⁵¹

In tackling the merger issue, the Court observed that the peculiar facts here dealt "not with multiple communities but with a single community having no visible or factually significant internal boundary separations, and with a record which overwhelmingly points educationally towards a single regional district rather than separate local districts."¹⁵² Citing the educational benefits of a combined district, and the "judicial views expressed" in prior precedent, the Court held that it was within the power of the Commissioner to order the districts to continue their send-receive relationship.¹⁵³ Moreover, the Commissioner was empowered to push them towards regionalization to fulfill the state's "educational and desegregation policies in the public schools."¹⁵⁴

The vitality of this philosophy has waned over time. Indeed, the United States Supreme Court recently invalidated school district attempts to promote diversity through racial balancing.¹⁵⁵ Therefore,

143. Reiner, *supra* note 37, at 360.

144. See *Jenkins v. Twp. of Morris Sch. Dist.*, 279 A.2d 619, 632-33 (N.J. 1971).

145. *Id.* at 622.

146. *Id.* at 620.

147. *Id.* at 620-21.

148. See *id.* at 620-22.

149. See discussion *supra* Part II.A.

150. *Jenkins*, 279 A.2d at 620.

151. See *id.* at 622.

152. *Id.* at 631.

153. *Id.* at 631-32.

154. *Id.* at 632-33.

155. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701,

it is difficult to see how racial diversity in schools per se, beyond a force for regionalization, will be advanced in the coming years.¹⁵⁶

2. School Funding Methods

Additionally, a major factor that has involved courts in regionalization is the method by which the funding formulae are implemented to spread the cost to districts.¹⁵⁷ School districts are funded through a combination of property taxes, state and federal aid. Also the smaller the town, the higher the percentage of property taxes that need to go to the district, and the greater the amount of aid siphoned from the state. The fear of many townships considering regionalization is that they will be the party who bears a greater burden in tax contributions to the newly created regional district.

C. *The New Jersey Legislature's Study of Regionalization*

1. Past Studies

State leaders have long realized that the proliferation of municipalities was unsustainable, and their solution was to form commissions to study the problem and make recommendations.¹⁵⁸ The parallel issue of schools in New Jersey has been studied for years with similar recommendations.¹⁵⁹

For over forty years, the New Jersey Legislature has attempted to tackle the necessary revisions to the state's schools. Indeed, almost "every governor since Brendan Byrne (1974-1981) has promoted some type of regionalization initiative."¹⁶⁰ The first report in 1969 "recommended configuring all districts into K-12 units of at least 3,500 students each."¹⁶¹ Eleven years later, the State's Department of

732 (2007) ("Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'").

156. See Reynolds Holding, *Can Schools Still Achieve Diversity?*, TIME.COM (June 28, 2007), <http://www.time.com/time/nation/article/0,8599,1638595-2,00.html>.

157. See Borough of Sea Bright v. Dept. of Ed., 576 A.2d 331, 334 (N.J. Super. Ct. App. Div. 1990) ("[T]axes in different taxing districts in the State need not be uniform, as among the districts." (quoting Robinson v. Cahill, 303 A.2d 273, 283-84 (N.J. 1973))); Borough of North Haledon v. Bd. of Ed. of the Manchester Reg'l H. Sch. Dist., 701 A.2d 925, 929-30 (N.J. Super. Ct. App. Div. 1997) ("N.J.S.A. 18A:13-23 requires that apportionment among municipalities within the regional district be approved 'by the voters of each municipality.'").

158. See discussion *supra* Part II.

159. See ASSEMBLY TASK FORCE, *supra* note 134, at 2.

160. See Frank Belluscio, *No Surprise: The State Wants Only K-12 Districts*, N.J. SCH. BOARDS ASS'N SCH. LEADER (Jan./Feb. 2009), <http://www.njsba.org/school-leader/janfeb09.html#surprise>.

161. *Id.* (citing REPORT OF THE STATE COMMITTEE TO STUDY THE NEXT STEPS OF REGIONALIZATION AND CONSOLIDATION IN THE SCHOOL DISTRICTS OF NEW JERSEY (1969)).

Education studied the issue and sought case-by-case reviews for the justification of elementary-only districts to exist.¹⁶² In 1991, a panel called for forced regionalization of all districts into K-12 ones.¹⁶³ In 1999, the Assembly released another study on regionalization,¹⁶⁴ and its influence can be seen in the ECS Act.

2. The Assembly's 1999 Study's Purposes and Findings

This study examined the efficiency problems from many different perspectives, including the following: past regionalization studies; New Jersey court decisions regarding regionalization; interest group positions such as unions; incentives to encourage regionalization; and mandated regionalization.¹⁶⁵ Moreover, it contains a substantial consideration of the potential benefits and problems that accompany regionalization.¹⁶⁶

Past studies were in agreement that the ability of a district to absorb, or be absorbed, by another district is not universal.¹⁶⁷ Additionally the study found that the Legislature, through its promulgation of educational regulations, created "financial disincentives" for districts to regionalize.¹⁶⁸ The historical survey also reported that due to home rule concerns, mandated regionalization was less likely to be received as well as if regionalization's "positive educational and economic benefits" were explained to constituents and lead to regionalization by choice.¹⁶⁹

The study also determined that regionalization is not a sure-fire method of addressing economic problems in districts.¹⁷⁰ Occasionally, the merging of teacher contracts, as well as the increased costs of providing student transportation over a much larger geographic area, can result in greater economic disparities than before.¹⁷¹

Another factor concerns the different methods by which municipalities collect and apply tax revenues for their schools.¹⁷²

162. *Id.* (citing the INTERIM REPORT TO REVIEW THE RECOMMENDATIONS OF THE STATE'S SCHOOL FUNDING LAW ON THE ORGANIZATION OF LOCAL SCHOOL DISTRICTS (1980)).

163. *See id.* (citing QUALITY EDUC. COMM'N, ALL OUR CHILDREN: A VISION FOR NEW JERSEY'S SCHOOLS IN THE 21ST CENTURY 19-23 (1992)).

164. *See ASSEMBLY TASK FORCE, supra* note 134.

165. *See id.* at 1, 6-7, 19.

166. *Id.* at 8-18.

167. *See id.* at i.

168. *Id.*

169. *Id.*

170. *See id.*

171. *See id.*

172. *See id.*

Two methods, equalized valuation¹⁷³ and per-pupil basis,¹⁷⁴ result in different tax consequences for residents.¹⁷⁵ A fear is that “[s]maller, more affluent communities in regional school districts, [who would be taxed based on equalized valuation] may wind up paying more [in a regionalized district] than what they otherwise would pay in a non-regionalized district.”¹⁷⁶ Moreover, unequal economic development in the municipalities that make up a regionalized district may result in further cost inequities.¹⁷⁷ Home rule concerns dealing with school board representation and procedural bars to de-regionalization make up the final drawbacks to regionalization plans.¹⁷⁸

3. Recommendations

To deal with these concerns, the Legislative committee made several recommendations.¹⁷⁹ First, the committee noted that property reassessment options should be provided in regionalization agreements when the per-pupil expenditure ratio between any two constituent municipalities is greater than 10%.¹⁸⁰ For example, take two neighboring districts with overall property values such that one was accustomed to paying \$10,000 per-pupil and the other \$11,500. If they merged, the towns could reassess the values of properties to get to a per-pupil ratio that was more of a compromise.

Second, the committee proposed ideas for an entirely new formula for cost apportionment to make regionalization a more realistic option.¹⁸¹ Rather than allocating greater cost to a smaller town by virtue of the property values, the cost could be allocated more evenly by which town had a higher population.

Third, the committee suggested that de-regionalization should be

173. Equalized valuation is defined as follows: “The true (market) value of real property, calculated by dividing the assessed value by the equalization ratio” *Annual Report Glossary*, N.J. DEP’T OF COMMUNITY AFFAIRS, DIVISION OF LOCAL GOV’T SERVICES, http://www.nj.gov/dca/lgs/annualrpt/ar_glossary.shtml (last visited Aug. 27, 2010).

174. Per-pupil spending involves calculating the amount to be levied through taxes based on the amount the district wants to spend for each student; see, e.g., Lisa Fleisher, *Studies Conflict on Whether N.J. Tax Cap Will Benefit Residents*, N.J.COM (May 25, 2010, 5:10 AM), http://www.nj.com/news/index.ssf/2010/05/studies_conflict_on_whether_nj.html (discussing effect of possible property tax cap on per pupil expenditures).

175. ASSEMBLY TASK FORCE, *supra* note 134, at i.

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.* at ii-iv.

180. *See id.* at iii.

181. *See id.* at ii-iv.

made easier through less regulation.¹⁸² The process of de-coupling from a regionalization arrangement is difficult, and viewed by some as a disincentive to enter into such agreements.¹⁸³ Finally, the committee recommended that more studies and greater dissemination of information to all stakeholders—including community members, elected officials, and school faculty—should be conducted so that the impacts of regionalization would be totally understood by all affected.¹⁸⁴

D. Conclusions

Viewed ten years later, the findings and recommendations of the Assembly report, like those of its predecessors, have not led to rampant district mergers.¹⁸⁵ However, some recommendations of the legislative committee, such as elimination of non-operating school districts, and consolidating “limited purpose” districts into K-12 districts, found a place in the ECS Act.¹⁸⁶

To be sure, regionalization has its critics; and there is something to be said for placing the management of educational functions at a very local level. School board meetings may be convenient to attend, leading to greater community input. Stakeholders in a district may feel more bound to the school district with the same name as their town, or that the district is the same as when they were students themselves. Moreover, the notion that the policies that determine one's child's education may be decided by a neighbor who happens to sit on the school board can give parents a greater sense of control.¹⁸⁷

But all of these justifications are merely self-serving and ignore the fact that a progressive education policy in the twenty-first century requires change. And the economic consequences of the current system, in New Jersey at least, will ultimately prove to be the undoing of the status quo.

V. THE LEGISLATIVE SOLUTION

Building on cultural inheritance, judicial proclamations, legislative nonfeasance and committee recommendations, Governor

182. *See id.*

183. *See id.* at i.

184. *See id.* at ii-iii.

185. Compare ASSEMBLY TASK FORCE, *supra* note 134, at 3 (noting that New Jersey had 600 districts) with *New Jersey Public School Statistics*, *supra* note 13 (noting that New Jersey has 602 districts).

186. *See* N.J. STAT. ANN. § 18A:7-8; *see also* discussion *infra* Part VI.

187. *But see* Nancy Gibbs, *Can These Parents Be Saved?*, TIME, Nov. 30, 2009, at 52 (discussing the rampant overparenting that threatens to stifle children's independence of thought and action).

Corzine signed the ECS Act into law in 2007.¹⁸⁸ This act represents the most forthright and meaningful attempt at fixing many of the state's school districts' problems at their source.

A. *The Components of the Act*

The ECS Act is part of the CORE Legislation,¹⁸⁹ "which emanated from the Legislature's Special Session on Property Tax Reform."¹⁹⁰ CORE stands for "Clearing Hurdles to Shared Services, Overriding Waste in Schools, Reining in Abuses, and Empowering Citizens" Act.¹⁹¹ In writing CORE, the legislature's goals were "to encourage the financial accountability of local units of government through empowering citizens, reducing waste and duplicative services, clearing legal hurdles to shared services and consolidation, and supplementing, amending, and repealing sections of statutory law."¹⁹² In pertinent part, the ECS Act amended current education laws to specify the powers and duties of executive county superintendents.¹⁹³

The ECS Act has the potential to effectuate substantial changes in the economics of New Jersey's public schools. The intent of the executive county superintendent provisions were to "clarify the various responsibilities given to [the Department of Education] and the districts" under various laws passed in 2006 and 2007.¹⁹⁴ Subsections (d)-(j) lay out certain areas upon which the executive

188. See *Governor Signs Property Tax Legislation, Including Property Tax Caps and "Super" County Superintendents*, N.J. PRINCIPALS AND SUPERVISORS ASS'N (Apr. 3, 2007), <http://www.njpsa.org/agr/news.cfm?newsid=187>.

189. See *id.* The article discusses "CORE Legislation," which can be found at 2007 N.J. Sess. Law Serv. Ch. 63 (Assembly 4) (West) (codified in scattered sections of N.J.S.A. STAT. ANN.).

190. Belluscio, *supra* note 160.

191. *Shared Services*, CAMDEN COUNTY, <http://www.camdencounty.com/government/offices-departments/shared-services> (last visited Aug. 27, 2010).

192. 2007 N.J. Sess. Law Serv. Ch. 63 (Assembly 4) (West).

193. *Id.* at Art. 4. (amending N.J. STAT. ANN. § 18A:13-46). The issue of executive county superintendents was the product of "certain components of the CORE proposal that [were] considered by the Joint Legislative Committee on Consolidation and Shared Services." LEGIS. BUDGET AND FIN. OFFICE, LEGIS. FISCAL ESTIMATE: ASSEMB., NO. 4 STATE OF NEW JERSEY 212TH LEGIS. (N.J. Feb. 28, 2009). The moniker "executive county superintendent" is a renaming of those who were previously "county superintendents." *Id.*

194. *DOE Releases Draft Accountability Regulations*, STATE OF N.J., DEPARTMENT OF EDUC. (April 30, 2008), <http://www.state.nj.us/education/news/2008/0430acc.htm> (discussing the "School Funding Reform Act . . . , the school district-related provisions of the CORE legislation (the Uniform Shared Services and Consolidation Act, approved in April of 2006 . . .), the School District Fiscal Accountability Act (approved in 2006) and the state Office of Management and Budget (OMB) travel circular, which applies to . . . local school districts under CORE.").

superintendent must focus.¹⁹⁵

The ECS Act not only attempts to solve the problems with meaningful and progressive reforms, but it implements them in a thoughtful and imperative way. For one, the Act compels the elimination of all non-operating school districts.¹⁹⁶ Second, the Act commands that during the time that regionalization plans are being considered, executive county superintendents should still make sure that school districts are engaging in shared services where able.¹⁹⁷ This can take the form of districts working together to enter purchasing arrangements for things like fuel, electricity, and school supplies.¹⁹⁸ It is a very simple economic truth that greater numbers buying jointly in large quantities may demand lower prices for commodities.¹⁹⁹

The Act directs additional service sharing in the transportation sphere.²⁰⁰ Currently, most districts have their own school buses and drivers. If across a given area bussing comes from a centralized point, this can eliminate various inefficiencies. For one, most districts have a transportation coordinator.²⁰¹ This position organizes bus routes and stays in contact with drivers. By centralizing such a position among a few districts there would be little lost, except for local control.

The Act's most important feature is the substantial requirement of a consolidation plan for non-K-12 districts within three years.²⁰² These plans were to be submitted to the Commissioner of Education, and eventually work their way to the individual school boards.²⁰³ After the proposals are researched and considered by the constituent

195. See N.J. STAT. ANN. § 18A:7-8(d)-(j) (West 2010) (“(d) Promote administrative and operational efficiencies and cost savings within the school districts in the county while ensuring that the districts provide a thorough and efficient system of education; (e) . . . [Require] that certain school districts . . . enter arrangements with one or more other school districts . . . for the consolidation of the district's administrative services; . . . (g) Eliminate [non-operating] districts . . . ; (h) No later than three years . . . recommend to the commissioner a school district consolidation plan to eliminate all districts [not K-12], through the establishment or enlargement of regional school districts [and put such plan up for vote] . . . ; (i) Promote coordination and regionalization of pupil transportation services . . . ; (j) Review and approve [contracts of superintendents and assistant superintendents.]”).

196. See § 18A:7-8(g).

197. See § 18A:7-8(d)-(e).

198. See *id.*; see also *supra* Part II.A.

199. See, e.g., BRYAN BERGERON, ESSENTIALS OF SHARED SERVICES 179-211 (2003).

200. See § 18A:7-8(i) (ordering the executive county superintendent to coordinate and regionalize bus routes and the schedules of all the schools within the county).

201. See, e.g., New Jersey Administrative Salaries, *supra* note 20.

202. See N.J. STAT. ANN. § 18A:7-8(h) (West 2010).

203. See N.J. ADMIN. CODE § 6A:23A-2.5 (2009).

municipalities, they will be put up for a vote.²⁰⁴ Unfortunately, convincing the electorate will be the difficult part.²⁰⁵ While in some regards three years is a long time, when the historical reticence of New Jersey to change is considered, this demonstrates a heretofore-absent sense of urgency for real progress.²⁰⁶

Finally, the Act's requirements relating to superintendents should not be overlooked.²⁰⁷ All superintendent contracts must be reviewed and approved by the executive county superintendent.²⁰⁸ It adds a level of transparency to a previously opaque process involving the highest single salary line item in every district's budget.²⁰⁹ This provision was inserted because of the rampant abuses of taxpayer funds that resulted in huge ancillary compensation perks for these school officials, sometime reaching sums in excess of \$500,000.²¹⁰

B. Initial Effect

While the most promising reforms relate to regionalization plans, meaningful progress has already resulted from the ECS Act.²¹¹ Most notable is the elimination of non-operating school districts.²¹² Smaller, non-K-12 districts, are also entering into more substantial and creative shared-services agreements.²¹³

The Legislature's empowerment of the executive county superintendents to create plans for regional school districts is key.²¹⁴ Regulations state that the executive county superintendents "shall study the consolidation of local public school districts within the county, other than county school districts and other than [sic] preschool or kindergarten through grade 12 operating school districts in the county, into one or more all purpose regional school

204. See § 18A:7-8(h).

205. See discussion *supra* Part II.C (discussing the five obstacles to change).

206. See discussion *supra* Part II.B (discussing New Jersey's continued tendency to absorb high costs from its duplicated municipal services).

207. See N.J. STAT. ANN. § 18A:7-8(j) (West 2010).

208. *Id.*

209. See New Jersey Administrative Salaries, *supra* note 20.

210. See, e.g., Claire Heining, *Educator Gives Up Her \$556K Severance: Ex-Superintendent Settles in Keansburg*, STAR-LEDGER, Mar. 27, 2010, at 1 (discussing a retiring superintendent's controversial pay package that "sparked taxpayer anger and new state limits on administrative pay").

211. See *supra* notes 204-06 and accompanying text.

212. See Press Release, *supra* note 5 (announcing the elimination of thirteen non-operating school districts).

213. See William L. Librera, *Reducing Costs and Improving Quality*, N.J. STATE LEAGUE OF MUNS., http://www.njslom.org/interlocal_reducingcostsarticle.html (last visited Aug. 27, 2010).

214. N.J. ADMIN. CODE § 6A:23A-2.5 (2009).

districts.”²¹⁵ This study is supposed to include districts with send-receive relationships as well as already existing regional school districts that receive students from various municipalities that have their own school districts.²¹⁶

Alternatively, where such a regional district is not viable or cost-effective, the executive county superintendents may contemplate “consolidating or sharing administrative or management services.”²¹⁷ This unprecedented expansion of powers for the executive county superintendents is remarkable and demonstrates a true intent by the Legislature to, at long-last, take control of these problems. The reports by the executive county superintendents were due to the Commissioner of Education by March 15, 2010.²¹⁸ The presentation of these plans by the executive county superintendents would be crucial to any real success because the taxpayers will make the ultimate decision.²¹⁹

C. Conclusions

The ECS Act brings together the recommendations of decades of state leaders. If there was ever a vehicle for change in the state's schools, it is manifested here. But the resistance to change is fierce, and new faces and priorities in Trenton may prove to be a fresh impediment. Indeed, it took only five months into a new administration to toll the progress of the nascent law.

The reports compiled by the executive county superintendents will not be released or implemented, nor will the commands of the ECS Act be followed.²²⁰ Treating the requirement of conducting

215. *Id.*

216. *Id.* For example, the Hunterdon Central Regional High School District receives 9th-12th grade students from Flemington Borough, Raritan Township, Readington Township, Delaware Township, and East Amwell Township; see *Hunterdon Central Regional High School 2009-2010 Profile*, HCRHS INFO., <http://central.hcrhs.k12.nj.us/schoolinfo/> (last updated Jan. 5, 2010). The executive county superintendent could potentially create a Hunterdon Central Regional School District. This would create massive redundancies in administrative positions, but probably not teaching positions, as the school facilities already located in the neighborhoods and towns they serve would continue functioning in same manner and serving the same number of students they are now. The redundancies would be created since where there are now six superintendents, there would be one (with a salary savings not inclusive of benefits of over \$500,000 annually). See *id.* There would also necessarily be a reduction in the curriculum planning and supervisory positions. *Id.* (even in a large district there would be no need for multiple Math or English supervisors). These are the types of savings that can have real impacts on property taxes when implemented across the state.

217. N.J. ADMIN. CODE § 6A:23A-2.5(a) (2009).

218. *Id.* § 6A:23A-2.5(b).

219. See N.J. STAT. ANN. § 18A:13-34 (West 2010).

220. N.J. Sch. Bds. Ass'n, *Schundler: Regionalization Not Moving*, 33 SCH. BOARD

feasibility studies as unfunded mandates, the Christie Administration has decided that it will forgo following the prescriptions of the ECS Act until the Legislature allocates appropriate monies.²²¹ This obstacle to regionalization is tragic but not complete. The administration has taken an entirely different approach, but one which nevertheless may ultimately lead to regionalization.

VI. EXECUTIVE REFORM

With a new political party in the executive branch inevitably comes somewhat of a departure from the *status quo ante*. The outcome of the November 2009 gubernatorial election in New Jersey, which saw Republican and former U.S. Attorney Chris Christie victorious, will have a profound impact on the future of the state's schools. This was demonstrated early and often in the first few months of Governor Christie's term. State aid to schools was slashed, public employee unions strained, and the core policies behind the ECS were rendered merely hortatory. Under this administration, any school reform will be initiated, approved or rejected by the powerful Executive Branch.²²²

A. *State Aid Cuts to Schools*

Governor Christie's budget proposals—slashing state aid to school districts by \$820 million, and proposing a 2.5% cap on property taxes (which fund schools)—indicate a clear policy direction.²²³ These cuts have severely hurt district budgets and changes will have to be made. Changes mean lost jobs. Districts that were told to plan for between 5%-15% decreases in state aid found themselves facing 55%-75% cuts.²²⁴ Budgets had to be drastically

NOTES, No. 29 (May 26, 2010), available at http://www.njsba.org/sb_notes/20100526/schundler.html.

221. *Id.*

222. See Jack M. Sabatino, *Assertion and Self-Restraint: The Exercise of Governmental Powers Distributed Under the 1947 New Jersey Constitution*, 29 RUTGERS L. J. 799, 825 (1998) (“The Governor of New Jersey is, at least functionally, the most powerful Chief State Executive in the nation.”).

223. See Governor Chris Christie, Budget Address (Feb. 11, 2010), available at http://www.nj.com/politics/index.ssf/2010/02/chris_christies_speech_on_budg.html [hereinafter Christie Budget Address]; see also *Projected SFRA State School Aid 2010-2011 and Projected Total School Aid 2010-2011*, N.J. DEPARTMENT OF EDUC., DIVISION OF FIN., <http://www.state.nj.us/education/stateaid/1011/StateAidPresentlyAllocabletoDistrictCountyTotals2011.pdf> (last visited Aug. 27, 2010).

224. See, e.g., Amanda Peterka, *Branchburg Schools Face 73% Loss in State Aid*, N.J.COM (Mar. 19, 2010, 12:24 PM), http://www.nj.com/messenger-gazette/index.ssf/2010/03/branchburg_schools_face_73_loss_in_state_aid.html.

reformed in a matter of days.²²⁵ The response varied, from school boards proposing 10% increases in tax levies, to those planning massive firings and lay-offs of teachers and administrators, and elimination of a variety of programs and services.²²⁶

And that is just to fund the 2010-2011 school year. Districts cannot continue to cut enough teachers annually to make up for large aid losses. Moreover, the state has habitually failed to make its contributions to the Teachers' Pension and Annuity Fund for years, creating a taxpayer liability that is underfunded by billions.²²⁷

In a speech before the State Legislature, Governor Christie discussed cuts that he was making in aid to school districts under emergency powers. He highlighted the problems the state faces if home rule in school districts and municipalities is not confronted:

Suburban districts will sacrifice. Urban districts will sacrifice. Rural districts will sacrifice. Some, both inside and outside this chamber, will urge you to retreat to the corner and protect your own piece of turf. Our state is in crisis. Our people are hurting. Now is the time when we all must resist the traditional, selfish call to protect your own turf at the cost of our state. It is time to leave the corner, join the sacrifice, come to the center of the room and be part of the solution. I urge all of us to come to the center of the room voluntarily, to stand up to the special interests, to fix our broken state – together. For those who continue to defend the old ways of selfishly protecting turf, who stay in the corner defending parochial interests, please be on notice—people of good will who want a better, stronger New Jersey will band together to come into those corners and drag you to the center of the room to make our state the place we know it can be.²²⁸

Unfortunately the Governor chose to characterize only union leaders as those who would “selfishly protect[] turf.”²²⁹ This ignores

225. *See id.*

226. *See* Stephen Stirling, *Schools Face Painful Choice in Wake of Christie's Budget Cuts*, STAR-LEDGER, Mar. 20, 2010, at 1; Rita Giordano, James Osbourne & Edward Colimore, *N.J. Aid to Schools to be Drastically Cut*, PHILA. INQUIRER, Mar. 18, 2010, at A01.

227. *See* Lisa Fleisher, *State Not Obligated to Pay Out Teachers' Pension Debt; Court: Issue of Millions Owed Annually in Flux N-JEA Weighs Appeal*, STAR-LEDGER, Mar. 5, 2010, at 29 (discussing the state courts' refusal to order the state to make payments to the pension funds, which faces a \$46 billion dollar deficit in part due to the state taking “payment holidays”). Additionally, laying off any significant percentage of those who are directly contributing to the pension fund will not help stabilize it anytime soon.

228. *See* Governor Chris Christie, Remarks to the Special Session of the New Jersey Legislature Regarding the Budget for Fiscal Year 2010 (Feb. 11, 2010), available at <http://www.nj.gov/governor/news/news/552010/approved/20100210.html> (last visited Aug. 27, 2010).

229. *Id.*

some municipal leaders as well as their constituents.

B. Attacks on the Unions

1. Executive Order 7

Governor Christie demonstrated his distaste for the state's public employee unions, following an election campaign in which NJEA and other unions vociferously fought against his candidacy.²³⁰ On his second day in office he signed eight executive orders.²³¹ The one he valued most was Executive Order No. 7²³² ("E.O. 7")—extending New Jersey's "pay-to-play" laws, which cap political campaign contributions by corporations, to public employee unions. While most pens used to sign the executive orders were distributed as favors, Governor Christie placed one he used to sign E.O. 7 into his breast pocket stating, "I'm keeping that one for myself."²³³ The pen would not see a long life as a collectible. Following a challenge brought by the state's largest public employee unions, the Appellate Division struck down the Order as an unconstitutional overreach into the legislative sphere.²³⁴

2. Re-opening Negotiations

The teachers' unions have been made the scapegoats for the entire state's fiscal problems.²³⁵ Part of the Governor's proposals involve "giving districts the tools to cope," which means letting school boards force unions to reopen negotiations before a contract is expired, in part to leverage greater union contribution to health benefit programs.²³⁶ It is true that many teachers in the state do not pay for health benefits, but these are negotiated compensation arrangements. Teachers have forgone greater salary increases in return for these benefits. It is simply wrong that the superintendents and municipal representatives who negotiated these contracts are

230. See Claire Heininger & Josh Margolin, *Christie Flexes Some Muscle Against Labor Unions Governor Limits Political Gifts as Democrats Protest*, STAR-LEDGER, Jan. 21, 2010, at 1; *Christie: No Friend of Education*, NJEA REP., Oct. 2009, at 1 (a pre-election article from a union newsletter outlining feared negative outcomes of a Christie victory).

231. Heininger & Margolin, *supra* note 230, at 1.

232. Exec. Order No. 7, 42 N.J.R. 580(b) (2010).

233. Beth Defalco, *N.J. Gov. Christie Signs 8 Executive Orders 1st Day*, SEATTLE TIMES, Jan. 21, 2010, http://seattletimes.nwsourc.com/html/business/technology/2010851651_apusnjgovernorfirstday.html; see also Heininger & Margolin, *supra* note 230, at 1.

234. See *Comm'ns Workers of Am. v. Christie*, 994 A.2d 545 (N.J. Super. Ct. App. Div. 2010).

235. See Christie Budget Address, *supra* note 223.

236. See *id.*

free from blame and encouraged to abrogate agreements made in good faith.

It is illegal for all public employees in New Jersey, including teachers, to strike.²³⁷ School boards thus cannot claim that they were being held hostage during negotiations by union demands for free healthcare. This is a concession that was made over 500 times in separate negotiations. If those promises now appear difficult to keep, the taxpayers' vitriol should be directed at those who are supposed to be representing *their* interests at the negotiating table.

Indeed, many unions, in recognition of the severity of the situation, have voluntarily re-opened negotiations and are being asked to both contribute to benefits and freeze salaries.²³⁸ However, in a typical K-8 district, this strategy may yield only \$376,000, in the face of millions in shortfalls.²³⁹ For this reason, unions that agreed to pay-freezes are still seeing many dozens of teachers let-go.²⁴⁰ This may be the reason the governor announced an incentive to get unions to bend to his will: offer to return some state aid if that district's unions agree to a pay freeze.²⁴¹

The impact of these layoffs on unemployment could be catastrophic. They are not limited in scope. Teachers by nature and training possess a skill set and a degree that is applicable to a narrow category of jobs.²⁴² When virtually *every* district in the state is shedding staff, where are all of those teachers to go?²⁴³ Teachers are put in this position solely because of the "multiple municipal madness."²⁴⁴ These inefficiencies are more sustainable in good economic times, but when faced with the worst economic period since the Depression, the curtain is lifted.

237. See, e.g., Bd. of Educ., Borough of Union Beach v. N.J. Educ. Ass'n, 247 A.2d 867, 871 (N.J. 1968) ("It has long been the rule in our State that public employees may not strike.").

238. See Peterka, *supra* note 224 (stating that Branchburg schools' collective bargaining groups are in negotiations to freeze all salaries for next year).

239. See *id.*

240. See Matt Freidman & Lisa Fleisher, *N.J. Gov. Chris Christie Defends School Cuts, Gears Up to Fight Teachers Union*, NJ.COM (Mar. 30, 2010, 9:53 PM), http://www.nj.com/news/index.ssf/2010/03/nj_gov_chris_christie_gears_up.html (discussing wage freeze incentives and reactions to this offer).

241. *Id.*

242. Additionally, within the teaching staff, teachers are certified for only particular aspects of teaching, such as K-12 music, 7-12 History, and K-6 Language Arts.

243. Perhaps Rhode Island. Because the new mantra of "fire teachers" has its proponents at the highest level of the Obama Administration, districts across the country are taking the step of simply firing all of the teachers and administrators at underperforming schools. See Jennifer D. Jordan, *Every Central Falls Teacher Fired, Labor Outraged*, PROVIDENCE J., Feb. 24, 2010, at 1.

244. See Bruck & Pinto, *supra* note 32, at 294.

3. Federal Aid

The nightmare faced by New Jersey's teachers at the end of the 2009-2010 school year was replicated throughout the nation, though the causes did not always stem from state executive branches.²⁴⁵ Teachers everywhere were attacked with a vehemence thus far reserved for corporate CEOs and Wall Street bankers.²⁴⁶ This has all been somewhat ameliorated by a \$26 billion jobs bill that will aid an estimated 300,000 workers, including teachers, by "helping state governors plug their own budget holes."²⁴⁷ However, this will prove to be a temporary panacea. With all signs pointing towards a continuing recession with stagnant job growth, and a national political environment in election season where "tax" might as well be spelled with four letters, there is no reason to believe that state governments will find new sources of revenue sufficient to prevent a repeat of the mass teacher layoffs of spring 2010.

The state needs money for education.²⁴⁸ New Jersey was one of many states to submit a bid to participate in the Race to the Top ("RTTT") program.²⁴⁹ RTTT is a federal program administered by the Department of Education and funded with \$4.3 billion.²⁵⁰ Part of the

245. See Tara Malone et al., *Class Resumes, for Some; Several Suburban Districts Able to Rehire Many Laid-off Teachers, but Others Wait to See Money*, CHI. TRIB., Aug. 12, 2010, at C1; Akilah Johnson, *For Many Teachers, Worry Turns to Thanks and Hope; School District's Rehiring Offers Laid-off Educators Opportunities to Return to Classroom*, SUN-SENTINEL (Fort Lauderdale), Aug. 11 2010, at 1B (describing two different school districts and the problems that resulted in the laying off and rehiring of many teachers).

246. See Robert Kolker, *Get Kotter; How Teachers Became the New Lawyers*, N.Y. MAG. Jul. 12, 2010, at 1 (stating that "[t]here may be no more vilified profession in our culture these days than teachers").

247. Lori Montgomery & Nick Anderson, *Obama Signs \$26 Billion Jobs Bill; Funds for State Payrolls Democrats Say Relief Money is Last of Stimulus*, WASH. POST, Aug. 11, 2010, at A12.

248. See Sam Dillon, *With Federal Stimulus Money Gone, Many Schools Face Budget Gaps*, N.Y. TIMES, Feb. 8, 2010, at A11.

249. See Sam Dillon, *Dangling \$4.3 Billion, Obama Pushes States to Shift on Education*, N.Y. TIMES, Aug. 17, 2009, at A1 (discussing the RTTT program and New Jersey's chances of being successful).

250. *Id.* While an in depth discussion of the RTTT program is outside the scope of this Note, it should be noted that institution of a merit pay system continues to be a pressed as the primary tool of public school reform. But merit pay only addresses a few areas of education, and the "class separation" that will occur between those who are merit pay eligible (English and Math) and those who are not (e.g. Science, Music, Gifted and Talented programs), can have deep educational (merit-pay teachers not wanting to send students out for music) and legal (contractual) ramifications. See generally Bruce D. Baker, *Pondering Legal Implications of Value-Added Teacher Evaluation*, SCHOOLFINANCE101'S BLOG (June 2, 2010), <http://schoolfinance101.wordpress.com/2010/06/02/pondering-legal-implications-of-value-added-teacher-evaluation/> (arguing that merit pay systems will face a host of challenges in their implementation,

reason New Jersey's initial bid for a share failed, besides a bungled transition between administrations at a critical point in the bid process, is that the RTTT program requires a huge level of support from the teachers' unions.²⁵¹ The goal is to have a united front in all facets of education in a given state, along with a plan for the funds. The Christie administration was quick to assign blame to NJEA for failing to support the state's plan,²⁵² while federal officials instead cited a lack of "clarity and coherence."²⁵³ Nonetheless, in the political atmosphere that has been created it is unthinkable that the state could command the same level of cooperation seen in Tennessee and Delaware, the only successful recipients from the first round.²⁵⁴

The states whose bids had failed were invited to reapply for the RTTT funds in June 2010.²⁵⁵ NJEA negotiated with Commissioner of Education Schundler, and reached an agreement wherein the teachers' union would endorse the state's revised bid, which included greater emphasis on student test performance in teacher evaluations.²⁵⁶ Less than one day after Schundler made the announcement, however, Governor Christie tore up the new bid and submitted his own proposal with no union support.²⁵⁷ The

but, because of their limited application in subject areas, the benefits will be minimal). *But cf.* Steven Brill, *The Teachers' Unions' Last Stand*, N.Y. TIMES, May 13, 2010, Magazine, at 32 (arguing that the "country had seen more school reform than it had in decades" before any of the funds were released due to changes implemented by the states in anticipation).

251. See Dillon, *supra* note 249.

252. See Bret Schundler, *Bret Schundler: NJEA Needs to Support Obama's Race to the Top Initiative to Avoid Losing More Federal Dollars*, NEWJERSEYNEWSROOM.COM (March 26, 2010, 4:30 PM), <http://www.newjerseynewsroom.com/commentary/bret-schundler-njea-needs-to-support-obamas-race-to-the-top-initiative-to-avoid-losing-more-federal-dollars> (citing the lack of union support for loss of RTTT funds because "[t]he union fears that school districts will judge teachers unfairly"). Bret Schundler is the Acting Commissioner of Education, and was widely opposed by the NJEA for that position. See Tom Moran, *With NJEA, Christie Comes Out Swinging*, STAR-LEDGER, Jan. 14, 2010, at 19 (describing Schundler as "a longtime nemesis of NJEA").

253. Leslie Brody, *Feds: Unclear Proposal Hurt State in its Bid for School Aid*, STAR-LEDGER, Mar. 30, 2010, at 15.

254. See Moran, *supra* note 252; see also Letter from Chris Christie, Governor, State of New Jersey, to Barbara Keshishian, President, New Jersey Education Association and Marie Bilik, Executive Director, New Jersey School Board Association (Mar. 23, 2010), available at http://www.nj.com/news/index.ssf/2010/03/christie_calls_for_teachers_sc.html (follow "Read Gov. Christie's letter to school boards" hyperlink) (calling for such cooperation amidst a tough political climate).

255. See Brill, *supra* note 250.

256. Kristen Alloway & Lisa Fleisher, *NJEA, Christie Finally on the Same Page: Union, Governor Reach Compromise in Bid for Up to \$400M in Education Grants*, STAR-LEDGER, May 28, 2010, at 13.

257. Jeanette Rundquist & Josh Margolin, *Christie Trashes Education Compromise: He Berates Schundler and Stuns NJEA with Application for Federal Funding*, STAR-

Commissioner was not authorized to make the “concessions” to the union that he did, so the Governor refused to honor the agreement.²⁵⁸

Nevertheless, New Jersey was announced as one of eighteen finalists in the second round of the RTTT competition.²⁵⁹ Once again, New Jersey lost out on federal funding from RTTT, this time by only a few points.²⁶⁰ The loss of three points was due to a clerical error of submitting budget statistics for the wrong year.²⁶¹ Moreover, a deduction was assessed because New Jersey “not using student performance to make decisions on teachers’ pay or job security”—precisely what Schundler and NJEA had initially agreed to.²⁶² Therefore, the deduction for using the wrong budget statistics would have been de minimus had the Governor accepted what NJEA and Commissioner Schundler had agreed to, and not raced to rewrite a new application in haste.²⁶³ Schundler was fired only days later.²⁶⁴

4. Taming the Free Radicals of the Education System

Governor Christie also put forth a meaningful solution to reign in superintendent salaries.²⁶⁵ Analogizing the top administrators to “free agents” in sports, the governor proposed a salary cap of \$175,000 for superintendents which would vary by district size.²⁶⁶ The impact and necessity of this reform is clear when one sees that this measure would affect over 70% of the superintendents in the state.²⁶⁷ In saving the state’s towns \$9.8 million, the proposal would also require merit assessments tied to bonuses.²⁶⁸

The governor is undoubtedly correct in his view that the market for these actors is brutally distorted by the number of job opportunities for them in the state. This results in their jumping from district to district after only a few years on the job. If teachers are going to be pilloried in this state, it is only fair that

LEDGER, June 2, 2010, at 1.

258. *Id.*; Josh Margolin & Jeanette Rundquist, *Christie: Schundler Caved in to the Teachers Union*, STAR-LEDGER, June 3, 2010, at 1.

259. Robbie Brown, *18 States and District of Columbia Are Finalists for Education Grants*, N.Y. TIMES, Jul. 28, 2010, at A13.

260. Jeanette Rundquist & Jessica Calefati, *Jersey’s \$400M Screw-Up*, STAR-LEDGER, Aug. 25, 2010, at A1.

261. *Id.*

262. *Id.*

263. *Id.*

264. Sharon Otterman, *Christie Schools Chief for Grant Slip*, N.Y. TIMES, Aug. 28, 2010, at A1.

265. Claire Heiningier & Lisa Fleisher, *Gov. Christie Proposes Superintendent Salary Cuts, Merit-Based Bonuses*, STAR-LEDGER, July 16, 2010, at A1.

266. *Id.*

267. *Id.*

268. *Id.*

superintendents, as the highest paid figureheads in a district (including those with no students), take their lumps as well.

C. Conclusions

The new administration's actions in challenging the teachers' unions, drastically slashing school aid, and reining in superintendent compensation mark a distinct change from previous administrations. Only time will tell whether these changes will have a curative effect. Along with regionalization of school districts, municipal consolidation must become a reality, and soon. Unfortunately, cuts were also made which limited aid to municipalities to fund consolidation studies.²⁶⁹ Nevertheless, home rule is being challenged as never before. It may come to pass that the efficiency and cost savings of regionalization and consolidation, while perhaps limited, will be the only remaining option. Everything about the current situation is proving itself to be completely untenable. The intractability New Jersey's residents have shown towards municipal consolidation should not be as intense with regards to school regionalization.

VII. CONCLUSION

As they now sit, New Jersey's public schools are on a dangerous precipice. The bill from more than a century of development inward instead of outward has finally come due, and the state's taxpayers cannot afford to pay. For the economic and educational good of all of the state's citizens and children, the arbitrary and capricious divisions separating school districts must be dropped and reformed in a sensible and efficient manner. While home rule may be a huge impediment for municipal consolidation,²⁷⁰ it need not be for school district consolidation. An elementary school district does not define a town as would a mayor or historic town parade.²⁷¹

Regionalization can make a meaningful difference; but the true measure of effectiveness is dependent on many factors. Regionalization plans must be as fair as possible to the constituent municipalities, reasonable, and economically sound. State and local officials must effectively sell these measures to a sometimes skeptical and cynical public. Voters must understand the overall value of the recommendations. Where these plans make it to a vote though, the

269. Christie Budget Address, *supra* note 223 ("For example, our state's special municipal aid program includes a balance of \$3.2 million, mostly for overhead costs. This spending is not appropriate, not necessary and will not be done.").

270. *See supra* Part II.

271. *See, e.g.*, Tanya Drobness, *A Hero They Won't Forget: Parade Honors WWII Vet, Focus of Miniseries*, STAR-LEDGER, Sept. 28, 2009, at 3 (discussing an annual parade honoring John Basilone who, faced with the loss of his entire unit, singularly fought off an entire enemy force at the Battle of Guadalcanal).

likelihood of the progressive solutions being approved is not good, based on historic, extremely low voter turnout.²⁷²

Even if successful, it will be years until regionalization plans are effectuated and years after that for the economic benefits to be felt in the form of reduced property taxes. But it is vital that these changes be undertaken. The local school boards who champion home rule need to be true to their taxpayers, and communicate the necessity and effectiveness of these plans to the voters. In times of economic strife, it is harder to use “home rule” as the principal justification of ignoring the economic benefits of regionalization.

It is also possible that the draconian tactics taken by Governor Christie will finally pull back the curtain on the mechanisms that fund and enable the state’s school systems. By yanking so much state money that districts were forced to sustain themselves, voters saw—through their tax bills, the dismissal of thousands of teachers, and the elimination of countless afterschool and co-curricular activities—that there is a massive problem in New Jersey’s public schools that can only be solved by eliminating the rampant inefficiencies created by too many school districts.

Finally, it is vital to note that neither courts, legislation, nor the executive branch, locally or nationally, can fully address the scope of the problems and challenges that our nation as a whole faces in the realm of education. While economics are important, the consideration of the students must not be overlooked. An educational curriculum that consists only of testing and preparation devalues the profession of teaching and any student’s interest in learning. Moreover, the ultimate goal of an efficiently run school system, organized in a fashion that brings our schools into the twenty-first century, and that provides a stellar education to all students is not solely the countenance of government.

Parents, now more than ever, must not abdicate their responsibility to be the most important player in their child’s education. This means striking a balance between abandonment and “helicopter parenting.”²⁷³ In New Jersey, by providing an avenue for the reorganization of school districts and the concurrent taxation relief it may provide, the State Legislature could conceivably remove a modicum of the financial burden off of these parents. It matters not what incentive teachers have to teach, but the incentive that the parents have to parent—the development of children who want to

272. See Kelly Heyboer, *Where was the Outrage?: Most New Jersey School Budgets Pass With Low Voter Turnout*, NJ.COM (Apr. 24, 2009, 5:18 AM), http://blog.nj.com/njv_editorial_page/2009/04/where_was_the_outrage_most_new.html, (pegging the voter turnout at 13.4% for school board elections).

273. See, e.g., Gibbs, *supra*, note 187.

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learn because the intrinsic worth of education is instilled in them as a family value. It may also encourage less cynicism and more optimism about the future of our public schools, their teachers, and their students.