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CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., ET AL. *v.* GOVERNOR M. JODI RELL ET AL.
(SC 18032)

Norcott, Katz, Palmer, Vertefeuille, Zarella, Schaller and McLachlan, Js.*

Argued April 22, 2008—officially released March 30, 2010

Neil Weare and *David Noah*, certified legal interns, with whom were *Robert A. Solomon* and *Robin Golden*, for the appellants (plaintiffs).

Gregory T. D'Auria, associate attorney general, with whom were *Clare E. Kindall* and *Robert J. Deichert*, assistant attorneys general, and, on the brief, *Richard Blumenthal*, attorney general, for the appellees (defendants).

Erika L. Amarante and *Michael A. Rebell* filed a brief for the Campaign for Educational Equity et al. as amici curiae.

Steven D. Ecker filed a brief for the Workforce Alliance et al. as amici curiae.

Robert M. DeCrescenzo filed a brief for the Connecticut Conference of Municipalities et al. as amici curiae.

Linda L. Morkan, *Ndidi N. Moses* and *Nicole A. Bernabo* filed a brief for One Connecticut as amicus curiae.

John C. Brittain, *Jennifer Mullen St. Hilaire* and *Emily A. Gianquinto* filed a brief for the Connecticut State Conference NAACP et al. as amici curiae.

David N. Rosen filed a brief for Christopher Collier and Simon J. Bernstein as amici curiae.

NORCOTT, J. It is by now well established that, under the constitution of Connecticut, the state must " 'provide a substantially equal educational opportunity to its youth in its free public elementary and secondary schools' "; *Horton* v. *Meskill*, 172 Conn. 615, 649, 376 A.2d 359 (1977) (*Horton I*); and that this court has a role in ensuring that our state's public school students receive that fundamental guarantee. See *Sheff* v. *O'Neill*, 238 Conn. 1, 45–46, 678 A.2d 1267 (1996). In this public interest appeal, we consider whether article eighth, § 1, of the constitution of Connecticut[1] also guarantees students in our state's public schools the right to a particular minimum quality of education, namely, suitable educational opportunities. The plaintiffs, the Connecticut Coalition for Justice in Education Funding, Inc.,[2] and numerous parents and their children, who are enrolled in public schools across the state,[3] appeal, upon a grant of certification by the Chief Justice pursuant to General Statutes § 52-265a,[4] from the judgment of the trial court granting the motion of the defendants, various state officials and members of the state board of education,[5] to strike counts one, two and four of the plaintiffs' amended complaint.[6] Having determined that the plaintiffs' claims are justiciable because they do not present a political question, we conclude that article eighth, § 1, of the Connecticut constitution guarantees Connecticut's public school students educational standards and resources suitable to participate in democratic institutions, and to prepare them to attain productive employment and otherwise to contribute to the state's economy, or to progress on to higher education. Accordingly, we reverse the judgment of the trial court.

The record reveals the following relevant facts, as alleged in the operative complaint and construed in the manner most favorable to the pleader; see, e.g., *Violano* v. *Fernandez*, 280 Conn. 310, 317–18, 907 A.2d 1188 (2006); and procedural history. The individual plaintiffs' children attend public schools in Bridgeport, Danbury, Windham, Hartford, New Haven, East Hartford, New London, Plainfield and New Britain. The plaintiffs allege that the state has failed to provide their children with "suitable and substantially equal educational opportunities" because of inadequate and unequal inputs, which "are essential components of a suitable educational opportunity," namely: (1) high quality preschool; (2) appropriate class sizes; (3) programs and services for at-risk students; (4) highly qualified administrators and teachers; (5) modern and adequate libraries; (6) modern technology and appropriate instruction; (7) an adequate number of hours of instruction; (8) a rigorous curriculum with a wide breadth of courses; (9) modern and appropriate textbooks; (10) a school environment that is healthy, safe, well maintained and conducive to learn-

ing; (11) adequate special needs services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (12) appropriate career and academic counseling; and (13) suitably run extracurricular activities. These inputs have been recognized by the state board of education in various "[p]osition [s]tatements" as "necessary components of a suitable educational opportunity."

The availability and quality of these essential inputs vary significantly in schools across the state, as demonstrated by statistics from the 2003–2004 school year cited by the plaintiffs. For example, at the Lincoln Elementary School (Lincoln) in New Britain, 50 percent of the kindergarten students attended preschool, nursery school or Head Start, as compared to 76 percent statewide. None of the computers at Lincoln are high or moderate powered, in comparison to the statewide average of 63 percent. Lincoln's library has ninety nonprint materials, as compared to an average of 395 elsewhere in the state. At Lincoln, 68 percent of the teachers have a master's degree, in comparison to 80 percent statewide. Finally, although numerous students at Lincoln perform poorly in mathematics, the school does not offer pull-out remedial instruction or in-class tutorials in that subject.[7]

At the Roosevelt School in Bridgeport, which includes grades kindergarten through eight, 61 percent of the kindergarten students have attended preschool or Head Start, as compared with 76 percent statewide. The average size for a kindergarten class is twenty-six students there, as compared with nineteen statewide. For a seventh grade class, the average size is thirty students, as compared with twenty-two statewide. The library has nine print volumes per student, in comparison to twenty volumes per student statewide, and thirty-seven nonprint materials, as compared to 324 statewide. The library does not subscribe to any periodicals, while the average kindergarten through eighth grade school subscribes to fifteen periodicals. Roosevelt School does not offer any computer education instruction, while other schools statewide provide an average of eighteen hours per year. Roosevelt School also does not provide any world language instruction, while 66 percent of the kindergarten through eighth grade schools statewide do provide such instruction. Finally, each counselor at the Roosevelt School works with 438 students, in comparison to the statewide average of 265.

At the high school level, for example, Plainfield High School does not offer pull-out remedial instruction, in-class tutorials, after school programs, or summer school in mathematics or language arts, despite the fact that numerous students performed poorly in those subjects. Students at Plainfield High School took advanced placement tests in five courses, in comparison to the statewide average of nearly ten such courses. Finally, several

dedicated specialty areas of Plainfield High School are in poor physical condition, including the all-purpose room, cafeteria, outdoor athletic facilities, educational technology and office/administrative space.[8]

As evidence of the state's failure to provide "suitable educational opportunities," the plaintiffs further rely on educational "outputs" from the previously discussed schools, as measured by the "adequate yearly progress" on student achievement tests required under the federal No Child Left Behind Act; 20 U.S.C. § 6301 et seq.; including the Connecticut Mastery Test and the Connecticut Academic Performance Test.[9] Indeed, students in these schools failed to complete essential courses, such as chemistry and algebra I, at a rate exceeding the statewide average.[10] The plaintiffs also emphasize the higher than statewide average rates of students at these schools who either are retained or advanced despite not being ready for promotion.[11] Finally, the plaintiffs emphasize the higher than average cumulative dropout rate at these districts' high schools when compared to the statewide average of 10 percent, most notably, Plainfield and Bridgeport's dropout rates of 20 and 45 percent respectively.

The plaintiffs allege that these deficiencies are the product of a flawed educational funding system that has failed to provide and "effectively [manage]" the resources necessary to ensure suitable and substantially equal educational opportunities in the public schools, which are state agencies managed by local school districts. Specifically, schools are funded by two sources, namely, local property taxes and state grants to municipalities via the educational cost sharing system pursuant to General Statutes § 10-262f et seq. Although the state board of education has taken the position that the state and municipalities should bear the costs of education equally, the educational cost sharing system grants have accounted for only 39 percent of school funding in Connecticut. The plaintiffs attribute this shortfall to: (1) the legislature's failure to raise the "foundation" grant amount from $5891 since 1999; see General Statutes (Rev. to 2007) § 10-262f (9) (G);[12] (2) the failure of that "foundation" amount to account for the "actual costs of providing special education students with suitable and substantially equal educational opportunities"; and (3) the failure of "the minimum base aid ratio"; see General Statutes (Rev. to 2007) § 10-262f (2);[13] which addresses a municipality's ability to pay and to calculate accurately a town's ability to raise the necessary funds. The plaintiffs reside in communities that "do not have the ability to raise the funds needed to compensate for the monetary shortfalls that result from the state's arbitrary and inadequate funding system."

The plaintiffs claim further that the state's failure to provide them with suitable and substantially equal

educational opportunities has caused them irreparable harm by rendering them "unable to take full advantage of the country's democratic processes and institutions, risking political and social marginalization." The plaintiffs also claim that these deficiencies will preclude them from being "competitive in seeking meaningful employment" and will leave them "less able to reap both the tangible and intangible benefits, including the salary, health benefits, and self-realization that come with securing a dependable and adequately paying job." The plaintiffs contend that the deficiencies will leave them "unable to continue their education" and "deprived of both the monetary and intellectual rewards that are associated with [higher] education." In sum, the plaintiffs claim that they are being educated "in a system which sets them up for economic, social, and intellectual failure."

Accordingly, in their four count complaint, the plaintiffs claim that the state has violated: (1) article eighth, § 1, and article first, §§ 1 and 20, of the state constitution by "failing to maintain a public school system that provides [them] with suitable and substantially equal educational opportunities"; (2) article eighth, § 1, of the state constitution by "failing to maintain a public school system that provides [them] with suitable educational opportunities"; (3) article eighth, § 1, and article first, §§ 1 and 20, of the state constitution by "failing to maintain a public school system that provides [them] with substantially equal educational opportunities"; and (4) article eighth, § 1, and article first, §§ 1 and 20, of the state constitution, as well as 42 U.S.C. § 1983, by acting under color of state law in "fail[ing] to maintain a public school system that provides [them] with suitable and substantially equal educational opportunities," which has disproportionately impacted African-American, Latino and other minority students. The plaintiffs seek a judgment declaring that: (1) they "have a right to receive suitable and substantially equal educational opportunities as a matter of state constitutional law"; (2) "the state's failure to provide suitable and substantially equal educational opportunities violates article eighth, § 1, and article first, §§ 1 and 20, of the [state] constitution"; and (3) the "existing school funding system is unconstitutional, void and without effect." The plaintiffs also seek, inter alia, injunctions against the continued operation of the present funding system except in transition to a court-ordered and newly created constitutional funding system, as well as the appointment of a special master, and an award of reasonable attorney's fees.

Thereafter, the defendants moved to strike the first, second and fourth counts of the complaint, arguing that article eighth, § 1, and article first, §§ 1 and 20, of the state constitution do not confer a right to "suitable" educational opportunities, and in particular, do not "guarantee equality or parity of educational achievement or results."[14] In addressing the defendants' motion

to strike, the trial court first concluded that it had subject matter jurisdiction because the plaintiffs' claims were justiciable under *Sheff* v. *O'Neill*, supra, 238 Conn. 1, and *Horton I*, supra, 172 Conn. 615. The trial court, applying the well established state constitutional analysis of *State* v. *Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992), concluded that the language of the state constitution did not support the plaintiffs' claim to a right to a suitable public education, and that the decisions of this court, including *Broadley* v. *Board of Education*, 229 Conn. 1, 639 A.2d 502 (1994), have demonstrated its "reluctance to insert itself into educational policy decisions in the absence of clear constitutional or legislative authority to do so." The trial court also concluded that federal precedents did not support the plaintiffs' claim, and that those state courts that have found "some qualitative content in their state constitution's educational clauses . . . have done so on the basis of language substantially different than Connecticut's."[15] Accordingly, the trial court concluded that there is no "constitutional right to 'suitable' educational opportunities."[16] The trial court rendered judgment striking counts one, two and four of the complaint, and this appeal followed. See footnotes 4 and 6 of this opinion.

"We begin by setting out the well established standard of review in an appeal from the granting of a motion to strike. Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling on the [defendants' motion] is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged. . . . It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted. . . . Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." (Internal quotation marks omitted.) *Violano* v. *Fernandez*, supra, 280 Conn. 317–18.

I

Because it implicates our subject matter jurisdiction, we begin with the defendants' contention that the trial court improperly concluded that this case is justiciable, and does not present a political question.[17] The defendants argue that the trial court improperly relied on *Sheff* v. *O'Neill*, supra, 238 Conn. 1, and *Horton I*, supra, 172 Conn. 615, in concluding that the plaintiffs' claims are justiciable because those cases involved educational equality claims, while this case presents ques-

tions of educational policy that are distinctly committed to coordinate branches of government. The defendants further contend that, under the well established political question analysis of *Baker* v. *Carr*, 369 U.S. 186, 211, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); see, e.g., *Office of the Governor* v. *Select Committee of Inquiry*, 271 Conn. 540, 573, 858 A.2d 709 (2004); the plaintiffs' claims present questions that are textually committed to the legislative branch, not readily evaluated under "judicially discoverable and manageable standards," and would require this court to act improperly as a "super legislature" to address educational policy in the first instance. In response, the plaintiffs contend that we rejected these same arguments in *Sheff*, and that their claims do not require the courts to mandate particular educational policies. They contend that their claims need only be evaluated under the "totality of the circumstances," which would compare the facts as found to a variety of indicators and inputs, none of which needs to be constitutionalized individually. The plaintiffs also emphasize the standard for considering motions to dismiss or to strike, which requires their allegations to be viewed in the light most favorable to the pleader. The plaintiffs further rely on *Seymour* v. *Region One Board of Education*, 261 Conn. 475, 482–84, 803 A.2d 318 (2002), in which we considered the plaintiffs' claims justiciable because formulation of the appropriate remedy could be left to the legislative branch in the first instance. We agree with the plaintiffs, and conclude that their claims do not present a nonjusticiable political question.

"We first set forth the fundamental principles that underlie justiciability. Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . . As we have recognized, justiciability comprises several related doctrines, namely, standing, ripeness, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter. . . . Finally, because an issue regarding justiciability raises a question of law, our appellate review is plenary." (Citations omitted; internal quotation marks omitted.) *Office of the Governor* v. *Select Committee of Inquiry*, supra, 271 Conn. 568–69.

"The political question doctrine itself is based on the principle of separation of powers . . . as well as the notion that the judiciary should not involve itself in matters that have been committed to the executive and legislative branches of government. To conclude that

an issue is within the political question doctrine is not an abdication of judicial responsibility; rather, it is a recognition that the tools with which a court can work, the data which it can fairly appraise, the conclusions which it can reach as a basis for entering judgments, have limits. . . . Whether a controversy so directly implicates the primary authority of the legislative or executive branch, such that a court is not the proper forum for its resolution, is a determination that must be made on a case-by-case inquiry." (Citations omitted; internal quotation marks omitted.) Id., 572–73.

Following *Baker* v. *Carr*, supra, 369 U.S. 211, "[i]n considering whether a particular subject matter presents a nonjusticiable political question, we have articulated [six] relevant factors, including: a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. . . . Furthermore, simply because the case has a connection to the political sphere [is not] an independent basis for characterizing an issue as a political question . . . ." (Internal quotation marks omitted.) *Office of the Governor* v. *Select Committee of Inquiry*, supra, 271 Conn. 573. Indeed, "the principle that a case should not be dismissed for nonjusticiability as a political question unless an unusual need for unquestioned adherence to that decision is inextricable from the case, means that courts should view such cases with a heavy thumb on the side of justiciability, and with the recognition that, simply because the case is connected to the political sphere, it does not necessarily follow that it is a political question." *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 488.

We agree with the plaintiffs that our decision in *Sheff* v. *O'Neill*, supra, 238 Conn. 1, controls the justiciability issue in this appeal. In that case, the plaintiff schoolchildren had claimed, inter alia, that the state "defendants bear responsibility for the de facto racial and ethnic segregation between Hartford and the surrounding suburban public school districts and thus have deprived the plaintiffs of an equal opportunity to a free public education as required by article first, §§ 1 and 20, and article eighth, § 1." Id., 5. The plaintiffs also alleged "that the defendants have failed to provide the

plaintiffs with an equal opportunity to a free public education as required by article first, §§ 1 and 20, and article eighth, § 1, because the defendants have maintained in Hartford a public school district that, by comparison with surrounding suburban public school districts: (1) is severely educationally disadvantaged; (2) fails to provide equal educational opportunities for Hartford schoolchildren; and (3) fails to provide a minimally adequate education for Hartford schoolchildren." Id., 6.

In *Sheff*, the state contended that the case was a nonjusticiable political question "expressly and exclusively entrusted to the legislature" by article eighth, § 1; id., 13; which directs the legislature "to implement this principle [of free public education] by appropriate legislation." Conn. Const., art. VIII, § 1. Describing the distinction between cases that are justiciable and those that are not as an "uneasy line," we emphasized that "courts do not have jurisdiction to decide cases that involve matters that textually have been reserved to the legislature, such as the implementation of a constitutional spending cap . . . or the appointment of additional judges. . . . In the absence of such a textual reservation, however, it is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles. . . . Deciding whether a matter has in any measure been committed by the [c]onstitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this [c]ourt as ultimate interpreter of the [c]onstitution." (Citations omitted; internal quotation marks omitted.) *Sheff* v. *O'Neill*, supra, 238 Conn. 13–14.

In *Sheff*, we emphasized that, in *Horton I*, supra, 172 Conn. 615, "we reviewed, in plenary fashion, the actions taken by the legislature to fulfill its constitutional obligation to public elementary and secondary schoolchildren." *Sheff* v. *O'Neill*, supra, 238 Conn. 14. We emphasized that the "plaintiff schoolchildren in the present case invoke the same constitutional provisions to challenge the constitutionality of state action that the plaintiff schoolchildren invoked in *Horton* [*I*] . . . . The text of article eighth, § 1, has not changed. Furthermore, although prudential cautions may shed light on the proper definition of constitutional rights and remedies . . . such cautions do not deprive a court of jurisdiction.

"*In light of these precedents, we are persuaded that the phrase 'appropriate legislation' in article eighth, § 1, does not deprive the courts of the authority to determine what is 'appropriate.'* Just as the legislature has a constitutional duty to fulfill its affirmative obligation to the children who attend the state's public ele-

mentary and secondary schools, so the judiciary has a constitutional duty to review whether the legislature has fulfilled its obligation. Considerations of justiciability must be balanced against the principle that every presumption is to be indulged in favor of subject matter jurisdiction. . . . In this case, our precedents compel the conclusion that the balance must be struck in favor of the justiciability of the plaintiffs' complaint."[18] (Citations omitted; emphasis added.) Id., 14–16; see also *Office of the Governor* v. *Select Committee of Inquiry*, supra, 271 Conn. 574 ("[a]lthough the text of our state constitution confers impeachment authority on the legislature . . . that authority is not unbounded and legislative encroachment upon other constitutional principles may, in an appropriate case, be subject to judicial review" [citations omitted]).

In support of his argument that article eighth, § 1, textually commits issues of educational quality to the legislature, Justice Zarella in his dissenting opinion relies on *Nielsen* v. *State*, 236 Conn. 1, 670 A.2d 1288 (1996), which addressed the legislature's responsibility to implement the constitutional spending cap, *Pellegrino* v. *O'Neill*, 193 Conn. 670, 480 A.2d 476, cert. denied, 496 U.S. 875, 105 S. Ct. 236, 83 L. Ed. 2d 176 (1984) (plurality opinion), wherein the plaintiffs sought this court to direct the appointment of additional trial judges, and *Simmons* v. *Budds*, 165 Conn. 507, 338 A.2d 479 (1973), cert. denied, 416 U.S. 940, 94 S. Ct. 1943, 40 L. Ed. 2d 291 (1974), wherein a professor challenged grading regulations adopted by the University of Connecticut. In our view, Justice Zarella's reliance on these cases is inapposite because the constitutional provisions at issue therein unambiguously confer full authority over the respective subject matter to the legislature, and do not contain qualifying terms such as "appropriate legislation" that imply a judicial role in disputes arising thereunder, particularly when coupled with the word "shall," which itself implies a "constitutional duty" that is "mandatory and judicially enforceable." See *Nielsen* v. *State*, supra, 9–10 (unlike "appropriate legislation" language of article eighth, § 1, language in article third, § 18 [b], requiring legislature to "by law define" terms for constitutional spending cap "by its plain and unambiguous terms, commits *exclusively* to the General Assembly the power to define the spending cap terms and nowhere intimates any role in this process for the judiciary" [emphasis added]); *Pellegrino* v. *O'Neill*, supra, 681 (number of trial judges is textually committed to legislature by provision stating, without qualification that " '[t]he judges of the . . . superior court shall, upon nomination by the governor, be appointed by the general assembly in such manner as shall by law be prescribed' "); *Pellegrino* v. *O'Neill*, supra, 688 (*Healey, J.*, concurring) (same); *Simmons* v. *Budds*, supra, 514 (although article eighth, § 2, of state constitution contains qualitative " 'excellence' "

standard, it also does not have "appropriate legislation" clause of article eighth, § 1);[19] see also R. Levy, "Gunfight at the K-12 Corral: Legislative vs. Judicial Power in the Kansas School Finance Litigation," 54 Kan. L. Rev. 1021, 1051–52 (2006) ("[o]rdinarily, when the term 'shall' is used in a legal document, it is construed as mandatory and judicially enforceable"). Accordingly, Justice Zarella's restrictive view of the constitutional language notwithstanding, the drafters of article eighth, § 1, could have used more restrictive language, had they wished to avert completely the potential involvement of the judiciary in its enforcement and implementation, regardless of the propriety of those legislative acts. Cf. *Nixon* v. *United States*, 506 U.S. 224, 229–31, 113 S. Ct. 732, 122 L. Ed. 2d 1 (1993) (claim that Senate improperly delegated impeachment fact-finding to committee was political question because of constitutional language giving Senate " '*sole* [p]ower to try all [i]mpeachments' " [emphasis added]).

Moreover, our subsequent decision in *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 475, demonstrates that at least one of the plaintiffs' desired remedies supports the justiciability of their claims. In *Seymour*, the plaintiffs claimed that General Statutes § 10-51 (b), which provides for the financing of regional school districts, unconstitutionally resulted in higher education costs for property poor towns. Id., 479. In concluding that this claim was justiciable, "we first address[ed] the specific forms of relief that the plaintiffs seek. If we were to construe the complaint as requesting only that a court, having determined that the plaintiffs' constitutional claims are meritorious, order the [school] district to establish itself as a taxing district, and set the taxing powers and standards suggested by the plaintiffs, we would have grave doubts about the justiciability of the claim, as the defendant suggests. In that case, it is very likely that the claim would fall within one or more of the categories of nonjusticiability.

"We do not, however, view the plaintiffs' prayer for relief so narrowly. Although the plaintiffs do seek, in part, such an order from the court, and although the text of the complaint presents such a remedy as the only way to vindicate the plaintiffs' rights, a separate prayer for relief is simply '[t]hat judgment be entered declaring that . . . § 10-51 (b) is unconstitutional on its face and as applied by [the board].' When a complaint is challenged by a motion to dismiss, we view its allegations in the light favorable to the pleader. . . . We see no reason why the same principle should not apply to the prayer for relief. This latter prayer for relief is susceptible of an interpretation that would leave the formulation of the appropriate remedy to the legislative branch, rather than requiring the judicial branch to entangle itself in what probably would be the nonjudicial function of establishing a taxing district. Furthermore, there is precedent for this court, having

determined that a particular legislative scheme is unconstitutional, to leave the remedy to the legislative branch, at least initially. . . . We, therefore, consider the question of justiciability on the premise that the plaintiffs seek a declaration of the unconstitutionality of § 10-51 (b), with the remedy that they propose to be considered by the legislative branch." (Citations omitted.) Id., 483–84; accord M. Besso, "*Sheff v. O'Neill*: The Connecticut Supreme Court at the Bar of Politics," 22 Quinnipiac L. Rev. 165, 210 (2003) (The author noted that the "existing" political question doctrine is "depend[ent] on a linkage between right and remedy," that it "no longer comports with the reality of our constitution in practice," and that "[w]e should expect that the judiciary will declare constitutional principles, when warranted, but should expect no more. We should expect that the court's declaration will be stated with clarity, and with no compromise, because of concerns about complex remedies. And we should expect that realization will come through the operation of politics beyond the court, but always in the shadow of the court's declaration."); see also M. Besso, supra, 211–12 (noting distinction between declaration of right and ordering of remedy, and arguing in favor of "a new role for the court that is at once more active and more restrained").

In the present case, as in *Seymour*, the complaint clearly requests a declaration of a constitutional violation, with the precise remedy being left to the defendants in the first instance. Specifically, the plaintiffs ask that the court "order [the] defendants to create and maintain a public education system that will provide suitable and substantially equal educational opportunities [for the] plaintiffs."[20] This type of relief would not turn a trial judge into a de facto education superintendent, and supports the plaintiffs' argument that their claims are justiciable. See also *Horton I*, supra, 172 Conn. 650–51 (This court noted that the trial court properly "limited its judgments to declaratory ones while retaining jurisdiction for consideration of the granting of any consequential relief" because "the fashioning of a constitutional system for financing elementary and secondary education in the state is not only the proper function of the legislative department but its expressly mandated duty under the provisions of the constitution of Connecticut, article eighth, § 1. The judicial department properly stays its hand to give the legislative department an opportunity to act.").

With respect to the other *Baker* factors, we first note that "[t]here are easily discoverable and manageable judicial standards for determining the merits of the plaintiffs' claim[s]." *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 485. Although the plaintiffs' claims present a question of first impression in Connecticut, similar issues with respect to the substantive content of education clauses have been considered by courts in many of our sister states, some of which

have articulated standards for determining whether a state's public schools satisfy minimum constitutional requirements. See part II E of this opinion. Although our courts should remain cautious of separation of powers concerns in crafting remedies, should the plaintiffs ultimately succeed in establishing liability at trial, the plaintiffs' claims at this stage present nothing more than a basic question of constitutional interpretation, a task for which this court is well suited.[21] See *Seymour* v. *Region One Board of Education*, supra, 485; see also *Office of the Governor* v. *Select Committee of Inquiry*, supra, 271 Conn. 574 ("[t]here are no special impediments to our ascertainment and application of the standards by which to resolve this challenge; indeed, the matter raises questions of constitutional interpretation that, for more than two centuries, regularly have been reserved for the judiciary"); *Neeley* v. *West Orange-Cove Consolidated Independent School District*, 176 S.W.3d 746, 779 (Tex. 2005) (The court noted that disagreements about the meaning of the constitutional language "are not unique to [the state's education clause]; they persist as to the meanings and applications of due course of law, equal protection, and many other constitutional provisions. Indeed, those provisions have inspired far more litigation than [the state's education clause] . . . .").

Further, deciding the merits of the plaintiffs' claims does not inextricably involve us "in making an initial policy determination of a clearly nonjudicial, discretionary nature. Whenever a court engages in the process of determining whether a statute violates the constitution, matters of policy admittedly enter into the analysis. That does not mean, however, that, in applying the appropriate constitutional standards in the present case, we would be required to make some initial policy determination of a kind clearly for nonjudicial discretion . . . ." (Internal quotation marks omitted.) *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 486; see also *Sheff* v. *O'Neill*, supra, 238 Conn. 13 ("it is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles"). Put differently, deciding the plaintiffs' claims does not put this court in the position of articulating in the first instance, for example, maximum class sizes or minimal technical specifications for classroom computers.[22] See also *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 176 S.W.3d 779 ("[t]he judiciary's choice is not between complete abstinence from [education clause] issues, and being, in the [s]tate defendants' words, 'the arbiter of education and policy, overseeing such issues as curriculum and testing development, textbook approval, and teacher certification' "). The judicial role is limited to deciding whether certain public educational systems, as presently constituted and funded, satisfy an articulated constitutional

standard.[23]

Indeed, "[w]e see nothing in the plaintiffs' claim of unconstitutionality, moreover, that would, if we were to undertake to decide it or if it were found to be meritorious, involve the courts in expressing a lack of due respect for coordinate branches of government." *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 486. We have recognized that, "deciding that a statute is unconstitutional, either on its face or as applied, is a delicate task in any event, and one that the courts perform only if convinced beyond a reasonable doubt of the statute's invalidity. . . . That alone does not mean, however, that, if such a result must be reached on the facts and the law, such a declaration expresses lack of due respect for the legislative branch. Performing such a task simply exemplifies the fundamental judicial burden of determining whether a statute meets constitutional standards." (Citation omitted.) Id.

Whether there is a risk of "multifarious pronouncements by other governmental departments on the question presented by the complaint" is not an inextricable concern. Id., 482. "Simply because the legislature has passed a statute adopting a particular fiscal formula cannot mean that a court may not entertain a constitutional challenge to that formula." Id., 487–88. Thus, "this matter does not present an unusual need for unquestioning adherence to a preexisting political decision. As previously discussed, it is well within the province of the judiciary to determine whether a coordinate branch of government has conducted itself" in accordance with "the authority conferred upon it by the constitution."[24] *Office of the Governor* v. *Select Committee of Inquiry*, supra, 271 Conn. 576. Accordingly, we conclude that we have subject matter jurisdiction over this case.[25]

II

We now turn to the merits of the plaintiffs' claims, which are properly framed using the state constitutional analysis articulated by *State* v. *Geisler*, supra, 222 Conn. 672, and posit that the fundamental right to education under article eighth, § 1, of the state constitution encompasses a minimum qualitative standard that guarantees students the right to "suitable educational opportunities." The plaintiffs define "suitable educational opportunities" as having three components: (1) "An educational experience that prepares them to function as responsible citizens and enables them to fully participate in democratic institutions"; (2) "a meaningful high school education that enables them to advance through institutions of higher learning, or that enables them to compete on equal footing to find productive employment and contribute to the state's economy"; and (3) an opportunity to meet the educational standards as set by the political branches of the state. We conclude, consistent with the conclusions of other state courts that have considered similar constitutional guarantees,

that article eighth, § 1, of the state constitution embodies a substantive component requiring that the public schools provide their students with an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting, and to prepare them to progress to institutions of higher education, or to attain productive employment and otherwise to contribute to the state's economy.

"It is well established that federal constitutional and statutory law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights. . . . Furthermore, although we often rely on the United States Supreme Court's interpretation of the amendments to the constitution of the United States to delineate the boundaries of the protections provided by the constitution of Connecticut, we have also recognized that, in some instances, our state constitution provides protections beyond those provided by the federal constitution, as that document has been interpreted by the United States Supreme Court. . . . The analytical framework by which we determine whether, in any given instance, our state constitution affords broader protection to our citizens than the federal constitutional minimum is well settled. In *State* v. *Geisler*, [supra, 222 Conn. 684–86], we enumerated the following six factors to be considered in determining that issue: (1) persuasive relevant federal precedents; (2) the text of the operative constitutional provisions; (3) historical insights into the intent of our constitutional forebears; (4) related Connecticut precedents; (5) persuasive precedents of other state courts; and (6) contemporary understandings of applicable economic and sociological norms, or as otherwise described, relevant public policies." (Internal quotation marks omitted.) *State* v. *McKenzie-Adams*, 281 Conn. 486, 509–10, 915 A.2d 822, cert. denied, 552 U.S. 888, 128 S. Ct. 248, 169 L. Ed. 2d 148 (2007).

"The *Geisler* factors serve a dual purpose: they encourage the raising of state constitutional issues in a manner to which the opposing party—the state or the defendant—can respond; and they encourage a principled development of our state constitutional jurisprudence. Although in *Geisler* we compartmentalized the factors that should be considered in order to stress that a systematic analysis is required, we recognize that they may be inextricably interwoven. . . . Finally, not every *Geisler* factor is relevant in all cases."[26] (Citation omitted.) *State* v. *Morales*, 232 Conn. 707, 716 n.10, 657 A.2d 585 (1995). Accordingly, we now turn to the parties' specific arguments with respect to each factor.

A

The Operative Constitutional Text

As noted previously, the text of article eighth, § 1, of the constitution of Connecticut provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation." Thus, the plaintiffs argue that the textual factor supports their claim because the use of the word "school" in article eighth, § 1, necessarily means institutions wherein "systematic" or "intellectual, moral and social" instruction is provided, and that not maintaining a minimum constitutional standard would eviscerate the legislature's responsibilities thereunder. The defendants contend in response that § 2 of article eighth of the state constitution, which provides that the University of Connecticut shall be devoted to "excellence" in education, as well as the use of qualitative language in other states' education clauses, indicates that the drafters acted intentionally to omit a particular qualitative standard from article eighth, § 1. The defendants rely, then, on *Moore* v. *Ganim*, 233 Conn. 557, 595, 660 A.2d 742 (1995), for the proposition that "[w]e are especially hesitant to read into the constitution unenumerated affirmative governmental obligations. In general, the declaration of rights in our state constitution was implemented not to impose affirmative obligations on the government, but rather to secure individual liberties against direct infringement through state action." The defendants contend, therefore, that the plaintiffs' adequacy claims are distinct from those considered in *Sheff* v. *O'Neill*, supra, 238 Conn. 1, which also involved constitutional provisions directly implicating equality and segregation. In our view, the text of article eighth, § 1, is ambiguous, which necessitates a complete *Geisler* analysis to determine its meaning with respect to a qualitative component.

"In dealing with constitutional provisions we must assume that infinite care was employed to couch in scrupulously fitting language a proposal aimed at establishing or changing the organic law of the state. . . . Unless there is some clear reason for not doing so, effect must be given to every part of and each word in the constitution." (Citations omitted.) *Stolberg* v. *Caldwell*, 175 Conn. 586, 597–98, 402 A.2d 763 (1978), appeal dismissed sub nom. *Stolberg* v. *Davidson*, 454 U.S. 958, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981). Moreover, we do not supply constitutional language that the drafters intentionally may have chosen to omit. See *State* v. *Colon*, 272 Conn. 106, 320, 864 A.2d 666 (2004), cert. denied, 546 U.S. 848, 126 S. Ct. 102, 163 L. Ed. 2d 116 (2005).

As noted previously, the text of article eighth, § 1, of the constitution of Connecticut, provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation." Article eighth, § 1,

does not contain any qualitative language, in contrast to § 2 of article eighth of the constitution of Connecticut, which requires the state to "maintain a system of higher education, including The University of Connecticut, which *shall be dedicated to excellence* in higher education. The general assembly shall determine the size, number, terms and method of appointment of the governing boards of The University of Connecticut and of such constituent units or coordinating bodies in the system as from time to time may be established." (Emphasis added.) Indeed, this court previously has held that the qualitative standard of "excellence" under article eighth, § 2, "was not meant to be a wedge for penetration of the educational establishment by judicial intervention in policy decisions." *Simmons* v. *Budds*, supra, 165 Conn. 514; id. (rejecting professor's challenge to actions of officials of university setting grading policies to apply in wake of student antiwar protests).

The language of certain other states' education clauses also supports the defendants' textual argument superficially. The majority of the states have constitutional language that requires their legislatures to establish and maintain schools that are "adequate," "general," "thorough" or "efficient," which supports the defendants' argument that the drafters of article eighth, § 1, of the constitution of Connecticut could have imposed similar qualitative standards. See, e.g., Ark. Const., art. 14, § 1 ("[i]ntelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education"); Colo. Const., art. IX, § 2 ("[t]he general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously"); Fla. Const., art. IX, § 1 (a) ("The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require."); Ga. Const., art. VIII, § 1 ("The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation."); N.J. Const., art. VIII, § 4 (1) ("[t]he Legislature shall

provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years"); Ohio Const., art. VI, § 2 ("[t]he general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state"); Va. Const., art. VIII, § 1 ("[t]he General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained"); Wyo. Const., art. 7, § 97-7-001 ("[t]he legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary").[27] Thus, these other states' educational provisions provide some indication that the drafters of article eighth, § 1, could have, but did not, act to enact a constitutional provision with a clearly articulated qualitative standard for its public schools.

We disagree, however, with the defendants' contention that *Moore* v. *Ganim*, supra, 233 Conn. 580–81, is dispositive of the plaintiffs' claims under the textual factor. In *Moore*, we rejected the plaintiffs' claim that the state constitution contains an "unenumerated . . . obligation of the state to provide subsistence benefits to all its citizens in need," concluding "that the state has no affirmative constitutional obligation to provide minimal subsistence to its poor citizens." Id., 580–81. We emphasized that "[t]he text of our constitution makes evident the fact that its drafters have been explicit when choosing to impose affirmative obligations on the state," noting that, "the history of article eighth, § 1, is particularly instructive in the present case. This explicit textual provision, and its counterparts, article eighth, § 2 (system of higher education), and article eighth, § 4 (school fund), are the only constitutional provisions, recognized to date, that impose affirmative obligations on the part of the state to expend public funds to afford benefits to its citizenry. Other provisions, such as those in article first, protect individuals from state intrusion."[28] Id., 595–96. *Moore* is inapposite because, in the present case, we are called on to consider the extent of the state's obligations under the *already existing* education clause, rather than to carve a new unenumerated right out of whole cloth.

Moreover, although the defendants' textual argu-

ments are plausible, the constitutional language nevertheless is ambiguous, and is not dispositive of this appeal. See *State* v. *Gethers*, 197 Conn. 369, 385–88, 497 A.2d 408 (1985) (recognizing that "superficially appealing" constitutional language may be rendered ambiguous in context of relevant case law in concluding that no right to hybrid representation in criminal case under article first, § 8, of the constitution of Connecticut). The commonly cited dictionary definitions of the relevant terms in article eighth, § 1, namely, "elementary," "secondary" and "school," have a qualitative connotation, as "elementary school" is defined as "a school usu[ally] the first four to the first eight grades and often a kindergarten," and particularly, "secondary school" is defined as a "school intermediate between elementary school and college and usu[ally] offering general, technical, vocational, or college-preparatory courses."[29] Merriam-Webster's Collegiate Dictionary (10th Ed. 1998). Indeed, even Justice Loiselle's dissenting opinion in *Horton I*, supra, 172 Conn. 658–59, in which he concluded that education was *not* a fundamental right under the state constitution, appears to contemplate that the education clause must have some substantive content in order to be meaningful, as he said that "when the constitution says free education it must be interpreted in a reasonable way. A town may not herd children in an open field to hear lectures by illiterates." See also id., 661 (*Loiselle, J.*, dissenting) ("[w]e cannot lose sight of the fact that the issue is not that our children are not getting a sound education, measured by reasonable standards, which will enable them to exercise fully their rights as citizens of their country"). Accordingly, since the text of article eighth, § 1, is ambiguous, we necessarily must continue with our review of the other *Geisler* factors.

B

The Holdings and Dicta of This Court

This factor similarly is not dispositive of the plaintiffs' appeal because this case presents a question of first impression, namely, the qualitative content of the education clause with respect to inadequacy without considerations of inequality.[30] A review of this court's[31] education clause jurisprudence demonstrates, however, that the plaintiffs' claims are in fact consistent with our precedents. The seminal[32] case is *Horton I*, supra, 172 Conn. 618, wherein the plaintiffs challenged the state's educational finance system, claiming that its reliance on the property tax "ensure[d] that, regardless of the educational needs or wants of children, more educational dollars will be allotted to children who live in property-rich towns than to children who live in property-poor towns." Id., 633.

This court first determined, with respect to the applicable level of scrutiny, that, "in Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized."[33]

Id., 646. In so concluding, the court emphasized the presence of a specific education clause in the state constitution, in contrast to the federal constitution, under which education is not a fundamental right. See id., 640–45 (distinguishing and discussing *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 [1973]). The court, therefore, concluded that "the present legislation enacted by the General Assembly to discharge the state's constitutional duty to educate its children, depending, as it does, primarily on a local property tax base without regard to the disparity in the financial ability of the towns to finance an educational program and with no significant equalizing state support, is not 'appropriate legislation' (article eighth, § 1) to implement the requirement that the state provide a substantially equal educational opportunity to its youth in its free public elementary and secondary schools." *Horton I*, supra, 172 Conn. 649. The court left the remedy to the legislature in the first instance, however, noting that "the fashioning of a constitutional system for financing elementary and secondary education in the state is not only the proper function of the legislative department but its expressly mandated duty under the provisions of the constitution of Connecticut, article eighth, § 1."[34] Id., 651; see also id. ("[t]he judicial department properly stays its hand to give the legislative department an opportunity to act").

The concurring and dissenting opinions in *Horton I* demonstrate that, as a basic fundamental point, the entire court agreed that article eighth, § 1, necessarily embodies some qualitative component. Concurring in the reasoning as well as the judgment of the court, Justice Bogdanski wrote separately to highlight the history of the education clause and the 1965 constitutional convention proceedings, which "formalized free public education on the elementary and secondary levels as a fundamental right." Id., 653–54. Justice Bogdanski also emphasized that "the right of our children to an education is a matter of right not only because our state constitution declares it as such, but because education is the very essence and foundation of a civilized culture: it is the cohesive element that binds the fabric of society together. In a real sense, it is as necessary to a civilized society as food and shelter are to an individual. It is our fundamental legacy to the youth of our state to enable them to acquire knowledge and possess the ability to reason: for it is the ability to reason that separates man from all other forms of life." Id., 654–55 (*Bogdanski, J.*, concurring). Indeed, Justice Bogdanski noted specifically that the equality issues presented by *Horton I* "are directed toward the right of the children of this state to a *basic education*, and the determination of whether certain statutes of this state unconstitutionally impinge upon that right." (Emphasis added.) Id., 655.

Justice Loiselle dissented from the majority's holding that education is a fundamental right under the state

constitution. Id., 655–56. He characterized the majority's opinion as "requiring . . . an equalized pot of money per town"; id., 658 (*Loiselle, J.*, dissenting); and stated that "the constitution requires free education, and 'appropriate legislation' is legislation which makes education free. I will concede that when the constitution says free education it *must be interpreted in a reasonable way. A town may not herd children in an open field to hear lectures by illiterates*. But there is no contention that such situations exist, *or that education in Connecticut is not meaningful or does not measure up to standards accepted by knowledgeable leaders in the field of education*." (Emphasis added.) Id., 658–59. Finally, Justice Loiselle emphasized that "[w]e cannot lose sight of the fact that *the issue is not that our children are not getting a sound education, measured by reasonable standards, which will enable them to exercise fully their rights as citizens of their country*. The issue is whether, because our state laws allow some towns to furnish a broader spectrum of choice than other towns desire to furnish or feel financially able to furnish, that the system has to tumble down." (Emphasis added.) Id., 661. In our view, the various opinions in *Horton I* support the plaintiffs' position that the fundamental right to an education is not an empty linguistic shell, but has at least some minimal substantive content. Indeed, Justice Loiselle's emphasis on the lack of a claim that the plaintiffs in *Horton I* were not getting a basic education is a harbinger of the plaintiffs' claims in this appeal.

Our most recent decision with respect to article eighth, § 1, is *Sheff* v. *O'Neill*, supra, 238 Conn. 1. In *Sheff*, we considered claims that severe racial and ethnic isolation in Hartford, as well as the high concentration of poverty there, violated the rights of the plaintiff schoolchildren under article eighth, § 1, and article first, §§ 1 and 20,[35] of the state constitution. Id., 3–5. The plaintiffs argued that the state bore responsibility for the de facto racial and ethnic segregation between Hartford and its surrounding suburban school districts; id., 5; and also that "the defendants have failed to provide the plaintiffs with an equal opportunity to a free public education as required by article first, §§ 1 and 20, and article eighth, § 1, because the defendants have maintained in Hartford a public school district that, by comparison with surrounding suburban public school districts: (1) is severely educationally disadvantaged; (2) fails to provide equal educational opportunities for Hartford schoolchildren; and (3) fails to provide a minimally adequate education for Hartford schoolchildren." Id., 6.

On the merits of the plaintiffs' claims, this court framed the issue as "whether the state has fully satisfied its affirmative constitutional obligation to provide a substantially equal educational opportunity if the state demonstrates that it has substantially equalized school

funding and resources."[36] Id., 25. We concluded that, notwithstanding the lack of any invidious intentional conduct on the part of the state in creating the conditions of segregation, "in the context of public education, in which the state has an affirmative obligation to monitor and to equalize educational opportunity, the state's awareness of existing and increasing severe racial and ethnic isolation imposes upon the state the responsibility to remedy segregation . . . because of race [or] . . . ancestry . . . . We therefore hold that, textually, article eighth, § 1, as informed by article first, § 20, requires the legislature to take affirmative responsibility to remedy segregation in our public schools, regardless of whether that segregation has occurred de jure or de facto."[37] (Internal quotation marks omitted.) Id., 29–30.

We applied the strict scrutiny analysis from *Horton* v. *Meskill*, 195 Conn. 24, 38–39, 486 A.2d 1099 (1985) (*Horton III*); see footnote 34 of this opinion; and noted that the "methodology requires us to balance the legislature's affirmative constitutional obligation to provide all of the state's schoolchildren with a substantially equal educational opportunity against the legislature's recognized significant discretion in matters of public elementary and secondary education." *Sheff* v. *O'Neill*, supra, 238 Conn. 37. Citing statistics with respect to the ethnic and racial composition of the schools' population, we stated that "the disparities in the racial and ethnic composition of public schools in Hartford and the surrounding communities are more than de minimis . . . [and] jeopardize the plaintiffs' fundamental right to education."[38] Id., 38–39.

Thus, we concluded that "the state has failed to fulfill its affirmative constitutional obligation to provide all of the state's schoolchildren with a substantially equal educational opportunity. Much like the substantially unequal access to fiscal resources that we found constitutionally unacceptable in *Horton I*, the disparity in access to an unsegregated educational environment in this case arises out of state action and inaction that, prima facie, violates the plaintiffs' constitutional rights, although that segregation has occurred de facto rather than de jure." Id., 40. Notwithstanding "the initiatives undertaken by the defendants to alleviate the severe racial and ethnic disparities among school districts, and despite the fact that the defendants did not intend to create or maintain these disparities, the disparities that continue to burden the education of the plaintiffs infringe upon their fundamental state constitutional right to a substantially equal educational opportunity."[39] Id., 42. Accordingly, we concluded that "the school districting scheme, as codified at [General Statutes] §§ 10-184 and 10-240 and as enforced with regard to these plaintiffs, is unconstitutional." Id., 43. We then elected "to employ the methodology used in *Horton I*," and directed only the granting of declaratory relief while retaining jurisdiction to grant consequential relief if

needed in the future, following action by the political branches. Id., 45–46; see id., 46 ("[p]rudence and sensitivity to the constitutional authority of coordinate branches of government counsel the same caution in this case").

In our view, *Sheff* supports the plaintiffs in the present case. Although not decided as an educational adequacy case, our determination therein that the claim that the government's failure to fulfill its constitutional responsibilities pursuant to article first, § 20, was justiciable; see footnotes 18 through 24 of this opinion and the accompanying text; as well as our willingness to consider and order judicial remedies for the effect of the segregated conditions in Hartford's schools on the education of the children there, indicates that this court is willing to protect the state constitutional right to an education afforded under article eighth, § 1.

Indeed, as in *Horton I*, the separate opinions in *Sheff* provide even stronger support for the plaintiffs' claims herein, as the plaintiffs in *Sheff* also raised an educational adequacy claim that was not addressed directly by the majority opinion. See *Sheff* v. *O'Neill*, supra, 238 Conn. 48 (*Berdon, J.*, concurring); id., 141 (*Borden, J.*, dissenting). Justice Berdon, concurring in the reasoning and the judgment, concluded that "a racially and ethnically segregated educational environment also deprives schoolchildren of *an adequate education as required by the state constitution.*" (Emphasis added.) Id., 48. Noting the fundamentality of the right to an education under article eighth, § 1; see id., 49–50; Justice Berdon stated that ethnic and racial segregation between school districts "can have a devastating impact on a minority student's education"; id., 51; and concluded that, "[i]n order to provide an adequate or 'proper' education, our children must be educated in a nonsegregated environment." Id., 51–52. Although Justice Berdon described Hartford's comparatively low achievement test scores as "insightful into the devastating effects of racial isolation on the students' education"; id., 52; he emphasized that the effects of de facto segregation are felt beyond Hartford: "Children of every race and ethnic background suffer when an educational system is administered on a segregated basis. Education entails not only the teaching of reading, writing and arithmetic, but today, in our multicultural world, it also includes the development of social understanding and racial tolerance. If the mission of education is to prepare our children to survive and succeed in today's world, then they must be taught how to live together as one people." Id., 53 (*Berdon, J.*, concurring).

In contrast, Justice Borden rejected the plaintiffs' educational adequacy claim in his dissenting opinion, although he concluded that "it is not necessary in this case to decide whether article eighth, § 1, embodies a requirement that the state provide a minimally adequate

education or, if it does, the extent to which such a requirement is subject to judicial review . . . [or] to define the specific contours of such an education." Id., 142. Justice Borden assumed that there was a constitutional right to an adequate education, but rejected the plaintiffs' reliance on state mastery test scores as a standard for determining whether that right had been violated, noting that, "[n]ot only the trial court's findings in this case, but also common sense tells me that any appropriate standard by which to measure the state's assumed obligation to provide a minimally adequate education must be based generally, *not on what level of achievement students reach, but on what the state reasonably attempts to make available to them*, taking into account any special needs of a particular local school system." (Emphasis added.) Id., 143. Describing students' problems such as low birth weight, maternal drug use and other "early environmental deprivations"; id., 144; Justice Borden concluded that, "[a]lthough schools are important socializing institutions in our democratic society, they cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder the academic achievement of those students." Id. Significantly, Justice Borden noted, however, that his conclusion was "not to say that, as part of its assumed constitutional obligation to provide a minimally adequate education, the state has no obligation to attempt, by reasonable means, to ameliorate these problems. It may well have such an obligation. It is to say, however, that this record fully establishes that the state has, through the programs, policies and funding mechanisms already described, met that obligation." Id. Although Justice Borden's dissenting opinion rejected the plaintiffs' claims on the record in *Sheff*, his analysis explicitly left open the question of whether article eighth, § 1, embodies a particular minimum quality of education.

Other decisions from this court provide additional insight into the limits of the state's responsibilities under the education clause, and consistent with Justice Borden's dissenting opinion in *Sheff*, indicate that the state's responsibilities under article eighth, § 1, are not unbounded, and do not require the state to take measures that will maximize the potential of specific students or mitigate the effect of every possible negative external factor for which the state bears no direct responsibility.[40] For example, in *Savage* v. *Aronson*, 214 Conn. 256, 286, 571 A.2d 696 (1990), the plaintiffs claimed that "terminating emergency housing and offering as an alternative only group shelter housing distant from the New Haven area, where the children of these plaintiffs have been attending school, would violate their state constitutional right to education because of the harmful effect upon them of frequent school transfers." Applying *Horton I*, this court concluded that

"the burden imposed on the state by our decision in *Horton* [*I*] to ensure approximate equality in the public educational opportunities offered to children throughout this state . . . despite variations in funding by the towns, [does not include] any guaranty that children are entitled to receive their education at any particular school or that the state must provide housing accommodations for them and their families close to the schools they are presently attending. The undoubted hardship imposed upon the children of these plaintiffs from the lack of affordable housing near the schools where they now are being educated cannot be disputed. *It results, however, from the difficult financial circumstances they face, not from anything the state has done to deprive them of the right to equal educational opportunity.* When the plaintiffs were displaced from their former homes, the commissioner [of income maintenance] was not obligated to provide emergency housing for them located near their former homes so that their children could continue to attend the same schools." (Citation omitted; emphasis added.) Id., 286–87.

Similarly, in *Broadley* v. *Board of Education*, supra, 229 Conn. 4, we considered the plaintiff's claim "that he has a state constitutional right to receive a program of education specially designed to meet his individual needs as a gifted child." Relying on General Statutes § 10-76a et seq., the plaintiff in *Broadley* contended that "the legislature, by classifying gifted children as among those children who are unable to 'progress effectively' without special education, has created for those children the right to special education under article eighth, § 1, of the Connecticut constitution . . . ." Id., 5. He "concede[d], however, that, the Connecticut constitution does not, standing alone, afford gifted children the right to a program of special education," and also "that gifted children have no state statutory right to special education, because the legislature has not mandated such a course of study for gifted pupils." Id., 6. We "conclude[d] that the legislature did not intend to create a right to special education for gifted children. Although the language of § 10-76a (c) includes gifted children as among those exceptional children who do not 'progress effectively' without special education, [General Statutes] § 10-76d (b) and (c) manifest the unambiguous intent of the legislature that special education is mandatory only for children with disabilities and not for gifted students. Indeed, there is not the slightest suggestion in the legislative history of the special education statutes that the legislature, in establishing a program of special education, sought either to define the parameters of the state constitutional right to a free public education, or to constitutionalize any particular kind of educational program for exceptional children." Id., 7. In our view, *Broadley* is another illustration of the limitations of the education clause, in its rejection of the plaintiff's claim that he was constitutionally entitled

to a particular program of education aimed at his individual progress specifically; indeed, the plaintiff therein did not claim that his education was insufficient to provide him with the minimum knowledge and skill base necessary to seek higher education or meaningful employment.

C

Constitutional History

As noted by the parties and the brief of the amici curiae, Christopher Collier, the state historian emeritus, and Simon J. Bernstein, the principal draftsman and proponent of article eighth, § 1, at the 1965 constitutional convention, Connecticut's deeply rooted commitment to free public education is well documented. See *State ex rel. Huntington* v. *Huntington School Committee*, 82 Conn. 563, 566, 74 A. 882 (1909) ("Connecticut has for centuries recognized it as her right and duty to provide for the proper education of the young"); see also *Bissell* v. *Davison*, 65 Conn. 183, 191, 32 A. 348 (1894) (describing education as duty "assumed by the [s]tate . . . chiefly because it is one of great public necessity for the protection and welfare of the [s]tate itself"). Indeed, the Code of Laws for the Colony of Connecticut, promulgated in 1650 and commonly known as the Ludlow Code, recognized that "the good Education of Children is of singular behoofe and benefitt to any Common wealth," and required families to educate their children "to read the [E]nglish tounge, and knowledge of the Capitall Lawes," in the "grounds and principles of religion," and "in some honest lawfull . . . labour or [e]mployment, either in husbandry, or some other trade proffitable for themselves and the Common wealth, if they will not nor cannott traine them [u]p in Learning to fitt them for higher [e]mployments." Code of Laws, Children (1650), reprinted in 1 Col. Rec. 509, 520–21 (J. Hammond Trumbull ed., 1850). To that end, the Ludlow Code made public education and school attendance mandatory, requiring "euery Towneshipp within this Jurissdiction, after the Lord hath increased them to the number of fifty houshoulders . . . [to] forthwith appoint one within theire Towne to teach all such children as shall resorte to him, to write and read," and further, "where any Towne shall increase to the number of one hundred families or housholders, they shall sett [u]p a Grammer Schoole, the masters thereof being able to instruct youths so farr as they may bee fitted for the [U]niversity." Code of Laws, Schooles (1650), reprinted in 1 Col. Rec., supra, 555.

Thus, Bernstein stated that he had introduced the resolution that ultimately was enacted as article eighth, § 1, because "our system of free public education [has] a tradition acceptance on a par with our bill of rights and it should have the same [c]onstitutional sanctity. It was because our [c]onstitution had no reference to our school system that I submitted my resolution . . . .

I became aware of this . . . when I served on a board of education and was surprised to find that Connecticut with its traditional good education had no reference to it in the [c]onstitution when I use the word 'good education' I am quoting . . . from the Connecticut code of 1650 which others I believe call the Ludlow Code. Quote 'a good education of children is of singular of behoove and benefit to any [c]ommonwealth' so we do have the tradition which goes back to our earliest days of free good public education and we have h[ad] good public schools so that this again is not anything revolutionary, it is something which we have, it is which is practically all [c]onstitutions in the [s]tates of our nation and Connecticut with its great tradition certainly ought to honor this principle."[41] Proceedings of Connecticut Constitutional Convention (1965), Pt. 3, p. 1039, remarks of Delegate Bernstein; see id., p. 1062, remarks of Delegate Chase G. Woodhouse ("I think it is extremely fitting that we should finally put into our [c]onstitution a reference to our great public schools because Henry Barnard of Connecticut is perhaps one of the greatest historical figures in this development of public school education in this whole nation of ours"); see also *Moore* v. *Ganim*, supra, 233 Conn. 595–96 (discussing history of article eighth, § 1, in noting that our constitution's drafters "have been explicit when choosing to impose affirmative obligations on the state"). Woodhouse noted that, in conjunction with § 2, which constitutionalized higher education, article eighth "covers everything that we might regard as essential now for a system of education that will be one of the best in the whole United States."[42] Proceedings of Connecticut Constitutional Convention (1965), Pt. 3, p. 1063. Indeed, in introducing the provision, Bernstein noted specifically the importance of education with respect to the preservation of representative democratic institutions.[43] See Proceedings of Connecticut Constitutional Convention (1965), Pt. 1, p. 312, remarks of Delegate Bernstein ("[i]t goes without saying that [if] we are g[o]ing to have represen[ta]tive [g]overnment elected by a public that the education of the public is the first and best way of promoting the best representatives [to] be elected to our various legislative bodies in the [c]ity and the [s]tate").

Although the proponents of article eighth, § 1, did not articulate a substantive standard, they emphasized the historical importance of education to Connecticut in the context of its role in fostering meaningful civic participation in a representative democracy. Thus, in the absence of any contravening evidence in the historical record supporting the proposition that the education provision only is hortatory and lacks real substance,[44] this historical factor informs our construction of article eighth, § 1.

D

Federal Precedents

Having reviewed those *Geisler* factors specific to Connecticut, we now turn to a review of those considerations that go beyond our borders. We note, however, that "not every *Geisler* factor is relevant in all cases." *State* v. *Morales*, supra, 232 Conn. 716 n.10; see also *Kerrigan* v. *Commissioner of Public Health*, 289 Conn. 135, 157, 956 A.2d 1174 (2008) (same). Thus, the lack of a comparable provision in the United States constitution that assures a fundamental right to a free public education renders federal precedent, most significantly *San Antonio Independent School District* v. *Rodriguez*, supra, 411 U.S. 1, largely inapposite, and this *Geisler* factor generally is irrelevant to our analysis herein.

We note briefly, however, that the defendants rely on passages from *San Antonio Independent School District*,[45] emphasizing, for example, that the case presented "the most persistent and difficult questions of educational policy, another area in which this [c]ourt's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels"; id., 42; and that, "[e]ducation, perhaps even more than welfare assistance, presents a myriad of intractable economic, social, and even philosophical problems."[46] (Internal quotation marks omitted.) Id. Their reliance is misplaced because of the distinct nature of education under the state and federal constitutions, particularly, because the Supreme Court specifically concluded in *San Antonio Independent School District* that the right to a public education is not fundamental under the federal constitution, and therefore the plaintiffs therein were not entitled to strict scrutiny review of their claims with respect to the constitutionality of the state's educational finance system. Id., 37–39. Put differently, the prudential concerns that the Supreme Court discussed in *San Antonio Independent School District* may well have their place in the state constitutional context with respect to specific remedies, but failing to consider carefully the plaintiffs' claims would amount to an evisceration of the central holding of *Horton I*, namely, that, under article eighth, § 1, of the Connecticut constitution, "the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized."[47] *Horton I*, supra, 172 Conn. 646. Accordingly, we conclude that federal precedent does not inform our analysis of the plaintiffs' claims in this appeal.

E

Sister State Decisions

A review of the sister state decisions in this area is of paramount importance to this appeal, which presents a question of first impression in an area of constitutional law that uniquely has been the province of the states. Cf.

San Antonio Independent School District v. *Rodriguez*, supra, 411 U.S. 133 n.100 (Marshall, J., dissenting) ("nothing in the [c]ourt's decision today should inhibit further review of state educational funding schemes under state constitutional provisions"). The linguistic diversity of the various states' education clauses; see part II A of this opinion; requires a careful review of the sister state decisions to determine which cases are of greatest precedential significance. Put differently, our analysis must go beyond simply determining the "majority" and "minority" approaches to this issue, and must focus specifically on decisions from states whose constitutional clauses, like article eighth, § 1, do not use qualitative language to describe their respective rights to education.[48]

We begin, then, with New York case law, which, as explained by the amici curiae Campaign for Educational Equity et al., is particularly instructive, given the similarity between its broadly worded constitutional provision and ours. New York's education clause provides simply that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. Const., art. XI, § 1. In 1995, the New York Court of Appeals addressed a claim that the "[s]tate's educational financing scheme fails to provide public school students in the [c]ity of New York . . . an opportunity to obtain a sound basic education as required by the [s]tate [c]onstitution." *Campaign for Fiscal Equity, Inc.* v. *State*, 86 N.Y.2d 307, 314, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995) (*Campaign I*). In the context of a motion to dismiss, an analogue to our motion to strike, the court concluded that New York's education clause "requires the [s]tate to offer all children the opportunity of a sound basic education . . . . Such an education should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury. If the physical facilities and pedagogical services and resources made available under the present system are adequate to provide children with the opportunity to obtain these essential skills, the [s]tate will have satisfied its constitutional obligation." (Citation omitted.) Id., 316. The court further emphasized that "[t]he state must assure that some essentials are provided," specifically, "minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas." Id., 317. The court did not, however,

"attempt to definitively specify what the constitutional concept and mandate of a sound basic education entails" because of the early procedural posture of the case, which lacked a developed factual record.[49] Id.

A subsequent decision rendered after the remand trial in *Campaign I* further developed this standard to provide that students have a right to a "meaningful high school education, one which prepares them to function productively as civic participants," although not necessarily a high school diploma. *Campaign for Fiscal Equity, Inc.* v. *State*, 100 N.Y.2d 893, 908, 801 N.E.2d 326, 769 N.Y.S.2d 106 (2003) (*Campaign II*). After concluding that, "whether measured by the outputs or the inputs, New York City schoolchildren are not receiving the constitutionally-mandated opportunity for a sound basic education"; id., 919; the court again remanded the case to the trial court for further proceedings, wherein "[t]he [s]tate need only ascertain the actual cost of providing a sound basic education in New York City. Reforms to the current system of financing school funding and managing schools should address the shortcomings of the current system by ensuring, as a part of that process, that every school in New York City would have the resources necessary for providing the opportunity for a sound basic education. Finally, the new scheme should ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education."[50] Id., 930.

The New Hampshire Supreme Court has ascribed similar substantive meaning to its education clause, which provides in relevant part: "Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; *it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools*, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people . . . ." (Emphasis added.) N.H. Const., Pt. II, art. LXXXIII. In a decision concluding that the state's system of financing public education, mostly via property taxation, was unconstitutional because the school property taxes were not "proportional and reasonable throughout the [s]tate" as was demanded by the state constitution's taxation clause; *Claremont School District* v. *Governor*, 142 N.H. 462, 470, 703 A.2d 1353 (1997) (*Claremont II*); the New Hampshire Supreme

Court emphasized that "[o]ur society places tremendous value on education. Education provides the key to individual opportunities for social and economic advancement and forms the foundation for our democratic institutions and our place in the global economy."[51] Id., 472. Thus, the court concluded that a "constitutionally adequate public education is a fundamental right"; id., 473; and emphasized that "[m]ere competence in the basics—reading, writing and arithmetic—is insufficient"; id., 474; and that "[a] broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute and flourish in the twenty-first century." Id.

Although the New Hampshire court left the implementation of a constitutionally adequate educational policy, and the financing thereof, to the political branches in the first instance, it followed the criteria set forth by the Kentucky Supreme Court in *Rose* v. *Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989),[52] and articulated "general, aspirational guidelines for defining constitutional adequacy," namely, that a public education would provide students with: " '(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.' " *Claremont II*, supra, 142 N.H. 474–75, quoting *Rose* v. *Council for Better Education, Inc.*, supra, 212; see also *Londonderry School District* v. *State*, 154 N.H. 153, 161–62, 907 A.2d 988 (2006) (statute modeled after seven *Rose* criteria is insufficient articulation of "constitutionally adequate education" because they are general guidelines that political branches are to use in designating which state education rules, statutes and curriculum frameworks form "constitutionally adequate education").

Similarly, South Carolina's education clause provides broadly that "[t]he General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions

of learning, as may be desirable." S.C. Const., art. XI, § 3. In *Abbeville County School District* v. *State*, 335 S.C. 58, 68, 515 S.E.2d 535 (1999), the South Carolina Supreme Court concluded that this provision "requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education." The court "define[d] this minimally adequate education required by our [c]onstitution to include providing students adequate and safe facilities in which they have the opportunity to acquire: 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills." Id. Remanding the case for further proceedings, the court recognized separation of powers concerns, and "emphasize[d] that the constitutional duty to ensure the provision of a minimally adequate education to each student in South Carolina rests on the legislative branch of government. We do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our [s]tate. We do not intend the courts of this [s]tate to become super-legislatures or super-school boards."[53] Id., 69.

In Tennessee, the state education clause provides that "[t]he State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines." Tenn. Const., art. XI, § 12. The Tennessee Supreme Court has interpreted this provision as requiring the legislature to "maintain and support a system of free public schools that provides, at least, the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare students intellectually for a mature life." *Tennessee Small School Systems* v. *McWherter*, 851 S.W.2d 139, 150–51 (Tenn. 1993); id. (rejecting defendants' claim that this rule is not "an enforceable standard for assessing the educational opportunities provided in the several districts throughout the state").

Finally, in one of the earliest adequacy cases, the Washington Supreme Court interpreted its education clause, which provides that "[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex"; Wash. Const., art. IX, § 1; and concluded that "the [s]tate's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary

setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas. . . . Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. . . . It must prepare them to exercise their [f]irst [a]mendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding. The constitutional right to have the [s]tate 'make ample provision for the education of all [resident] children' would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas." (Citations omitted.) *Seattle School District* v. *State*, 90 Wash. 2d 476, 517–18, 585 P.2d 71 (1978). The court recognized that these standards are not "fully definitive of the [s]tate's paramount duty," but rather, "constitute broad guidelines and that the effective teaching and opportunities for learning these essential skills make up the *minimum* of the education that is constitutionally required." (Emphasis in original.) Id., 518; see also id., 519 (state not required to "furnish total education in the sense of *all* knowledge or the offering of *all* programs, subjects, or services which are attractive but only tangentially related to the central thrust of our guidelines" [emphasis in original; internal quotation marks omitted]).

These cases are illustrative, as our research has revealed that those state courts that have reached the merits of the issue[54] overwhelmingly have held that there is a floor with respect to the adequacy of the education provided pursuant to their states' education clauses; that education must be in some way "minimally adequate" or "soundly basic."[55] Furthermore, many of these decisions have articulated comprehensive standards that have defined the components of a constitutionally adequate education, which provide us with further guidance as we consider the merits of this appeal. See part III of this opinion.

F

Economic and Sociological Public Policy Considerations

Finally, we address the sixth *Geisler* factor, which requires consideration of the economic and sociological concerns presented by this appeal.[56] The plaintiffs, supported by several of the amici, cite statistics linking higher education and productive employment, given the changing structure of Connecticut's economy, and argue that an education suitable to prepare students for higher education is necessary because students without higher education are more likely to wind up unemployed. The plaintiffs also cite statistics demonstrating that citizens without high school diplomas or higher

education are less likely to vote in elections. In response, the defendants do not dispute that education should be, and is a high social priority, as shown by the fact that education already is the second highest appropriation in the state budget. They do, however, cite standardized testing statistics from the United States Department of Education indicating that Connecticut's students already have a " 'better-than-average chance for success at every stage' of their educational trajectory," and emphasize that our students already perform above the national average on standardized tests. Emphasizing that the trial court has left intact the plaintiffs' equal protection claim, they argue that it is unlikely that judicial intervention will remedy the imperfections that do exist in the system, and likely would result in its upheaval, which would "stifle educational innovation" by reducing local control. Finally, the defendants reiterate their argument that the "prudential concerns" with respect to the enforcement of a right to a suitable education, namely, the complications attendant to supplanting the legislature with the judiciary as the primary education policy-making body, favor their restrictive interpretation of article eighth, § 1. Although we acknowledge the prudential concerns that will attend the crafting of a remedy for a constitutional violation that may well be found in this case, we nevertheless conclude that this sixth *Geisler* factor favors the plaintiffs.

In addressing the problems wrought by racial and ethnic school segregation, we previously have acknowledged the policy behind public education, quoting the United States Supreme Court and stating that "a sound education is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . . The American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance. . . . We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government . . . and as the primary vehicle for transmitting the values on which our society rests. . . . And these historic perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists. . . . [E]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot

ignore the significant social costs borne by our [n]ation when select groups are denied the means to absorb the values and skills upon which our social order rests." (Citation omitted; internal quotation marks omitted.) *Sheff* v. *O'Neill*, supra, 238 Conn. 43–44, quoting *Plyler* v. *Doe*, 457 U.S. 202, 221, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982); *Brown* v. *Board of Education*, 347 U.S. 483, 493, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

Moreover, although individual plaintiffs bear the brunt of constitutional educational deprivation, "that deprivation potentially has an impact on the entire state and its economy—not only on its social and cultural fabric, but on its material well-being, on its jobs, industry, and business. Economists and business leaders say that our state's economic well-being is dependent on more skilled workers, technically proficient workers, literate and well-educated citizens. And they point to the urban poor as an integral part of our future economic strength. . . . So it is not just that their future depends on the [s]tate, the state's future depends on them."[57] (Internal quotation marks omitted.) *Sheff* v. *O'Neill*, supra, 238 Conn. 44.

Thus, although "[p]rudential and functional considerations are relevant to the classical enterprise of constitutional interpretation, especially where, as here, the constitutional provisions at issue are so remarkably open-textured"; *Fonfara* v. *Reapportionment Commission*, 222 Conn. 166, 185, 610 A.2d 153 (1992); these concerns, which, as Justice Vertefeuille points out in her dissent, involve the potential for judicial overmanagement of the state's education system and interference with the prerogatives of the political branches of government, are in our view better addressed in consideration of potential remedies for any constitutional violations that may be found at a subsequent trial on the merits, which might well require staying further judicial action pending legislative action. See *Sheff* v. *O'Neill*, supra, 238 Conn. 45; *Horton I*, supra, 172 Conn. 653; see also *Campaign for Fiscal Equity, Inc.* v. *State*, 8 N.Y.3d 14, 27–28, 861 N.E.2d 50, 828 N.Y.S.2d 235 (2006) (*Campaign III*) ("[t]he role of the courts is not . . . to determine the best way to calculate the cost of a sound basic education . . . but to determine whether the [s]tate's proposed calculation of that cost is rational" because of "limited access of the [j]udiciary to the controlling economic and social facts, but also by our abiding respect for the separation of powers upon which our system of government is based" [internal quotation marks omitted]). Put differently, concerns over complications with respect to remedies for violations will not lead us to misinterpret substantive provisions of the constitution.

III

The wealth of information yielded by our *Geisler* analysis has served well to explain the ambiguous text

of Connecticut's education clause, article eighth, § 1, of our state constitution. Thus, we conclude that article eighth, § 1, entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting. A constitutionally adequate education also will leave Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy.[58] To satisfy this standard, the state, through the local school districts, must provide students with an objectively "meaningful opportunity" to receive the benefits of this constitutional right. *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 176 S.W.3d 787 ("[t]he public education system need not operate perfectly; it is adequate if districts are *reasonably* able to provide their students the access and opportunity the district court described" [emphasis in original]); see also *Sheff* v. *O'Neill*, supra, 238 Conn. 143 (*Borden*, *J.*, dissenting) (constitutional adequacy determined not by "what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system"). Moreover, we agree with the New York Court of Appeals' explication of the "essential" components requisite to this constitutionally adequate education, namely: (1) "minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn"; (2) "minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks"; (3) "minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies"; and (4) "sufficient personnel adequately trained to teach those subject areas." *Campaign I*, supra, 86 N.Y.2d 317; see also, e.g., *Abbeville County School District* v. *State*, supra, 335 S.C. 68 (state constitution requires provision to students of "adequate and safe facilities in which they have the opportunity to acquire: [1] the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; [2] a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and [3] academic and vocational skills"); *Pauley* v. *Kelly*, 162 W. Va. 672, 706, 255 S.E.2d 859 (1979) (provision of constitutionally adequate education "implicit[ly]" requires "supportive services: [1] good physical facilities, instructional materials and personnel; [2] careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency").

We recognize that our explication of a constitutionally adequate education under article eighth, § 1, is

crafted in broad terms. This breadth reflects, first and foremost, our recognition of the political branches' constitutional responsibilities, and indeed, greater expertise, with respect to the implementation of specific educational policies pursuant to the education clause.[59] See *Sheff* v. *O'Neill*, supra, 238 Conn. 46. The broad constitutional standard also reflects our recognition of the fact that the specific educational inputs or instrumentalities suitable to achieve this minimum level of education may well change over time, as a "constitutionally adequate public education is not a static concept removed from the demands of an evolving world." *Claremont II*, supra, 142 N.H. 474; see also, e.g., *DeRolph* v. *State*, 89 Ohio St. 3d 1, 9–10, 728 N.E.2d 993 (2000) ("[w]hat was deemed thorough and efficient when the state's [c]onstitution was adopted certainly would not be considered thorough and efficient today"); *Campbell County School District* v. *State*, 907 P.2d 1238, 1274 (Wyo. 1995) ("[t]he definition of a proper education is not static and necessarily will change"). Finally, it bears mention that, like any other principle of constitutional law, this broad standard likely will be refined and developed further as it is applied to the facts eventually to be found at trial in this case.

We note that the failure of students to achieve the goals of a constitutionally mandated education may be the result of specific deficient educational inputs, or potentially, be caused by factors not attributable to, or capable of remediation by, state action or omission, a complicated question that is at this point beyond the procedural posture of this case.[60] See *Campaign I*, supra, 86 N.Y.2d 318 ("[i]n order to succeed in the specific context of this case, plaintiffs will have to establish a causal link between the present funding system and any proven failure to provide a sound basic education to New York City school children"); *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 176 S.W.3d 788 ("[w]hile the end-product of public education is related to the resources available for its use, the relationship is neither simple nor direct; public education can and often does improve with greater resources, just as it struggles when resources are withheld, but more money does not guarantee better schools or more educated students"); see also *Savage* v. *Aronson*, supra, 214 Conn. 287 ("The undoubted hardship imposed upon the children of these plaintiffs from the lack of affordable housing near the schools where they now are being educated cannot be disputed. It results, however, from the difficult financial circumstances they face, not from anything the state has done to deprive them of the right to equal educational opportunity."); *Sheff* v. *O'Neill*, supra, 238 Conn. 143 (*Borden*, *J.*, dissenting) (assuming existence of constitutional right to adequate education, and noting that "any appropriate standard by which to measure the state's assumed obligation to provide a minimally adequate

education must be based generally, not on what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system"); *Sheff* v. *O'Neill*, supra, 144 (*Borden, J.*, dissenting) ("[a]lthough schools are important socializing institutions in our democratic society, they cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder the academic achievement of those students"). Put differently, although we acknowledge the state's significant responsibilities under the constitution, we nevertheless recognize that the education clause is not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs in their complaint; a constitutionally adequate education is not necessarily a perfect one. See *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 784 (The court stated that the education clause "does allow the [l]egislature, of necessity, much latitude in choosing among any number of alternatives that can reasonably be considered adequate, efficient, and suitable. These standards do not require perfection, but neither are they lax. They may be satisfied in many different ways, but they must be satisfied.").

We conclude, therefore, that the trial court improperly granted the defendants' motion to strike because further proceedings are required to determine as a question of fact whether the state's educational resources and standards have in fact provided the public school students in this case with constitutionally suitable educational opportunities.

The judgment is reversed and the case is remanded for further proceedings according to law.

In this opinion KATZ and SCHALLER, Js., concurred.

* This case originally was argued before a panel of this court consisting of Justices Norcott, Katz, Palmer, Zarella and Schaller. Thereafter, the court, pursuant to Practice Book § 70-7 (b), sua sponte, ordered that the case be considered en banc. Accordingly, Justices Vertefeuille and McLachlan were added to the panel, and they have read the record, briefs and transcript of oral argument.

The listing of justices reflects their seniority status as of the date of oral argument.

[1] Article eighth, § 1, of the constitution of Connecticut provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

[2] We note that the trial court granted the defendants' motion to dismiss the claims of the named plaintiff, the Connecticut Coalition for Justice in Education Funding, Inc., after concluding that it lacked representational standing under *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell*, 199 Conn. 609, 616, 508 A.2d 743 (1986). Specifically, the trial court determined that it could not determine from the pleadings that the parents who are alleged to be members of the named plaintiff are in fact the parents of children in Connecticut's public schools. Thereafter, the trial court granted the plaintiffs' motion, filed pursuant to Practice Book § 10-60, to amend the operative complaint to cure this jurisdictional defect and to permit the named plaintiff to participate in these proceedings.

[3] The individual plaintiffs in this case are: (1) Nekita Carroll-Hall, who

resides in Bridgeport with her children Ana-Simone Hall and Jacob Hall; (2) Marta Calderon, who resides in Bridgeport with her grandson Angel Calderon; (3) Richard Molinaro, who resides in Danbury with his granddaughter Jada Mourning; (4) Sherry Major, who resides in Willimantic with her sons Joseph Major and James Major; (5) Nancy Diaz, who resides in Hartford with her son Joshua Diaz; (6) Glenny Pentino, who resides in New Haven with her daughter Quintana Riveras; (7) Lawrence Porter, who resides in East Hartford with his children Katelyn Porter and Sean Porter; (8) Maria Santiago, who resides in New London with her daughter Carimarie Colon; (9) Donna Finnemore, who resides in Plainfield with her sons Benjamin Wisniewski, Brandon Wisniewski and Brian Wisniewski; and (10) Juana Feliciano, who resides in New Britain with her sons Christian Alvarado and Victor Alvarado. We note, however, that Porter, Santiago, Feliciano and their children are no longer involved in this appeal.

[4] Chief Justice Rogers granted the plaintiffs' petition for certification of an immediate expedited appeal pursuant to General Statutes § 52-265a, which provides in relevant part: "(a) Notwithstanding the provisions of sections 52-264 and 52-265, any party to an action who is aggrieved by an order or decision of the Superior Court in an action which involves a matter of substantial public interest and in which delay may work a substantial injustice, may appeal under this section from the order or decision to the Supreme Court within two weeks from the date of the issuance of the order or decision. The appeal shall state the question of law on which it is based.

"(b) The Chief Justice shall, within one week of receipt of the appeal, rule whether the issue involves a substantial public interest and whether delay may work a substantial injustice. . . ."

[5] The defendants in this case are named only in their official capacities and are: (1) Governor M. Jodi Rell or her successor; (2) Mark K. McQuillan, successor to Betty J. Sternberg as commissioner of education; (3) Allan B. Taylor, Beverly Bobroske, Donald J. Coolican, Lynne S. Farrell, Janet M. Finneran, Theresa Hopkins-Staten, Timothy J. McDonald, Patricia B. Luke and Alice L. Carolan, John H. Foss or their successors on the state board of education; (4) Treasurer Denise L. Nappier or her successor; and (5) Comptroller Nancy S. Wyman or her successor.

[6] After the trial court granted the defendants' motion to strike counts one, two and four of the amended complaint, it granted the plaintiffs' motion for written permission to appeal from the judgment on those counts pursuant to Practice Book § 61-4 (a), which permits an appeal from a trial court decision "that disposes of at least one cause of action where the judgment does not dispose of either of the following: (1) an entire complaint, counterclaim, or cross complaint, or (2) all the causes of action in a complaint, counterclaim or cross complaint brought by or against a party . . . [upon] a written determination that the issues resolved by the judgment are of such significance to the determination of the outcome of the case that the delay incident to the appeal would be justified, and the chief justice or chief judge of the court having appellate jurisdiction concurs. . . ." Rather than appealing from that judgment to the Appellate Court, the plaintiffs filed a petition pursuant to § 52-265a seeking certification of an immediate expedited appeal to this court, which Chief Justice Rogers granted on October 31, 2007. See footnote 4 of this opinion.

[7] The plaintiffs also make similar allegations with respect to the South Street Elementary School in Danbury, and emphasize that its library has seventeen print volumes per student, as compared to twenty-five statewide, and the school provides 966 hours of instruction per year, as compared to 985 statewide.

[8] Similarly, East Hartford High School does not provide any pull-out remedial instruction or in-class tutorial instruction in mathematics and language arts, despite having numerous students who performed poorly in those subjects. East Hartford High School has 6.9 students per academic computer, in comparison to the statewide average of 3.3. Finally, 29 percent of East Hartford High School's computers are moderate or high powered, in comparison to the state average of 77 percent.

[9] For example, the fourth grade plaintiff students at the Lincoln, South Street and Roosevelt Schools, in New Britain, Danbury and Bridgeport respectively, tested significantly below the 2004 state averages for "goal" and "proficiency" on the Connecticut Mastery Test for mathematics and reading. The plaintiffs make similar claims with respect to the Plainfield and East Hartford tenth grade students' scores on the Connecticut Academic Performance Test.

[10] The statewide average rates of completion for algebra I, chemistry and

three or more credits in science are 90, 69 and 85 percent respectively. The respective percentages of East Hartford High School graduates who have completed those courses are 56, 42 and 57 percent. The respective percentages of Plainfield High School graduates who have completed those courses are 76, 43 and 74 percent.

[11] For example, although 47 percent of the fourth grade students at Lincoln scored below proficiency in math, and 66 percent scored below proficiency in reading, 99.8 percent of the school's students were promoted to the next grade level. In contrast, the Roosevelt School exhibited a rate of retention more than double that of the state average. Similarly, 16.7 percent of students at the East Hartford and Plainfield High Schools were retained, a rate more than triple that of the statewide average.

[12] General Statutes (Rev. to 2007) § 10-262f (9) provides in relevant part: " 'Foundation' means . . . (G) for the fiscal years ending June 30, 2000, to June 30, 2007, inclusive, five thousand eight hundred ninety-one dollars."

We note, however, that No. 07-3, § 61 (9), of the 2007 Public Acts amended § 10-262f (9) by adding a new subparagraph (H) to increase the foundation amount, and that General Statutes § 10-262f (9) (H) now provides in relevant part: " 'Foundation' means . . . for the fiscal years ending June 30, 2008, to June 30, 2012, inclusive, nine thousand six hundred eighty-seven dollars." We take no position as to whether this statutory change suffices to address the problems complained of by the plaintiffs herein.

[13] General Statutes (Rev. to 2007) § 10-262f (2) provides: " 'Base aid ratio' means one minus the ratio of a town's wealth to the state guaranteed wealth level, provided no town's aid ratio shall be less than six one-hundredths."

We note, however, that No. 07-3, § 61 (2), of the 2007 Public Acts amended § 10-262f (2), and General Statutes § 10-262f (2) now provides: " 'Base aid ratio' means one minus the ratio of a town's wealth to the state guaranteed wealth level, provided no town's aid ratio shall be less than nine one-hundredths, except for towns which rank from one to twenty when all towns are ranked in descending order from one to one hundred sixty-nine based on the ratio of the number of children below poverty to the number of children age five to seventeen, inclusive, the town's aid ratio shall not be less than thirteen one-hundredths when based on data used to determine the grants pursuant to section 10-262h for the fiscal year ending June 30, 2008." We take no position as to whether this statutory change suffices to address the problems complained of by the plaintiffs herein.

[14] The defendants conceded before the trial court that count three of the plaintiffs' complaint, which alleges only that the plaintiffs have been denied "substantially equal" educational opportunities, states a viable cause of action under *Horton I*, supra, 172 Conn. 615.

[15] The trial court also rejected the plaintiffs' reliance on remarks at the 1965 constitutional convention proceedings by Simon J. Bernstein, the proponent of article eighth, § 1, of the state constitution as "far too slender a reed" to support their claims, and concluded that, although public policy supported the "notion of a suitable education as a fundamental right," it was deterred by prudential concerns about judicial intrusion into public education policy set by state and local legislative bodies.

[16] Citing Justice Loiselle's dissenting opinion in *Horton I*, supra, 172 Conn. 658–59, the trial court emphasized, however, that courts cannot "abdicate their duty to give strict scrutiny to executive and legislative efforts to comply with the constitutional mandate to provide free education," and stated that, it could "well imagine situations where state or local authorities might seek to eliminate, cut back or restrict programs in such a way that the ability of children in the state or a particular town or region to receive an education would be endangered." The trial court also noted that there might well be a *statutory* right to a "suitable" education under General Statutes § 10-4a, but did not develop this point further.

[17] We note that the defendants did not raise the justiciability issue as an alternate ground for affirmance pursuant to Practice Book § 63-4 (a) (1), or file a cross appeal from the trial court's justiciability ruling pursuant to Practice Book § 61-8. Nevertheless, we consider this issue on its merits because it implicates our subject matter jurisdiction and, therefore, may be raised at any time. See, e.g., *Office of the Governor* v. *Select Committee of Inquiry*, 271 Conn. 540, 569, 858 A.2d 709 (2004). Moreover, the plaintiffs have not been prejudiced by the defendants' late raising of the justiciability issue on appeal because that question was argued extensively before the trial court, and we granted the plaintiffs' motion for permission to file an overlong reply brief to respond to the defendants' arguments.

[18] We note that the justiciability conclusion in *Sheff* was unanimous, as

the three dissenters, Justices Borden, Callahan and Palmer, who also subsequently rejected the plaintiffs' claim that their right to a minimally adequate education had been violated, nevertheless found that claim justiciable. See *Sheff* v. *O'Neill*, supra, 238 Conn. 57 (*Borden*, *J.*, dissenting).

We further disagree with the argument of the defendants and Justice Zarella in his dissenting opinion that the present case is distinguishable for justiciability purposes from *Sheff* and *Horton I* because it is an adequacy of education case, rather than an equality case. Our holding in *Sheff* with respect to article eighth, § 1, does not refer specifically to the constitution's equal protection provisions, and relies expressly on the "appropriate legislation" clause from article eighth, § 1, to justify judicial examination of educational statutes. See *Sheff* v. *O'Neill*, supra, 238 Conn. 15.

[19] In particular, we note our specific disagreement with Justice Zarella's reliance on the proposition from *Simmons* v. *Budds*, supra, 165 Conn. 514, that, under article eighth, § 2, of the state constitution, "the constitutional [s]tandard of 'excellence' was not meant to be a wedge for penetration of the educational establishment by judicial intervention in policy decisions." As noted in *Sheff*, *Simmons* rejected the merits of the plaintiff's attack on the actions of the defendant officials of the University of Connecticut, and was not purely a justiciability holding. See *Sheff* v. *O'Neill*, supra, 238 Conn. 15 n.17. Moreover, as noted previously; see footnote 18 of this opinion; unlike § 1, § 2 of article eighth does not refer to "appropriate legislation," which further distinguishes the higher education clause from the public education clause for purposes of judicial review.

[20] In his dissent, Justice Zarella refers to a report commissioned by the plaintiffs in this case, and relies on it in support of the proposition that, "the inescapable fact . . . is that the plaintiffs are asking this court to order the legislature to rearrange its spending priorities by increasing the annual appropriation for public elementary and secondary education by nearly 92 percent over the present level of funding in order to satisfy the constitutional mandate of providing Connecticut schoolchildren with a suitable education." See Augenblick, Palaich & Associates, Inc., "Estimating the Cost of an Adequate Education in Connecticut" (June, 2005) p. v, available at http://www.schoolfunding.info/states/ct/costingout_ct.php3 (last visited March 9, 2010) (copy contained in the file of this case in Supreme Court clerk's office). We decline to consider this report prematurely in the context of this appeal. First, this appeal is taken from a motion to strike and our analysis is, therefore, limited only to those "well-pleaded facts and those facts necessarily implied from the allegations . . . ." (Internal quotation marks omitted.) *Violano* v. *Fernandez*, supra, 280 Conn. 317. Moreover, the content of this report is not subject to judicial notice without an opportunity for a hearing, because it would constitute adjudicative, rather than legislative, facts. See *Moore* v. *Moore*, 173 Conn. 120, 122, 376 A.2d 1085 (1977) (describing "distinction between 'legislative facts,' those which help determine the content of law and policy, and 'adjudicative facts,' facts concerning the parties and events of a particular case"); compare *Mahoney* v. *Lensink*, 213 Conn. 548, 562 n.20, 569 A.2d 518 (1990) (taking judicial notice of newspaper article about events that led to enactment of patient bill of rights), with *Kerrigan* v. *Commissioner of Public Health*, 289 Conn. 135, 222–23 n.58, 957 A.2d 407 (2008) (criticizing, in context of quasi-suspect class analysis, dissent's reliance on opinions expressed in news conference and press release because, "to infer, on the basis of those opinions, that a gay marriage bill soon will become law in this state . . . contravenes the prohibition against appellate factfinding"). At this early stage in this litigation, particularly as no liability has yet been found, we decline to speculate about precise remedies and their attendant financial consequences.

[21] Justice Zarella relies on the specter of the decades old New Jersey education litigation in the long lines of cases stemming from *Robinson* v. *Cahill*, 62 N.J. 473, 303 A.2d 273 (1973), and *Abbott* v. *Burke*, 100 N.J. 269, 495 A.2d 376 (1985), to warn that our conclusion in the present case puts our courts on the precipice of becoming "bogged down for years in endless litigation" occasioned by the lack of "easily identifiable judicial standards by which to measure whether children are receiving a suitable education." Although the judicial remedies implemented in the *Abbott* line of cases are particularly aggressive, and could well raise some separation of powers issues; see also footnote 22 of this opinion; we emphasize that the possibility that a judicially articulated standard may well evolve over time does not render it unworkable, as "[a]ny judicial genesis of a constitutional standard will subsequently undergo a process of development, evolution, and perhaps even revision. To be engaged in the development of constitutional jurispru-

dence is, by definition, the role of a state supreme court." M. Blanchard, "The New Judicial Federalism: Deference Masquerading as Discourse and the Tyranny of the Locality in State Judicial Review of Education Finance," 60 U. Pitt. L. Rev. 231, 275 (1998).

[22] We view Justice Zarella's reliance on the decades old New Jersey education litigation in the lines of cases stemming from *Robinson* v. *Cahill*, 62 N.J. 473, 303 A.2d 273 (1973), and *Abbott* v. *Burke*, 100 N.J. 269, 495 A.2d 376 (1985), in support of his contention that our decision in this appeal will lead us into a morass of judicial policy making, as premature and as of yet unwarranted. We agree that the *Abbott* line of cases presents a particularly aggressive judicial remedy in the area of education adequacy. For example, in its fifth decision in that line of cases, the New Jersey Supreme Court adopted a ruling directing the state to require its property poor school districts with special needs, to, inter alia: (1) adopt the Success for All and Roots and Wings models of " 'whole-school reform' "; (2) implement full day kindergarten immediately; and (3) provide half day preschool programs. *Abbott* v. *Burke*, 153 N.J. 480, 493, 710 A.2d 450 (1998). Indeed, commentators have noted that New Jersey's judicial remedies entail more active court involvement in education policy than do the more deferential approaches of other states, which leave the implementation of reforms to the political branches to be conducted under broader standards articulated by the judicial branch. See J. Chia & S. Seo, "Battle of the Branches: The Separation of Powers Doctrine in State Education Funding Suits," 41 Columbia J.L. & Soc. Probs. 125, 131–36 (2007); P. Trachtenberg, "Beyond Educational Adequacy: Looking Backward and Forward Through the Lens of New Jersey," 4 Stan. J. C.R. & C.L. 411, 412 (2008). We emphasize, however, that liability has not yet been proven in the present case, and it is premature to consider the implications of specific remedies. Indeed, we recognize that separation of powers concerns necessarily will inform the creation of any remedy in this case, should one ultimately be required. Guided by the presumption in favor of subject matter jurisdiction and against unnecessary findings of nonjusticiability; see, e.g., *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 488; we will not let premature, and perhaps unfounded, concerns about the crafting of a remedy deprive the plaintiffs of their day in court. See also footnote 59 of this opinion.

[23] Justice Zarella notes that "student achievement is not merely a function of what takes place at school, but is also influenced by economic, social, cultural and other factors, some unknown and perhaps unknowable, beyond the control of the educational system." Justice Zarella, whose observation has been echoed by, inter alia, President Barack Obama; see footnote 20 of the dissenting opinion; undoubtedly is correct, which counsels against an excessive reliance on outputs such as test scores in assessing whether the state has fulfilled its constitutional obligations. See *Sheff* v. *O'Neill*, supra, 238 Conn. 143–44 (*Borden*, *J*., dissenting); see also part II B of this opinion. That said, "[i]n neighborhoods across our country, there are boys and girls with dreams, and a decent education is their only hope of achieving them." President George W. Bush, State of the Union Address (January 28, 2008). Accordingly, we join the majority of the states that have considered this issue; see footnote 24 of this opinion; and do not use the political question doctrine as a way to avoid answering the narrow issue of constitutional interpretation presented by this appeal.

[24] As we noted in *Sheff*, the vast majority of jurisdictions "overwhelmingly" have concluded that claims that their legislatures have not fulfilled their constitutional responsibilities under their education clauses are justiciable. *Sheff* v. *O'Neill*, supra, 238 Conn. 15 n.18. Indeed, some of the cases cited in *Sheff* are *adequacy* cases that interpret constitutional provisions committing the establishment of public schools to the legislature. See, e.g., *Rose* v. *Council for Better Education, Inc.*, 790 S.W.2d 186, 205, 213–14 (Ky. 1989) (considering adequacy of state's public education system under education clause requiring legislature to, "by appropriate legislation, provide for an efficient system of common schools"); *McDuffy* v. *Secretary of the Executive Office of Education*, 415 Mass. 545, 606, 610–11, 615 N.E.2d 516 (1993) (recognizing separation of powers concerns in leaving remedy to legislature after concluding that state constitution imposes affirmative duty on commonwealth "to provide an education for *all* its children, rich and poor . . . to prepare them to participate as free citizens of a free [s]tate to meet the needs and interests of a republican government" [emphasis in original]); see also, e.g., *Idaho Schools for Equal Educational Opportunity* v. *Evans*, 123 Idaho 573, 583, 850 P.2d 724 (1993) ("[W]e decline to accept the respondents' argument that the other branches of government be allowed to interpret the constitution for us. That would be an abject abdication of our role

in the American system of government.").

Indeed, other courts have arrived at the same conclusion in cases decided subsequent to *Sheff*. See *Lobato* v. *State*, 218 P.3d 358, 374 (Colo. 2009) (concluding that adequacy claims are justiciable and that engaging in rational basis review of state's public school financing system, guided by laws and pronouncements of legislature "as well as other courts' interpretations of similar state education clauses," would "satisf[y] the judiciary's obligation to evaluate the constitutionality of the public school system without unduly infringing on the legislature's policymaking authority"); *Bonner* v. *Daniels*, 885 N.E.2d 673, 689–90 (Ind. App. 2008) (rejecting claim that adequacy claim is unreviewable on ground that "school funding lies exclusively within the dominion of the legislature" because, although "specific method of funding education is within the legislature's realm, nevertheless, in the discharge of our constitutional obligations, we may be required to determine whether the legislative action is constitutionally valid"), rev'd on other grounds, 907 N.E.2d 516, 522 (Ind. 2009) (concluding on merits that "the [e]ducation [c]lause of the Indiana [c]onstitution does not impose upon government an affirmative duty to achieve any particular standard of resulting educational quality"); *Columbia Falls Elementary School District No. 6* v. *State*, 326 Mont. 304, 310, 109 P.3d 257 (2005) ("In the case sub judice, the [l]egislature has addressed the threshold political question: it has executed Article X, [§] 1 [3], by creating a basic system of free public schools. As the final guardian and protector of the right to education, it is incumbent upon the court to assure that the system enacted by the [l]egislature enforces, protects and fulfills the right."); *Leandro* v. *State*, 346 N.C. 336, 345, 488 S.E.2d 249 (1997) (The court rejected the political question argument and concluded that "[w]hen a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits. . . . Therefore, it is the duty of this [c]ourt to address [the plaintiffs'] constitutional challenge to the state's public education system. [Citation omitted.]); *DeRolph* v. *State*, 78 Ohio St. 3d 193, 198, 677 N.E.2d 733 (1997) ("We will not dodge our responsibility by asserting that this case involves a nonjusticiable political question. To do so is unthinkable. We refuse to undermine our role as judicial arbiters and to pass our responsibilities onto the lap of the General Assembly."); *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 176 S.W.3d 780–81 ("[l]ike the majority of these states, we conclude that the separation of powers does not preclude the judiciary from determining whether the [l]egislature has met its constitutional obligation to the people to provide for public education"); cf. *Brigham* v. *State*, 179 Vt. 525, 527–28, 889 A.2d 715 (2005) (trial court improperly granted motion to dismiss on ground of judicial restraint).

Thus, we continue to follow *Sheff* and disagree with the defendants' and the dissent's reliance on *Coalition for Adequacy & Fairness in School Funding, Inc.* v. *Chiles*, 680 So. 2d 400 (Fla. 1996), *Nebraska Coalition for Educational Equity & Adequacy* v. *Heineman*, 273 Neb. 531, 731 N.W.2d 164 (2007), and *Oklahoma Education Assn.* v. *State*, 158 P.3d 1058 (Okla. 2007). We simply disagree with the somewhat perfunctory analysis undertaken by the Florida Supreme Court, which construed an education clause with language even more specifically amenable to judicial review than article eighth, § 1, of our state constitution. See *Coalition for Adequacy & Fairness in School Funding, Inc.* v. *Chiles*, supra, 405 (state constitutional provision provides that "[a]dequate provision shall be made by law for a uniform system of free public schools" [internal quotation marks omitted]). Moreover, the Oklahoma and Nebraska decisions are based on state constitutional language and history that render them distinct from the "appropriate legislation" provision contained in article eighth, § 1, of the constitution of Connecticut, which we found in *Sheff* v. *O'Neill*, supra, 238 Conn. 15, to permit judicial review. See *Nebraska Coalition for Educational Equality & Adequacy* v. *Heineman*, supra, 550–54 (relying on voters' recent rejection of constitutional amendment to include qualitative standards in education clause and emphasizing complicated policy questions surrounding educational funding that would require reassessing legislative spending priorities); *Oklahoma Education Assn.* v. *State*, supra, 1062 n.8, 1065–66 (relevant constitutional provision provides that legislature "shall establish and maintain a system of free public schools wherein all the children of the [s]tate may be educated"); see also justiciability cases cited in footnote 54 of this opinion.

[25] "[I]n deciding whether the complaint presents a justiciable claim, we make no determination regarding its merits. We do not consider, for example, whether it would survive a motion to strike on the ground that it does not state a valid cause of action for deprivation of the constitutional rights

asserted, or whether it would survive a motion for summary judgment on the basis that the undisputed facts show that no such constitutional deprivations have occurred. We consider only whether the matter in controversy [is] capable of being adjudicated by judicial power . . . .'' (Internal quotation marks omitted.) *Seymour* v. *Region One Board of Education*, supra, 261 Conn. 481.

[26] In his dissenting opinion, Justice Zarella notes his agreement with ''commentators who question [*Geisler*'s] legitimacy on the ground that 'it is no more than a checklist from which to select [various interpretive] tools' and that it provides no guidance as to the significance of selecting 'any particular method in any particular case.' '' Justice Zarella also considers the *Geisler* test to be ''more harmful than beneficial because, without such guidance, the mere accumulation of analyses or precedents from an array of different methods, some of which may be of questionable relevance, can be used as a means to reach a desired end.'' In our view, this criticism of the *Geisler* analysis is unwarranted. The *Geisler* analysis promises nothing more than ''a structured and comprehensive approach'' to state constitutional interpretation; *Honulik* v. *Greenwich*, 293 Conn. 641, 648 n.9, 980 A.2d 845 (2009); it is nothing more than an organizational tool that cannot be expected always to yield a single answer to a question of constitutional interpretation. Accordingly, we agree with Justice Vertefeuille's conclusion that the *Geisler* framework is ''equally useful in analyzing the scope of a right guaranteed by the state constitution that has no federal analog.''

[27] For additional examples of state constitutional provisions that utilize qualitative language, see Ala. Const., art. XIV, § 256 (''[t]he Legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years''); Ariz. Const., art XI, § 1 (A) (''[t]he legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system''); Del. Const., art. X, § 1 (''[t]he General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means''); Idaho Const., art. IX, § 1 (''[t]he stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools''); Ill. Const., art. X, § 1 (''The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free.''); Ind. Const., art. VIII, § 1 (''[k]nowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all''); Kan. Const., art. VI, § 6 (b) (''[t]he legislature shall make suitable provision for finance of the educational interests of the state''); Ky. Const., § 183 (''[t]he General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State''); Md. Const., art. VIII, § 1 (''[t]he General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public [s]chools; and shall provide by taxation, or otherwise, for their maintenance''); Minn. Const., art. XIII, § 1 (''The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.''); Mont. Const., art. X, § 1 (''[1] It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. [2] The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity. [3] The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.''); Nev. Const., art. XI, § 2 (''[t]he legislature

shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools"); N.M. Const., art. XII, § 1 ("[a] uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained"); N.C. Const., art. IX, § 2 (1) ("[t]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students"); N.D. Const., art. VIII, § 2 ("[t]he legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education, except that the legislative assembly may authorize tuition, fees and service charges to assist in the financing of public schools of higher education"); Or. Const., art. VIII, § 3 ("[t]he Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools"); Pa. Const., art. III, § 14 ("[t]he General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth"); R.I. Const., art. XII, § 1 ("[t]he diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services"); S.D. Const., art. VIII, § 1 ("[t]he stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education"); Tex. Const., art. VII, § 1 ("[a] general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools"); W. Va. Const., art. XII, § 1 ("[t]he Legislature shall provide, by general law, for a thorough and efficient system of free schools").

[28] In *Moore*, we noted that, although both public education and providing for the poor have deep historical roots, and "the framers of the education clause had looked to the historical statutory tradition of free public education in this state to support its explicit inclusion in the state constitution, they did not consider this tradition in and of itself to create a state constitutional obligation. . . . To the contrary, they found it appropriate to amend the constitution in order to give public education constitutional status." (Citation omitted.) *Moore* v. *Ganim*, supra, 233 Conn. 596; see also id., 597 (noting "[explicit]" protections under article first, § 20, of the Connecticut constitution and amendment twenty-one for "certain discrete groups in order to deal with specific social problems").

[29] The dictionary further defines "school" in relevant part as "an organization that provides instruction . . . ." Merriam-Webster's Collegiate Dictionary (10th Ed. 1998).

[30] The first wave of education litigation nationwide focused largely on inequality claims, with inadequacy claims arising more recently within the last twenty years. See J. Dinan, "The Meaning of State Constitutional Education Clauses: Evidence from the Constitutional Convention Debates," 70 Alb. L. Rev. 927, 927–28 (2007); W. Koski & R. Reich, "When 'Adequate' Isn't: The Retreat from Equity in Educational Law and Policy and Why it Matters," 56 Emory L.J. 545, 558–60 (2006); C. Lockard, note, "In the Wake of *Williams* v. *State*: The Past, Present and Future of Education Finance Litigation in California," 57 Hastings L.J. 385, 393–95 (2005).

[31] Although this *Geisler* factor also contemplates reviewing decisions of the Appellate Court, neither the parties' briefs nor our independent research has identified any relevant opinions from that court.

[32] Although our analysis under this *Geisler* factor focuses on our more recent case law applying and interpreting article eighth, § 1, of the state constitution, we acknowledge that this court's older case law has documented the historical importance of public education in Connecticut as well,

a factor we consider in greater detail in part II C of this opinion. See *State ex rel. Huntington* v. *Huntington School Committee*, 82 Conn. 563, 566, 74 A. 882 (1909) (noting that "Connecticut has for centuries recognized it as her right and duty to provide for the proper education of the young" in concluding that unified town school committees are agents of state); see also *Bissell* v. *Davison*, 65 Conn. 183, 191, 32 A. 348 (1894) (describing education as duty "assumed by the [s]tate . . . chiefly because it is one of great public necessity for the protection and welfare of the [s]tate itself," in upholding statute permitting school districts to adopt mandatory vaccination rules).

[33] The court noted the long history of public education in Connecticut since colonial days, and the existence of the basic public educational system since that time, with "the state recognizing that providing for education is a state duty and function now codified in the constitution, article eighth, § 1, with the obligation of overseeing education on the local level delegated to local school boards which serve as agents of the state. . . . The General Assembly has by word, if not by deed, recognized in the enactment of § 10-4a of the General Statutes . . . that it is the concern of the state that 'each child shall have . . . equal opportunity to receive a suitable program of educational experiences.' Indeed the concept of equality is expressly embodied in the constitutional provision for distribution of the school fund in the provision (article eighth, § 4) that the fund 'shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof.' " (Citations omitted.) *Horton I*, supra, 172 Conn. 647–48.

[34] Thereafter, in *Horton* v. *Meskill*, 195 Conn. 24, 27, 486 A.2d 1099 (1985) (*Horton III*), the court considered an appeal and cross appeal from the trial court's ruling holding the legislative response to *Horton I* "constitutional in design but unconstitutional in part." The trial court had upheld the basic plan, which had "two principal components: (1) the guaranteed tax base grant formula (GTB) and (2) the minimum expenditure requirement (MER). The GTB formula is a plan of state grants designed to provide towns with a state-guaranteed tax base for the financing of public school education. It is designed to distribute equitably state aid to towns that establish their eligibility through the MER, a formula that sets the minimum acceptable level of per pupil town expenditures." Id., 28–29.

Further developing the rule of *Horton I*, this court adopted a three step analysis for the strict scrutiny of educational financing plans, which provided: "First, the plaintiffs must make a prima facie showing that disparities in educational expenditures are more than de minimis in that the disparities continue to jeopardize the plaintiffs' fundamental right to education. If they make that showing, the burden then shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy. If the state's justification is acceptable, the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional. In other words, to satisfy the mandate of *Horton I*, a school financing plan must, as a whole, further the policy of providing significant equalizing state support to local education." Id., 38.

Applying this test, the court concluded that, although there were "continued significant disparities in the funds that local communities spend on basic public education," the legislation nevertheless "was a constitutionally acceptable response to the problem of disparate local educational expenditures" because, "if adequately funded, the GTB program would provide sufficient overall expenditures for public school education, that its five-year phase-in assured an efficient use of educational resources, and that its design would provide equity in the distribution of educational funds and a proper balance between state and local contributions thereto. In addition, the court found that the program retained a salutary role for local choice by guaranteeing minimum funds without imposing a ceiling on what a town might elect to spend for public education." Id., 39–40.

[35] "The constitution of Connecticut, article first, § 1, provides: 'All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community.'

"The constitution of Connecticut, article first, § 20, as amended by articles five and twenty-one of the amendments, provides: 'No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.' " *Sheff* v. *O'Neill*, supra, 238 Conn. 3–4 n.2.

[36] The court noted that "[s]tate financial aid is distributed so that the neediest school districts receive the most aid. Accordingly, in the 1990–91 and 1991–92 school years, overall per pupil state expenditures in Hartford exceeded the average amount spent per pupil in the twenty-one surrounding suburban towns. The state reimburses Hartford for its school renovation projects at a rate that is considerably higher than the reimbursement rate for the twenty-one surrounding suburban towns." *Sheff* v. *O'Neill*, supra, 238 Conn. 10.

[37] The court emphasized that "[n]othing in the description of the relevant legal landscape in any of our cases suggests that the constitutional right that we articulated in *Horton I* was limited to school financing," and that the "addition of [the] term ['segregation'] to the text of our equal protection clause distinguishes this case from others in which we have found a substantial equivalence between our equal protection clause and that contained in the United States constitution." *Sheff* v. *O'Neill*, supra, 238 Conn. 26–27.

[38] We stated that, although poverty is not by itself a suspect classification, the trial court's "extensive findings about the significant role that adverse socioeconomic conditions play in the difficulties encountered by Hartford schoolchildren" did not "undermine the plaintiffs' claim." *Sheff* v. *O'Neill*, supra, 238 Conn. 39. Rather, we concluded that "Hartford's schoolchildren labor under a dual burden: their poverty and their racial and ethnic isolation. These findings regarding the causal relationship between the poverty suffered by Hartford schoolchildren and their poor academic performance cannot be read in isolation. They do not diminish the significance of the stipulations and undisputed findings that the Hartford public school system suffers from severe and increasing racial and ethnic isolation, that such isolation is harmful to students of all races, and that the districting statute codified at [General Statutes] § 10-240 is the single most important factor contributing to the concentration of racial and ethnic minorities in the Hartford public school system." Id.

[39] We first concluded that the state met its initial burden of proving the legitimacy of the districting statute, which was enacted "not to impose or to foster racial or ethnic isolation, but to improve educational quality for all Connecticut schoolchildren by increasing state involvement in all aspects of public elementary and secondary education," as well as to "[further] the legitimate nonracial interests of permitting considerable local control and accountability in educational matters." *Sheff* v. *O'Neill*, supra, 238 Conn. 40–41.

[40] We note that in *Campbell* v. *Board of Education*, 193 Conn. 93, 104, 475 A.2d 289 (1984), this court was required to "decide the applicability of the fundamental rights guaranteed by article eighth, § 1, to a school board's policy of imposing uniform school-wide academic sanctions for nonattendance." We disagreed with the plaintiff's reliance on *Horton I* for the proposition that strict scrutiny must be applied to "any and all governmental regulations affecting public school education." Id., 105. We concluded that the school board's policy, "which is neither disciplinary . . . nor an infringement of equal educational opportunity, does not jeopardize any fundamental rights under our state constitution." (Citations omitted.) Id.

[41] Bernstein had noted previously that "[i]t may come as a matter of some surprise to all of us who have grown up in this [s]tate of Connecticut, which considers itself a well educated populace [with] schools dating back to our early history. Our [c]onstitution as it is presently written does not say anything about a provision for public education on any level." Proceedings of Connecticut Constitutional Convention (1965), Pt. 1, p. 311. Bernstein noted further that "the history of education in Connecticut is as early as the day our [c]olonies were founded in 1636 when Hartford was founded, they wasted no time in getting a school master for Hartford. . . . We have a great history and tradition requiring that the public body supply our children with free public education." Id., p. 312.

[42] Indeed, the delegates at the 1965 constitutional convention enacted article eighth, § 1, with the knowledge that Connecticut was the only state in the United States that did not have an education guarantee in its state constitution. See J. Zaiman, "First Constitutional Guarantee Of Free Education Is Approved," Hartford Courant, October 20, 1965, pp. 1, 5.

[43] Bernstein's remarks echo the sentiments of several notable early proponents of public education, including Thomas Jefferson and Horace Mann. See T. Jefferson, Notes on Virginia (1782), Query XIV ("[o]f all the views of this law [for public education], none is more important, none more legitimate, than that of rendering the people the safe as they are the ultimate guardians of their own liberty"), "Thomas Jefferson on Politics & Govern-

ment," available at http://etext.virginia.edu/jefferson/quotations/jeff1370.htm (last visited March 9, 2010); Letter from Thomas Jefferson to John Adams (1813) ("[t]his [bill] on education would [raise] the mass of the people to the high ground of moral respectability necessary to their own safety and to orderly government"), "Thomas Jefferson on Politics & Government," available at http://etext.virginia.edu/jefferson/quotations/jeff1370.htm (last visited March 9, 2010); see also *McDuffy* v. *Secretary of the Executive Office of Education*, 415 Mass. 545, 619–20, 615 N.E.2d 516 (1993) (stating that " 'under our republican government, it seems clear that the minimum of this education can never be less than such as is sufficient to qualify each citizen for the civil and social duties he will be called to discharge—such an education as teaches the individual the great laws of bodily health; as qualifies for the fulfilment of parental duties; as is indispensable for the civil functions of a witness or a juror; as is necessary for the voter in municipal and in national affairs; and finally, as is requisite for the faithful and conscientious discharge of all those duties which devolve upon the inheritor of a portion of the sovereignty of this great republic' "), quoting H. Mann, The Massachusetts System of Common Schools: Tenth Annual Report of the Massachusetts Board of Education (1849) p. 17.

[44] The defendants have cited a law review article that comprehensively has reviewed the histories of the various states' education clauses, and classifies article eighth, § 1, into a category of clauses that are "hortatory," and drafted for the "purpose of recognizing or confirming actions already taken by legislatures." J. Dinan, "The Meaning of State Constitutional Education Clauses: Evidence from the Constitutional Convention Debates," 70 Alb. L. Rev. 927, 941 (2007); see id., 943–44. Given Bernstein's emphasis on putting education "on par with the bill of rights"; Proceedings of Connecticut Constitutional Convention (1965), Pt. 3, p. 1039; and Woodhouse's comments about making Connecticut's public education system one of the best nationwide; id., p. 1063; we disagree with Professor Dinan's narrower view of the constitutional history.

[45] By way of background, we note briefly that *San Antonio Independent School District* was a "class action on behalf of schoolchildren throughout [Texas] who are members of minority groups or who are poor and reside in school districts having a low property tax base," in which the plaintiffs alleged that the state's educational funding system violated the equal protection clause of the fourteenth amendment to the United States constitution. *San Antonio Independent School District* v. *Rodriguez*, supra, 411 U.S. 5–6. The Supreme Court rejected the plaintiffs' claims that public education was a fundamental right under the federal constitution, noting statements from its past decisions, such as *Brown* v. *Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), about the importance of education to our nation, but nevertheless stating that "the importance of a service performed by the [s]tate does not determine whether it must be regarded as fundamental for purposes of examination under the [e]qual [p]rotection [c]lause." *San Antonio Independent School District* v. *Rodriguez*, supra, 30. The court stated that fundamental rights are those that are "explicitly or implicitly guaranteed" in the constitution; id., 33; and that "[i]t is not the province of this [c]ourt to create substantive constitutional rights in the name of guaranteeing equal protection of the laws." Id., 33; see also id., 35 (rejecting plaintiffs' claim "that education is distinguishable from other services and benefits provided by the [s]tate because it bears a peculiarly close relationship to other rights and liberties accorded protection under the [c]onstitution" specifically, "the effective exercise of [f]irst [a]mendment freedoms and to intelligent utilization of the right to vote"). Accordingly, the court acted out of "sensitiv[ity]" to the state's efforts and applied deferential rational basis review to conclude that Texas' educational finance system, which relied on both state and local resources, was a rational approach to addressing disparities in local resources caused by the development of commercial and industrial centers with population shifts; id., 47–49; and served as "a means of guaranteeing a minimum statewide educational program without sacrificing the vital element of local participation." Id., 48.

[46] The court also stated that "[t]he ultimate wisdom [about educational problems] is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the [s]tates inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions." *San Antonio Independent School District* v. *Rodriguez*, supra, 411 U.S. 43.

[47] Finally, the significance of the cautionary language in *San Antonio Independent School District* is further mitigated by the Supreme Court's emphasis that, unlike the present case, that case did not present any educational adequacy claims. Indeed, the majority opinion noted that, "[e]ven if it were conceded that *some identifiable quantum of education is a constitutionally protected prerequisite* to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short"; (emphasis added) *San Antonio Independent School District* v. *Rodriguez*, supra, 411 U.S. 36–37; and that "no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the *basic minimal skills* necessary for the enjoyment of the rights of speech and of full participation in the political process." (Emphasis added.) Id., 37. Justice Marshall, joined by Justice Douglas, dissented specifically on the ground that, "because some 'adequate' level of benefits is provided to all, discrimination in the provision of services is therefore constitutionally excusable. The [e]qual [p]rotection [c]lause is not addressed to the minimal sufficiency but rather to the unjustifiable inequalities of state action. It mandates nothing less than that 'all persons similarly circumstanced shall be treated alike.' " Id., 89; see also id., 111–12 (Marshall, J., dissenting) (concluding that education is fundamental right).

[48] States whose education clauses are similar to Connecticut's with respect to an absence of qualitative language, but lack published appellate case law addressing any adequacy requirement thereunder, are Alaska, California, Hawaii, Michigan, Mississippi, Missouri, Utah and Vermont. See Alaska Const., art. VII, § 1 ("The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control."); Cal. Const., art. IX, § 5 ("the Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established"); Hawaii Const., art. X, § 1 ("[t]he State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor"); Mich. Const., art. VIII, § 2 ("The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."); Miss. Const., art. VIII, § 201 ("[t]he Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe"); Mo. Const., art. IX, § 1 (a) ("[a] general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law"); Utah Const., art. X, § 1 ("The Legislature shall provide for the establishment and maintenance of the state's education systems including: [a] a public education system, which shall be open to all children of the state; and [b] a higher education system. Both systems shall be free from sectarian control."); Vt. Const., c. II, § 68 ("[l]aws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth"). In California, however, a recent equal protection challenge, with adequacy overtones, to the state's oversight of the public education system, was settled following a one time payout of $1 billion. See C. Lockard, note, "In the Wake of *Williams* v. *State*: The Past, Present and Future of Education Finance Litigation in California," 57 Hastings L.J. 385, 414–15 (2005).

[49] The court stated that the trier of fact would "have to evaluate whether the children in [the] plaintiffs' districts are in fact being provided the opportunity to acquire the basic literacy, calculating and verbal skills necessary to enable them to function as civic participants capable of voting and serving as jurors"; *Campaign I*, supra, 86 N.Y.2d 318; and emphasized that the plaintiffs' "fact-based claims of inadequacies in physical facilities, curricula, numbers of qualified teachers, availability of textbooks, library books, etc." had properly stated a cause of action. Id., 319.

[50] After the proceedings on remand, although the state Senate had agreed

with the recommendation of a commission appointed by New York's governor that a $1.93 billion appropriation was needed to cover the shortfall and ensure a "sound basic education" in New York City's schools, the legislature ultimately only appropriated $300 million toward that end. *Campaign for Fiscal Equity*, *Inc.* v. *State*, 8 N.Y.3d 14, 24–25, 861 N.E.2d 50, 828 N.Y.S.2d 235 (2006) (*Campaign III*). A blue ribbon panel of referees appointed by the trial court then conducted hearings, and the trial court adopted their recommendation to require an appropriation of $9.18 billion. Id., 25–26. On appeal, the Court of Appeals subsequently concluded that the trial court "erred by, in effect, commissioning a de novo review of the compliance question. The role of the courts is not, as [the trial court] assumed, to determine the best way to calculate the cost of a sound basic education in New York City schools, but to determine whether the [s]tate's proposed calculation of that cost is rational. [The trial court] should not have endorsed an examination in which the cost of a sound basic education in New York was calculated anew, when the state budget plan had already reasonably calculated that cost." Id., 27. Rather, the court concluded that "the constitutionally required funding for the New York City [s]chool [d]istrict includes, as demonstrated by this record, additional operating funds in the amount of $1.93 billion . . . ." Id. The court emphasized that its "deference to the [l]egislature's education financing plans is justified not only by prudent and practical hesitation in light of the limited access of the [j]udiciary to the controlling economic and social facts, but also by our abiding respect for the separation of powers upon which our system of government is based . . . ." (Citation omitted; internal quotation marks omitted.) Id., 28; see also id., 28–29 ("Devising a state budget is a prerogative of the [l]egislature and [e]xecutive; the [j]udiciary should not usurp this power. The legislative and executive branches of government are in a far better position than the [j]udiciary to determine funding needs throughout the state and priorities for the allocation of the [s]tate's resources.").

[51] The court previously had concluded that the legislature was required to fund an "adequate education," but initially did not further "define the parameters of the education mandated by the constitution as that task is, in the first instance, for the legislature and the [g]overnor." *Claremont School District* v. *Governor*, 138 N.H. 183, 192, 635 A.2d 1375 (1993) (*Claremont I*). The court did, however, note that, "[g]iven the complexities of our society today, the [s]tate's constitutional duty extends beyond mere reading, writing and arithmetic. It also includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas." Id.

[52] In *Rose*, the Kentucky Supreme Court had concluded that the state's education financing system violated its constitution; Ky. Const., § 183; which provides that, "[t]he General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the [s]tate." (Internal quotation marks omitted.) *Rose* v. *Council for Better Education*, *Inc.*, supra, 790 S.W.2d 205. The court concluded that "[a] child's right to an adequate education is a fundamental one under our [c]onstitution," and articulated the *Rose* factors as guidelines and minimum goals by which the General Assembly could recreate the state's financing system. Id., 212 and n.22.

[53] An appeal is pending before the South Carolina Supreme Court in *Abbeville County School District* after an extensive trial on remand at which the trial court concluded that "the money allotted to the plaintiff districts, the system of teacher licensure, the state of the facilities, and most other inputs were sufficient. However, the trial court concluded the funding of early childhood intervention programs did not satisfy the constitutional requirement to provide a minimally adequate education. The trial court found that the state has a duty to ameliorate the inequality between underprivileged and more privileged children by establishing an educational system that overcomes the effects of poverty for children in prekindergarten and kindergarten programs." B. DuRant, comment, "Education Law: The Political Question Doctrine: A Doctrine for Long-Term Change in Our Public Schools," 59 S.C. L. Rev. 531, 535 (2008).

[54] As previously noted in greater detail in footnote 24 of this opinion, courts in several states have concluded instead that disputes over educational adequacy present nonjusticiable political questions. See *Coalition for Adequacy & Fairness in School Funding*, *Inc.* v. *Chiles*, 680 So. 2d 400, 405 (Fla. 1996); *Committee for Educational Rights* v. *Edgar*, 174 Ill. 2d 1, 29–32, 672 N.E.2d 1178 (1996); *Nebraska Coalition for Educational Equity & Adequacy* v. *Heineman*, 273 Neb. 531, 550–54, 731 N.W.2d 164 (2007); *Okla-*

homa Education Assn. v. *State*, 158 P.3d 1058, 1065–66 (Okla. 2007); *Marrero* v. *Commonwealth*, 559 Pa. 14, 19–20, 739 A.2d 110 (1999); *Pawtucket* v. *Sundlun*, 662 A.2d 40, 58–59 (R.I. 1995).

[55] We have discussed in detail only those cases from states whose education clauses are worded and structured closely to article eighth, § 1, of the constitution of Connecticut. The vast majority of the other states have reached the same conclusion, namely, that students are entitled to a sound basic, or minimally adequate, education in the public schools, on the basis of differently worded education clauses, which make them strongly indicative of a national trend and informative with respect to the articulation of a specific legal standard; see part III of this opinion; although not necessarily as valuable with respect to the baseline question of interpretation, namely, whether article eighth, § 1, embodies minimum qualitative standards at all. See *Opinion of the Justices No. 338*, 624 So. 2d 107, 154–55 (Ala. 1993); *Hull* v. *Albrecht*, 190 Ariz. 520, 524, 950 P.2d 1141 (1997); *Lake View School District No. 25* v. *Huckabee*, 351 Ark. 31, 67, 91 S.W.3d 472 (2002), cert. denied, 538 U.S. 1035, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003); *McDaniel* v. *Thomas*, 248 Ga. 632, 644, 285 S.E.2d 156 (1981); *Idaho Schools for Equal Educational Opportunity* v. *Evans*, 123 Idaho 573, 583–84, 850 P.2d 724 (1993); *Montoy* v. *State*, 275 Kan. 145, 155, 62 P.3d 228 (2003); *Rose* v. *Council for Better Education, Inc.*, supra, 790 S.W.2d 212; *Hornbeck* v. *Somerset County Board of Education*, 295 Md. 597, 632, 458 A.2d 758 (1983); *McDuffy* v. *Secretary of the Executive Office of Education*, 415 Mass. 545, 618–19, 615 N.E.2d 576 (1993); *Skeen* v. *State*, 505 N.W.2d 299, 310–11, 315 (Minn. 1993); *Columbia Falls Elementary School District No. 6* v. *State*, 326 Mont. 304, 311, 109 P.3d 257 (2005); *Abbott* v. *Burke*, 119 N.J. 287, 374, 575 A.2d 359 (1990); *Leandro* v. *State*, 346 N.C. 336, 347, 488 S.E.2d 249 (1997); *DeRolph* v. *State*, 78 Ohio St. 3d 193, 203–205, 677 N.E.2d 733 (1997); *Pendleton School District 16R* v. *State*, 220 Or. App. 56, 67–68, 185 P.3d 471 (2008); *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 176 S.W.3d 783; *Scott* v. *Commonwealth*, 247 Va. 379, 384–85, 443 S.E.2d 138 (1994); *Pauley* v. *Kelly*, 162 W. Va. 672, 705–706, 255 S.E.2d 859 (1979); *Vincent* v. *Voight*, 236 Wis. 2d 588, 622–23, 614 N.W.2d 388 (2000); *Campbell County School District* v. *State*, 907 P.2d 1238, 1258–59 (Wyo. 1995); but see *Bonner* v. *Daniels*, 907 N.E.2d 516, 522 (Ind. 2009) ("we conclude that the [e]ducation [c]lause of the Indiana [c]onstitution does not impose upon government an affirmative duty to achieve any particular standard of resulting educational quality"); *Charlet* v. *Legislature of State*, 713 So. 2d 1199, 1207 (La. App.) ("[t]he Louisiana [c]onstitution does not require that the educational funding provided by the state be 'adequate' or 'sufficient,' or that it achieve some measurable result for each pupil or each school district"), writ denied, 730 So. 2d 934 (1998); *School Administrative District No. 1* v. *Commissioner of Education*, 659 A.2d 854, 857 (Me. 1995) ("There is no provision in the Maine [c]onstitution guaranteeing a certain level of state funding of education or equitable funding. To the contrary, the Maine [c]onstitution requires only that the [s]tate enforce the municipal obligation to support public education.").

[56] We note that the plaintiffs also have raised a procedural claim, namely, that the trial court improperly evaluated the legal sufficiency of their constitutional claim without first giving them the opportunity to develop a factual record, particularly with regard to the economic and sociological considerations of the sixth *Geisler* factor. In response, the defendants contend that the trial court properly applied *Geisler* in the context of a motion to strike, as state constitutional claims present pure questions of law that do not require factual findings by the trial court. We agree with the defendants. We frequently have considered constitutional claims in the context of motions to strike; see, e.g., *Batte-Holmgren* v. *Commissioner of Public Health*, 281 Conn. 277, 294, 914 A.2d 996 (2007); or for summary judgment, even those raising novel issues with public policy considerations; see, e.g., *Kerrigan* v. *Commissioner of Public Health*, supra, 289 Conn. 146–47; or on appeal pursuant to *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989). See, e.g., *State* v. *McKenzie-Adams*, supra, 281 Conn. 498 n.9. Moreover, we have concluded that this court may consider scientific studies in the context of the sixth *Geisler* factor, and that the review of such studies does not present impermissible fact-finding on appeal, even if they were not part of the trial court record. See *State* v. *Ledbetter*, 275 Conn. 534, 567–68, 881 A.2d 290 (2005) (considering studies with respect to accuracy of eyewitness identification procedures), cert. denied, 547 U.S. 1082, 126 S. Ct. 1798, 164 L. Ed. 2d 537 (2006). Thus, assuming all facts alleged in the complaint to be true, the trial court properly addressed the plaintiffs' constitutional claim in the

context of the motion to strike. See also *Moore* v. *Moore*, 173 Conn. 120, 122, 376 A.2d 1085 (1977) (Noting "distinction between 'legislative facts,' those which help determine the content of law and policy, and 'adjudicative facts,' facts concerning the parties and events of a particular case. The former may be judicially noticed without affording the parties an opportunity to be heard, but the latter, at least if central to the case, may not.").

[57] The statistics cited by the defendants in support of the proposition that Connecticut's public schools already educate their students effectively do not support their position that article eighth, § 1, of the constitution of Connecticut does not entitle students to an adequate education. These statistics, and those offered by the plaintiffs to prove the opposite proposition, likely will have their place in determining at trial whether a constitutional violation requiring remedial action actually exists as a question of fact, but do not support the baseline argument that article eighth, § 1, lacks a substantive adequacy component.

[58] The defendants contend that the plaintiffs have shifted gears inappropriately by arguing on appeal the right to a "minimally adequate" education, although their pleadings and memoranda before the trial court focused on the right to a "suitable" education. See, e.g., *Reardon* v. *Windswept Farm, LLC*, 280 Conn. 153, 164–65, 905 A.2d 1156 (2006) ("as a general rule, [a] party cannot present a case to the trial court on one theory and then ask a reversal in the [S]upreme [C]ourt on another" [internal quotation marks omitted]). The plaintiffs ask for a finding of a right under article eighth, § 1, either to "suitable educational opportunities . . . that [serves] the purposes alleged in [paragraph forty-six] of [the] amended complaint," or, alternatively, "some minimum qualitative standard, the definition of which would be established on a full record . . . ." In their brief, the plaintiffs describe the "suitable educational opportunities" pleaded in the complaint as those that will "prepare students to obtain gainful employment, participate fully in our democracy, advance to higher education, and meet state standards." Similarly, in paragraph forty-six of the amended complaint, the plaintiffs describe a "suitable educational opportunity" as consisting of "the following components":

"a. All students must receive an educational experience that prepares them to function as responsible citizens and enables them to fully participate in democratic institutions;

"b. All students must receive an opportunity to complete a meaningful high school education that enables them to advance through institutions of higher learning, or that enables them to compete on equal footing to find productive employment and contribute to the state's economy;

"c. All students must receive a suitable opportunity to meet standards which the state has set based on its estimation of what students must learn in order to achieve the goals of [General Statutes] § 46a-42b."

In our view, the defendants' argument on this point boils down to rather insignificant semantics, as we view the terms "suitable" and "minimally adequate" as synonymous in this context. Cf. Merriam-Webster's Collegiate Dictionary (10th Ed. 2001) (defining "suitable" as "proper," "able, qualified" and "adapted to a use or purpose"). Indeed, the plaintiffs' explication of a "suitable" education in paragraph forty-six of their amended complaint accords with other jurisdictions' explication of what constitutes a "minimally adequate" education under their state constitutions. See, e.g., *Rose* v. *Council for Better Education, Inc.*, supra, 790 S.W.2d 212; *Claremont II*, supra, 142 N.H. 472–74; *Campaign II*, supra, 100 N.Y.2d 908; *Seattle School District* v. *State*, supra, 90 Wash. 2d 517–18.

[59] In his dissent, Justice Zarella reviews the education statutory scheme, General Statutes § 10-1 et seq., under which local school boards are agents of the state that are responsible for implementing the principle of a free public education in accordance with General Statutes § 10-218 et seq.; see, e.g., *West Hartford Education Assn.* v. *DeCourcy*, 162 Conn. 566, 573, 295 A.2d 526 (1972); under the supervision of the state board of education; see General Statutes § 10-4; and agrees with the defendants that our conclusion herein will have the effect of "wrest[ing] control of education from the local boards [of education]," instead placing it "in the hands of the court." Justice Zarella argues that "[c]ourt intervention to establish a minimum standard of education or level of educational achievement . . . will conflict with legislative directives to local boards, whose discretion to determine what constitutes a 'suitable program' and 'an appropriate learning environment' for children in their respective districts will not only be severely curtailed, but very likely eliminated . . . ." He further notes that "there is nothing in the recorded history of the 1965 convention to suggest that the framers

wanted to end the tradition of local control of education by granting the courts authority to determine how the principle of a free public education should be implemented."

We emphasize that our conclusion herein is not intended to supplant local control over education, nor, as the defendants argue, deprive "parents [of] a true say in their children's education." We are cognizant of the risks and separation of powers concerns attendant to intensive judicial involvement in educational policy making; see footnote 22 of this opinion; and emphasize that our role in explaining article eighth, § 1, is to articulate the broad parameters of that constitutional right, and to leave their implementation to the expertise of those who work in the political branches of state and local government, informed by the wishes of their constituents. So long as those authorities prescribe and implement a program of instruction rationally calculated to enforce the constitutional right to a minimally adequate education as set forth herein, then the judiciary should stay its hand. Cf. *Neeley* v. *West Orange-Cove Consolidated Independent School District*, supra, 176 S.W.3d 778 ("At one extreme, no one would dispute that a public education system limited to teaching first-grade reading would be inadequate . . . . At the other, few would insist that merely to be adequate, public education must teach all students multiple languages or nuclear biophysics, or that to be efficient, available resources must be unlimited.").

[60] We note that Justice Schaller writes a separate concurring opinion to "express prudential concerns regarding the next stage of this litigation and to offer suggestions in the form of a *preliminary template* based on what [he] anticipate[s] may arise at trial." (Emphasis in original.) Specifically, Justice Schaller explores several methodologies for assessing adequacy, as well as concerns about how to assess the adequacy of education in light of other social factors such as poverty, and also considers potential remedies should a violation be found after remand. Although Justice Schaller's observations are thoughtful and well considered, we emphasize that, beyond the political question issues discussed in part I of this opinion, we take no position on the applicable assessment mechanisms or potential remedies, which present questions beyond those appropriately considered in the narrow procedural posture of a motion to strike.