SCHALLER, J., concurring. I agree with the plurality opinion's conclusion that the education clause, article eighth, § 1, of the constitution of Connecticut[1] requires public schools in Connecticut to provide students with an education that is adequate to prepare them to be full participants in the democratic processes of our government, and to be productive members of society, that is, to compete in the job market either before or after acquiring higher education for that purpose.[2] I write separately in order to clarify and, where necessary, expand on the constitutional principles that compel that conclusion. I also write separately to express some important prudential concerns regarding the future progress of this action. Those concerns pertain to the standards that the trial court should apply in the trial of this matter in order to determine whether the plaintiffs, the Connecticut Coalition for Justice in Education Funding, Inc., and numerous parents and their children, who are enrolled in public schools in this state, will have succeeded in establishing a violation of the constitutional right as we define it today, and to the authority of the trial court to order appropriate remedies in the event that a violation has occurred.

It has long been established, based on the express language of our constitution, that the education clause guarantees to citizens of this state an affirmative right to a free public education. See, e.g., *Moore* v. *Ganim*, 233 Conn. 557, 595–96, 660 A.2d 742 (1995) (education clause imposes affirmative obligation on state to expend public funds to provide free public elementary and secondary education); *Broadley* v. *Board of Education*, 229 Conn. 1, 6, 639 A.2d 502 (1994) ("Connecticut schoolchildren have a state constitutional right to an education in our free public elementary and secondary schools"); *Horton* v. *Meskill*, 172 Conn. 615, 645, 376 A.2d 359 (1977) (*Horton I*) (recognition of education as fundamental right guaranteed by education clause). I am convinced, as is the plurality, that the education clause guarantees, in addition, that the education we provide must satisfy a minimum qualitative standard, namely, that children in Connecticut have a constitutional right to an adequate education. Although the various terms by which the minimum qualitative standard has been expressed in this and other state litigation—suitable, adequate, or sound basic—are essentially interchangeable, keeping in mind that we are dealing with an implied, not an express, right, I believe that the term "adequate" conveys best the concept of a minimum qualitative standard. I believe it necessary, first, to explain more fully why that minimum standard is constitutionally required and how it is that this court has the basis as well as the authority to define the

standard in terms of practical application—that is, democratic participation and productive citizenship—and, second, to explain why an adequate education, in addition to serving democratic goals, must, as the plurality concludes, "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." I address each of these points in turn. Finally, I will address several prudential concerns that are of paramount importance as this case proceeds to trial. It is crucial to keep in mind at this point that we are at an early stage of what is likely to be a long journey through the court system and, depending on the result, through the other branches of government. We decide the present issues based solely on the allegations of the plaintiffs' complaint. No factual record exists. Neither the judicial branch nor the legislative branch has engaged in fact finding. Our main task is to determine the constitutional issue presented on appeal and, importantly, to guide the trial court and the parties as they undertake the complicated process of litigating this case in the Superior Court. As important as our constitutional decision is, it is no more than a threshold ruling. Because our obligation to instruct the trial court as to how to proceed within proper judicial boundaries is crucial, I will offer a preliminary template for the trial court's role in this litigation.

I

In construing the contours of our state constitution, the plurality employs the analysis established in *State* v. *Geisler*, 222 Conn. 672, 684–85, 610 A.2d 1225 (1992). In view of the fact that our state constitution does not contain an explicit statement of the constitutional right at issue, I agree in principle with this approach. I do not believe, however, that once having undertaken a *Geisler* analysis, it is necessary to determine whether the text is ambiguous. The use of *Geisler* is based on a prior determination that the text does not contain explicit language concerning the right in question. Because my application of *Geisler* differs in some material respects from that of the plurality, I will offer an alternative analysis. In the course of the analysis, I undertake to articulate and explain the most persuasive reasons for interpreting the education clause to require that the guaranteed free public education must be adequate. *Geisler*, as we know, is grounded on the well established principle 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." (Internal quotation marks omitted.) Id., 684. In cases such as the present one, in which the question presented requires us to determine the contours of our state constitution in the absence of a specific declaration of a minimum qualitative standard, we have employed "the following tools of analysis . . .

to the extent applicable: (1) the textual approach . . . (2) holdings and dicta of this court . . . (3) federal precedent . . . (4) sister state decisions or sibling approach . . . (5) the historical approach, including the historical constitutional setting and the debates of the framers . . . and (6) economic/sociological considerations." (Citations omitted.) Id., 685. As we know, the *Geisler* tools were never intended to create a rigid formula nor were they intended to produce, by their mere recitation, a self-evident result as if by some intuitive process. See *State* v. *Hill*, 237 Conn. 81, 112, 675 A.2d 866 (1996) (*Norcott, J.*, dissenting). We have acknowledged this principle, stating that the *Geisler* factors "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." (Citation omitted; emphasis added.) *State* v. *Morales*, 232 Conn. 707, 716 n.10, 657 A.2d 585 (1995). The purpose of *Geisler* was to require our courts to assemble and to assess the relevant information concerning the factors that applied to the particular constitutional interpretation—and then to reach a conclusion by the process of reasoning. This approach explains why the most reasonable interpretation of our education clause is that it implicitly requires that the education provided must be adequate. The *Geisler* factors are meant to serve as a guide to a searching analysis in order to identify and explain the contours of our state constitution, and are a vital component of our constitutional jurisprudence. The quality of the *Geisler* analysis employed has direct bearing on the authoritativeness of the opinion that, in this case, may be called upon to sustain and support this litigation through a demanding, even arduous, process.

I undertake to examine the factors as helpful tools to inform and guide the constitutional analysis. One of the most basic ways to ensure that the factors function as sources of information and guidelines is to allow the question to shape the discussion, rather than routinely going through the list of factors. In other words, the *Geisler* analysis must adapt itself to each particular inquiry. Some factors that are extremely relevant and persuasive in one inquiry may yield little or no persuasive information in another inquiry. The structure, therefore, of any *Geisler* inquiry must derive from the subject matter. I begin, therefore, with the most basic guideline provided by *Geisler*, and apply the factors only to the extent that each applies. In the present case, I agree with the plurality that this basic approach will mean that relatively little weight should be accorded to federal precedent. Accordingly, I will first consider more pertinent factors, and will look to federal precedent briefly, for only the most general guidance. Simi-

larly, although I find that sibling state precedent, two cases, in particular, provides some guidance, the usefulness of decisions from other states is greatly limited by the fact that very few states with constitutional language similar to our own have weighed in on the issue, and the decisions of those courts contain little helpful analysis. By contrast, the two factors that I find to be particularly helpful and persuasive are the text of the education clause and our own case precedent, in which we have interpreted the education clause in two seminal cases. See *Sheff* v. *O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996); *Horton I*, supra, 172 Conn. 615. I see no need in this concurring opinion to discuss the history of the education clause or the economic and sociological factors. The plurality opinion thoroughly discusses those considerations and explains fully why each factor supports its conclusion. I agree with its analysis and conclusion that those factors favor interpreting the education clause to include a qualitative element.

In any case, our starting point, as always, should be with the applicable constitutional text. The education clause provides: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation." Conn. Const., art. VIII, § 1. Nothing in the express language of the education clause requires that our public schools are required to deliver an education that meets any specific qualitative standard. I rely on two fundamental concepts, however, to conclude that the mere absence of express qualitative language does not preclude us from interpreting the constitutional text to require that public schools provide a minimally adequate level of education. The first is the use of common sense and logic in understanding the ordinary meaning of the constitutional language. The second is the recognition that a *Geisler* analysis would be unnecessary in the presence of an *express* guarantee. The test, after all, was designed to provide us with guidelines for inferring the meaning of a text *in the absence of an explicit statement* of the constitutional right or duty at issue.

As to the first concept, the education clause requires that there shall always be free public elementary and secondary schools in the state. It would defy common sense to conclude that the General Assembly could possibly satisfy its obligation by providing for *bad—or unsuitable*, *inadequate*, *or unsound*—public schools. That is precisely what we would have to assume if we were to suppose that the General Assembly could satisfy its obligation to provide such schools without any qualitative requirements. That interpretation, I submit, is unthinkable. As Justice Loiselle famously observed in his dissent in *Horton I*, "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." *Horton I*,

supra, 172 Conn. 659. A "school" is a "place for instruction in any branch or branches of knowledge; an establishment for *imparting education*." (Emphasis added.) Webster's New International Dictionary (1916). "When [used] without qualification, school is now familiarly used of an institution for teaching children." Id. A "school," therefore, is defined by its function—to educate children. In other words, the goal of educating children is presupposed in the very idea of a "school." The concept of education cannot be understood absent the incorporation of qualitative principles. To "educate" is "[t]o develop and cultivate mentally or morally; to expand, strengthen and discipline, as the mind . . . to form and regulate the principles and character of; to prepare and fit for any calling or business by systematic instruction; to cultivate; train; instruct." Id. Education, by its very nature, is a process designed to achieve the goal of improving students through cultivation and development of their minds, and training students by systematic instruction.

Second, the absence of explicit language cannot be an absolute determinant, because, otherwise, a *Geisler* analysis would never be appropriate. That is, only when a constitutional right or guarantee at issue is *not* explicit or plain on the face of the text does a *Geisler* analysis become necessary. This does not mean, however, that we may lightly read guarantees into our state constitution. We must, instead, be mindful of the guidance offered in *Moore* v. *Ganim*, supra, 233 Conn. 581, in which, when confronted with a similar claim of an implicit constitutional guarantee, we stated: "In construing the contours of our state constitution, we must exercise our authority with great restraint in pursuit of reaching reasoned and principled results. . . . We must be convinced, therefore, on the basis of a complete review of the evidence, that the recognition of a constitutional right or duty is warranted." (Citation omitted; internal quotation marks omitted.)

I agree with the plurality that it is significant, albeit not dispositive, that article eighth, § 2, of the state constitution, in contrast to § 1 of article eighth, the education clause, does contain express qualitative language, providing: "The state shall 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.) Conn. Const., art. VIII, § 2. The education clause, of course, does not contain similar qualitative language. This difference, however, is not inconsistent with the plurality's interpretation of the education clause to guarantee an adequate education to primary and secondary public school students. As I

have discussed in this concurring opinion, the idea of a minimum qualitative standard is implicit in the definition of "school." "Excellence," however, goes well beyond any minimum qualitative standard. Although, of course, no one would quarrel with the proposition that, in an ideal world, all public schools would be excellent, we cannot say that the idea of "excellence" is necessarily implicit in the idea of a "school." Our reading of the education clause to guarantee "adequacy" as opposed to the "excellence" guaranteed in article eighth, § 2, reflects the difference between a minimally adequate education that is consistent with the definition of a "school," and an excellent one that is expressly guaranteed by the state constitution.

I believe that the most persuasive evidence in support of identifying a qualitative element in the education clause derives from the holdings and dicta of this court, to which I now turn. I agree generally with the plurality's analysis of our previous holdings and dicta, and the bearing that those precedents have on the issue before the court. I offer a few highlights. As the plurality opinion notes, even prior to the addition of the education clause to our constitution following the 1965 constitutional convention, our case law has long recognized the state's commitment to public education. See, e.g., *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"). Two of our landmark decisions in the area of education provide remarkably persuasive support for identifying an implicit qualitative standard in our education clause.[3] See *Sheff* v. *O'Neill*, supra, 238 Conn. 1; *Horton I*, supra, 172 Conn. 615.

Education finance litigation in Connecticut has followed the national trend of progressing in two "waves," beginning with what are known as "equity" claims, equal protection actions based on claimed disparities in education financing. The present action represents the second wave of cases, known as "adequacy" claims, which are premised not on any alleged unconstitutional disparities but, rather, on the assertion that the state constitution guarantees some minimum standard of education that the state is not delivering to the plaintiffs.[4] *Horton I* was a classic equity case, presenting the issue of whether financial disparities between property rich and property poor towns rendered the system of public education financing at that time, which depended heavily on local property taxes, invalid under the equal protection clause of the state constitution. *Horton I*, supra, 172 Conn. 618, 628. The case did not rely on a claim that students were guaranteed a minimally ade-

quate level of education. The court, in fact, took great pains to clarify that "minimal sufficiency" was not at issue in the action. Id., 645–46 ("[t]he [e]qual [p]rotection [c]lause is not addressed to the minimal sufficiency but rather to the unjustifiable inequalities of state action"). Although the question of whether the state constitution guaranteed a minimally adequate education was not before the court, it is telling that, in concluding that the plaintiffs had established a violation of their right to equal protection, the court relied heavily on the relation between education financing and education quality. Id., 648 ("[t]he present-day problem arises from the circumstance that over the years there has arisen a great disparity in the ability of local communities to finance local education, which has given rise to a consequent significant disparity in the quality of education available to the youth of the state"); id., 635 ("because many of the elements of a quality education require higher per pupil operating expenditures, there is a direct relationship between per pupil school expenditures and the breadth and quality of educational programs"). To be sure, the court concluded in *Horton I* only that the plaintiffs were entitled to receive an education that was substantially equal in quality to the education that was provided to other children, not that they were guaranteed an education meeting a minimum qualitative standard. Id., 648–49. It is not possible to infer generally from a requirement of equality a requirement of adequacy. On the other hand, the idea that it is the *quality of education* to which Connecticut children have an equal right, rather than merely equality in education financing, supports the general proposition that the interest that children have in the fundamental right to education guaranteed by our education clause is inextricably linked to the quality of the education provided. Put another way, our conclusion in *Horton I* that the plaintiffs had a right to substantially equal educational funding is based on the right to an education of substantially equal *quality*. The notion that children have a right to an education of substantially equal quality presupposes that "quality" is an essential component of the education clause. We cannot fairly separate the right to education from the right to a *quality* education. This is the very idea that I discussed previously in this concurrence in examining the text of the education clause. "School" and "education" are concepts that embody the idea of some minimal level of quality. The majority opinion in *Horton I* aptly illustrates this connection.[5]

Another landmark case, *Sheff* v. *O'Neill*, supra, 238 Conn. 1, provides further guidance. I first note that *Sheff*, like *Horton I*, does not address directly the question of whether the state constitution guarantees a minimally adequate education. In fact, the *Sheff* court expressly declined to resolve the merits of that issue, even though the plaintiffs had alleged that the defen-

dants had failed to provide them with a minimally adequate education.[6] Id., 36–37. Just as in *Horton I*, however, in which an equal protection claim based on financial disparities ultimately was grounded on an interest in quality education, *Sheff*, a case based on racial and ethnic segregation in public schools, ultimately was grounded in the interest that the plaintiffs had in obtaining a quality education. In the course of explaining why article eighth, § 1, and article first, § 20,[7] of the state constitution required the legislature to remedy the racial segregation in Hartford's public schools, the court looked to the general purpose and importance of education in our society, noting that "[s]chools bear central responsibility for inculcating [the] fundamental values necessary to the maintenance of a democratic political system . . . . When children attend racially and ethnically isolated schools, these shared values are jeopardized: If children of different races and economic and social groups have no opportunity to know each other and to live together in school, they cannot be expected to gain the understanding and mutual respect necessary for the cohesion of our society." (Citation omitted; internal quotation marks omitted.) Id., 34. The court explained the importance of providing children access to an unsegregated education, stating: "As the United States Supreme Court has eloquently observed, 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." (Citation omitted; internal quotation marks omitted.) Id., 43–44. Although we did not directly conclude that the state constitution guarantees a minimally adequate education, our equal protection analysis was guided by the underlying assumption that the education clause does not merely guarantee to each child in the state "an education" without qualification. Implicit in our analysis is the idea

that the fundamental right to education guaranteed by the education clause is one that includes a qualitative component that is inseparable from the fundamental right. In other words, the right vindicated by *Sheff* logically and implicitly, if not expressly, was not merely a right of equal access to *any* education, but equal access to a "sound" or "adequate" education.

Justice Berdon's concurring opinion in *Sheff* goes even further, reasoning that, from the elevation of education to a fundamental right through the passage of the education clause, "it logically follows that the education guaranteed in the state constitution must be, at the very least, within the context of its *contemporary meaning*, an adequate education." (Emphasis added.) *Sheff* v. *O'Neill*, supra, 238 Conn. 50. This understanding of the fundamental right to education was, according to Justice Berdon, simply a matter of interpreting the education clause in a "reasonable manner." Id. I agree with Justice Berdon that the contemporary meaning of the language of the education clause must inform our interpretation of the scope of the fundamental right to education and that interpreting the education clause in a reasonable manner requires the conclusion that the state constitution guarantees Connecticut children the right to an adequate education.

The first four *Geisler* factors—that is, the text and our case precedent, which I have discussed, plus the historical background of article eighth and the economic and sociological considerations, both of which are effectively set forth by the plurality opinion—taken together, appear to me to be highly persuasive on the issue. They convince me that the only reasonable interpretation of our education clause is that it implicitly includes a qualitative standard. The remaining two factors, sibling state decisions and federal precedent, although of significantly less relevance and persuasive value, provide further support for that conclusion. I turn first to the decisions of our sibling states.

There is some persuasive force in the fact that most state courts that have addressed the substantive issue have concluded that their state constitution guarantees a minimally adequate level of education.[8] Because the education clauses in most state constitutions differ materially from our own, an analysis of sibling state decisions must focus on those states that have clauses most closely resembling our own, that is, clauses that do not contain qualitative language in setting forth the right to education.[9] There are few of these, and even fewer that have been interpreted by the state courts resolving whether the clause implicitly includes a qualitative element, specifically, New York, North Carolina and South Carolina. Of those three states, I briefly discuss the decisions of New York and North Carolina because they are the most pertinent.[10] The education clause in New York's state constitution provides simply:

"The 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 *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*), the court considered the plaintiffs' claim that the state system of public education financing violated the state constitution because it denied them a sound basic education, and noted that it already had, in dicta, construed the meaning of education to connote a "sound basic education." Id., 316, citing *Board of Education* v. *Nyquist*, 57 N.Y.2d 27, 48, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982), appeal dismissed, 459 U.S. 1138, 103 S. Ct. 775, 74 L. Ed. 2d 986 (1983). In *Nyquist*, the court relied on two sources to interpret the education clause, the text itself and the historical background of the clause. As to the historical background of the education clause, which was adopted in 1894, the court stated that "[w]hat appears to have been contemplated when the education article was adopted at the 1894 Constitutional Convention was a [s]tate-wide system assuring minimal acceptable facilities and services . . . ." *Board of Education* v. *Nyquist*, supra, 47. The court's consideration of the text is somewhat more oblique, yet still helpful. The opinion simply refers to "[i]nterpreting the term *education*, as we do, to connote a sound basic education . . . ." (Emphasis added.) Id., 48. Without directly saying so, the court was relying on the definition of the term *education* in concluding that the word must include some qualitative element. This is precisely what I have done in reading the term "schools" in our education clause. The two terms cannot be understood without finding the concept of a minimum qualitative standard in the definition.

The Supreme Court of North Carolina, in *Leandro* v. *State*, 346 N.C. 336, 345, 488 S.E.2d 249 (1997), interpreted the state constitution's two education clauses, which provide: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right"; N.C. Const., art. I, § 15; and "[t]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . ." N.C. Const., art. IX, § 2 (1). The court concluded that the constitutional guarantee of the right to public education contains a qualitative element, and based its analysis primarily on the court's prior precedent and the education statutes. *Leandro* v. *State*, supra, 346–47. The court also based its conclusion, however, on the general principle that "[a]n education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is *devoid of substance* . . . ." (Emphasis added.) Id., 345. This is another way of stating the principle with which I began, in my textual analysis: the guarantee of quality is in the meaning of "school" and

"education" themselves. Without some guarantee of a qualitative standard, the fundamental right to education guaranteed by our state constitution would be meaningless.

As I noted previously in this concurring opinion, I consider the factor of federal precedent last because it has the least relevance in this particular context, in which the language of our state constitution differs from the federal constitutional language. I observe merely that, although education is not a fundamental right under the federal constitution, federal precedent repeatedly has recognized the importance of education to our democratic society. Indeed, even in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 29, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973), the United States Supreme Court recognized the unique significance of the right to education in our society, citing to *Brown* v. *Board of Education*, 347 U.S. 483, 493, 74 S. Ct. 686, 98 L. Ed. 873 (1954), for the proposition that "education is perhaps the most important function of state and local governments." (Internal quotation marks omitted.) Moreover, at the same time that *San Antonio Independent School District* established that education is not a fundamental right under the federal constitution, the court left further resolution of the issue to the states, cautioning that its decision was "not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity." *San Antonio Independent School District* v. *Rodriguez*, supra, 58.

Finally, the General Assembly already has acknowledged statutorily the very same standard that we today hold is mandated constitutionally. Specifically, in General Statutes § 10-4a (1), the legislature identifies the educational interests of the state to include "the concern of the state that . . . each child shall have for the period prescribed in the general statutes equal opportunity to receive a *suitable* program of educational experiences . . . ." (Emphasis added.) Accordingly, the duty that we now hold to be *constitutionally* required is one that the legislature already has recognized and undertaken of its own volition.

These tools of constitutional analysis lead me to the firm conclusion that the fundamental right to free education guaranteed by the education clause, article eighth, § 1, of the state constitution, would be stripped of its meaning and content if we were to interpret that guarantee as not embodying some minimum qualitative standard. A guarantee of education cannot stand without assurance that the guaranteed "schools," and the education provided therein will meet a minimum quali-

tative standard.

II

Having concluded that our education clause implicitly includes a qualitative element, I next turn to the question of how we should define the contours of the right sufficiently to guide the trial court in determining the issues in the present action without intruding on the authority of the other branches of government, that is, within the scope of the justiciable issue in this case. The plurality opinion settles on the formula proposed by the plaintiffs, concluding that the education clause "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." I suggest that it is important to explain more thoroughly the reasons for so defining the constitutional right. Otherwise, we run the risk of sacrificing the primary benefits of a *Geisler* analysis—enabling a principled development of our constitutional law and, by so doing, establishing and supporting the constitutional right with the authority of the court. Our sound reasoning comprises a crucial step in making a constitutional pronouncement with such far-reaching consequences. Regardless of the outcome of this litigation, this constitutional determination will continue to guide the legislative branch in carrying out its constitutional duty in future years. Well reasoned explanation also may serve to establish common ground for the parties to reach consensus, now or in the future, on various aspects of the issues. Without sound reasoning to support and explain the decision, the court relinquishes its principal claim to authority. See *State* v. *Morales*, supra, 232 Conn. 716 n.10.

We must, accordingly, do more than merely conclude that our state constitution guarantees the right to an adequate education. That conclusion alone does not provide sufficient guidance to enable the trial court to determine whether the constitutional guarantee is being fulfilled or violated. It is essential to explain *how* we arrive at the stated goals that fully define the contours of the educational guarantee. Linguistic considerations alone support the conclusion that our task is not completed by stating that the education clause guarantees the right to an adequate education. That determination merely gives rise to the inevitable question as to adequacy "for what purposes?" Two general principles guide my inquiry as to the contours of the right. First, the question "for what purposes" suggests that the direction of the inquiry should be goal directed; that is, the inquiry seeks to determine the goals to be served by the adequate education. Second, in answering the question, it is necessary to examine why education has been elevated to the status of a fundamental right pro-

tected by our state constitution. In other words, only by understanding what we as a society so value in education, may we discern "for what purposes" such an education should be adequate. Accordingly, I examine in turn each of the purposes proposed by the plurality—in short, to prepare students to participate in democratic institutions and to become productive members of our society—to determine whether there is a sufficient basis in our law to conclude that each is an essential component of an adequate education.

"I know no safe depositary of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power." Letter from Thomas Jefferson to William C. Jarvis (1820), 12 The Works of Thomas Jefferson (P. Ford ed., 1905), p. 163. Education is not simply a duty owed to the individual student. Rather, the duty to provide an education to the young in our society also is viewed in very utilitarian terms. That is, we educate our young not only for their personal benefit, but also to benefit our democracy. See *Bissell* v. *Davison*, supra, 65 Conn. 191 (duty to provide education "has always been assumed by the [s]tate; not only because the education of youth is a matter of great public utility, but also and chiefly because it is one of great public necessity for the protection and welfare of the [s]tate itself"). Certainly, an education that adequately prepares our children to participate effectively in our democracy is of critical importance to our society. Adequate education must prepare students fully for meaningful participation in the democratic process. I can envision that effective participation will involve, not only nominal performance of typical civic actions, such as voting and jury service, but well-informed and thoughtful contributions to the wide variety of activity and decision making that enables our democratic society to flourish. There is ample support for the conclusion that an adequate education should prepare students to become engaged in the democratic process. Evidence of this connection dates back to the Code of Laws for the Colony of Connecticut, commonly known as the Ludlow Code, which required that children receive "so much [l]earning as may inable them perfectly to read the [English] toungue, and *knowledge of the Capitall Lawes*." (Emphasis added.) Code of Laws, Children (1650), reprinted in 1 Col. Rec. 509, 521 (J. Hammond Trumbull ed., 1850). Simon J. Bernstein, a delegate to the 1965 constitutional convention and proponent of amending the constitution to add the education clause, expressly relied on the Ludlow Code in describing the purpose of the proposed constitutional amendment during the 1965 constitutional convention. Additionally, he specifically acknowledged the impor-

tance of education in fostering and maintaining our democratic government: "It goes without saying that if we are going to have representative [g]overnment elected by a public . . . the education of the public is the first and best way of promoting the best representatives to be elected . . . ." Proceedings of the Connecticut Constitutional Convention (1965), Pt. 1, p. 312, remarks of Delegate Bernstein.

More recent legislation also supports the conclusion that a principal purpose of education is to prepare children to participate effectively in our democracy. For example, General Statutes § 10-18 (a) (1) requires schools to provide courses in history, government and citizenship: "All . . . schools . . . shall provide a program of United States history, including instruction in United States government at the local, state and national levels, and in the duties, responsibilities, and rights of United States citizenship. No student shall be graduated from any such school who has not been found to be familiar with said subjects." In 2007 and 2008, that statute was amended by the enactment of No. 07-138 of the 2007 Public Acts and No. 08-153 of the 2008 Public Acts, to add a new subdivision requiring that "elementary schools shall include in their third, fourth or fifth grade curriculum a program on democracy in which students engage in a participatory manner in learning about all branches of government." General Statutes § 10-18 (a) (2). In 2000, the legislature enacted No. 00-156 of the 2000 Public Acts, amending General Statutes § 10-221a to add civics as a requirement for high school graduation.[11] The Associate Commissioner of the State Department of Education at the time explained the impetus behind this amendment: "The civics requirement grows out of a concern that young citizens are disengaged from the democratic process. . . . Relevance to life is imperative for students to reconnect with democratic behaviors and institutions as citizens of the United States. It is this connection which must be explicitly made for students as a part of civics education." Connecticut Department of Education Letter to School Superintendents, High School Principals and Social Studies Department Heads, September 27, 2000, p. 1, available at http://www.sde.ct.gov/sde/lib/sde/Word Docs/Curriculum/soccivic.doc (last visited March 9, 2010). All of these recent changes to the curriculum and graduation requirements reflect the General Assembly's understanding of the critical role that education plays in preparing our children to become citizens in our democracy.

This court also has acknowledged, repeatedly, that a principal purpose of education is to prepare students to participate as citizens in our democracy. In his concurring opinion in *Horton I*, Justice Bogdanski eloquently described the function of education in our society: "[T]he 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 [men and women] from all other forms of life." *Horton I*, supra, 172 Conn. 654–55. Indeed, Justice Loiselle, in his dissenting opinion, stated: "We 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." Id., 661. These two statements also illustrate the principle that education simultaneously is intended to benefit individual members of society, by enabling them to exercise their rights as citizens, and society as a whole, by providing individuals with the means to exercise those rights intelligently.

We explained further in *Sheff*, in which the function of education in preparing students to participate as citizens in our society was central to our holding, that "[i]t is crucial for a democratic society to provide all of its schoolchildren with fair access to an unsegregated education. As the United States Supreme Court has eloquently observed, *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.' *Brown* v. *Board of Education*, supra, 347 U.S. 493. '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.' " (Emphasis added.) *Sheff* v. *O'Neill*, supra, 238 Conn. 43–44. One would have to look hard for a more compelling statement of the importance of a "sound" or "adequate" education to the preparation for good citizenship.

Marian Wright Edelman, the president and founder of the Children's Defense Fund, and a leading scholar in the area of educational theory, has stated that "educa-

tion is for improving the lives of others and for leaving your community and world better than you found it"[12] and "education is a precondition to survival in America today."[13] Surely, enabling our children to become productive members of society, either directly following secondary school, or after completing a course of higher education, serves the general utilitarian purpose of benefiting the state as a whole. See *Bissell* v. *Davison*, supra, 65 Conn. 190–91. A statement made by President Barack Obama during an address to the Hispanic Chamber of Commerce on March 10, 2009, illustrates dramatically the importance of this purpose of education: "The source of America's prosperity has never been merely how ably we accumulate wealth, but how well we educate our people. This has never been more true than it is today. In a [twenty-first] century world where jobs can be shipped wherever there's an Internet connection, where a child born in Dallas is now competing with a child in New Delhi, where your best job qualification is not what you do, but what you know—education is no longer just a pathway to opportunity and success, it's a prerequisite for success." Our law has long supported the conclusion that one of the primary purposes of education is to prepare children in this state to compete in the economic marketplace. The Ludlow Code understood this to be an essential goal of education, requiring that schoolmasters "bring [up] theire [c]hildren and [a]pprentices in some honest lawfull [calling] labour or [e]mployment . . . proffitable for themselves and the Common wealth . . . ." Code of Laws, Children (1650), reprinted in 1 Col. Rec., supra, 521.

This court also has acknowledged the vital role that education plays in enabling citizens of this state to compete in the economic marketplace: "[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." (Internal quotation marks omitted.) *Sheff* v. *O'Neil*, supra, 238 Conn. 44. Indeed, the words of the *Sheff* majority, describing the racial and ethnic isolation claims asserted by the plaintiffs in that case, characterize the claims of the plaintiffs in the present case precisely: "Although the constitutional basis for the plaintiffs' claims is the deprivation that they themselves are suffering, 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." (Internal quotation marks omitted.) Id. The purpose of preparing children to become productive members of society, then, like the purpose of preparing them to be good citizens in our democratic society, benefits both the individual and the state as a whole. Not only do democratically engaged and productive citizens, adequately prepared by their public educations, contribute to the well-being and progress of our society, but education also provides the means by which individuals improve their own social and economic circumstances, thereby enabling them and their successors to benefit from that education.

I conclude that these authorities sufficiently support the plaintiffs' contention that the education guaranteed by the education clause, article eighth, § 1, of the state constitution, must be adequate to prepare students to participate and engage in the processes of our democracy and to become productive members of our society.

III

I write also 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 I anticipate may arise at trial. During the next stage, which is likely to consist of pleading, discovery, trial and decision making in the Superior Court, I can envision several issues, among many, that are likely to prove especially challenging. These issues will have to be addressed by the trial court and the parties as they litigate, in a sense as *proxies* for the people of the state, who surely have a compelling interest in the outcome, the troubling allegations of inadequacy, as well as inequity, for which the plaintiffs seek relief. The first issue is the challenge that the court will face in determining the appropriate method of measuring educational adequacy for the public school students of the state. The second is the challenge that the court will face in determining whether the plaintiffs ultimately have proved that some or all of the students are being deprived of an adequate education. Finally, in the event that the trial court determines that the state has failed to meet its constitutional duty of providing an adequate education, the trial court, and ultimately this court, in all likelihood, will face the challenge of determining the extent to which the court can design a specific remedy without intruding on the constitutional authority of the legislative branch, or whether the crafting of the remedy must be left in the first instance to the legislature. I discuss each of these issues in turn.

The New York Court of Appeals, in a decision that was rendered at a stage of litigation similar to the posture of the present case, succinctly articulated the task of the trial court in determining the appropriate measure of adequacy and whether it is being met. The court

first determined, with somewhat more specificity than we do today, that the education article of the New York constitution "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." (Citation omitted.) *Campaign I*, supra, 86 N.Y.2d 316. The court explained both the need to set forth a template to guide the trial court and the necessary limits of such a template, because of the early stage of the litigation process. "We do not attempt to definitively specify what the constitutional concept and mandate of a sound basic education entails. Given the procedural posture of this case, an exhaustive discussion and consideration of the meaning of a 'sound basic education' is premature. Only after discovery and the development of a factual record can this issue be fully evaluated and resolved. Rather, we articulate a template reflecting our judgment of what the trier of fact must consider in determining whether [the] defendants have met their constitutional obligation." Id., 317–18. Given the preliminary contours that the court drew of a "sound basic education," it described the task of the trial court, which would "have to evaluate whether the children . . . are in fact being provided the opportunity to acquire the basic literacy, calculating and verbal skills necessary to enable them" to achieve the goals of education; id., 318; which we have identified in this opinion as participating fully in the democratic process and becoming productive members of society. As I have noted, we have identified the goals of education in less specific terms than the New York Court of Appeals did in *Campaign I*. Accordingly, the trial court in the present case will have to evaluate whether the schools in the plaintiffs' towns or districts are providing children with the skills necessary to enable the children to participate effectively in our democracy and to become productive members of our society. In other words, the court will have to determine whether the education provided is adequate to meet the goals that we have defined today.[14] As it carries out that task, the trial court will have to *flesh out* the goals with appropriate specificity, based on the factual record.

In order to make that evaluation, the court first will have to determine the appropriate method for measuring adequacy. Measuring educational adequacy traditionally is accomplished by identifying input and/or output standards that serve as a measure of adequacy, then calculating the actual cost of attaining those inputs and/or outputs, a process referred to as "costing out." S. Smith, "Education Adequacy Litigation: History, Trends, and Research," 27 U. Ark. Little Rock L. Rev. 107, 114 (2004). "There are four methodologies to identify adequate education funding: (1) the professional

judgment model; (2) the evidence based or 'best practices' model; (3) the successful schools model; and (4) the advanced statistical model." Id., 115. "[T]he professional judgment and evidence based/best practices models can be viewed as input models in which expert educators and researchers identify inputs that are required to produce an adequate education system. These inputs are then costed out to arrive at an adequate funding level. The successful schools and advanced statistical models can be viewed as outcome models in which an analysis compares schools and/or school districts with varying demographics and student performance to their corresponding funding levels in order to identify adequate funding levels." Id. Basically these methods combine to allow the trier of fact to consider the state's general and per pupil expenditures along with the level of performance of children of the state on standardized tests, matriculation rates, and other measures of performance. An alternative means of measuring adequacy is to rely on statistical modeling studies. These statistical methods are used "either to estimate (a) the quantities and qualities of educational resources associated with higher or improved educational outcomes or (b) the costs associated with achieving a specific set of outcomes, in different school districts, serving different student populations. The first of these methods is known as the education production function and the second of these methods is known as the education cost function." R. Wood & B. Baker, " An Examination and Analysis of the Equity and Adequacy Concepts of Constitutional Challenges to State Education Finance Distribution Formulas," 27 U. Ark. Little Rock L. Rev. 125, 147 (2004). The advantage of these two methods is that they both "require policymakers to establish explicit, measurable outcome goals." Id. Moreover, both of these statistical methods may prove helpful in estimating the effect of the different particular needs of the various districts on values such as resources and costs. Id.

The North Carolina Supreme Court endorsed this general approach in *Leandro* v. *State*, supra, 346 N.C. 355. That court directed that the trial court on remand could consider "[e]ducational goals and standards adopted by the legislature," "the level of performance of the children of the state [of North Carolina] and its various districts on standard achievement tests," and the "level of the state's general educational expenditures and per-pupil expenditures." Id. In *Campaign I*, the New York Court of Appeals listed the following relevant inputs, including: "minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn . . . minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks . . . [and] 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." *Campaign I*, supra, 86 N.Y.2d 317. The court in *Campaign I* also mentioned performance on standardized tests as a relevant output. Id.

In my view, it is not sufficient for the state merely to offer an opportunity for education without regard to the circumstances of the children to whom it is offered. In other words, because an opportunity exists only when it takes into account the conditions—social, economic, and other—that realistically limit the opportunity, the educational offering must be tailored to meet the adequacy standard in the context of the social and economic conditions of the children to whom it is offered. Although no one could reasonably argue that the state is constitutionally bound to be a *guarantor* of educational, civic, or economic success, the state is bound to provide an education that is adequate given the circumstances of the children to whom it must be provided. Depending on the circumstances, an offering that would suffice in one district of the state may not suffice in another.

By way of illustration, some commentators argue that the most serious social disadvantage preventing a child from being able to learn is, of course, poverty. Relying on data obtained from the United States Census Bureau, the General Assembly's Commission on Children reported in 2009 that one in ten Connecticut children under the age of eighteen in 2007 lived in a family with income below the federal poverty line—nearly 86,000 children. State of Connecticut General Assembly, Commission on Children, Fact Sheet on Child Poverty in Connecticut, 2009, available at http://www.cga.ct.gov/coc/PDFs/poverty/child poverty report 0109.pdf (last visited March 9, 2010). Not surprisingly, those children were not evenly distributed throughout the state's 169 towns. The 2000 census revealed that, in thirty-eight towns, the child poverty rate was less than 2 percent, yet in seven towns that rate was 23 percent, led by Hartford, which had an extremely high child poverty rate of 47 percent. Id. Waterbury, Bridgeport and New Haven also had the high child poverty rates of 31.4 percent, 28.4 percent, and 28.7 percent, respectively. Id. The impact that poverty has on a child's ability to learn is difficult to quantify, but it is unquestionably considerable. Poverty brings with it a host of other impediments to learning: limited or no access to health and dental care, poor or no prenatal care for the child's mother, failure to identify conditions such as learning disabilities and autism that would require special education services, poor diet and inadequate housing in unsafe neighborhoods. See M. Rebell, "Poverty, 'Meaningful' Educational Opportunity, and the Necessary Role of the Courts," 85 N.C. L. Rev. 1467, 1472–73 (2007).[15]

As challenging as these issues are, the trial court and, likely, this court, may have to face the issue of remedies, depending on the outcome of the adequacy phase of the trial. In that event, it may well be that the appropriate option available to the courts, to avoid a conflict concerning the separation of powers, would be the route taken in *Sheff* and *Horton I*, that is, an order that would assign, at least initially, the responsibility of providing a specific remedy to the legislature and, as appropriate, to the parties to the litigation. *Sheff* v. *O'Neill*, supra, 238 Conn. 4 ("the constitutional imperative of separation of powers persuades us to afford the legislature, with the assistance of the executive branch, the opportunity, in the first instance, to fashion the remedy that will most appropriately respond to the constitutional violations that we have identified"); see also *Horton I*, supra, 172 Conn. 650–51.[16] The North Carolina Supreme Court explained the prudential concerns that support this approach. "[T]he legislative process provides a better forum than the courts for discussing and determining what educational programs and resources are most likely to ensure that each child of the state receives a sound basic education. The members of the General Assembly are popularly elected to represent the public for the purpose of making just such decisions. The legislature, unlike the courts, is not limited to addressing only cases and controversies brought before it by litigants. The legislature can properly conduct public hearings and committee meetings at which it can hear and consider the views of the general public as well as educational experts and permit the full expression of all points of view as to what curricula will best ensure that every child of the state has the opportunity to receive a sound basic education." *Leandro* v. *State*, supra, 346 N.C. 354–55. Moreover, "[e]ducational goals and standards adopted by the legislature are factors which may be considered on remand to the trial court for its determination as to whether any of the state's children are being denied their right to a sound basic education." Id., 355.

The standard of educational adequacy that is required by our constitution must be met with respect to all children in our state, including those who face serious obstacles to benefiting from it as well as those who are readily equipped to benefit. The public educational system does not operate in abstraction but, rather, in the full social and economic context of our diverse society. The children who have the greatest need for an adequate education are those who face the greatest obstacles to obtaining that education. For many of our children, public education is, perhaps ironically, the principal means by which they can surmount the obstacles that must be overcome, in the first place, in order to benefit from the education. While the state is not bound under the constitution to be a guarantor of educational, social or economic success in the long run, the

state is bound to provide a public education that is well suited to enable all children to achieve that success.

[1] Article eighth, § 1, of the Connecticut constitution 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] Because we are required only to interpret the education clause of the state constitution, I agree with the plurality that the case is justiciable. Although I agree with Justice Zarella's dissent that the implementation of the fundamental right to education has been committed by the education clause to the General Assembly, defining that right with sufficient precision to guide the trial of this case is the prerogative—and the duty—of the judicial branch. The challenge going forward, however, may be deciding where judicial interpretation stops and legislative implementation begins. In part III of this concurring opinion, I express various prudential concerns regarding the difficult issues that may arise as the case progresses. In the course of that discussion, I suggest a preliminary template reflecting my judgment of what the trier of fact must consider in determining whether the constitutional obligation of providing an adequate education has been satisfied. I envision that the trial court will flesh out that template based on the factual record presented at trial.

[3] I disagree with the plurality that either *Savage* v. *Aronson*, 214 Conn. 256, 286, 571 A.2d 696 (1990), or *Broadley* v. *Board of Education*, supra, 229 Conn. 6, merit consideration as bearing on the issue, as neither case sheds light on the question of whether the education clause implicitly includes a qualitative element. The mere fact that those cases consider claims based on the fundamental right to education recognized in *Horton I* does not make them worthy of discussion. A *Geisler* analysis must consider only sources that actually are relevant.

[4] Scholars actually refer to adequacy litigation as the "third wave." See, e.g., W. Koski, "Achieving 'Adequacy' in the Classroom," 27 B.C. Third World L.J. 13, 19–21 (2007); D. Verstegen, "Towards a Theory of Adequacy: The Continuing Saga of Equal Educational Opportunity in the Context of State Constitutional Challenges to School Finance Systems," 23 St. Louis U. Pub. L. Rev. 499, 506–507 (2004). According to these scholars, the first wave was education finance litigation that sought relief under the federal constitution. See *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 4–6, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973). For the sake of convenience, because Connecticut's education finance litigation began with *Horton I*, supra, 172 Conn. 615, which brought an equity claim under our state constitution, I refer to only two waves of litigation.

[5] As the plurality explains, the idea that the education clause implicitly includes a qualitative element was acknowledged not only by the majority in *Horton I*, but also by the concurring and dissenting opinions. See, e.g., *Horton I*, supra, 172 Conn. 655 (*Bogdanski*, *J.*, concurring) (equality issues presented in *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"); id., 658–59 (*Loiselle*, *J.*, dissenting). It is not necessary in this concurring opinion to discuss the concurring and dissenting opinions in *Horton I* further, as the plurality opinion in the present case aptly sets forth the language in each of those opinions that supports the conclusion that our education clause guarantees an adequate education.

[6] The court in *Sheff* declined to address the plaintiffs' claim that the defendants failed to provide them with a minimally adequate education because the plaintiffs did not allege any nexus between that failure and the racial and ethnic isolation that formed the basis of the action, and because the plaintiffs conceded at oral argument that they had not claimed that the right to be free of such racial and ethnic isolation was a constitutionally required component of a minimally adequate education. *Sheff* v. *O'Neill*, supra, 238 Conn. 36.

[7] 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."

[8] The courts in twenty states, Alabama, Arkansas, Colorado, Idaho, Kentucky, Maryland, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Washington, West Virginia, Wisconsin and Wyoming, have interpreted their education

clauses to include a guarantee that the education so provided must satisfy some minimally sufficient standard. See *Opinion of the Justices No. 338*, 624 So. 2d 107, 146 (Ala. 1993); *Lake View School District No. 25* v. *Huckabee*, 351 Ark. 31, 57, 91 S.W.3d 472 (2002), cert. denied sub nom. *Wilson* v. *Huckabee*, 538 U.S. 1035, 123 S. Ct. 2097, 155 L. Ed. 2d 1066 (2003); *Lobato* v. *State*, 218 P.3d 358, 372 (Colo. 2009); *Idaho Schools for Equal Educational Opportunity* v. *Evans*, 123 Idaho 573, 583, 850 P.2d 724 (1993); *Rose* v. *Council for Better Education, Inc.*, 790 S.W.2d 186, 205–206 (Ky. 1989); *Hornbeck* v. *Board of Education*, 295 Md. 597, 632, 458 A.2d 758 (1983); *McDuffy* v. *Secretary of the Executive Office of Education*, 415 Mass. 545, 606, 615 N.E.2d 516 (1993); *Columbia Falls Elementary School District No. 6* v. *State*, 326 Mont. 304, 310–11, 109 P.3d 257 (2005); *Claremont School District* v. *Governor*, 138 N.H. 183, 184, 635 A.2d 1375 (1993); *Abbott* v. *Burke*, 149 N.J. 145, 166–67, 693 A.2d 417 (1997); *Board of Education* v. *Nyquist*, 57 N.Y.2d 27, 48, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982), appeal dismissed, 459 U.S. 1138, 103 S. Ct. 775, 74 L. Ed. 2d 986 (1983); *Leandro* v. *State*, 346 N.C. 336, 345, 488 S.E.2d 249 (1997); *DeRolph* v. *State*, 78 Ohio St. 3d 193, 197, 203, 677 N.E.2d 733 (1997); *Abbeville County School District* v. *State*, 335 S.C. 58, 68, 515 S.E.2d 535 (1999); *Tennessee Small School Systems* v. *McWherter*, 851 S.W.2d 139, 150–51 (Tenn. 1993); *Neeley* v. *West Orange-Cove Consolidated Independent School District*, 176 S.W.3d 746, 753 (Tex. 2005); *Seattle School District No. 1* v. *State*, 90 Wash. 2d 476, 517–18, 585 P.2d 71 (1978); *Pauley* v. *Kelly*, 162 W. Va. 672, 705, 255 S.E.2d 859 (1979); *Kukor* v. *Grover*, 148 Wis. 2d 469, 486, 436 N.W.2d 568 (1989); *Vincent* v. *Voight*, 236 Wis. 2d 588, 624–25, 614 N.W.2d 388 (2000); *Campbell County School District* v. *State*, 181 P.3d 42, 48, 50 (Wyo. 2008).

The courts in eight states, Florida, Georgia, Illinois, Indiana, Nebraska, Oklahoma, Pennsylvania and Rhode Island, have determined either that the issue is nonjusticiable, or, without making a specific determination regarding justiciability, nevertheless determined that the issue properly should be directed to the legislature. See *Coalition for Adequacy & Fairness in School Funding, Inc.* v. *Chiles*, 680 So. 2d 400, 408 (Fla. 1996); *McDaniel* v. *Thomas*, 248 Ga. 632, 644, 285 S.E.2d 156 (1981); *Lewis E.* v. *Spagnolo*, 186 Ill. 2d 198, 201, 710 N.E.2d 798 (1999); *Bonner* v. *Daniels*, 907 N.E.2d 516, 522 (Ind. 2009); *Nebraska Coalition for Educational Equity & Adequacy* v. *Heineman*, 273 Neb. 531, 534, 731 N.W.2d 164 (2007); *Oklahoma Education Assn.* v. *State*, 158 P.3d 1058, 1061 (Okla. 2007); *Marrero* v. *Commonwealth*, 559 Pa. 14, 20, 739 A.2d 110 (1999); *Pawtucket* v. *Sundlun*, 662 A.2d 40, 57–59 (R.I. 1995).

The courts in the remaining twenty-two states have yet to address the issue.

[9] For this reason, I disagree with the plurality that the decisions of the courts of New Hampshire, Tennessee and Washington interpreting the education clauses of their respective state constitutions provide helpful guidance in interpreting our education clause. The New Hampshire education clause contains qualitative language upon which the court relied heavily in its interpretation of the state constitutional right to education: "*Encouragement of* [l]iterature . . . [*k*]*nowledge 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; see *Claremont School District* v. *Governor*, 138 N.H. 183, 187–88, 635 A.2d 1375 (1993).

Similarly, the case law of Tennessee is of limited persuasive value. The education clause in the Tennessee state constitution 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." (Emphasis added.) Tenn. Const., art. XI, § 12. In interpreting that constitutional language, the Tennessee Supreme Court not only looked to the definition of "education," but also relied on the recognition of the "inherent value"

of education in the provision. *Tennessee Small School Systems* v. *McWherter*, 851 S.W.2d 139, 150 (Tenn. 1993). Much of the court's analysis, leading to the conclusion that the education clause implies some qualitative component, centers on the "value of education." Id., 151.

The education clause of the Washington state constitution, also relied upon by the plurality, is also linguistically dissimilar to our own. That clause provides: "It 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." (Emphasis added.) Wash. Const., art. IX, § 1. In interpreting the constitutional text, the Washington Supreme Court noted specifically that its state constitutional language was "unique . . . ." *Seattle School District No. 1* v. *State*, 90 Wash. 2d 476, 498, 585 P.2d 71 (1978). In interpreting the education clause to include a qualitative guarantee, the court specifically relied on the meaning of the words "paramount"; id., 510; and "ample"; id., 515–16; adjectives conspicuously absent from our own education clause.

[10] South Carolina's precedent provides little guidance on this issue. In *Abbeville County School District* v. *State*, 335 S.C. 58, 66, 515 S.E.2d 535 (1999), the South Carolina Supreme Court considered the meaning of its education clause, which provides: "The 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. The court, however, arrived at its conclusion without any analysis. The court simply concluded that "the South Carolina [c]onstitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education." *Abbeville County School District* v. *State*, supra, 68.

[11] General Statutes § 10-221a (b) provides: "Commencing with classes graduating in 2004, and for each graduating class thereafter, no local or regional board of education shall permit any student to graduate from high school or grant a diploma to any student who has not satisfactorily completed a minimum of twenty credits, not fewer than four of which shall be in English, not fewer than three in mathematics, not fewer than three in social studies, *including at least a one-half credit course on civics and American government*, not fewer than two in science, not fewer than one in the arts or vocational education and not fewer than one in physical education." (Emphasis added.)

[12] M. W. Edelman, The Measure of Our Success: A Letter to My Children and Yours (1992) Pt. I, pp. 9–10.

[13] M. W. Edelman, "We must convey to children that we believe in them . . . ." Ebony, August, 1988, p. 130.

[14] It is worth noting that the New York Court of Appeals also stated that a relevant issue might be whether the plaintiffs could establish a correlation between funding and educational opportunity. *Campaign I*, supra, 86 N.Y.2d 318. The court indicated that, given the procedural posture of the case, addressing that issue was also premature. Id. That issue will likely be germane to the present litigation, not only as to the total amount of funding provided and the strategies, equations, and formulae on which funding is based, but also as to the allocation of funding based on educational priorities, in the context of constitutional requirements. Given the economic context in which the present litigation takes place, that issue is a compelling reason that favors placing the initial responsibility for designing appropriate remedial action in the hands of the legislature rather than the judiciary, provided, of course, that the final outcome of the case calls for appropriate remedial action.

[15] As it evaluates the evidence concerning the adequacy of the education provided to public school students, the trial court will have to grapple with numerous difficult questions, including the following. Should the court, in determining whether a school is providing its students with an adequate education, use the same standards to evaluate the outputs of children in a town school system with relatively little poverty and the outputs of children in a town school system with high poverty rates? What should be used as the measure for a *representative* child or *representative* children in public school for purposes of determining whether the school system is failing in its duties? What is an appropriate measure for the correlation between a child's failure to achieve as measured by academic outputs and the school system's alleged inadequacies, given the difficulties in quantifying social, economic, and environmental factors that enable or impede a child from being able to learn and, ultimately, to succeed in obtaining higher education

and employment? All of these concerns and others will challenge the trial court to fashion judicially manageable standards to resolve the present case.

[16] In this regard, it should be noted that even if funding resources were unlimited—which they are not under any circumstances, especially, current circumstances—expenditures alone are not likely to remedy whatever deficiencies exist. It can be anticipated that sound expenditures, allocations and reallocations of resources, even to the point of structural change, along with wise choices with respect to all educational resources, including teachers, equipment, and proper standards, among others, will be essential.