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# All Eyes Forward: Public Engagement and Educational Reform in Kentucky

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## Abstract

Kentucky has initiated and sustained what many consider to be the most comprehensive current statewide education reforms in the nation. This article explores the factors that led Kentucky to establish and maintain this unique judicial and legislative reform initiative. The author suggests that a variety of non-governmental organizations have played a critical role and traces fifteen years of advocacy and public engagement efforts to improve public education. The work of many of these groups has never before been significantly documented.

## Introduction

Before the Kentucky Supreme Court's 1989 decision in *Rose v. Council for Better Education*,<sup>2</sup> Kentucky's schools were among the worst in the nation and its citizens among the least educated. The level of education funding was inadequate throughout the state, and because of the system's heavy reliance on local property taxes, property-poor districts were gravely short of revenues for their schools. After a decade of growing awareness of these problems, the state's supreme court ruled that the state was responsible for adequately and equitably funding the public schools.

Issuance of the *Rose* decision was a pivotal moment in Kentucky education history. The legislature's prompt, positive response to the court's order moved the Commonwealth to the forefront of the national education reform movement and built a new financing system that directed a higher proportion of state money to low-wealth districts. Sweeping changes in education and school funding drew immediate attention from educators and finance experts alike. But even more impressive now—nine years later—Kentucky has stayed the course. Other states that have tried to institute changes of a similar nature have

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1. Molly A. Hunter, Esq. is Director of Legal Research at the Campaign for Fiscal Equity, Inc. The author wishes to thank the many Kentuckians and others cited in this article who gave generously of their time and extensive knowledge on the subject. An earlier version of this article appeared in April 1998 in the Campaign for Fiscal Equity's monograph series STUDIES IN JUDICIAL REMEDIES AND PUBLIC ENGAGEMENT.

2. 790 S.W.2d 186 (Ky. 1989).

often failed at the outset or experienced significant backsliding. In Kentucky, however, school funding statewide has increased dramatically, the gap between revenue per pupil in high-wealth and low-wealth districts has narrowed by 59%, and all schools have adopted at least some innovative education reforms.

Why has Kentucky been able to enact and sustain what other states have not? What have been the keys to obtaining and maintaining this remedy? The answers must be sought in: 1) the history of education and education finance in Kentucky prior to the lawsuit; 2) the impetus and political cover afforded by the court's bold decision; and 3) the extensive statewide efforts that have encouraged members of local school communities to remain engaged in the process of implementing and evaluating education reforms and governing their schools.

## I. Kentucky Education and Education Finance Before *Rose*

### The State of Learning

In the 1980s, Kentucky was fiftieth among the states in adult literacy and adults with high school diplomas, forty-ninth in college-going rate, and forty-eighth in per pupil and per capita expenditures on public schools.<sup>3</sup> Only 68% of ninth graders were graduating from high school in four years, and in the Appalachian counties over 48% of the population was functionally illiterate.<sup>4</sup> Kentucky ranked in the lower 20 to 25% nationally in virtually every category used to evaluate educational achievement, and it consistently ranked near the bottom in educational achievement and spending when compared to its seven surrounding states.<sup>5</sup>

Within Kentucky, the state's 178 school districts provided greatly disparate educational opportunities to their students. The highest spending district had per pupil revenues two and a half times the revenues of the lowest spending district.<sup>6</sup> In many poor rural districts, class sizes were large; science, art, and music curricula and necessary supports, such as laboratories and equipment, were sparse. Children attended dilapidated schools and competed in fundraising contests to pay for basic school supplies.<sup>7</sup> As a result, student test scores

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3. 1 THE PARTNERSHIP FOR KENTUCKY SCHOOL REFORM, FROM DILEMMA TO OPPORTUNITY: A REPORT ON EDUCATION REFORM IN KENTUCKY 5-6 (1996) [hereinafter DILEMMA TO OPPORTUNITY].

4. C. Scott Trimble & Andrew C. Forsaith, *Achieving Equity and Excellence in Kentucky Education*, 28 J. LAW REFORM 599, 601 (1995) (citing Anne E. Keating, *You Get What You Pay For: Financing Public Schools in Kentucky*, KY. BENCH & BAR (Winter 1993)).

5. Rose, 790 S.W.2d at 197.

6. RONALD G. DOVE, JR., ACORNS IN A MOUNTAIN POOL: THE ROLE OF LITIGATION, LAW AND LAWYERS IN KENTUCKY EDUCATION REFORM 1-2 (June 1991) [hereinafter ACORNS IN A MOUNTAIN POOL].

7. DILEMMA TO OPPORTUNITY, *supra* note 3, at 4; ACORNS IN A MOUNTAIN POOL at 2.

in these districts were dismally low.<sup>8</sup> In addition, entrenched local leadership, combined with the fact that the schools were the largest employers in some rural counties, sometimes led to mismanagement and corruption.<sup>9</sup>

However, the disparities among school districts partially obscured a bigger problem in Kentucky's educational system: pervasive inadequacy. Some Kentucky leaders felt that their state had the most poorly educated workforce in the country and was in danger of becoming "the nation's premier economic backwater."<sup>10</sup> Ninety percent of companies looking to relocate rejected Kentucky, largely due to its inadequate schools and undereducated workforce.<sup>11</sup> This systemic mediocrity contributed to a cycle of unemployment and poverty. In the 1980s, Kentucky ranked seventh highest in the nation in unemployment and percentage of children living in poverty. Per capita income was forty-fifth among the fifty states, and better-educated Kentuckians were migrating to states with more job opportunities.<sup>12</sup>

### Public School Finance—One Step Forward, One Step Back

Before the *Rose* decision, Kentucky's per pupil spending on public education was only 79% of the national average.<sup>13</sup> The state provided a larger share of combined state and local education funding than most states, about 70 percent. Because Kentucky had such a high poverty rate, it received 13.3% of its education funds from the federal government, earning it the dubious distinction of ranking first in the nation in that category.<sup>14</sup>

Historically, the state had distributed revenues designated for education on a per pupil basis, pursuant to an express provision of the state constitution.<sup>15</sup> By 1954, a series of amendments to the constitution had eliminated the per pupil allocation restriction on state funds, and the General Assembly created the Minimum Foundation Program (MFP) "to assure substantially equal educa-

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8. Report by the Select Committee to Judge Ray Corns, Franklin Circuit Court, September 15, 1988 (reprinted as Kern Alexander, et al., *Constitutional Intent: "System," "Common," and "Efficient" as Terms of Art*, 15 J. EDUC. FIN. 142, 156 (Fall 1989) [hereinafter *Constitutional Intent*]).

9. THE PRICHARD COMMITTEE FOR ACADEMIC EXCELLENCE, *THE PATH TO A LARGER LIFE: CREATING KENTUCKY'S EDUCATION FUTURE xvii* (1990 edition) [hereinafter *PATH TO A LARGER LIFE*]. In some school districts, a majority of the employees literally had the same last name. Interview with Ginny Eager, Director, Forward in the Fifth (November 20, 1997).

10. *DILEMMA TO OPPORTUNITY*, *supra* note 3, at 5.

11. Judge Ray Corns, Remarks at National Organization on Legal Problems in Education Conference (Nov. 19, 1994) (referring to Report of the Kentucky Chamber of Commerce Task Force on Education (1983)).

12. DR. ROBERT F. SEXTON, *NEW HOPE FOR BETTER SCHOOLS* (1988) [hereinafter *NEW HOPE*].

13. *PATH TO A LARGER LIFE*, *supra* note 9, at 110.

14. *DILEMMA TO OPPORTUNITY*, *supra* note 3, at 6.

15. KY. CONST. of 1890, § 186 (amended 1953).

tional opportunities.”<sup>16</sup> However, the MFP provided little relief to low-wealth districts because it offered no incentive to raise local taxes or improve the assessment process, which often greatly under-reported property values.<sup>17</sup>

In 1965, the Kentucky Supreme Court interpreted the Kentucky Constitution to require that all taxable property be assessed at 100% of fair market value. This change promised to increase local school revenues significantly and reduce inequities. But the governor almost immediately called a special session of the General Assembly to pass a “rollback law” that eviscerated the effects of the court’s decision.

In 1972, the General Assembly ended the cap on local property taxes and adjusted the assessment process to recognize increasing property values. Four years later, it established the District Power Equalization Program (DPEP) to shift a larger proportion of state funding to property-poor districts. DPEP’s impact was minimal, however, because only a small portion of local tax effort was subject to equalization. Even these small steps forward were rescinded when, in 1979, a special session of the General Assembly enacted another rollback law. From 1979 to 1981, property tax rates declined by almost 33% while assessed property values rose. The net result was no appreciable growth in local revenues for schools.<sup>18</sup>

During the 1980s, Kentucky property taxes remained low while education inadequacies and inequities persisted. Widely disparate property values, assessments, and tax rates generated annual school district revenues from \$78 to \$3,867 per pupil. Expenditures on instruction ranged from \$1,499 to \$3,709 per pupil, and the ratio of students to classroom teachers ranged from 11.8 to 20.2.<sup>19</sup> Kentucky’s overall state and local tax effort—after eliminating the effects of taxing capacity—was only 89% of the national average. Property taxes were the largest source of revenues, followed closely by the general sales tax. However, tax effort compared to national averages was only 62% for

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16. Act of Mar. 22, 1954, ch. 214, 1954 Ky. Acts 590 (repealed 1974); KY. REV. STAT. ANN. § 157.310 (Michie 1996). Although this goal was not achieved through the MFP, the statement of purpose foreshadowed the goals that Kentucky chose to pursue years later.

17. Assessments ranged from 12.5% to 33.5% of fair market values. *Rose*, 790 S.W.2d at 194-95. See *Cheating Our Children*, LEXINGTON HERALD-LEADER, August through November 1989 (award winning series on property assessment and property tax collection abuses).

18. *Rose*, 790 S.W.2d at 196.

19. OFFICE OF EDUCATION ACCOUNTABILITY (OEA), KENTUCKY GENERAL ASSEMBLY, ANNUAL REPORT, Tables 20, 26 and 28 (December 1996) [hereinafter OEA 1996 ANNUAL REPORT]; Jacob E. Adams, Jr., *School Finance Reform and Systemic School Change: Reconstituting Kentucky's Public Schools*, 18 J. EDUC. FIN. 318, 331 (Spring 1993) [hereinafter *School Finance Reform*]. For the school year 1989-90, tax rates ranged from \$0.23 to \$1.11 per \$100 of assessed value, per pupil property wealth from \$38,031 to \$343,822, and average teacher salaries from \$21,718 to \$30,379. *Id.*

property and 82% for general sales. Thus, these underutilized taxes were the most likely candidates for any subsequent tax increase.<sup>20</sup>

### Public Dialogue

As one commentator has noted, Kentucky's "one step forward, one step back" approach to education [finance] reform suggests that social, political, and legal forces were never truly in sync.<sup>21</sup> However, by 1989, when *Rose v. Council for Better Education* was before the Kentucky Supreme Court, significant public and business concern about the quality of education had altered the political landscape. Citizens had participated in a statewide forum on education which spawned many local efforts. The editors of the two major newspapers were expressing their support for education reform, and one of the largest employers in the state was running newspaper advertisements explaining the importance of education. A coalition of education organizations and the governor were acknowledging the need for education and finance reform.

This dramatic change was generated at least in part by the Prichard Committee for Academic Excellence ("Prichard Committee"). The Prichard Committee was founded in 1983 by the members of the former Committee on Higher Education in Kentucky's Future, a group chaired by Edward F. Prichard. While preparing their report on higher education, committee members saw the need for "radical improvement" in elementary and secondary education in Kentucky.<sup>22</sup> To pursue this goal they established the Prichard Committee as a not-for-profit, independent, volunteer citizens advocacy organization. Its mission was to publicize the need for school improvements and build public support for significant school reform legislation.<sup>23</sup>

The Prichard Committee expanded from thirty members to sixty, and its resulting membership represented a balance of opinion makers, parents of school children, and good-government advocates. Some members were very visible, such as former governors and business leaders; others were less so, such as parents active in their local schools. Although undoubtedly there were elected officials and educators who shared the committee's education improvement goals, they were not invited to join because the committee wanted to be,

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20. For example, raising property taxes to the national average rate would have generated over \$400 million annually. *PATH TO A LARGER LIFE*, *supra* note 9, at 99-113 (citing ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, 1986 STATE FISCAL CAPACITY AND EFFORT, REPORT M-165 (1989)).

21. *ACORNS IN A MOUNTAIN POOL*, *supra* note 6, at 5.

22. *PATH TO A LARGER LIFE*, *supra* note 9, at xiii.

23. JACOB E. ADAMS, JR., *THE PRICHARD COMMITTEE FOR ACADEMIC EXCELLENCE: CREDIBLE ADVOCACY FOR KENTUCKY SCHOOLS 2* (December 1993) [hereinafter *CREDIBLE ADVOCACY*].

and appear to be, independent from both government and the schools.<sup>24</sup> Members successfully sought contributions to support the committee's efforts, and funding came primarily from private businesses, individuals, and a few small Kentucky foundations.<sup>25</sup> From 1983 to 1989, the Prichard Committee helped stimulate a statewide public dialogue among citizens, educators, and members of the business community on school improvement.<sup>26</sup>

The Prichard Committee's members served on subcommittees that studied education-related issues and formulated recommendations. For example, one subcommittee analyzed economic and demographic trends and broadly disseminated the findings. These studies found that major sectors of employment, such as farming and manufacturing, were declining and likely to be replaced by jobs requiring higher level skills. They also found that in 1910, there had been seventeen workers for each retired person in Kentucky; by 2010 there would be only two or three workers per retiree. The Prichard Committee concluded that "our children needed to be able to get better jobs and therefore needed better education."<sup>27</sup>

Business support for education reform came early and stayed.<sup>28</sup> The business community offered a quid pro quo: if Kentucky policy makers and educators would seriously and substantially reinvent schools and make public education accountable for its results, business would support them and pay the resulting higher taxes. Why would the business community make such a seemingly radical proposal? First, business saw "a black cloud of doom" with respect to Kentucky high school graduates and dropouts being ill-equipped to fill available jobs. Second, companies such as Ashland Oil, one of the three largest employers in the state, wanted to attract and keep employees—who wanted their children to attend good schools—and needed an adequate supply of well-educated workers.<sup>29</sup> Finally, the Kentucky Chamber of Commerce had documented its lack of ability to sell the state to businesses, largely because of the weak educational system.<sup>30</sup> Kentucky, along with Mississippi and Louisi-

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24. *Id.* at 18; Interview with Cindy Heine, Associate Executive Director of the Prichard Committee (September 24 and December 12, 1997). Ms. Heine became a Prichard Committee member in 1983 and joined the staff in 1989.

25. *PATH TO A LARGER LIFE*, *supra* note 9, at xiii. From 1983 to 1990, more than 300 donors contributed over one million dollars. *CREDIBLE ADVOCACY*, *supra* note 23 at 19.

26. Robert F. Sexton, *Exploring Topics in Education* (Prichard Committee, Lexington, Ky.) May 1994; *CREDIBLE ADVOCACY*, *supra* note 23, at 17.

27. Heine Interview, *supra* note 24.

28. *Id.* "The employers see so clearly the need [for better schools]."

29. Interview with Carolyn Witt Jones, Director, The Partnership for Kentucky Schools (Oct. 23, 1997 and May 4, 1999); *DILEMMA TO OPPORTUNITY*, *supra* note 3, at 5; *Chamber of Commerce Joins the Fray*, *LEXINGTON HERALD-LEADER*, July 9, 1989. (Ms. Jones is a former teacher and strategic planner).

30. Remarks of Judge Ray Corns, *supra* note 11.

ana, was among the states least attractive to business. These conditions described a crisis and therefore business rallied.<sup>31</sup>

Other efforts on behalf of public education were also essential. For example, a 1985 report that Kentucky's Fifth Congressional District was the nation's worst in education motivated citizens there to push for reform. Asked by business leaders who had grown up in the region to study the situation, the Mountain Association for Community Economic Development (MACED) found that the region had a high dropout rate, and that those students who succeeded in school generally left the region. MACED recommended the formation of Forward in the Fifth, a private nonprofit Local Education Fund and member of the national Public Education Network. Forward in the Fifth established Affiliates in all twenty-seven counties within the Fifth District. Their school improvement goal, which necessarily included more local tax revenues, was especially challenging in the face of long-standing traditions of nepotism.<sup>32</sup>

The Kentucky media consistently supported education reforms and the need to fund them.<sup>33</sup> The state's two major newspapers made education a high priority. In a prize-winning investigation of local tax assessment practices, the *Lexington Herald-Leader* disclosed cases of nepotism and tax fraud.<sup>34</sup> Moreover, media access helped the Prichard Committee deliver its message to a broad audience and, at the same time, develop its reputation as a citizens' voice for better schools.<sup>35</sup>

On November 15, 1984, the Prichard Committee gained exposure and credibility by convening a statewide forum on education, broadcast via Kentucky Educational Television. The forum included 140 local sites, with at least one in each of the state's 120 counties. The general public was invited to participate, and nearly 20,000 people attended. To successfully conduct such a large, far-flung forum, the committee collaborated with local PTAs, Chambers of Commerce, chapters of the League of Women Voters, and similar organizations. Ashland Oil, a leader in raising public awareness of the importance of higher quality education, provided primary funding for the forum, including

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31. Jones Interview, *supra* note 29; DILEMMA TO OPPORTUNITY at vi.

32. Eager Interview, *supra* note 9. After reapportionment in 1991, Forward in the Fifth added 12 counties so it could continue to serve the entire Fifth District and retain all of its prior counties. Its Affiliates support education in all 55 school districts in these 39 counties. *Id.*

33. "Positive media coverage about education reform results from specific, concerted, strategic efforts. The Prichard Committee has been very sophisticated about that in Kentucky." Interview with Susan Traiman, Director, Education Initiative, The Business Roundtable (November 6, 1997).

34. *Cheating Our Children*, August through November, 1989.

35. ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 31-32; CREDIBLE ADVOCACY, *supra* note 23, at 2-3, 8, 23; Heine Interview, *supra* note 24.



money for radio and print media announcements and materials distributed at each site.<sup>36</sup>

The Prichard Committee viewed its role at the forum as listening, not promoting any particular point of view.<sup>37</sup> Local citizens were trained to facilitate participation at the town forum sites. The forum revealed that Kentucky citizens placed a high priority on education and provided an early step toward a grassroots mandate for change.<sup>38</sup> Years later, the Prichard Committee reflected on the forum as having set the pattern and tone—"open citizen dialogue and active citizen involvement"—that characterized its subsequent work.<sup>39</sup>

The forum motivated and mobilized people, as participants in as many as fifty sites formed local organizations to press for education reforms in their home districts. They felt legitimized and called themselves, for instance, the Floyd County Prichard Committee. Not surprisingly, they asked the Prichard Committee for support, but that was a difficult challenge for such a small, lightly funded entity. In response, the committee retained Roberts & Kay, a consulting firm, to design and conduct six regional Citizen Action Workshops for members of the local organizations. The workshops taught basic organizational skills such as how to run an effective meeting and how to organize people around school issues.<sup>40</sup>

Separately, and after more than a year of organizing among superintendents, sixty-six property-poor rural school districts incorporated the Council for Better Education ("Council") in early 1985 to seek more equitable funding for their schools through the courts.<sup>41</sup> Initial reaction from politicians was fiercely critical.<sup>42</sup> The Council obtained the pro bono services of a former governor and member of the Prichard Committee, Bert Combs, as lead counsel.<sup>43</sup> In the summer of 1985, with impetus from this potential litigation and the televised statewide forum, the governor called a special session of the legislature to

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36. Interview with Dr. Robert F. Sexton, Executive Director of the Prichard Committee (April 10, 1997); CREDIBLE ADVOCACY, *supra* note 23, at 3.

37. As delineated by the Executive Director of Public Agenda, the principles of public engagement begin with listening. See Deborah Wadsworth, *Building a Strategy for Successful Public Engagement*, 78 PHI DELTA KAPPAN 10, 752 (June 1997).

38. Heine Interview, *supra* note 24; Sexton Interview, *supra* note 36. Dr. Sexton noted that the wide base of support was not deep, in that many people did not necessarily understand the particulars of reform.

39. CREDIBLE ADVOCACY, *supra* note 23, at 3 (citing the Prichard Committee's 1992 proposal to the Carnegie Corporation for continuation funding). For a more thorough discussion of the televised statewide forum, see *id.* and ACORNS IN A MOUNTAIN POOL, *supra* note 6 at 31-32.

40. Heine Interview, *supra* note 24. The Prichard Committee obtained a small amount of separate funding to retain these consultants. *Id.*

41. Woody Barwick, *A Chronology of the Kentucky Case*, 15 J. EDUC. FIN. 136, 138 (Fall 1989) (seven local school boards and 22 students joined the Council as plaintiffs shortly thereafter).

42. ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 7, 13.

43. CREDIBLE ADVOCACY, *supra* note 23, at 9.

consider a proposed education improvement program. By November, however, Council members realized that the resulting legislation provided little relief for poor districts, so they filed the suit that became known as *Rose v. Council for Better Education*.<sup>44</sup>

Also in 1985, the Prichard Committee published *The Path to a Larger Life: Creating Kentucky's Educational Future*. This 150-page report was the culmination of the work of the member subcommittees that had been studying education-related issues. It proposed systemic education reform under seven themes: the teaching profession, education goals and curriculum, leadership and governance, commitment to children, assessments, vocational education, and finance. The report made eighty-two recommendations ranging from overarching concerns, such as comprehensive professional development for teachers and outcome-based evaluations, to specific proposals, such as a constitutional amendment for an appointed Superintendent of Public Instruction.<sup>45</sup> Because it was perceived as advocacy for children and schools, not for the committee members' self interests, the report added to the Prichard Committee's public credibility.<sup>46</sup>

After issuing *The Path to a Larger Life*, the Prichard Committee focused its energies on a statewide public awareness campaign to fuel interest in better schools and to rally support for education reforms and increased funding. Executive Director Robert Sexton attended as many Rotary Club and Kiwanis meetings as he could, primarily to sound an alarm about the depth and urgency of the state's educational deficiencies and the economic and social "underdevelopment" that they engendered. Some members of the committee also gave speeches and offered testimony before legislative committees.<sup>47</sup> The earlier demographic, economic, and other subcommittee studies supplied the interstate comparisons and in-state trends that helped listeners understand the problems and see the need for change. The committee also presented potential means for improvement, such as early childhood education programs, advancement of the teaching profession, and more competent and honest school district leadership.<sup>48</sup>

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44. *Id.* at 3; ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 11-12.

45. PATH TO A LARGER LIFE, *supra* note 9. The report's student achievement indicators foreshadowed those delineated by the Kentucky Supreme Court in its *Rose* decision four years later. *Id.* at 119-22. Many of the report's themes and some specific proposals were later included in the Kentucky Education Reform Act of 1990. LOUISVILLE COURIER-JOURNAL, April 11, 1990.

46. CREDIBLE ADVOCACY, *supra* note 23, at 8 and 3 (quoting a LOUISVILLE COURIER-JOURNAL editorial, January 2, 1985, that said, "The Prichard Committee is an essential anchor, because it is focused on long-term objectives, and, perhaps more important, because it is free of ties to any special political or educational interest").

47. CREDIBLE ADVOCACY, *supra* note 23, at 25; Heine Interview, *supra* note 24.

48. NEW HOPE, *supra* note 12.

One of the keys to the Prichard Committee's success was broad dissemination of information to interested people across the state, with the express purpose of enabling recipients to speak up in their communities. The committee provided information to local participants, who felt they could not rely on the state department of education because it was too politicized.<sup>49</sup> For citizens in school districts where school boards were the largest employers in the county, the committee served as an important source of "courage" to get involved. By offering information, training sessions, and a vision of local citizen groups coming together to solve problems and improve their schools, the committee, along with business, the media, and other groups, stimulated public engagement about education throughout the state.<sup>50</sup>

In 1988, an unusual collaboration of organizations established the Education Coalition. For the first time, all of the state's major education interest groups joined with business, religious, and advocacy groups in a common reform effort.<sup>51</sup> Although the coalition represents diverse views and interests, it was able to internally negotiate agreement on potentially divisive educational issues and to present unified positions to the public and legislative policy makers. Some credit the diversity of the coalition and a growing momentum towards school reform with keeping the education interest groups at the table and helping them work out their differences.<sup>52</sup>

## II. The Amazing Decision: *Rose v. Council for Better Education*

### Education Finance System Found Unconstitutional

In the midst of growing concern about the quality of public education in Kentucky, *Rose v. Council for Better Education* went to trial in 1987. Prichard Committee staff testified at the trial, and members and staff reviewed legal briefs in advance of their filing with the court.<sup>53</sup> In March 1988, while the trial court was reviewing the evidence, the Prichard Committee filed an amicus brief emphasizing the need for education and governance reforms in addition to the

49. Heine Interview, *supra* note 24.

50. CREDIBLE ADVOCACY, *supra* note 23, at 25-26. For a definition of public engagement, see Wadsworth, *supra* note 37, at 749.

51. The groups included the Kentucky School Boards Association, Kentucky Association of School Administrators, Kentucky Association of School Superintendents, Kentucky Congress of Parents and Teachers (PTA), and the Kentucky Education Association. They joined with the Kentucky Department of Education, Catholic Conference of Kentucky, Kentucky Educational Foundation, Kentucky Chamber of Commerce, and the Prichard Committee to establish the coalition. CREDIBLE ADVOCACY, *supra* note 23, at 7.

52. *Id.*; Interview with Dr. Robert F. Sexton, *supra* note 36; Heine Interview, *supra* note 24.

53. D. Frank Vinik, *The Contrasting Politics of Remedy: The Alabama and Kentucky School Equity Finding Suits*, 22 J. EDUC. FIN. 60, 77 (Summer 1996) (citing Ray Cohn, *Tax Increase Needed for Schools, 3 Testify*, LEXINGTON HERALD-LEADER, Aug. 6, 1987); CREDIBLE ADVOCACY, *supra* note 23, at 9.

finance reform argued by plaintiffs.<sup>54</sup> Also in March, a rally sponsored by the Kentucky Education Association (KEA), demanding more money for schools, drew tens of thousands of educators, parents, and schoolchildren to Frankfort, the state capital.<sup>55</sup>

In May 1988, the trial court ruled that the state's education finance system violated the Kentucky Constitution. Although later criticized by the Kentucky Supreme Court for improperly delegating his judicial authority, trial judge Ray Corns stayed his decision on the appropriate remedy for six months, and appointed a select committee to advise him on the parameters of the education system envisioned by the framers of the Kentucky Constitution.<sup>56</sup> The select committee held five public meetings around the state, one attended by the governor and all covered extensively and favorably by the press.<sup>57</sup>

The select committee's interpretations of the education section of the constitution reflected expert testimony presented by plaintiffs at trial. The constitution requires the General Assembly to establish "an efficient system of common schools throughout the Commonwealth."<sup>58</sup> Basing its analysis primarily on historical documents, the select committee interpreted the phrase "system of common schools" to mean that the schools must be free and open to all children and that the system must be equal and uniform throughout the state. In a more creative analysis, the select committee determined that the word "efficient" means that the schools must be, *inter alia*, "adequate" and that "adequate schools" must produce a society of individuals who possess certain skills and knowledge that enable them to function in a complex, rapidly changing world. The select committee enumerated five student outcomes that Kentucky's system of common schools would have to produce to be considered "adequate."<sup>59</sup> The trial court substantially adopted the select committee's conclusions and included them in its written opinion.<sup>60</sup>

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54. Heine Interview, *supra* note 24.

55. ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 17.

56. *Rose* at 215. See also *Constitutional Intent*, *supra* note 8 (presenting the Report by the Select Committee to Judge Ray Corns, Franklin Circuit Court, September 15, 1998). The Select Committee was chaired by Kern Alexander, who had testified for plaintiffs and was president of Western Kentucky University.

57. Barwick, *supra* note 41, at 141; ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 19 (citing LEXINGTON HERALD-LEADER, July 6, 1988, at A1 (reporting on first public hearing) and LEXINGTON HERALD-LEADER, July 7, 1988, at B1 (reporting on second public hearing)).

58. KY. CONST. § 183.

59. *Constitutional Intent*, *supra* note 8, at 147-154. The student outcomes were: oral and written communication skills, knowledge of economic and social systems sufficient to make informed choices, an understanding of governmental processes sufficient to perpetuate a democratic government, enough knowledge to attend to their own wellness, and sufficient grounding in the arts to appreciate our cultural and historical heritage. *Id.* at 154.

60. Council for Better Educ. v. Wilkinson, No. 85-CI-1759 (Franklin Circuit Court, Div. I, October 14, 1988).

Media coverage of the trial court's decision was favorable, but some legislators noted that the decision would likely lead to higher taxes. In what some viewed as an attempt to intimidate the superintendents, the state audited plaintiff school districts. However, there were no significant findings.<sup>61</sup> Legislative leaders Rose and Blandford decided to appeal the decision, but the governor did not appeal. Instead, he announced his agreement with the trial court ruling. The Kentucky Supreme Court agreed to hear the appeal directly, bypassing the appellate intermediate court.<sup>62</sup>

By 1989, when the *Rose* appeal was before the Kentucky Supreme Court, public opinion on education and education funding in Kentucky had clearly shifted. The proportion of taxpayers willing to support improved schools through increased taxes had moved from 49 to 67 percent.<sup>63</sup> Education stakeholders credited the Prichard Committee as a "prime force" affecting this change—by raising public and political awareness, achieving significant consensus through the Education Coalition, and bringing citizens into the policy and political arena.<sup>64</sup> As the appeal went forward, advocates for improving the schools continued to press for change, and the media continued to give education front-page coverage.<sup>65</sup>

### Kentucky's Entire System of Common Schools Found Unconstitutional

On appeal, plaintiffs urged the Kentucky Supreme Court to affirm the lower court's finding that the state's education finance system was unconstitutional. However, the supreme court reached far beyond the finance system and declared that "Kentucky's *entire system* of common schools is unconstitutional."<sup>66</sup> Plaintiffs' attorneys were "amazed."<sup>67</sup>

61. The Executive Editor, *The Kentucky Case Introduction*, 15 J. EDUC. FIN. 134, 135 (Fall 1989); ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 35.

62. *Id.* at 18-20.

63. Issues in Education: A Report on Public Opinion in Kentucky, Survey Research Center, University of Kentucky, 1983, asked interviewees whether they favored or opposed increased taxes to raise money for schools; *Bluegrass State Poll on Education*, LOUISVILLE COURIER-JOURNAL, Aug. 6, 1989, asked interviewees whether they were willing to have state taxes increased if they were sure the money would be used to improve the public schools (as cited in PATH TO A LARGER LIFE, *supra* note 9, at xxiv).

64. CREDIBLE ADVOCACY, *supra* note 23, at 24-26. The stakeholders included legislative staff, Department of Education officials, representatives of the Kentucky Education Association, Council on Higher Education, and Kentucky School Boards Association, business executives, news reporters, and the author of the *Rose* decision. *Id.* at ii, 24.

65. For example, the Prichard Committee, with funding from Ashland Oil, distributed 100,000 postcards and placed public service announcements and newspaper ads for "Better Schools Now." Thousands of postcards were received by the governor and legislators. *Id.* at 24. (See also Robert T. Garrett, et al., *Sources Say Ruling Will Require That Taxation Be More Uniform*, LOUISVILLE COURIER-JOURNAL, June 7, 1989, at A1; ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 31 (citing LOUISVILLE COURIER-JOURNAL, Dec. 8, 1988, at A1 and LEXINGTON HERALD-LEADER, Oct. 18, 1988, at A10).

66. *Rose*, 790 S.W.2d, at 215 (emphasis in original).

67. Interview with Debra Dawahare, Wyatt, Tarant & Combs, counsel to plaintiffs (July 17, 1993).

The court characterized its repudiation of the entire system of common schools in a positive light, stating that it intended no criticism. Rather, the court viewed its decision as "an opportunity for the General Assembly to launch the Commonwealth into a new era of educational opportunity which will ensure a strong economic, cultural and political future."<sup>68</sup> Hence, the court echoed a long-standing theme of Kentucky's education change proponents.<sup>69</sup>

The 1989 *Rose* opinion was one of the most far-reaching fiscal equity decisions ever issued and has been cited by other courts deciding similar suits ever since.<sup>70</sup> In reaching its conclusions, the court took unequivocal stands on three major questions. First, based on statements by the framers of the Kentucky constitution in 1890, the court declared education a fundamental right.<sup>71</sup> Therefore, the court held, the schools must "provide equal educational opportunities to all Kentucky children . . ." <sup>72</sup> Second, the court accepted as obvious the expert testimony that showed "a definite correlation between the money spent per child on education [ , ] the quality of education received," and student test scores.<sup>73</sup> Third, the court placed "sole responsibility" for the public schools in the hands of the General Assembly.<sup>74</sup> Although this determination was aptly grounded in the language of the constitution, the court did not address the countervailing tradition of local control.

The supreme court relied on the trial court record, which included abundant evidence of educational inadequacy and funding inequities in Kentucky. But it also addressed defendants' evidence that blamed plaintiff school districts for their own plight. The court concluded that "[e]ven a total elimination of mismanagement and waste" would not be sufficient to compensate for the lack of financial resources and inadequate curricula in the plaintiff school districts.<sup>75</sup>

Affirming the constitutional interpretation of the trial court, the supreme court interpreted the word "efficient" to include "adequate" and expansively defined adequate to include student outcomes.<sup>76</sup> The court boldly enumerated

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68. *Rose*, 790 S.W.2d, at 216.

69. *PATH TO A LARGER LIFE*, *supra* note 9, at xxi.

70. *See, e.g.*, *McDuffy v. Sec'y*, 615 N.E.2d 516, 554 (Mass. 1993); *Opinion of the Justices*, 624 So.2d 107, 107-08 (Ala. 1993); *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1378 (N.H. 1993); *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997); *Abbeville County Sch. Dist. v. State*, Opinion No. 24939 (S.C. April 22, 1999).

71. *Rose*, 790 S.W.2d, at 206.

72. *Id.* at 212.

73. *Id.* at 197-98. For a broader discussion of the connection between resources and student achievement, see Michael A. Rebell, *Fiscal Equity in Education: Deconstructing the Reigning Myths and Facing Reality*, 23 N.Y.U. REV. L. & SOC. CHANGE 691 (1994-95); *See also Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980).

74. *Rose*, 790 S.W.2d, at 212.

75. *Id.* at 197.

76. Supreme courts in other states have adopted the *Rose* language to define an efficient or adequate education or a sound basic education. *See supra*, note 70.

seven education capacities that Kentucky schools must have as their goal to provide to each child.<sup>77</sup> It then ordered that:

The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education. . . . An adequate education is one which has as its goal the development of the seven capacities recited previously. . . . The General Assembly has the obligation to see that *all property* is assessed at 100 percent of its fair market value. . . . the General Assembly must establish a uniform *tax rate* for such property [so that] all owners . . . throughout the *state* will make a comparable effort in the financing of the state system of common schools. (emphasis in original)<sup>78</sup>

Reactions to the court's decree from the governor, legislators, and the media were generally positive.<sup>79</sup> The governor stated that he had been saying "the school-finance system is unconstitutional" for three years. House Speaker Blandford said, "We're going to have to go back to the drawing board," while defendant Senator Rose noted that the issues would be dealt with in a special session of the legislature called in the next few months.<sup>80</sup> A *Louisville Courier-Journal* editorial entitled "Golden Opportunity" urged the state to "seize the moment."<sup>81</sup> And seize the moment is exactly what the state did.

### III. A Model for the Nation: The Kentucky Education Reform Act of 1990

Less than a year after the court's decision in *Rose*, the Kentucky legislature had passed and the governor had signed the Kentucky Education Reform Act of 1990 ("KERA"). The speed with which the General Assembly acted was astonishing for two reasons. In other states, responses to parallel court decrees

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77. "... an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: 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." *Rose*, 790 S.W.2d, at 212.

78. *Id.* at 212, 216.

79. Before announcing its opinion, the court conferred with the governor and legislative leaders and provided a draft to them two days earlier. Garrett, *supra* note 65, at 1A.

80. Tom Loftus, *Kentucky's Entire System of Common Schools is Unconstitutional*, LOUISVILLE COURIER-JOURNAL, June 8, 1989, at 1A.

81. Vinik, *supra* note 53, at 79 (citing the LOUISVILLE COURIER-JOURNAL, June 9, 1989).

have generally been slow, piecemeal, and seldom in compliance with the constitutional mandate on the first attempt.<sup>82</sup> Also, the reforms were so comprehensive and complex that a legislature could not have researched and fully considered them in only ten months. In fact, Kentucky legislators had been studying education reform for years. They had visited other jurisdictions where reforms were being implemented and were prepared to enact a less extensive reform package if the equity suit failed.<sup>83</sup> The Prichard Committee attributed passage of the legislation to “seven years of lobbying, primarily by citizens and business.”<sup>84</sup> Interviews conducted in 1993 revealed that “[w]ithout exception, stakeholders credited the [Prichard] Committee with being *the* catalyst for elementary and secondary school reform in the state.”<sup>85</sup>

KERA was so ambitious that it was called a crusade, a miracle, and a model for the nation.<sup>86</sup> President Bush lauded the state’s “creative thinking” in its education reform, the *Education Guardian* in London praised Kentucky’s actions, and *The New York Times* described it as “the most sweeping education package ever conceived by a state Legislature.”<sup>87</sup> Indeed, when The Business Roundtable, an organization of about 200 chief executive officers who develop public policy positions on national issues, designed its Education Initiative in 1990, it used KERA’s bundle of reforms as its model.<sup>88</sup>

KERA’s interwoven fabric of reform consisted of three overarching components: curriculum, governance, and finance.

### Systemic Curriculum and Governance Reform

The most extraordinary aspects of KERA were its broad, multifarious education reforms and transfer of governance authority to local schools.

82. MICHAEL A. REBELL, ET AL., *FISCAL EQUITY IN EDUCATION: A PROPOSAL FOR A DIALOGIC REMEDY A-1 to A-93* (Campaign for Fiscal Equity, Inc., 1995)(reviewing court decisions and legislative responses in ten states).

83. Sexton Interview, *supra* note 36..

84. *Id.*

85. CREDIBLE ADVOCACY, *supra* note 23, at 24-25; See also Editorial, LOUISVILLE COURIER-JOURNAL, April 11, 1990.

86. Bert T. Combs, *Creative Constitutional Law: The Kentucky School Reform Law*, 28 HARV. J. ON LEGIS. 367 (Summer 1991): “Kentucky has now decided to become educated and has embarked on a crusade to accomplish that objective. Do not be surprised if we should, within the next decade, develop a first-class educational system. Most people would think that is impossible. But Kentuckians do not know that it is impossible. So we might just go ahead and do it.” See also ACORNS IN A MOUNTAIN POOL, *supra* note 6, at 3 (“a miracle”); *School Finance Reform*, *supra* note 19, at 345 (1993) (“a model for the nation”).

87. Combs, *supra* (citing *Kentucky Ahead of Fields in LMS*, EDUCATION GUARDIAN (London), July 3, 1990, at 1); *Starting Over*, N.Y. TIMES, April 8, 1990, at 34; *Bush Lauds Kentucky for Efforts to Reform Schools*, LEXINGTON HERALD-LEADER, April 5, 1990, at A8; *Kentucky’s Bold Reforms*, SAN ANTONIO EXPRESS-NEWS, April 4, 1990.

88. Trainman Interview, *supra* note 33; *An Introduction to The Business Roundtable* (www.brtable.org n.d. [1998]).



No other state has attempted such a comprehensive reform strategy through legislation.<sup>89</sup> The authors of KERA believed that the reform initiatives would complement one another, that removing any one would destroy the synergy and strength of the whole. They also re-created the Kentucky Department of Education, reduced its size, and refocused it on supporting the new initiatives.<sup>90</sup>

KERA's learning goals were extremely ambitious, reaching beyond gaining parity with other states.<sup>91</sup> To propel its public education system to such heights, KERA mandated and funded many education and governance initiatives statewide. They included school-based management councils, a primary program in place of grades K-3, extensive professional development, performance-based assessments, an accountability system of rewards and sanctions, and vastly expanded use of technology. KERA also provided support services, such as early childhood programs for at-risk and disabled children, family resource and youth service centers, and extended school services.<sup>92</sup>

KERA shifted decision-making to local schools by requiring every school to form a school-based management council consisting of the principal, three teachers elected by the teachers, and two parents elected by the school's parents. The councils have authority to establish policies regarding curriculum, textbooks, instructional practices, staff assignments, discipline, and the school budget, including professional development; they also select the principal when a vacancy exists. Through the councils and provisions for parental involvement in the pre-school and primary programs, KERA envisioned on-going dialogue between parents, other citizens, teachers, administrators, and staff, thus bringing communities together to decide school issues. In 1992, the General Assembly added requirements for minority representation on councils for schools with eight percent or more minority students, and for recruitment and retention of minority educators, which further encouraged a broad-based involvement.<sup>93</sup>

Kentucky's most radical change to teaching practices was its primary program, intended to reduce retention which, before reform, was 22% by the third grade. The primary program's "critical attributes" include: "developmentally appropriate educational practices; . . . authentic assessment; qualitative report-

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89. *Id.*; Debra Viadero, *A Living Laboratory*, EDUC. WEEK 38 (January 14, 1998).

90. KYNA KOCH & TOM WILLIS, KENTUCKY DEP'T OF EDUC. AND KENTUCKY LEGISLATIVE RESEARCH COMM'N, THE KENTUCKY EDUCATION REFORM ACT OF 1990: A REVIEW OF THE FIRST BIENNIUM iv (March 18, 1993); KY. REV. STAT. ANN. § 156.005, *et seq.* (Michie 1996).

91. Interview with Pam Coe, Appalachia Educational Laboratory, Principal Investigator, Study of KERA Implementation in Small, Rural Districts (Jan. 21, 1998).

92. KY. REV. STAT. ANN. §§ 156.095, 156.660 *et seq.*, 157.226, 157.317-318, 157.497, 158.030, 158.070, 158.360, 158.645 *et seq.*, 160.345 (Michie 1996). Many initiatives were not funded separately, but overall state funding increased significantly at the same time that they were instituted.

93. KY. REV. STAT. ANN. §§ 160.345, 161.165 (Michie 1996).

ing . . . and positive parental involvement.”<sup>94</sup> The primary program freed some teachers to be creative and extraordinarily effective, while others floundered.<sup>95</sup> For teachers of all grades, KERA emphasized more advanced content, critical thinking, writing, and application of knowledge.<sup>96</sup> Many teachers and administrators, who were schooled in different teaching and learning approaches, wanted professional development and instructional programs to assist them in making the necessary transitions.<sup>97</sup>

The most controversial provisions of KERA were those holding teachers and principals accountable for student performance. The business community in particular considered accountability a critical feature of education reform.<sup>98</sup> Pursuant to the new law, the state developed a new assessment system to measure student achievement for each school, which, in turn, determined financial incentives and possible sanctions for teachers and principals. The accountability system is improvement-driven: it set the same 20-year goal for all schools and, recognizing that schools started at different levels of achievement, is measuring progress in each school at two-year intervals.<sup>99</sup>

### Education Finance Reform

KERA set up the Support Education Excellence in Kentucky (“SEEK”) program to increase overall public school spending and, at the same time, reduce the disparity in per pupil spending among school districts.<sup>100</sup> The new

94. KY. REV. STAT. ANN. §§ 156.160, 158.030 (Michie 1996); DILEMMA TO OPPORTUNITY, *supra* note 3, at 27.

95. Holly Holland, *KERA: A Tale of One Teacher*, 79 PHI DELTA KAPPAN 265 (December 1997); See also KENTUCKY INSTITUTE FOR EDUCATION RESEARCH, THE IMPLEMENTATION OF KENTUCKY’S PRIMARY PROGRAM 1995: A PROGRESS REPORT (June 1995) (recommending extensive professional development for primary teachers who were struggling).

96. KY. REV. STAT. ANN. § 158.645 (Michie 1996).

97. TOM CORCORAN, SHIFTING GEARS: PROVIDING PROFESSIONAL DEVELOPMENT THAT PROMOTES HIGH ACADEMIC PERFORMANCE (1997); G. WILLIAMSON McDIARMID, REALIZING NEW LEARNING FOR ALL STUDENTS: A FRAMEWORK FOR THE PROFESSIONAL DEVELOPMENT OF KENTUCKY TEACHERS 7-21 (n.d. [1994]); *Special Feature: KERA Through the Eyes of Teachers*, NOTES FROM THE FIELD: EDUCATION REFORM IN RURAL KENTUCKY 4 (Appalachia Educational Laboratory, Charleston, W.V.), Sept. 1992; Coe Interview, *supra* note 91.

98. DILEMMA TO OPPORTUNITY, *supra* note 3, at vi. Accountability was the “overriding goal of KERA” (*id.*) and is crucial to continued support from business (Sexton Interview, *supra* note 36).

99. KY. REV. STAT. ANN. § 158.645 (Michie 1996). In contrast, Ohio holds school districts accountable for student scores on 14 tests and requires students to pass a ninth-grade proficiency examination to obtain a high school diploma. John Augenblick, Presentation at the National Conference of State Legislatures (November 8, 1997). In an extremely high-stakes accountability system, New York is phasing in a requirement that every student pass five rigorous examinations to obtain a high school diploma. New York State Education Dep’t, Press Release, *Regents Vote: Students Must Pass Regents Exams*, April 24, 1996. Ohio and New York have not yet funded their higher standards.

100. 2 DILEMMA TO OPPORTUNITY, *supra* note 3, at 34; MARY HELEN MILLER, ET AL., LEGISLATIVE RESEARCH COMMISSION, A GUIDE TO THE KENTUCKY EDUCATION REFORM ACT OF 1990 11-29 (April 1990) [hereinafter 1990 GUIDE TO KERA]; KY. REV. STAT. ANN. §§ 157.310-440 (Michie 1996).

