

FLORES v. STATE OF ARIZONA: HISTORY, STATUS AND IMPLICATIONS

I. INTRODUCTION

In Arizona, approximately 20% of students attending public school are English language learners. For years, the State of Arizona has failed to adequately fund programs for English language learners. The consequences of that failure are now becoming manifest. Beginning in 2006, all high school students must pass an achievement test to graduate from high school. In spring 2004, more than 80% of ELLs in high school were still failing the AIMS test compared with 26% of the entire high school population.

The struggle for adequate funding for English language learner programs in Arizona's public schools has been going on since 1992. That's when *Flores v. State of Arizona* was filed alleging that the state was violating federal law by failing to adequately fund ELL programs. Despite the fact that judgment was issued in favor of the plaintiffs in January 2000, the state has yet to comply with the judgment. As a result, ELL students in Arizona are still not receiving the equal education to which they are entitled under federal law.

II. HISTORY OF *FLORES v. STATE OF ARIZONA*

This case was filed as a class action in 1992 on behalf of parents and students in the Nogales and Douglas Unified School Districts in Arizona. Originally, the class representative was identified as Evangiline Miranda on behalf of her children and other parents and children similarly situated. Ms. Miranda was eventually dismissed and Miriam Flores was substituted in her place as the named class representative.

The complaint filed in 1992 generally alleged that the state was violating the Equal Education Opportunities Act of 1974 (“EEOA”).¹ The EEOA requires local education agencies including the state to take “appropriate action” to help non-English speaking students overcome their language barriers so that they can participate to the same extent as other students in public education. The *Castenada* case provides the analytical framework for determining whether the EEOA has been violated.²

The decision in *Castenada* established a three-prong test for determining compliance with the EEOA. First, the state must have a recognized educational methodology in place for delivering language acquisition services. At the time the *Flores* case was filed, Arizona had authorized four different methodologies for use by school districts and none of these was challenged by the plaintiffs in *Flores*. Second, the state must allocate appropriate resources in order to effectively implement the educational methodology that has been approved. It is this prong of the test that the plaintiffs challenged in *Flores*. And, third, even if there is a recognized methodology and adequate resources to implement it, the program must work. That is, it must produce results indicating that the language barriers confronting students are actually being overcome.

In 1996, the plaintiffs amended their complaint to include an additional claim. It was in 1996 that the state adopted the Arizona Instrument to Measure Standards (“AIMS”) test and established successful completion of the test as a graduation requirement. The additional claim asserted by the plaintiffs in *Flores* was that the AIMS

¹ 20 U.S.C. § 1703(f).

² *Castenada v. Pickard*, 648 F.2d 989 (5th Cir. 1981)

test would have a disparate impact on minority students in violation of Title VI of the Civil Rights Act of 1964.³

U. S. District Court Judge Alfredo Marquez established a trial date of August 16, 1999. The plaintiffs and defendants agreed that only the funding issues would be tried to the Court and that the programmatic issues in the case would be settled by agreement of the parties and become the subject of a Consent Order approved by the Court. The Court heard three days of testimony concerning the state's funding for ELL programs. The Court issued its judgment on January 24, 2000.⁴

A. The Judgment

1. EEOA Claim

Judge Marquez ruled in favor of the Plaintiffs on their EEOA claim. The Judge's decision began with a description of the Arizona school finance system and the manner in which ELL programs are funded through that system. In general, a base level amount of funding is made available to each school district on a per student basis. The state's finance formula increases the base funding amount by weighing certain factors such as the type of student, the experience of the teaching faculty, and the size and type of the school district. The weighting factor for ELL students was established by the state in 1989-90 and was based on a cost study performed in 1987-88. That cost study showed that on average school districts were annually spending \$450 per ELL student.

The state's witness at trial testified that the cost study was not reflective of the actual cost of operating a successful language acquisition program for numerous reasons. At the time of trial, the state had never updated nor revised the 1987-88 cost study. In

³ 42 U.S.C. § 2000D.

⁴ *Flores v. State of Arizona*, 172 F. Supp. 2d 1225 (D. Ariz. 2000).

1989-90, the weight applied to base level funding for ELL students was .02 meaning that schools received approximately \$50 more for each ELL student. In 1991-92, the state legislature increased the weight to the then current amount of .06 which resulted in approximately \$150 more being apportioned for each ELL student.

After describing the state's school financing scheme, the Court extensively summarized the testimony of the Director of Bilingual Education and Curriculum for Nogales Unified School District.⁵ She testified about the programs NUSD had in place for ELL students and testified that the United States Department of Education Office of Civil Rights had conducted a compliance review of NUSD in 1992 and that the District had entered into a compliance agreement to remedy certain problems. The Director also testified about problems that continued to persist in the District in the operation of ELL programs. Those problems included the need for qualified faculty, additional classroom space, materials, teacher training, parent training and transportation. The Director testified that NUSD lacked the resources to address these inadequacies.

The Court held that the state's \$150 appropriation per ELL student, in combination with the state's property based financing scheme, was inadequate and resulted in ELL program deficiencies. The Court identified the deficiencies as:

- 1) Too many students in a classroom,
- 2) Not enough classrooms,
- 3) Not enough qualified teachers including teachers to teach ESL and bilingual teachers to teach content area studies,
- 4) Not enough teacher aides,

- 5) An inadequate tutoring program and
- 6) Insufficient teaching materials for both ESL classes and content area courses.

Additionally, the Court determined that the state's \$150 appropriation per ELL student was based on the state's cost study which the state conceded was unreliable and which the state had failed to update. Consequently, the Court ruled that the ELL program cost on which the state's minimum \$150 appropriation was based was arbitrary and capricious.

2. Title VI Claim

The Court rejected the Plaintiffs' claim that the AIMS test violated Title VI's implementing regulations which prohibit a recipient of federal funding from utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.⁶ The Court held that demonstrating discriminatory effect suffices to establish a violation of the regulations but held that the Plaintiffs had failed to make the necessary showing.

The Court said that to establish a prima facie case of disparate impact, the Plaintiffs' had to establish that the AIMS test would have a disproportionate and adverse impact on minority students in NUSD, that the AIMS graduation test causes the disparity, and the disparity falls on the Plaintiffs because they are members of a protected group based on race, color or national origin. The Court held that the Plaintiffs' evidence failed to establish the necessary causal link between the disparate impact of the test and the Plaintiffs' minority status. That was particularly so because there was a correlation in

⁵ By the time of trial, the Plaintiff class had been limited to ELL students and their parents in the Nogales Unified School District. The class action allegations on behalf of students and parents in Douglas Unified School District had been decertified by the Court.

⁶ 34 C.F.R. §100.3(b)(2).

NUSD between low income at risk students and ELL students that eliminated any race-based inferences that might otherwise be drawn. Therefore, the students in NUSD might very well fail the test because they are low income at risk students who are not legally protected from discriminatory treatment as opposed to members of a protected group to whom such protections are available.

I. The Consent Order

Following issuance of the judgment, the Plaintiffs and Defendants continued to negotiate resolution of the programmatic issues in the case. Those negotiations resulted in a proposed Consent Order that was presented to the Court. The Court approved the Consent Order on July 31, 2000. With the Court's approval, the Consent Order acquired the same force and effect as a judgment and became judicially enforceable.

The Consent Order addresses numerous programmatic issues regarding the delivery of ELL programs in Arizona. Among other issues, the Consent Order requires that: a) the Superintendent of Public Instruction select tests and scores to determine English proficiency; b) the State Board of Education amend its rules to require that a student exited from an ELL program be reassessed in the two years following exit to determine whether the student is making academic progress. Exited students who do not perform satisfactorily on the reassessment tests shall be re-enrolled in an ELL and/or given compensatory instruction aimed at curing the skill or knowledge deficits revealed by the reassessment results; c) the State Board is also required to amend its rules to require that English language instruction shall be appropriate to the level of English proficiency and shall include listening and speaking skills, reading and writing skills, and cognitive and academic development in English. Additionally, the rules shall require

daily instruction in basic subject areas that is understandable and appropriate to the level of academic achievement of the ELL student; d) the State Board is also required to enact rules to provide that ELL students who are not progressing toward achieving proficiency of the Board's academic standards shall be provided additional compensatory instruction to help them achieve those standards; and e) the Superintendent is required to monitor school districts for compliance with state and federal laws including the Consent Order.

III. IMPACT OF PROPOSITION 203

In November 2000, Arizona voters approved a ballot initiative that established sheltered English immersion as the recognized educational methodology in Arizona for delivery of language acquisition services and programs. The initiative was patterned after the so-called Unz initiative approved two years earlier in California. The Arizona initiative, Proposition 203, repealed bilingual and English as a Second Language ("ESL") instruction except under limited circumstances.

To the extent Proposition 203 simply established a new methodology for language acquisition, it had no direct effect on the Court's judgment that the state's funding system was arbitrary, capricious and inadequate. Regardless of the methodology, the state was still under an obligation to adequately fund ELL programs. The cost of implementing Proposition 203 and establishing English immersion had yet to be assessed just as the cost of providing bilingual or ESL programs had never been assessed.

The one area in which Proposition 203 had the potential to affect program and cost issues in the *Flores* case was the issue of teacher qualifications. Prior to Proposition 203, the state had established the qualifications necessary for teachers to obtain bilingual and ESL endorsements. With the passage of Proposition 203, it became necessary for the

state to establish new qualifications for sheltered English immersion (“SEI”) teachers. The Plaintiffs and Defendants stipulated that the state would adopt rules establishing the requirements for teachers of ELL students consistent with the requirements of Proposition 203.

The state eventually adopted a rule that applied not only to teachers of ELL students but to all teachers on the theory that all teaching personnel should have some minimum background in SEI instruction regardless of whether they actually teach ELL students. Consequently, the qualifications established by the state were minimal. In contrast to the bilingual and ESL endorsements which required 18 semester hours of credit, the SEI endorsement could be obtained on a provisional basis with only 15 clock hours of training and on a permanent basis with an additional 45 clock hours of training.

The Plaintiffs claimed that the state had violated the stipulation by not specifying the qualifications for teachers of ELL students but instead for all teachers. The Court rejected that argument. However, in the final analysis, the state’s funding system must support recruiting and retaining teachers who are qualified to teach ELL students not only under state law but also the more rigorous requirements of federal law.

IV. ENFORCEMENT PROCEEDINGS

Immediately after the Court issued its judgment on January 24, 2000, counsel for the Plaintiffs delivered a letter to each Arizona legislator and the Governor informing them of the judgment and their responsibility to comply with it. Notwithstanding the judgment, By the time the legislative session concluded in May, no legislative action had been taken.

A. Plaintiffs First Motion for Injunctive Relief

In view of the legislature's failure to take any action during the 2000 Legislative session to comply with the judgment in *Flores*, the Plaintiffs filed their first Motion for Injunctive Relief in May of that year. They requested that the Court order the Defendants to perform a cost study upon which legislative action could be based to comply with the funding provisions of the judgment. On October 12, 2000, the Court granted the Plaintiffs' Motion and ordered that a cost study be conducted to determine appropriate funding levels for ELL programs. The Court further ordered that the study be completed in sufficient time for the legislature to act during the legislative session that would begin in January 2001.

The Arizona Department of Education contracted with two consulting firms to perform the required cost study. However, a cost study based upon ELL programs in Arizona's schools had become problematic in view of Arizona voters' approval of Proposition 203 in November 2000. That Proposition repealed the language methodologies in Arizona law including bilingual and ESL instruction and substituted in their place sheltered English immersion subject to certain exceptions. It became necessary for the consultants to examine a limited number of school districts outside of Arizona to assess the cost of providing effective English immersion programs.

The cost study was not completed and delivered to the legislature until May 2001. By then, the legislature was on the verge of adjournment and disinclined to extend the legislative session for the purpose of addressing ELL program funding issues. Moreover, some claimed that the cost study was of limited utility because of the small number of

school districts that were examined and their widely varying costs. The legislature adjourned once again without taking any action.

1. Plaintiffs' Second Motion for Injunctive Relief

Two legislative sessions had now come and gone without any action being taken to comply with the judgment. Moreover, there was no prospect that the legislature ever intended to take any action. Therefore, the Plaintiffs filed another motion asking the Court to establish a deadline for compliance.

The Court granted that motion and ordered the Defendants to comply with the judgment and provide adequate funding for ELL programs by January 31, 2002 or the conclusion of any earlier special session of the legislature that had been called for any other purpose. As it turns out, the legislature was called into special session by the Governor in December 2001 for a purpose unrelated to *Flores*. Rather than face sanctions from the Court, the legislature enacted legislation that addressed the judgment in *Flores* but only on an interim basis.

The interim legislation, House Bill 2010, was premised on the notion that the state still did not have reliable cost data to establish appropriate funding levels for ELL programs. Given the data that was available, the legislature determined that doubling ELL funding was appropriate until more reliable cost data could be obtained. Additionally, the legislation established three separate appropriations for teacher training, compensatory instruction and instructional materials. In total, House Bill 2010 increased annual funding for ELL programs by over \$40 million.

At the same time, House Bill 2010 also required that a new cost study be performed under the auspices of Legislative Council. House Bill 2010 also established

parameters for the cost study and appropriated funds for payment of outside consultants to conduct the cost study. Unfortunately, the legislation required that the cost study be submitted by August 2004, more than two and a half years later.

It was for that reason and others that the Plaintiffs opposed House Bill 2010 as even an adequate interim measure. Nevertheless, the Court accepted the legislation as an interim measure that would lead to ultimate resolution of the case. The legislation contemplated that after the cost study was submitted in August 2004, a Joint Legislative Committee would evaluate it and make recommendations to the legislature which would form the basis for action during the legislative session beginning in January 2005.

V. THE COST STUDY

A contract for the performance of the cost study was not even executed by Legislative Council until mid-2002. The contract was awarded to the National Conference of State Legislatures (“NCSL”). According to the terms of the contract, NCSL was charged with identifying the incremental costs of delivering language acquisition services to ELLs in Arizona’s public schools. The contract required that a survey be conducted of school districts and charter schools to determine those incremental costs. Additionally, NCSL was charged with identifying the costs of complying with state and federal law including the requirements of the *Flores* case and the state’s voter approved measure establishing sheltered English immersion.

In 2003, NCSL developed a survey instrument with assistance from the Arizona Auditor General’s Office. The survey was distributed to 39 school districts in December 2003. Eighteen school districts provided responses to the survey containing detailed information about costs associated with their ELL programs.

Following completion of the survey responses, NCSL convened two professional judgment panels, one consisting of state experts and the other consisting of national experts. The respective panels met and identified the essential components of ELL programs and attached costs to those components to arrive at a total incremental cost for providing adequate ELL programs.

In late July 2004, NCSL provided an Executive Summary of its report but, inexplicably, not the report itself. The Executive Summary identified incremental costs associated with providing adequate ELL programs based upon the professional judgment of the state and national expert panels. The state panel identified incremental costs of \$1,665 for grades K-2 and \$1,439 grades 3-12. The national panel identified incremental costs ranging from \$2,495 for high need, elementary school students to \$703 for low need high school students.

With only an Executive Summary, the Joint Legislative Committee that was established to review the cost study failed to meet or make any recommendations by December 1, 2004. Instead, the chairs of the Joint Legislative Committee sent the Governor a letter indicating that since the cost study had not been provided, the Committee could not meet and make recommendations as required by House Bill 2010.

The Plaintiffs determined that prospects for any legislative action in the session beginning January 2005 were becoming less and less likely. As a result, they filed a third Motion for Injunctive Relief requesting that the Court establish a deadline for compliance with the judgment by the end of the legislative session. In January 2005, the Court granted that Motion and ordered that the state “constitutionally and adequately fund”

programs for English language learners consistent with the Court’s judgment in previous orders.

It was not until the last week of the session that legislation was introduced to address the *Flores* judgment. The legislation was sponsored by the majority leadership in the legislature and generally predicated on their belief that the NCSL cost study failed to provide them sufficient information upon which to accurately assess and fund the cost of ELL programs. In the intent section of the legislation, the legislature declared that:

It has grave concerns regarding the validity and reliability of the cost study performed by the National Conference of State Legislatures...the cost study used what it referred to as the “professional judgment approach” to determine the incremental costs for English language learners, yet acknowledged that this kind of approach “depends on the judgment of educational professionals in identifying strategies rather than research that actually shows a linkage between the strategy and student performance.”⁷

Instead of relying upon the cost study, the legislation required the development of research based models of structured English immersion. Once the models were developed, the legislation allowed school districts to apply for additional funding associated with the incremental costs of the research based models that are in addition to the normal costs of conducting programs for English proficient students.

House Bill 2718 provided a temporary increase in the funding formula weight for ELL students that amounted to approximately \$75 per student. After one year of funding the weight at that level, House Bill 2718 eliminated the weight all together finding that classification of a pupil as an English language learner is “fundamentally different than the classification of the pupil as qualified for any other...category.”⁸

⁷ House Bill 2718, § 17(A).

⁸ House Bill 2718, § 17(B).

The legislation declared that the costs of implementing the new English language learner programs could not be determined until the research based models were developed. So, more than five years after the judgment had been issued in the *Flores* case, the legislature was admitting that it had not yet identified the cost of providing ELL programs as required by the Court. This was a major defect of the legislation causing the Plaintiffs to oppose it.

Additionally, the legislation cast serious doubt on the ability of school districts to successfully apply for any additional funding even after research based models were established. The legislation permitted school districts to apply for additional funding “if the estimated incremental costs of the...English immersion program exceed the total amount of funding available from all other sources.”⁹ The Plaintiffs objected to this provision as well because its broadly worded limitation would render virtually all school districts ineligible for any additional funding because, at least theoretically, their entire budgets are available for English language learner programs.

House Bill 2718 was approved on a partisan vote in the early morning hours of May 13, 2005 and was delivered to the Governor for her signature. On May 20, 2005, the Governor vetoed the bill citing several reasons for doing so. First among them was the fact that the legislative leadership had failed to include minority members of the legislature in the development of a bipartisan bill to satisfy the state’s obligations in the *Flores* litigation. Additionally, the Governor noted that the funding provided in the bill was grossly inadequate over the long run to meet the state’s ELL needs. Finally, she cited the legislation’s “bureaucratic and subjective grant funding process as a step backward” and not reasonably calculated to comply with the Court’s orders.

The Governor cited the potential loss of federal funding if the state did not comply with the Court's orders and urged the legislature to promptly work to achieve a bipartisan bill that meaningfully addresses the Court's legitimate concerns. She indicated that she would call a special session once she was informed by both minority and majority leadership that such a bill was ready for her consideration.

In very short order, it became clear that the majority in the legislature was in no mood for further discussions on the topic of *Flores*. Therefore, the Governor began work on her own proposal to address the Court's judgment and orders in the *Flores* case. In mid-June, she released her own legislative proposal relying on the NCSL cost study to establish appropriate funding levels. The Governor's proposal provided for phased in funding over a four year period of time. Like the legislature's proposal, the Governor's proposal eliminated the ELL weight but in its place substituted a separate funding mechanism for ELL students which required that the funding be spent solely for ELL purposes. In contrast, the weighted funding system allows school districts to budget ELLs funds for any purpose and does not restrict the expenditure of funds to ELLs.

After the four year phase-in, the Governor's proposal established funding at a level of \$1,289 per ELL student. This amount was within the range identified by the NCSL cost study after total incremental costs were offset by monies that school districts had historically spent on ELL programs from other sources including federal and locally generated funding. The Governor's proposal also included strict accountability provisions for the expenditure of the funds.

The legislative majority's reaction to the Governor's proposal was instantaneous. The Speaker of the House declared that Arizona would become "Mexico's best school

⁹ House Bill 2718, § 3 adding § 15-756.02(C)(2)(b).

district north of the border.” Other legislators denied that the state had any responsibility for educating non-citizens and insisted that children born in the United States to parents who had immigrated illegally were not citizens despite the U.S. Constitution’s explicit language to the contrary. One legislator suggested that the children “should be deported, along with their parents.”

VI. CURRENT STATUS

Given the legislative majority’s reaction to the Governor’s proposal, the Plaintiffs determined that they could wait no longer for the executive and legislative branches to discuss, much less agree, on a proposal that would comply with the Court’s judgment and orders. In late July and early August, the Plaintiffs filed two motions seeking further relief from the Court.

A. Motion to Enjoin the AIMS Test as a Graduation Requirement

On July 28, 2005, the Plaintiffs filed a Fourth Motion for Injunctive Relief asking that the Court enjoin the application of the AIMS test as a graduation requirement for ELLs. The Plaintiffs noted that even though the AIMS test was established in 1996, it would not be applied for the first time until the graduating class of 2006. In the intervening years, the state had taken action to not only make the test easier but also lowered the passing scores. Both adjustments have had the effect of reducing the failure rate for all categories of students except ELLs. The failure rate for non ELL students had been cut in half from over 50% to 26% by the spring of 2005. However, the failure rate for ELLs has held steady at 83%.

The Plaintiffs cited the obvious unfairness of requiring ELLs to pass an achievement test as a graduation requirement when the programs that were supposed to

help them do so have never been funded adequately. The Plaintiffs analogized the situation to those in which graduation tests were imposed in previously segregated school systems in which black students had received an inferior education. The courts have suspended the use of such tests until the vestiges of discrimination had been eliminated and equal education had been provided for a reasonable period of time. Similarly, in this case, the Plaintiffs asked the Court to prevent the state from using the AIMS test as a graduation requirement until programs for ELL students have been adequately funded for a sufficient period of time so that ELL students have a meaningful opportunity to achieve the state's academic standards and pass the AIMS test.

In response, the state claims that students have known for a number of years that they would be required to pass the AIMS test in order to graduate and have had sufficient time to prepare. The state also cites the availability of tutoring programs to provide assistance to struggling students. The state also argues that to exempt ELLs from the AIMS test would itself constitute discrimination against other students who would still be required to pass the AIMS test in order to graduate.

B. Motion for Sanctions

On August 2, 2005, the Plaintiffs filed a Motion for Sanctions against the Defendants. The Motion requests that the Court provide the state with thirty days in which to comply with the Court's judgment but if the state fails to take action within that period of time, the Court should enjoin Arizona from receiving federal highway funds. The Plaintiffs' theory is that since the state is violating federal law on a daily basis, it should be prevented from enjoying the fruits of its federal relationship when it disregards the obligations that go along with that relationship. Among the many categories of

federal funds that Arizona receives, the Plaintiffs identified highway funding because of its importance to the legislature in supporting Arizona's rapid growth.

The state has opposed the Plaintiffs' Motion for Sanctions on the grounds that it has acted in good faith and therefore should not be punished for non-compliance with the Court's order. The Plaintiffs have responded that the issue is not good faith but the timely establishment of programs for ELLs in public schools. The state has also sought the guidance of the Court regarding the issue of federal funding and its impact on the state's financial obligation for ELL programs.

The American Council of Engineering Companies of Arizona and the Associated General Contractors of America, Arizona Chapter, have also moved to intervene in the case for the limited purpose of opposing the sanctions sought by the Plaintiffs. The Intervenor claim that many of their members' existence depends on federal highway funding and that they would be substantially harmed if federal highway funding was terminated. The Intervenor also argue that the Court lacks authority to grant the sanctions sought by the Plaintiffs on various grounds including separation of powers, and the Tenth and Eleventh Amendments to the United States Constitution.

C. Court Hearing Scheduled

Judge Raner Collins scheduled a hearing on the Plaintiffs' Motions for October 31, 2005. That means that it is unlikely the legislature will be required to meet in special session to consider the *Flores* judgment before the end of 2005. Instead, it is more likely that the legislature will be required to enact legislation to comply with the judgment during the regular legislative session that begins in January 2006. However, there is no

reason to believe that the legislature and Governor will have changed their positions by then so the prospect for impasse continues to exist.

The imposition of sanctions either in the form of terminating federal highway funding or substantial fines may help to break the impasse. Under ordinary circumstances, the prospect of the state losing hundreds of millions of dollars in federal funding would trigger further negotiations and ultimate resolution of this issue. Unfortunately, these are not ordinary circumstances. Politically volatile issues concerning immigration have been interjected into the *Flores* debate. As a legal matter, those issues have nothing to do with the state's obligation to educate public school children and comply with the Equal Education Opportunities Act. Compounding the political issue, is the legislature's resistance to Court mandated spending on education issues. Many legislators take the position that the judiciary has no role to play in what they regard as essentially a legislative function.

VII. IMPLICATIONS

The *Flores* case is significant in several respects. First, it is the only reported court decision finding that a state has failed to comply with the EEOA. There have been other decisions involving school districts but none in which a state has been ordered by a federal court to increase funding for English language learner programs. Second, there have been many school finance decisions across the country in which state courts have determined that school finance systems are unconstitutional under the terms of a state's constitutional provisions. Those questions almost always raise separation of powers issues regarding the state court's ability to mandate legislative compliance with varying results. However, the *Flores* case is one of the few cases in which a federal court has

mandated legislative compliance with funding provisions. Although separation of powers questions are not a barrier to judicial enforcement, the integrity of the federal-state relationship poses similar problems. The *Flores* case will test the federal judiciary's ability to enforce federal law against an uncooperative and unwilling state.

From an educational prospective, *Flores* represents yet another case in which the judiciary has been willing to use state or federal law as a basis for imposing limitations on legislative funding decisions. Those funding decisions have historically been reserved to the sole and exclusive discretion of the legislature. However, over the last thirty years, courts have shown a willingness to review those legislative decisions under either state constitutional provisions or, in the *Flores* case, federal law.

The judicial trend is toward requiring legislative decisions that have some relationship to the costs of providing an adequate education. Where legislative funding decisions in the educational arena had been politically driven in the past, states are being required in many instances to establish some rational cost basis for their decisions.

That is not to say that states must simply perform a cost study and then provide funding at the recommended level. If that were true, then there would be no need for state legislatures. Instead, the evolving legal standard seems to require an inquiry into the costs of adequately educating students and using that inquiry at least in part as a basis for funding decisions.

VIII. CONCLUSION

It is clear that cases like *Flores* are not a panacea for inadequate educational funding. Ultimately, funding decisions are committed to the sound discretion of legislative and executive officials who have been elected to make those decisions.

However, cases like *Flores* established that the principle that such discretion is not unlimited and requires consideration of the costs associated with funding inadequate education.