PALMER, J., concurring in the judgment. I agree with the plaintiffs[1] that their claims under article eighth, § 1, of the Connecticut constitution[2] are justiciable. I also conclude that the right embodied in that provision is a substantive one that requires the state[3] to provide an educational opportunity to the students of our free public elementary and secondary schools that, at the least, is minimally adequate by modern educational standards.[4] Consequently, like the plurality, I also conclude that the judgment of the trial court must be reversed. I am unable to join the plurality opinion, however, primarily because I take a different view from the plurality with respect to the scope of the right guaranteed by article eighth, § 1. In particular, I believe that the executive and legislative branches are entitled to considerable deference with respect to the determination of what it means, in practice, to provide for a minimally adequate, free public education. Thus, it is the prerogative of the legislature to determine, within reasonable limits, what a minimally adequate education entails. Consequently, in my view, the plaintiffs will not be able to prevail on their claims unless they are able to establish that what the state has done to discharge its obligations under article eighth, § 1, is so lacking as to be unreasonable by any fair or objective standard. As I explain more fully hereinafter, any other approach, including the approach that the plurality advocates, would permit the judicial branch to second-guess the reasoned judgment of the legislative and executive branches with respect to the education policy of this state, thereby depriving those branches of their "recognized significant discretion in matters of public elementary and secondary education." *Sheff* v. *O'Neill*, 238 Conn. 1, 37, 678 A.2d 1267 (1996).

I

JUSTICIABILITY

The state contends that the plaintiffs' claims under article eighth, § 1, of the state constitution give rise to a nonjusticiable political question. Although I agree with the plurality's determination that the plaintiffs' state constitutional claims are justiciable, I disagree with the plurality's assertion that *Sheff* v. *O'Neill*, supra, 238 Conn. 1, "controls the justiciability issue in this appeal." My disagreement with the plurality is twofold. First, *Sheff* involved a claim that the plaintiffs in that case had been denied the right to a substantially equal educational opportunity under article eighth, § 1, *and* under the equal protection provisions of article first, §§ 1[5] and 20,[6] of the state constitution. Second, in retrospect, our justiciability analysis in *Sheff* was less than persuasive.

Before considering these two points, I turn first to this court's relatively brief discussion of justiciability in *Sheff*, in which we first explained that the defendants in that case had asserted that the plaintiffs' claims were nonjusticiable because "the relief [that the plaintiffs sought] would . . . require this court to respond to a political question that our constitution has expressly and exclusively entrusted to the legislature." Id., 13. Although we acknowledged that "courts do not have jurisdiction to decide cases that involve matters that textually have been reserved to the legislature"; id.; we also explained that, "[i]n the absence of such a textual reservation . . . it is the role and the duty of the judiciary to determine whether the legislature has fulfilled its affirmative obligations within constitutional principles." Id. We then observed that, "[i]n the context of [a claim seeking] judicial enforcement of the right to a substantially equal educational opportunity arising under article eighth, § 1, and article first, §§ 1 and 20, justiciability is not a matter of first impression for this court." Id., 14. We explained, more specifically, that, "[i]n *Horton* [v. *Meskill*, 172 Conn. 615, 376 A.2d 359 (1977) (*Horton I*)], and *Horton* v. *Meskill*, 195 Conn. 24, 486 A.2d 1099 (1985) (*Horton III*), we reviewed, in plenary fashion, the actions taken by the legislature to fulfill its constitutional obligation to public elementary and secondary schoolchildren. Judicial authority to render these decisions was expressly reaffirmed in *Nielsen* v. *State*, [236 Conn. 1, 9–10, 670 A.2d 1288 (1996)], and in *Pellegrino* v. *O'Neill*, [193 Conn. 670, 683, 480 A.2d 476, cert. denied, 469 U.S. 875, 105 S. Ct. 236, 83 L. Ed. 2d 176 (1984)]." *Sheff* v. *O'Neill*, supra, 238 Conn. 14.

We then noted: "The defendants [in *Sheff*] do not challenge the continued validity of *Horton I* and *Horton III* . . . but argue that their claim of nonjusticiability differs. That argument is unavailing. The plaintiff schoolchildren . . . invoke the same constitutional provisions to challenge the constitutionality of state action that the plaintiff schoolchildren invoked in *Horton I* and *Horton III*. The text of article eighth, § 1, has not changed." Id., 14–15. The court in *Sheff* concluded that, "[i]n light of these precedents . . . the phrase 'appropriate legislation' in article eighth, § 1, does not deprive the courts of the authority to determine what is 'appropriate.' " Id., 15.

Thus, our justiciability determination in *Sheff* was predicated entirely on *Horton I* and *Horton III*, and two subsequent cases, *Nielsen* v. *State*, supra, 236 Conn. 1, and *Pellegrino* v. *O'Neill*, supra, 193 Conn. 670. In *Horton I* and *Horton III*, however, this court *never considered* the justiciability of the plaintiffs' claims in those cases because the defendants did not appeal the trial court's decision rejecting their contention that the plaintiffs' claims were nonjusticiable. Although we adverted to that fact in a footnote in *Sheff*;[7] see *Sheff*

v. *O'Neill*, supra, 238 Conn. 14 n.16; we nevertheless treated our plenary review of the plaintiffs' claims in *Horton I* and *Horton III* as adequate support for our conclusion in *Sheff* that claims alleging a violation of the constitutionally protected right to an equal educational opportunity are justiciable. See id., 14–15. Therefore, because we never addressed the issue of justiciability in *Horton I* or *Horton III*, our reliance on those cases for purposes of resolving the defendants' justiciability claim in *Sheff* was misplaced.[8] Finally, in both of the cases that we cited in *Sheff* as "expressly reaffirm[ing]" our justiciability determination in *Horton I* and *Horton III*, namely, *Nielsen* and *Pellegrino*; id., 14; we simply explained that we had exercised our authority in *Horton I* and *Horton III* to reach the merits of those cases; we made no mention of the fact that the *issue of our authority to do so* was not before this court in either *Horton I* or *Horton III* because no party to those cases had raised it on appeal. See generally *Nielsen* v. *State*, supra, 9–10; *Pellegrino* v. *O'Neill*, supra, 683. In light of this history, I cannot see how our justiciability determination in *Sheff* is sufficient to warrant our reliance on that conclusion for purposes of the present case.

I also disagree with the plurality's reliance on our justiciability determination in *Sheff* for a second reason, namely, because *Sheff* and the present case involve different rights under the state constitution that implicate materially different jurisprudential considerations. In *Sheff*, the plaintiffs alleged that they had been deprived of their right to an equal educational opportunity under article eighth, § 1, and article first, §§ 1 and 20; see *Sheff* v. *O'Neill*, supra, 236 Conn. 5; whereas the plaintiffs in the present case have claimed that they have been denied their right to a suitable or adequate education under article eighth, § 1. The two types of claims give rise to important differences with respect to the role of the judiciary; the former requires the adjudication of issues that relate primarily to the equality of education, whereas the latter requires the adjudication of issues that are more directly related to education policy. To the extent that education adequacy litigation involves the courts in matters of education policy to a greater degree than education equity litigation, it is reasonable to conclude that, as a general matter, adequacy claims are more likely to result in judicial intrusion into areas of core legislative interest and responsibility. See, e.g., R. Levy, "Gunfight at the K-12 Corral: Legislative vs. Judicial Power in the Kansas School Finance Litigation," 54 U. Kan. L. Rev. 1021, 1033–34 (2006) ("Defining levels of adequacy requires that courts become involved in determining educational policies—the goals and the methods of delivering education—in a way that equity litigation does not. Likewise, fashioning remedies for violations of adequacy requirements is more problematic because legislatures may be reluctant to provide sufficient funding and

because judicial enforcement of remedies against the legislature presents practical difficulties and raises serious separation-of-powers concerns.").

I nevertheless agree with the plaintiffs that their claims under article eighth, § 1, are justiciable. First, I am not persuaded that the language of article eighth, § 1, so clearly removes the issue of its implementation from judicial review as to preclude the judiciary from exercising the authority that it otherwise possesses to consider the merits of the plaintiffs' claims. Although the "appropriate legislation" language of article eighth, § 1, affords the legislature considerable latitude in determining how best to meet the constitutional mandate of free public elementary and secondary school education; see part II of this opinion; there is nothing in the wording or history of that provision to indicate that its drafters intended to shield its implementation by the legislature from any and all measure of judicial interpretation or review. Moreover, although I believe that the other factors to be considered in determining the justiciability of a claim under the state constitution[9] present a closer question than the plurality believes it does, I agree with the plurality and the plaintiffs that those considerations are not sufficiently compelling in this case to relieve this court of *its* constitutional responsibility to safeguard the constitutional rights of our citizenry.[10] Mindful of the fact that we undertake our resolution of the state's claim "with a heavy thumb on the side of justiciability, and with the recognition that, simply because the case is connected to the political sphere, it does not necessarily follow that it is a political question"; *Seymour* v. *Region One Board of Education*, 261 Conn. 475, 488, 803 A.2d 318 (2002); I am not convinced that that doctrine bars us from entertaining the plaintiffs' education adequacy claim under article eighth, § 1, of the state constitution. As I explain more fully hereinafter, however, I am persuaded that many of the factors that the state identifies in the present case as requiring complete judicial abstention under the political question doctrine militate strongly in favor of limiting the role of the judiciary by deferring to the reasoned determination of the political branches with respect to the precise parameters of the right established under article eighth, § 1. Thus, affording considerable deference to the political branches with respect to the approach that they deem appropriate to satisfy the mandate of article eighth, § 1, necessarily eases separation of powers concerns—concerns that otherwise might lead to a different resolution of the state's claim of nonjusticiability.

II

THE CONSTITUTIONAL STANDARD

By its terms, article eighth, § 1, of the state constitution is not merely precatory or hortatory. On the contrary, it imposes an affirmative, mandatory obligation

on the legislature to enact legislation appropriate to the task of maintaining a system of free public elementary and secondary schools. The issue, therefore, is whether article eighth, § 1, obligates the state to ensure that those free public schools provide to the students attending them an educational opportunity of a certain level or quality. I believe that it does.

For several reasons, I am unable to conclude that article eighth, § 1, is satisfied as long as the state maintains a system of public elementary and secondary schools no matter how fundamentally inadequate some or all of those schools may be. It is apparent that Simon Bernstein, one of the delegates at the state constitutional convention of 1965, and other delegates who supported the idea of constitutionalizing the right to free public schools were proud of Connecticut's long-standing commitment to the education of its schoolchildren, and they urged their colleagues to support the proposed right as an expression of the state's continued recognition of that responsibility. See Proceedings of the Connecticut Constitutional Convention (1965), Pt. 1, p. 312, remarks of Bernstein ("[w]e have a great history and tradition requiring that the public body supply our children with free public education"); Proceedings of the Connecticut Constitutional Convention (1965), Pt. 3, p. 1039, remarks of Bernstein (noting this state's educational "tradition which goes back to our earliest days of a free good public education"); see also id., p. 1062, remarks of Chase Going Woodhouse ("it is extremely fitting that we should finally put into our [c]onstitution a reference to our great public schools because Henry Barnard of Connecticut is perhaps one of the greatest historical figures in this development of public school education in this whole nation of ours"). To presume, therefore, that the legislature may, if it chooses, establish and maintain manifestly inferior or substandard public schools would be inconsistent with the purpose underlying article eighth, § 1, namely, to underscore the importance of free public schools by elevating that principle to constitutional status. See, e.g., id., p. 1039, remarks of Bernstein ("I submitted a resolution . . . which pertained to the subject of education . . . and the statement of purpose of that resolution . . . was that our system of free public education have a tradition [of] acceptance on a par with our bill of rights and it should have the same [c]onstitutional sanctity. It was because our [c]onstitution had no reference to our school system that I submitted my resolution and of course others were aware of the same [omission] in our [c]onstitution and other similar resolutions were submitted. . . . [W]e have [had] good public schools so that this again is not anything revolutionary, it is something which we have, it is which is [in] practically all [c]onstitutions in the [s]tates of our nation and Connecticut with its great tradition certainly ought to honor this principle."). Moreover, a contrary determination

would be incompatible with the requirement of article eighth, § 1, that the legislature shall implement a system of free public elementary and secondary schools by "appropriate" legislation, a mandate that suggests that the delegates contemplated the establishment of free public schools of at least some measure or level of quality. Indeed, it would do violence to the meaning of the term "school,"[11] as a place where students go to learn, to conclude that the legislature is free to establish and maintain a system of public education that is not even minimally adequate to meet the needs of those students.

Finally, I agree with Justice Schaller that our determination in *Horton I* concerning the right to an equal educational opportunity informs our determination of whether that right also includes a qualitative component. As Justice Schaller explains in his concurring opinion: "To be sure, the court concluded in *Horton I* only that the plaintiffs [in that case] 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. . . . 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 [article eighth, § 1] is inextricably linked to the quality of the education provided. Put another way, our conclusion in *Horton I* that the plaintiffs [in that case] 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 [article eighth, § 1]. We cannot fairly separate the right to education from the right to a *quality* education." (Citation omitted; emphasis in original.) Thus, implicit in the right to an equal educational opportunity in our free public elementary and secondary schools is the right to an education that, at the least, satisfies minimum qualitative standards.

Having determined that article eighth, § 1, contains a qualitative component, the following question remains: What is the nature and scope of the right guaranteed under that provision? For the reasons that follow, I conclude, first, that the right established under article eighth, § 1, requires only that the legislature establish and maintain a minimally adequate system of free public schools. I also conclude that the legislature is entitled to considerable deference with respect to both its conception of the scope of the right and its implementation of the right.

A number of considerations support the conclusion that the right under article eighth, § 1, places no greater an obligation on the legislature than to provide a minimally adequate educational opportunity to this state's public elementary and secondary school students. First, article eighth, § 1, contains no language that mandates any particular standard or otherwise purports to delineate expressly the parameters of the right to a minimally adequate education. At first blush, the framer's omission of such language might appear to be neutral with respect to the issue of the scope of the right created under article eighth, § 1. As the plurality has observed, however, the analogous provisions of a majority of state constitutions require the legislatures in those states to establish and maintain schools of a certain caliber, level or quality. See, e.g., Ark. Const., art. 14, § 1 (state must maintain "a general, suitable and efficient system of free public schools"); Colo. Const., art. IX, § 2 (legislature directed to provide for "a thorough and uniform system of free public schools"); Fla. Const., art. IX, § 1 (a) (state shall provide for "a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education"); Idaho Const., art. IX, § 1 (legislature shall provide for "a general, uniform and thorough system of public, free common schools"); Ill. Const., art. X, § 1 ("[t]he state shall provide for an efficient system of high quality public educational institutions and services"); Minn. Const., art. XIII, § 1 (legislature shall provide for "a thorough and efficient system of public schools"); Mont. Const., art. X, § 1, para. 3 ("[t]he legislature shall provide a basic system of free quality public elementary and secondary schools"); N.J. Const., art. VIII, § IV, para. 1 ("[t]he [l]egislature shall provide for the maintenance and support of a thorough and efficient system of free public schools"); Ohio Const., art. VI, § 2 (Ohio General Assembly shall make provisions for "a thorough and efficient system of common schools throughout the state"); Va. Const., art. VIII, § 1 ("[t]he General Assembly . . . shall seek to ensure that an educational program of high quality is established and continually maintained"); W. Va. Const., art. XII, § 1 (legislature "shall provide, by general law, for a thorough and efficient system of free schools"); Wyo. Const., art. 7, § 1 ("[t]he [l]egislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction"). In Connecticut, however, we have elected to establish the constitutional right to a free public education without reference to any substantive or qualitative requirement. Although I am not persuaded that the absence of such language in article eighth, § 1, reflects an intent by the framers that our public elementary and secondary schools need not meet any minimum or threshold qualitative standard, the fact that article eighth, § 1, contains no such language is nevertheless reason for this court to refrain from defining the right too broadly

or expansively.

Furthermore, article eighth, § 2, of the Connecticut constitution, which, like article eighth, § 1, was adopted at the 1965 constitutional convention, requires that the state "maintain a system of higher education, including The University of Connecticut, which shall be *dedicated to excellence* in higher education." (Emphasis added.) The fact that this provision makes reference to a particular qualitative standard supports an inference that the framers intentionally drafted article eighth, § 1, in nonsubstantive terms and further counsels against an expansive interpretation of article eighth, § 1.

The history of article eighth, § 1, also indicates that the framers themselves did not believe that they were establishing a broad, new right. For example, the main sponsor of the proposed provision, Bernstein, urged its adoption because the other states already had seen fit to include similar provisions in their state constitutions. See Proceedings of the Connecticut Constitutional Convention, supra, Pt. 3, p. 1039, remarks of Bernstein. Indeed, Bernstein expressly stated that the principle embodied in his proposal was "not anything revolutionary." Id.; see also id., p. 1040, remarks of Albert E. Waugh (explaining that because Connecticut was only state not to have constitutional provision establishing right to free public education, adoption of proposed amendment was "natural and proper thing to do"). Thus, the intent and purpose of the framers, as reflected in the proceedings of the 1965 constitutional convention, coupled with the language of article eighth, § 1, strongly suggest that a particularly demanding qualitative requirement was not a matter of paramount importance. These considerations, taken together, nevertheless support the conclusion that article eighth, § 1, contemplates free public elementary and secondary schools that, at the least, are minimally adequate.

I also believe that the proper scope of article eighth, § 1, cannot be determined without due regard for the principle, previously recognized by this court, that "prudential cautions may shed light on the proper definition of constitutional rights and remedies . . . ." (Citation omitted.) *Sheff* v. *O'Neill*, supra, 238 Conn. 15; see also *Fonfara* v. *Reapportionment Commission*, 222 Conn. 166, 185, 610 A.2d 153 (1992) ("[p]rudential and functional considerations are relevant to the classical enterprise of constitutional interpretation, especially [when] . . . the constitutional provisions at issue are . . . open-textured"); cf. *United States Dept. of Commerce* v. *Montana*, 503 U.S. 442, 459, 112 S. Ct. 1415, 118 L. Ed. 2d 87 (1992) (observing that issue before court regarding limits of Congress' apportionment authority gave rise to special concerns not present in prior cases but concluding that those concerns "relate[d] to the merits of the controversy rather than to [the court's] power to resolve it"). Several such prudential consider-

ations militate strongly in favor of deferring to the reasoned judgment of the political branches with respect to the determination, in practice, of the parameters of the right.

The first such consideration is what this court has recognized as the legislature's significant discretion in matters of public elementary and secondary school education. *Sheff* v. *O'Neill*, supra, 238 Conn. 37, 41. The judicial branch must accord the legislative branch great deference in this area because, among other reasons, courts are ill equipped to deal with issues of educational policy; in other words, courts "lack [the] specialized knowledge and experience" to address the many "persistent and difficult questions of educational policy" that invariably arise in connection with the establishment and maintenance of a statewide system of education. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 42, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973). Thus, these issues are best addressed by our elected and appointed officials in the exercise of their informed judgment. See id. As the United States Supreme Court has observed, "[e]ducation . . . presents a myriad of intractable economic, social, and even philosophical problems. . . . The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of solving them, and that, within the limits of rationality, the legislature's efforts to tackle the problems should be entitled to respect. . . . On even the most basic questions in this area the scholars and educational experts are divided. Indeed, one of the major sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education . . . . Related to the questioned relationship between cost and quality is the equally unsettled controversy as to the proper goals of a system of public education. . . . The ultimate wisdom as to [the] . . . problems of education is not likely to be divined for all time even by the scholars who now so earnestly debate the issues. In such circumstances, the judiciary is well advised to refrain from imposing on the [state] inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions." (Citations omitted; internal quotation marks omitted.) Id., 42–43.

Special deference is warranted in the present case due to the fact that the framers reserved to the legislature the responsibility of implementing the mandate of a free public education under article eighth, § 1, by "appropriate legislation." The ordinary meaning of these words vests the legislature with significant discretion. Indeed, because the framers provided no express guidance as to the nature or scope of the "appropriate"

legislation required under article eighth, § 1, it is apparent that they intended to leave that determination to the reasoned judgment of the legislature.

Another compelling reason for judicial restraint in matters relating to educational policy is the potential that exists for a costly and intrusive remedy if it is determined that the state's system of public education has failed to meet the constitutional standard of quality. The recent experience of our neighbors in Massachusetts and New York is instructive. In both of those states, trial courts found that certain schools were constitutionally deficient and imposed remedies that ultimately were upheld on appeal, costing billions of dollars. See *Hancock* v. *Commissioner of Education*, 443 Mass. 428, 436–51, 822 N.E.2d 1134 (2005) (plurality opinion) (explaining history and cost of litigation in Massachusetts); *Campaign for Fiscal Equity, Inc.* v. *New York*, 8 N.Y.3d 14, 20–27, 861 N.E.2d 50, 828 N.Y.S.2d 235 (2006) (explaining history and cost of litigation in New York). Despite these expenditures, and after years of good faith efforts by the political branches to ameliorate the constitutional violations, trial courts in both Massachusetts and New York concluded that the educational deficiencies persisted and ordered further remedial action. See *Hancock* v. *Commissioner of Education*, supra, 443 (plurality opinion); *Campaign for Fiscal Equity, Inc.* v. *New York*, supra, 25–27. On appeal, however, both the Supreme Judicial Court of Massachusetts and the New York Court of Appeals determined that further judicial involvement in budgeting and policy making decisions relating to education was unwarranted—the lingering educational inadequacies notwithstanding—in light of the substantial deference due the political branches in matters of education policy. See *Hancock* v. *Commissioner of Education*, supra, 460 (plurality opinion) (rejecting trial court's remedial order because it was, inter alia, "rife with policy choices that are properly the [l]egislature's domain" and because remedy "would not be a final [one], but a starting point for what inevitably must mean judicial directives concerning appropriations," which was unacceptable result in light of then ongoing efforts by political branches to improve education statewide); *Campaign for Fiscal Equity, Inc.* v. *New York*, supra, 28 ("[The court's] deference to the [l]egislature's education financing plans is justified not only by prudent and practical hesitation in light of the limited access of the [j]udiciary to the controlling economic and social facts, but also by our abiding respect for the separation of powers [on] which our system of government is based . . . . We cannot intrude [on] the policy-making and discretionary decisions that are reserved to the legislative and executive branches . . . ." [Citations omitted; internal quotation marks omitted.]).

These examples and similar cases from other jurisdictions reflect what one commentary recently has charac-

terized as a distinct trend in education adequacy litigation away from judicial intervention and toward deference to the legislature. J. Simon-Kerr & R. Sturm, "Justiciability and the Role of Courts in Adequacy Litigation: Preserving the Constitutional Right to Education," 6 Stan. J. C.R. & C.L. (forthcoming 2010) (discussing cases), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1312426 (last visited March 9, 2010). Although I agree with the plaintiffs that the prospect of an expensive remedy, or one that is likely to inject the court into matters of education policy, or both, should not preclude an adjudication of the merits of their education adequacy claims, the significant separation of powers issues that any such remedy invariably would spawn must be given due consideration in determining the scope of the right established under article eighth, § 1.[12] The fact is that the plaintiffs seek a complete overhaul of the current system of public education, including a judgment declaring "that the existing school funding system is unconstitutional, void and without effect,"[13] a permanent injunction barring the state "from operating the current public education system, except as necessary to provide an expedient and efficient transition to a constitutional public education system," and the appointment of a special master "to hold hearings, make findings, and report recommendations to the [c]ourt with regard to the constitutionality of any new system of education proposed by [the state]." It is difficult to imagine a more comprehensive or thoroughgoing challenge to the legitimacy of the manner in which the legislature has elected to discharge its responsibilities under article eighth, § 1, than that reflected in the relief sought by the plaintiffs in the present case.

With respect to the plaintiffs' funding claim, it is noteworthy that a report commissioned by the named plaintiff, Connecticut Coalition for Justice in Education Funding, Inc., contains an estimate indicating that, during the 2003–2004 school year, the state would have had to spend an additional $2.02 billion on elementary and secondary public school education to meet the constitutional standard advocated by the plaintiffs. See Augenblick, Palaich & Associates, Inc., Estimating the Cost of an Adequate Education in Connecticut (June, 2005) p. v, available at http://www.schoolfunding.info/states/ct/CT-adequacystudy.pdf (last visited March 9, 2010). This "additional" annual amount is approximately 92 percent more than the amount that the state actually spent that year, i.e., approximately $2.2 billion, on those schools. See Office of Fiscal Analysis, Connecticut General Assembly, Connecticut State Budget 2003–2005, p. 13. For present purposes, it is not important whether the $2.02 billion figure is, in fact, accurate; what is important is that, under the plaintiffs' conception of the nature and scope of the right established under article eighth, § 1, the state would be required to spend,

at a minimum, many hundreds of millions of additional dollars on the state's public elementary and secondary schools. I fully appreciate, of course, that, at this preliminary stage of the litigation, it would be unfair to use the report or its $2.02 billion estimate for anything other than a very rough indicator of the magnitude of the problem from the plaintiffs' perspective. The potential cost of the remedy as estimated in the report, however, is sufficiently great that it cannot be ignored for purposes of determining the scope and parameters of article eighth, § 1.

The potential for long, protracted and expensive litigation is yet another factor favoring an approach that affords a substantial degree of deference to the legislature concerning the discharge of its responsibility under article eighth, § 1. In his dissenting opinion, Justice Zarella discusses a number of cases in which sister state courts "have become bogged down for years in [seemingly] endless litigation" over the nature and scope of the state constitutional right to a free public education and the appropriate remedies for violations of that right, including, most notably, the New Jersey courts, and I need not repeat that discussion here. The observations of the high courts of Nebraska and Rhode Island are worth noting, however, because they so graphically highlight the problems that can arise when the judiciary becomes embroiled in disputes over the precise contours of the state constitutional right to education.[14] See *Nebraska Coalition for Educational Equity & Adequacy* v. *Heineman*, 273 Neb. 531, 557, 731 N.W.2d 164 (2007) ("The landscape is littered with courts that have been bogged down in the legal quicksand of continuous litigation and challenges to their states' school funding systems. Unlike those courts, we refuse to wade into that Stygian swamp."); *Pawtucket* v. *Sundlun*, 662 A.2d 40, 59 (R.I. 1995) ("[T]he New Jersey Supreme Court has struggled in its self-appointed role as overseer of education for [decades], consuming significant funds, fees, time, effort, and court attention. The volume of litigation and the extent of judicial oversight provide a chilling example of the thickets that can entrap a court that takes on the duties of a [l]egislature."). It is no doubt that these potential problems can be minimized or perhaps even eliminated by employing a mode of constitutional interpretation that affords considerable deference to the legislature with respect to the manner in which the right to a minimally adequate free public education is conceived and implemented.

In accordance with the foregoing principles and considerations, I agree generally that the following "essentials," as explicated by the New York Court of Appeals, are necessary to satisfy the requirement of a minimally adequate education for purposes of article eighth, § 1. "Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn.[15] Chil-

dren should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks.[16] Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas."[17] *Campaign for Fiscal Equity, Inc.* v. *New York*, 86 N.Y.2d 307, 317, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995).

Although these basic, minimum requirements appear to be relatively straightforward, what level of resources or specific measures are necessary to satisfy them in practice is by no means self-evident. Undoubtedly, reasonable people with expertise in the field of education can and will disagree on whether one or more of these requirements has, in fact, been met with regard to a particular school or schools and, if the requirement has not been met, what more is necessary to satisfy it. In my view, the deference owed to the political branches in matters of education policy dictates that, unless the plaintiffs can demonstrate that the actions that the state has taken to satisfy the particular requirement in dispute cannot reasonably be defended as minimally adequate, the court must defer to the judgment of the political branches in the matter. Thus, if the state and the plaintiffs disagree as to whether the legislature has met its obligation under article eighth, § 1, with respect to any of the core or essential components of a minimally adequate education, to prevail on their claim of a constitutional violation, the plaintiffs must establish that the action that the legislature has taken to comply with article eighth, § 1, reasonably cannot be considered sufficient by any fair measure. Put differently, the plaintiffs are not entitled to relief unless they can demonstrate that the legislature's formulation of the scope of the right to a minimally adequate public education and its efforts in implementing that formulation are unreasonably insufficient. Any less demanding standard would give insufficient voice to the reasoned judgment of the legislature.[18]

III

CONCLUSION

"Compulsory school attendance laws and the great expenditures for education both demonstrate [the court's] recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities . . . . It 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." *Brown* v. *Board of*

Education, 347 U.S. 483, 493, 74 S. Ct. 686, 98 L. Ed. 873 (1954). It reasonably cannot be disputed, however, that, even though "schools are important socializing institutions in our democratic society, they cannot be constitutionally required to overcome every serious social and personal disadvantage that students bring with them to school, and that seriously hinder[s] the academic achievement of those students."[19] *Sheff* v. *O'Neill*, supra, 238 Conn. 144 (*Borden*, *J.*, dissenting); see also part III of the plurality opinion ("[T]he failure of students to achieve the goals of a constitutionally mandated education may be . . . caused by factors not attributable to, or capable of remediation by, state action . . . . [W]e [therefore] recognize that [article eighth, § 1] is not a panacea for all of the social ills that contribute to many of the achievement deficiencies identified by the plaintiffs in their complaint . . . ." [Citations omitted.]).

In light of our citizenry's "abiding respect for the vital role of education in a free society"; *San Antonio Independent School District* v. *Rodriguez*, supra, 411 U.S. 30; however, and because our free public elementary and secondary schools can serve as a beacon for those most in need, we reasonably may expect that the legislative and executive branches will strive to do much more than is constitutionally required for the benefit of those attending those schools. Article eighth, § 1, however, *guarantees* a minimally adequate education for those students, and the plaintiffs' complaint, liberally construed, alleges a violation of that fundamental right.[20] Consequently, the plaintiffs are entitled to proceed with their claims under that provision. I therefore agree with the plurality that the trial court's judgment must be reversed and that the case must be remanded for further proceedings.

[1] The plaintiffs are the Connecticut Coalition for Justice in Education Funding, Inc., and certain parents and grandparents of students enrolled in various public schools throughout the state. See footnote 3 of the plurality opinion and accompanying text.

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

[3] The defendants in this case are M. Jodi Rell, the governor of Connecticut, Denise Lynn Nappier, the state treasurer, Nancy S. Wyman, the state comptroller, Mark K. McQuillan, successor to Betty J. Sternberg, the former state commissioner of education, and various former and current members of the state board of education. See footnote 5 of the plurality opinion for a list of the particular defendants in this case. In the interest of simplicity, I refer to the defendants collectively as the state throughout this opinion.

[4] I perceive no difference between an educational opportunity that is minimally adequate and an educational opportunity that the plurality characterizes as "soundly basic." (Internal quotation marks omitted.) I use the former terminology, however, because it mirrors the language used in the explication of the standard that I believe is most useful for purposes of explaining the essential requirements of article eighth, § 1. See part II of this opinion.

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

[6] Article first, § 20, of the constitution of Connecticut 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 civil or political rights because of religion, race, color, ancestry or national origin."

Article first, § 20, has been amended by articles five and twenty-one of the amendments, which added sex and disability, respectively, to the list of protected classes.

[7] We stated in *Sheff*: "The defendants in *Horton I* originally asserted defenses based on justiciability, sovereign immunity and standing. The trial court ruled against the defendants on the issues of justiciability and standing . . . but did not address the issue of sovereign immunity. *Horton* v. *Meskill*, 31 Conn. Sup. 377, 389, 332 A.2d 113 (1974). In their appeal to [the state Supreme] [C]ourt, the defendants in *Horton I* did not challenge the trial court's ruling." *Sheff* v. *O'Neill*, supra, 238 Conn. 14 n.16. In *Horton* v. *Meskill*, supra, 31 Conn. Sup. 389, the court, *Rubinow*, *J.*, resolved the defendants' claim of nonjusticiability by reference to an earlier decision in the same case by the court, *Parskey*, *J.*, which had rejected that same claim. The following represents the entire analysis of that claim by the court, *Parskey*, *J.*: "Justicibility involves such questions as whether the duty asserted can be judicially identified, its breach judicially determined and whether protection of the right asserted can be judicially molded. . . . Such matters deal with the exercise of jurisdiction rather than the lack of it and therefore must be considered on the merits. In a declaratory judgment action the only issue that involves justiciability is whether the interests of the opposing parties are adverse. . . . In this case the defendants make no claim contesting the adverse relationship of the opposing parties; nor could they on the face of the record." (Citations omitted.) *Horton* v. *Meskill*, Superior Court, Hartford County, Docket No. 185283 (January 21, 1974).

[8] Moreover, as I have noted; see footnote 7 of this opinion; the trial court in *Horton I* rejected the defendants' justiciability claim in that case solely because "the interests of the opposing parties [were undisputedly] adverse"; *Horton* v. *Meskill*, Superior Court, Hartford County, Docket No. 185283 (January 21, 1974); a reason that is wholly inadequate in light of the significant jurisprudential considerations militating both for and against justiciability of claims raised under article first, §§ 1 and 20, and article eighth, § 1, of the Connecticut constitution.

[9] "It is well settled that certain political questions cannot be resolved by judicial authority without violating the constitutional principle of separation of powers. *Baker* v. *Carr*, 369 U.S. 186, 210, 217, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); *Fonfara* v. *Reapportionment Commission*, 222 Conn. 166, 184–85, 610 A.2d 153 (1992); *Pellegrino* v. *O'Neill*, [supra, 193 Conn. 679–80]. As we have stated, the 'characterization of such issues as political is a convenient shorthand for declaring that some other branch of government has constitutional authority over the subject matter superior to that of the courts.' *Pellegrino* v. *O'Neill*, supra, 680. The fundamental characteristic of a political question, therefore, is that its adjudication would place the court in conflict with a coequal branch of government in violation of the primary authority of that coordinate branch. *Baker* v. *Carr*, supra, 217. Whether a controversy so directly implicates the primary authority of the legislative or executive branch, such that a court is not the proper forum for its resolution, is a determination that must be made on a case-by-case [basis]. Id., 210–11." *Nielsen* v. *Kezer*, 232 Conn. 65, 74–75, 652 A.2d 1013 (1995). The specific factors that may render a case nonjusticiable are enumerated in the plurality opinion; see part I of the plurality opinion; and I need not restate them here.

[10] I do wish to note, however, my disagreement with the plurality's assertion that "it is premature to consider the implications of specific remedies" for purposes of determining whether the present case is justiciable. Footnote 22 of the plurality opinion. In my view, it is not premature to consider those implications because, for the reasons set forth more fully in part II of this opinion, they are real and, therefore, bear on the issue of whether this court is capable of identifying and imposing an appropriate remedy if and when the plaintiffs prove a constitutional violation. I also disagree with the plurality's assertion that "at least one of the plaintiffs' desired remedies supports the justiciability of their claims," namely, the plaintiffs' request for an order requiring the state "to create and maintain a public education system that will provide suitable and substantially equal educational opportunities [for the] plaintiffs." (Internal quotation marks omitted.) The plurality's assertion is predicated on the notion that a case is likely to be justiciable if at least one of the possible remedies for a violation is to afford the legislature the

opportunity to fix the problem. This principle, which this court first identified and found applicable in *Seymour* v. *Region One Board of Education*, 261 Conn. 475, 803 A.2d 318 (2002), has little, if any, applicability to the present case. In *Seymour*, we considered a challenge to the constitutionality of the statutorily mandated financing system for regional school districts. Id., 476. In addressing the contention of the defendants in that case that the plaintiffs' claims involved a nonjusticiable political question, this court observed that it "would have grave doubts about the justiciability of the claim" if the only remedy available was an order directing the defendant school district "to establish itself as a taxing district, and set the taxing powers and standards suggested by the plaintiffs . . . ." Id., 483. As we explained, we were concerned that such a remedy would "requir[e] the judicial branch to entangle itself in what probably would be the nonjudicial function of establishing a taxing district." Id., 484. We rejected the defendants' claim of nonjusticiabilty, however, due to the fact that, consistent with the plaintiffs' prayer for relief, the legislature could be ordered to create a new taxing district. See id. In *Seymour*, our concern about justiciability was based on the longstanding recognition that matters relating to taxation are quintessentially matters for legislative consideration; the remedy, however, would have been relatively simple and straightforward, and readily accomplished by the legislature. See id. By contrast, if the plaintiffs in the present case are successful in proving their claim under article eighth, § 1, the legislature would be required to overhaul completely the current manner in which the public education system is funded. Moreover, there is little doubt that such an overhaul would require at least some measure of court supervision, likely for an extended period of time. These considerations raise separation of powers issues that cannot be brushed aside as premature or hypothetical. See part II of this opinion.

[11] "School" is defined as "an organized source of education or training: as . . . an institution for the teaching of children . . . a place where instruction is given . . . ." Webster's Third New International Dictionary.

[12] I therefore disagree with the plurality's assertion that, "although [p]rudential and functional considerations are relevant to the classical enterprise of constitutional interpretation . . . these concerns, which . . . involve the potential for judicial overmanagement of the state's education system and interference with the prerogatives of the political branches of government, are in our view better addressed in consideration of potential remedies for any constitutional violations that may be found at a subsequent trial on the merits, which might well require staying further judicial action pending legislative action." (Citation omitted; internal quotation marks omitted.) The plurality's approach is unpersuasive because it fails to acknowledge that, as the experience of other states, including New York and Massachusetts, has borne out, it is unrealistic to believe that a remedy can be devised that will not give rise to separation of powers concerns. Although the plurality seems to believe that it can avoid those concerns simply by leaving the remedy to the legislature in the first instance, I submit that the plurality's confidence in that regard is misplaced. As recent education adequacy cases have demonstrated, there is no way that courts can avoid involvement in complex funding and education policy issues at the remedy stage merely by permitting the legislature to attempt to satisfy the court's mandate; the issues involved at that stage are likely to be too complicated and the parties' views too divergent for the court to be able to remove itself from the remedy phase. See, e.g., *Sheff* v. *O'Neill*, Superior Court, judicial district of Hartford, Docket No. X07 CV-89-4026240-S (February 22, 2010) (stating that "[t]his case returns to court yet again" and providing brief history of *Sheff* litigation, which commenced in 1998 and still has not concluded). Indeed, the plaintiffs in the present case have sought the appointment of a special master to assist the court in what the plaintiffs believe will be the court's ongoing supervision over any remedy that may be proposed or implemented by the state.

[13] The plaintiffs have alleged that the current system of public school funding in this state is "flawed" as well as "arbitrary and inadequate . . . ."

[14] In the present case, the plaintiffs' anticipation of extended involvement by the court is reflected in their request for the appointment of a special master to conduct hearings and make recommendations to the court concerning the propriety of "any new system of education proposed by [the state]."

[15] It goes without saying that a safe and secure environment also is an essential element of a constitutionally adequate education.

[16] These instrumentalities of learning also may include modern technolo-

gies, such as computers, that are essential to a minimally adequate education. I express no view, however, as to whether such technologies, and if so, which ones, may be necessary to a minimally adequate education.

[17] To the extent that the plurality also relies on this explication of the qualitative right afforded under article eighth, § 1, I, of course, agree with the plurality. I do not necessarily agree, however, with other statements of the plurality concerning that qualitative standard. For example, the plurality states that its "explication of a constitutionally adequate education under article eighth, § 1, is crafted in broad terms. This breadth reflects, first and foremost, our recognition of the political branches' constitutional responsibilities, and indeed, greater expertise, with respect to the implementation of specific educational policies pursuant to [article eighth, § 1]." The plurality further states that, as with "any other principle of constitutional law, this broad standard likely will be refined and developed further as it is applied to the facts eventually to be found at trial in this case." Although I agree with the plurality's comment concerning the relative expertise of the legislative and judicial branches in matters of public education, I disagree with the plurality that it is appropriate to craft the constitutional standard "in broad terms." In my view, the broader the standard, the more vague it is likely to be. In addition, the broader the standard, the more difficult it will be for the parties and the court to understand and apply it. I also disagree with the plurality's suggestion that a broad standard is beneficial because it may be "refined and developed further" at trial. Although some constitutional standards must be defined in broad terms because of their applicability to a vast number of fact patterns, this is not such a case; for purposes of a case like the present one, in which it is critically important to give as much guidance to the court and the parties as possible, the more clearly defined the standard, the better. Cf. *Moore* v. *Ganim*, 233 Conn. 557, 629, 660 A.2d 742 (1995) (*Peters*, *C. J.*, concurring) ("well established jurisprudential doctrine counsels us to construe ambiguous constitutional principles narrowly").

[18] In contrast to the traditional standard advanced by the plurality, the foregoing approach, which properly considers the significant discretion to which the legislative branch is entitled in matters of public elementary and secondary education; see *Sheff* v. *O'Neill*, supra, 238 Conn. 37; also gives due regard to the prudential considerations that militate strongly in favor of judicial restraint in such matters.

Indeed, it is one thing for a court to determine whether the legislature has acted rationally in fulfilling its obligation under article eighth, § 1, and something entirely different for a court to decide which of two positions concerning the specific parameters of a minimally adequate education in practice—the position advocated by the plaintiffs or the one advocated by the state—is the better position. As I have explained, the latter methodology unduly involves the judiciary in matters of educational policy that are primarily reserved to the political branches, and for which the judiciary is both ill suited and ill equipped.

[19] Consequently, I agree with the observation that "[p]erformance or achievement of the student population, taken generally, cannot . . . be the principle [on] which [a constitutionally required minimally adequate education] is based. There is nothing in either the language or the history of article eighth, § 1, to support such a standard. . . .

"[Rather, the] obligation to provide a minimally adequate education must be based generally, not on what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system." *Sheff* v. *O'Neill*, supra, 238 Conn. 143 (*Borden*, *J.*, dissenting). Although I do not suggest that educational "outputs" are never relevant to the determination of whether the state has complied with the requirements of article eighth, § 1, because student achievement may be affected by so many factors outside the state's control, including, perhaps most particularly, "the disadvantaging characteristics of poverty"; (internal quotation marks omitted) id., 139 (*Borden*, *J.*, dissenting); educational "inputs" must provide the primary basis for that determination. In part for that reason, I am unable to agree with the plurality's assertion that "[a] constitutionally adequate education . . . will leave Connecticut's students prepared to progress to institutions of higher education, or to attain productive employment and otherwise contribute to the state's economy."

[20] I acknowledge that portions of the plaintiffs' complaint reasonably may be read as asserting a right to a quality of education under article eighth, § 1, that exceeds the parameters of the right as I conceive it. The plaintiffs have asserted extensive factual allegations, however, and their claims are

cast in broad terms. The plaintiffs assert, for example, that, in some of their schools, the state is failing to provide a healthy and safe learning environment and adequate and appropriate textbooks, libraries and technology. They further allege significant disparities in "[education] input statistics" between the plaintiffs' schools and the state school average in categories such as library materials per pupil, class size, and language and computer instruction. The plaintiffs also maintain that (1) "many [students] attend schools that do not have the resources necessary to educate their high concentration of poorly performing students," (2) the state has failed "to provide the resources necessary to intervene effectively on behalf of at-risk students," that is, students "who, because of [a] wide range of financial, familial, and social circumstances, [are] at greater risk of failing or experiencing other unwanted outcomes unless intervention occurs," and (3) the state's education funding system is "arbitrary and inadequate," and not related to the actual costs of providing an education that meets constitutional standards. As a consequence, the plaintiffs contend, "Connecticut has an educational underclass" that is "being educated in a system [that] sets them up for economic, social, and intellectual failure." Because this court is bound to construe the plaintiffs' complaint "in the manner most favorable to sustaining its legal sufficiency"; *Bernhard-Thomas Building Systems, LLC* v. *Dunican*, 286 Conn. 548, 553, 944 A.2d 329 (2008); I cannot say, as a matter of law, that these claims and factual allegations are insufficient to allege a violation of the standard articulated in this opinion. See *Sheff* v. *O'Neill*, supra, 238 Conn. 35 ("the plaintiffs can succeed if any of their claims [fall] within the constitutional right as [the court has] defined it"); see also footnote 58 of the plurality opinion (explaining that, when viewed in context, plaintiffs' claim of constitutional right to suitable education is synonymous with claim of right to minimally adequate education). I am satisfied, therefore, that the plaintiffs have stated a legally cognizable cause of action under article eighth, § 1.