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ABSTRACT

State supreme courts have had major impacts on education policy and service delivery in recent years through their rulings on the constitutionality of existing school-finance systems. This paper reviews the legal context against which current debates about the merits of alternative plans for school-finance reform are being played out. It reviews the key federal and state court cases that have created pressure both to improve education quality and reform unfair school-finance structures. It also summarizes court rulings in the major school-finance cases that have been decided over the past 20 years and highlights a number of policy issues that state and local policymakers must address in the process of reforming funding systems overturned by state courts. State judicial renderings on the constitutionality of school-finance systems have typically been based on interpretations of the equal protection and education clauses of state constitutions. Patterns both among states and over time in state court rulings are difficult to discern because of the wide interstate variability in relevant constitutional provisions and case law, the nature of the evidence presented, and the political and educational contexts overlaying the litigation. However, more recent rulings appear to have focused on rectifying intrastate disparities in student achievement as opposed to merely equalizing differences in spending. The rulings challenge state policymakers to operationally define "adequate" resource levels and determine the appropriate balance between state and local governments in raising the necessary revenues. A table of state Supreme Court and key lower court school-finance decisions, 61 endnotes, and information on the Finance Policy and its resources are included. (Contains 21 references.) (LMI)

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SCHOOL FINANCE
LITIGATION

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A Review of Key Cases

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SCHOOL FINANCE

LITIGATION



A Review of Key Cases

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THE FINANCE PROJECT

PREFACE

Public financing for education and an array of other children's services has become a topic of significant interest and political concern. Growing skepticism among a critical mass of American voters and taxpayers has fueled doubts about the ability of government to solve social problems and provide basic supports and services that enhance the quality of life in their communities. Many believe government is too big; it's too expensive; and it doesn't work very well. Despite steadily increasing public expenditures for health, education, welfare, human services, and public safety over the past two decades, seemingly intractable problems persist. Nearly a quarter of U.S. children are poor and live in families and communities that are unable to meet their basic needs. Schools have become increasingly expensive. But student achievement hasn't matched the rising costs, and drop-out rates remain unacceptably high. Health care costs continue to go up. Yet, many Americans can't get the services they need, and with each passing year their health care dollars buy less. Criminal justice demands a dramatically increasing share of public dollars—for police officers and judges and jails—but neighborhood streets aren't safer.

Voters have spoken clearly. They want more for their money. They have called for more and better services, but they also have demanded balanced budgets and cuts in income and property taxes. In this time of big public deficits, they want government at all levels to operate more effectively and efficiently. They also want it to invest wisely and live within its means.

Across the country, there is mounting evidence of efforts to reform and restructure education and other community supports and services in order to improve the lives and future prospects of children and their families. Critical to the success of these initiatives is the way in which they are financed. How revenues are generated and how funds are channeled to schools, human service agencies, and community development initiatives influences what programs and services are available. It determines how they are provided and who benefits from them. Financing also affects how state and local officials define investment and program priorities, and it creates incentives that guide how educators, other service providers, and community volunteers do their jobs. For these reasons, financing fundamentally affects how responsive programs and institutions are to the needs of the people and communities they are in business to serve.

In recent years, several blue ribbon commissions and national task forces have presented ambitious prescriptions for reforming and restructuring the nation's education, health, and human service systems in order to improve outcomes for children. While some have argued that public financing and related structural and administrative issues are critical to efforts to foster children's healthy development and school success, none has been framed for the specific purpose of inventively reconceptualizing public financing. Indeed, many of the most thorough and thoughtful reports have called for an overlay of new funds, but have neglected to provide cogent analyses of effective financing strategies, the costs of converting to these approaches, and the potential beneficial outcomes that might accrue from addressing financing reform as an integral aspect of program reform.

In addition, the past several years have witnessed a burgeoning of experimental efforts by mayors and city managers, governors and state agency directors, legislators and council members, program managers and school officials to make government work better and more efficiently.

They have been enhanced by the work of people outside of government, including foundation executives, business and labor leaders, community organizers, and academic scholars. Some are creating new ways to raise revenues, manage schools, deliver human services, and spur community economic development. Others are designing new public governance and budgeting systems. Still others are developing and testing new approaches to more directly involve citizens in setting public priorities and maintaining accountability for public expenditures. Taken together, these efforts suggest the nascent strands of new and improved public financing strategies.

Against this backdrop, a consortium of national foundations established The Finance Project to improve the effectiveness, efficiency, and equity of public financing for education and an array of other community supports and services for children and their families. Over a three-year period that began in January 1994, The Finance Project is conducting an ambitious agenda of policy research and development activities, as well as policymaker forums and public education. The aim is to increase knowledge and strengthen the capability of governments at all levels to implement strategies for generating and investing public resources that more closely match public priorities and more effectively support improved education and community systems.

As a part of its work, The Finance Project produces a series of working papers on salient issues related to financing for education and other children's services. Some are developed by project staff; others are the products of efforts by outside researchers and analysts. Many are works in progress that will be revised and updated as new information becomes available. They reflect the views and interpretations of the authors. By making them available to a wide audience our intent is to stimulate new thinking and induce a variety of public jurisdictions, private organizations, and individuals to examine the ideas and findings they present and use them to advance their own efforts to improve public financing strategies.

This paper, *School Finance Litigation: A Review of Key Cases*, was prepared by Dore Van Slyke of the American University Law School, and by Alexandra Tan and Martin Orland with The Finance Project. Anna Danegger with The Finance Project assisted with the research. John Augenblick, Helen Hershcoff, Lawrence Picus, and William Thro contributed to the paper as reviewers. It was presented at the Roundtable on Financing for Education and Other Services for School-Age Children, convened by The Finance Project, October 12-14, 1994.

Improvements in school financing are critical to the success of efforts to implement the ambitious goals for education reform agreed upon by former President Bush and the nation's governors and supported by President Clinton. This paper reviews the legal context against which current debates about the merits of alternative plans for school finance reform are being played out. It reviews the key federal and state court cases that have created pressure both to improve education quality and reform unfair school finance structures. And it highlights a number of policy issues that must be addressed by state and local decision makers in their efforts to design new funding strategies that will effectively support education programs to enhance student learning and achievement.

Cheryl D. Hayes
Executive Director

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Over the past two decades, a large body of litigation has challenged school finance systems in states across the nation. Although early attempts to use the U.S. Constitution as a basis to resolve inequities in funding for public schools were unsuccessful, an array of subsequent law suits have been successful, arguing that states' school funding mechanisms fundamentally violate state constitutional provisions. In early state cases, advocates often argued that state funding systems violated state equal protection guarantees. More recent cases, however, center around whether the state has failed to live up to its constitutionally mandated obligation to provide an adequate education as required by the constitution's education clause. Many of these have claimed that education systems violate that clause by relying too heavily on local property taxes to fund education and failing to distribute state education funds equitably and adequately.

It is difficult to find clear patterns in state school finance rulings. In some cases, state supreme courts have found their education finance systems unconstitutional on the grounds that inequitable spending in school districts with varying levels of wealth results in unequal educational opportunities for children in poorer districts. In others, they have upheld the constitutionality of their systems on the grounds that spending disparities are caused by local control over school financing and that states are not responsible for requiring equal expenditures per child across districts or for ensuring that every district has sufficient funds to meet basic educational requirements.

Rulings in school finance cases seem to be influenced by a variety of factors. Because state constitutions vary significantly in their language concerning equal protection and the provision of education, the courts have arrived at different conclusions about the intent of constitutional law. Other factors may be equally important in determining the outcome of a case. In particular, the nature of the evidence presented, the body of case law existing within the state, and the breadth of jurisdiction that the courts define for themselves have contributed to different outcomes.

Issues that are the subject of school finance litigation are complex and far reaching. Even in states where the courts have provided the impetus for school finance reforms, they generally have stopped short of defining the exact nature of the remedies. In most states the courts have given the legislature wide latitude to define an appropriate remedy. Nevertheless, the courts have played, and seem likely to continue to play, an important role in reshaping education policy as school finance and education governance become more closely interrelated and as the movement toward nationwide and state education standards and goals gains additional momentum.

This paper summarizes court rulings in the major school finance cases that have been decided over the past 20 years, and it highlights a number of issues that policymakers must address in the process of reforming funding systems overturned by state courts.

CASES BASED ON FEDERAL CONSTITUTIONAL PROVISIONS

Early attempts to pursue reform or challenge the legitimacy of school finance systems through the courts focused on the equal protection clause of the U.S. Constitution, which states that "No State shall...deny to any person within its jurisdiction the equal protection of the laws."¹ Initial efforts to use the federal equal protection clause to overturn school financing systems were unsuccessful in the late 1960s. The failure of these attempts led to the development of a legal strategy by Coons, Clune, and Sugarman, who argued that the relationship between education spending and local district property wealth violated the equal protection clause because the provision of education was not fiscally neutral².

Serrano I

This strategy was successfully employed in *Serrano v. Priest* in 1971, the first major school finance case filed in state rather than federal court. The case marked the first time that a state system of school finance was found unconstitutional. In *Serrano* the California Supreme Court found the state funding system violated the equal protection clauses of both the U.S. Constitution and the California State Constitution. The California decision prompted similar lawsuits in courts around the country.

Rodriguez

In *San Antonio Independent School District v. Rodriguez*³ in 1973, however, the U.S. Supreme Court effectively precluded litigants from using the federal equal protection clause as a vehicle for school finance reform.⁴ In a split five to four decision, the court ruled that education was not a fundamental right because it is not explicitly or implicitly protected by the U.S. Constitution. Furthermore, the court ruled that the Constitution did not prohibit the government from providing different services to children in poor school districts than it did to children in wealthy school districts. The court noted that the constitution protects the rights of individuals, not governmental entities (school districts).

CASES BASED ON STATE CONSTITUTIONAL PROVISIONS

Those seeking public school finance reform after the Supreme Court's *Rodriguez* ruling have had to rely only on language in state constitutions when attempting to overturn school funding systems.⁵ Over the past 20 years, supreme courts in approximately one-half of the states have considered constitutional challenges to their public education financing systems.⁶ In 13 states, the state supreme courts found that the public school financing systems violated the states' constitutions. The remaining state supreme courts have held that the particular financing scheme in that state did not violate its constitution. In some states where the supreme court has not ruled on school finance issues, litigation has taken place in lower courts. On occasion, these cases have also provided an impetus for school finance reform, either directly when a state chooses not to challenge a lower court's decision (as in the case of Alabama) or indirectly by encouraging the legislature to reform the school funding system, rather than face a prolonged court battle.

State finance cases typically charge that the school funding system violates the state equal protection clause or education clause or a combination of the two. The goal of litigation based primarily on the equal protection clause is often different from the goal of litigation which is based mainly on the education clause. For challenges based on the equal protection clause, litigants usually seek equal or near equal funding levels. For challenges based on state education clauses, the cases center on the quality of education mandated by the state constitution and the need for additional resources in districts that are failing to meet the constitutionally-mandated standard. Recent cases have tended to rely more heavily on the latter strategy.

Table 1 summarizes the rulings in state supreme court and other key lower court school finance decisions. It also attempts to categorize the decisions according to the basis of the particular ruling. In some cases, legal scholars disagree on what constitutes the basis of the court's decision. Disagreement exists over whether courts that have found the funding system in violation of the state's equal protection clause have also found it in violation of the state education clause. For example in the case of *Horton v. Meskill*, Fulton and Long and Odden and Picus classify the decision as one based on both the education clause and the equal protection clause, while Thro (1993) argues that the decision is based solely on the state's equal protection clause. Similar disagreement exists for *Dupree*, *Lujan*, *Horton*, *Rose*, *Helena*, *Robinson*, *Fair School Finance Council*, *Kukor*, and *Washakie*. When such disagreement exists, the decisions have been classified based on the most prevalent interpretations of the rulings.

The following two sections highlight court decisions in cases that successfully overturned state finance systems. The first section examines cases where courts found funding systems unconstitutional based on the state's equality guaranty provisions. The next section examines decisions based on the state's education clause. Cases where judges have based their rulings on both decisions are discussed in the section on equal protection litigation because of the frequent disagreement over whether the education clause also should be considered as a basis for the ruling.

Decisions Based on State Equality Guaranty Provisions

State equality guaranty clauses are one means through which reformers have sought to challenge education financing in the states. Some states, such as Wyoming and Idaho, have an explicit equal protection clause, such as "government is instituted for the people's equal protection."⁷ Other states, for example Colorado and Oregon, do not have an equal protection clause in their state constitution⁸ but have other equality guaranty provisions that the state courts have interpreted as requiring equality.⁹

Similar to the equal protection provision of the U.S. Constitution, the equal protection provisions of state constitutions guarantee individuals the right to fair treatment by the state. State courts have employed a variety of tests to evaluate whether state action violates the rights of individuals. These tests differ both in the specific analyses employed and in how critically they judge the state's action and the rationale for that action.

For example, if a state's action affects an individual's fundamental right or differentially affects a suspect class of individuals, courts generally evaluate the rationale for state action more critically than in other cases. Under the most difficult standards, *strict scrutiny* is applied. In this test, the state must demonstrate that its actions serve a compelling governmental interest. Alternatively, if the state's action does not impinge on fundamental rights or affect a suspect class of individuals, the court may apply a less stringent intermediate scrutiny test. Finally, if the court finds that a state's action does not fall into the previous two categories, the least stringent tests are applied to weigh the rationale for state action against any possible infringement on individual rights. Thus, in states that closely follow federal equal protection analysis, the state must simply demonstrate that a rationale relationship exists between its action and the means pursued to accomplish it. In general, to win a case for education financing reform based on a state equality provision, a court must find either that (1) education is a fundamental right under the state's constitution;¹⁰ (2) wealth is a suspect class; or (3) the particular financing scheme is irrational.¹¹

The use of the equality clause has met with limited success. Plaintiffs have used a state equality provision as the basis for overturning school funding systems in five supreme court cases. In four rulings, *Serrano v. Priest II*, *Pauley v. Burley*, *Washakie County School District No. 1 v. Herschler*, and *Horton v. Meskill*, the state's supreme court determined that education was a fundamental right protected by the respective state's constitution. In the fifth case, *Dupree v. Alma School District No. 30*, the rational basis test was used by the Arkansas court to overturn the existing school funding scheme. In addition, at least one lower court case, *Harper v. Hunt*, is noteworthy since the state chose not to appeal the lower court's decision to overturn the school finance system to a higher court. No school finance reform case has ever held that wealth was a suspect classification, probably because of the enormous implications of such a holding.¹²

The remainder of this section briefly summarizes the different types of arguments used by the courts in overturning school finance systems on equal protection grounds.

Serrano II

Following the U.S. Supreme Court decision in *Rodriguez* in 1973, the California Supreme Court ruled that education is a fundamental right under the California constitution in 1977. In *Serrano v. Priest II*¹³ the court reaffirmed the test it employed in *Serrano I* (decided before *Rodriguez*). In both cases the court employed a strict scrutiny analysis.¹⁴ In *Serrano II* the court defined fundamental rights as "those individual rights and liberties which lie at the core of our free and representative form of government."¹⁵ The court referred to many sources to establish the vital role of education, stating that education is as important as two other fundamental rights—the right to vote and the rights of criminal defendants.¹⁶

Several commentators have offered reasons for the fact that few other state courts have employed the *Serrano II* "core of our democratic government" test. Some have argued that the ruling "provides little substantive guidance to lower courts."¹⁷ Others have noted that the lack of use may be due to judicial reluctance to rule on issues where the roles of the legislature and of the judiciary are unclear.¹⁸

Pauley and Washakie

Pauley v. Bailey,¹⁹ and *Washakie v. Herschler*²⁰ used the same test to find that education was a fundamental right; both the West Virginia and Wyoming courts relied on the "explicitly or implicitly guaranteed" test of *Rodriguez*.²¹ This test was raised by the Supreme Court's *Rodriguez* decision and evaluates the fundamental nature of a particular right as follows:

The key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.²²

Cases that have attempted to establish education as a right that is explicitly guaranteed by the state constitution have met with little success. However, this strategy may be inappropriate for state constitutional contexts for several reasons.²³ State constitutions mention a variety of possible state functions, many of them trivial, and from a practical point of view, courts have been reluctant to declare these functions as fundamental rights. In addition, state powers differ from those of the federal government; states may undertake activities not discussed in their constitutions, whereas the federal government can only do those things specified in the U.S. Constitution. Moreover, state constitutions are more easily revised or amended, making it difficult for courts to select which group of framers' intentions should guide the court over time.

Those arguing that state constitutions have an "implicit" guarantee for education have had more success. In West Virginia and Wyoming, for example, the court did not rule that education was a fundamental right, but the inclusion of education provisions in the states' constitutions was critical to the courts' conclusions that "education was a fundamental right for equal protection purposes."²⁴ In *Pauley*, the West Virginia court found that the state constitution's clause for a "thorough and efficient system of free schools" was sufficient to create a fundamental right to education for the children of West Virginia.²⁵ In *Washakie*, the Wyoming Supreme Court concluded that the emphasis placed on education by the Wyoming Constitution led directly to the conclusion that the "education of the children of Wyoming is a matter of fundamental interest."²⁶

Horton

In *Horton v. Meskill*²⁷, the Connecticut Supreme Court came to the conclusion that education was a fundamental right under the state's constitution through an examination of "the degree of support given to education by the legislature throughout the state's history."²⁸ Essentially, because the court found that the practice for centuries had been to act as if it was Connecticut's duty to provide education to its children the "duty had assumed the status of a constitutional obligation."²⁹

Dupree

Unlike the other four states in which school finance litigation was overturned based on an equal protection analysis, the Arkansas Supreme Court did not address the issue of fundamentality in *Dupree v. Alma*.³⁰ Rather, the court used a rational basis test to determine if the Arkansas government had a rational basis for financing the school system as it did. The court found that the Arkansas system was irrational: "Even without deciding whether the right to a public education is fundamental, we can find no constitutional basis for the present system, as it has no rational bearing on the education needs of the districts."³¹ As one commentator noted, the Arkansas interpretation of the rational basis test has "more bite" than the federal rational basis test.³²

Harper

In *Harper v. Hunt*, students from four poor rural schools in Alabama successfully challenged the educational funding system of that state. The county circuit court found the *entire* school system to be unconstitutional because it was both inadequate and inequitable. The court's ruling was based on the fact that the disparities in funding led to inequity in educational opportunity, in violation of both Alabama's state education clause and equal protection provisions.

Although the funding system was declared unconstitutional by the circuit court rather than the state supreme court, the ruling is significant for several reasons. First, the state decided not to appeal the case. Therefore, the court's decision served as an impetus for change in the same way that supreme court level decisions have required the legislature to initiate change in other states. Second, the decision in *Harper* was similar to the Kentucky court's ruling in *Rose* because it declared more than just the school funding system unconstitutional.

Decisions Based on State Education Clauses

Although the equal protection clause was used effectively in some cases in the 1970s, the other avenue for litigation has been state education provisions. An education clause, present in all state constitutions,³³ requires the maintenance of a system of free public education. Arguments alleging that a state's education financing system violates the education clause in its constitution have become increasingly successful in overturning school funding systems. Cases where courts ruled school funding systems unconstitutional based solely on the education clause include: *Seattle School District No. 1 v. State*, *Robinson v. Cahill*, *Abbott v. Burke*, *Edgewood Independent School District v. Kirby*, *Helena Elementary School District No. 1 v. State*, *Rose v. Council for Better Education*, *McDuffy v. Secretary of Office of Education*, *Tennessee Small School Systems et al. v. McWherter et al.*, and *Roosevelt Elementary School District 66 v. Bishop*.

Plaintiffs who allege that the funding system violates the state constitution's education provision must convince the court that the existing funding system violates the government's constitutional mandate to provide free public education. Essentially, the strategy of

education litigation is "to inject substantive meaning into a state education clause"³⁴ and to argue that the constitutional duty has implications for the method of funding.

Differences in the wording of state educational clauses may affect the strategies pursued by legal reformers. Some commentators have argued that these differences also may affect the courts' willingness to overturn school funding systems since education clauses differ considerably in the responsibility that they place on the state to provide a system of education.³⁵ Some education clauses are general, vague clauses which "impose the minimal educational obligation on a state"³⁶ by merely requiring the state to provide a system of free public schools. For example, Oklahoma's education clause states, "the legislature shall establish and maintain a system of free public schools wherein all the children of the state may be educated."³⁷ Others impose a greater burden on states because they require that public education meet a minimum level of *quality*, such as being "thorough and efficient."³⁸ The Pennsylvania Constitution, for example, requires that "the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."³⁹ Still others contain "a stronger and more specific education mandate and purposive preambles."⁴⁰ Those with the strongest language place the highest burden on state legislatures by declaring that education is fundamental or paramount, as in the case of Washington's clause, which says that it is "the paramount duty of the state to make ample provision for the education of all children residing within its borders."⁴¹

Although the exact wording of the state's education clause may affect the legal strategy pursued, as noted above, the implied obligation placed on the state is only one of several factors that affects the court's willingness to declare a funding system unconstitutional. This fact is demonstrated by the prevalence of state supreme court decisions that overturn school finance systems based on education clauses that impose the minimal requirements on a state.

The remainder of this section briefly reviews each of the cases in which the court based its ruling to overturn existing state financing mechanisms solely on the education clause. In chronological order, they are: *Robinson*, *Seattle*, *Abbott*, *Edgewood*, *Helena*, *Rose*, *McDuffy*, *Tennessee Small School Systems*, and *Roosevelt*.

Robinson

The challenge for education clause litigants is "to convince the court to interpret the education clause as addressing school finance."⁴² One strategy often employed is to argue that the education clause places an affirmative duty on the legislature to create "more than just an education system."⁴³ This type of argument was successfully used twice in New Jersey, first in *Robinson v. Cahill*⁴⁴ and subsequently in *Abbott v. Burke*.⁴⁵

In *Robinson* the court ordered school financing reform after determining that the state's constitutional mandate for "thorough and efficient" education required an equal opportunity for all children, a mandate that the court felt was not being met because of the funding disparities present in the existing system. The New Jersey Supreme Court, therefore, found the state's existing public school financing unconstitutional, and ordered the implementation of a "funding equalization plan."⁴⁶

Interestingly enough, the New Jersey Supreme Court in *Robinson* also discussed the avenue of equal protection analysis. Although the court determined that the state had a responsibility to provide a thorough and efficient education, it did not find that education was a fundamental right under the state's constitution. Thus, it concluded that the equity guarantee in the New Jersey Constitution "did not mandate greater equality of funding" for school finance.⁴⁷

Abbott

In *Abbott v. Burke* the New Jersey court went beyond its decision in *Robinson* and decided that a "thorough and efficient" education requires an educational system that provides disadvantaged students the opportunity to compete with their more advantaged peers. As a result, the existing school financing system was ruled unconstitutional, although only for the 28 poorest school districts in New Jersey.⁴⁸ This decision was particularly important because it not only implied an equal spending criterion, but it also recognized that the needs of poor children will require the state to spend even more on these students than it does when educating other students. Since its original ruling in 1989, the court has subsequently ruled on the enacted legislative remedies three times. Each time the court has sent the funding plan back to the legislature to be revised, noting that the remedy failed to fulfill the court's mandate.

Seattle School District

In *Seattle School District No. 1 v. State*⁴⁹ the Washington Supreme Court overturned its decision four years earlier in *Kinnear*, which had found the system of school funding constitutional.⁵⁰ In *Seattle*, the court reinterpreted the state's education clause to impose a duty on the state. The court concluded that the existing system of funding did not make "ample provision" for the education of the children in the district.⁵¹

Edgewood

In *Edgewood Independent School District v. Kirby*⁵² the Texas court determined that an "efficient" system, as guaranteed by the state's constitution, was not being provided because of gross inequalities in spending. The legislature has had great difficulty in crafting a new school financing system that meets the mandates of the court without violating the state's constitutional prohibitions against both a statewide property tax and an income tax. As in New Jersey, the Texas court has ruled on several occasions after issuing its original decision that the legislative remedies were unconstitutional. The most recent plan was upheld by the state district court in early 1994 as constitutional but it is expected to be challenged in the state supreme court at a later date.

Helena

The Montana Constitution requires the state to provide a "basic system of free quality public elementary and secondary schools." In *Helena Elementary School District No. 1 v. State*⁵³ the state supreme court found that the school finance system failed to provide equality of educational

opportunity and was, therefore, unconstitutional. The ruling was significant because the court found that the provision of a minimum education was inadequate.

Rose

In *Rose v. Council for Better Education, Inc.*,⁵⁴ the state supreme court considered "whether the Kentucky General Assembly has complied with its constitutional mandate to 'provide an efficient system of common schooling throughout the state.'"⁵⁵ After examining the history of the Kentucky Constitution, the court found that education was a fundamental right under the state's constitution.⁵⁶ Moreover, the court defined an "efficient" system as one with "the twin attributes of uniformity and equality."⁵⁷ After defining education as a fundamental constitutional right, the logical move for the court was to turn to the equal protection provision of the constitution and declare the present financing system unconstitutional.⁵⁸ However, the court ignored this avenue and stated the issue as whether the present financing system was "efficient." In a decision unprecedented in the history of school finance reform, the court ultimately decided that Kentucky's *entire* system of common schools was unconstitutional⁵⁹ and ordered the General Assembly to "re-create, re-establish a new system of common schools in the Commonwealth."⁶⁰

McDuffy

In *McDuffy v. Secretary of Office of Education* the court ruled that the Massachusetts' scheme of school financing was unsatisfactory based on the education clause of the state's constitution. The education clause states:

(I)t shall be the duty of legislatures and magistrates, in all future periods of this commonwealth to cherish the interests of literature and the sciences, and all seminaries of them;... public schools and grammar schools in the town.⁶¹

The court reached the conclusion that "equal expenditure per pupil is [not] mandated or required ... however, fiscal support, or the lack of it, has a significant impact on the quality of education." The lack of fiscal support in some districts led to disparities in the education provided by the more and less affluent communities. As a consequence, children in less affluent communities did not receive the education to which they are constitutionally entitled.

Tennessee Small School Systems

Tennessee Small School Systems et al. v. McWherter et al. was filed on behalf of 77 small rural school districts to challenge the constitutionality of that state's school finance system. Tennessee's education clause requires "substantially equal educational opportunities to all students." The state supreme court found the finance system unconstitutional based on inequity of educational opportunities between wealthier and poorer school districts.

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Roosevelt Elementary School District

Arizona's education clause guarantees "general and uniform" public schools. The uniformity aspect of this clause was the basis for the case in *Roosevelt Elementary School District 66 v. Bishop*. The plaintiffs in *Roosevelt* charged that the state's system for financing the capital construction of education buildings was unequal and therefore unconstitutional. They also sought to overturn an earlier case in which the court found the system of school finance constitutional, thereby establishing a positive precedent for future challenges to the entire school finance structure.

The state supreme court ruling in *Roosevelt* declared the use of property taxes to fund education unconstitutional if those taxes result in inequities across the state's school systems. Although the court was expected to rule only on the capital financing system in its decision, the court went further and overturned the entire school finance structure. The superintendent of schools has challenged this ruling, requesting that the court clarify whether its ruling applies only to capital financing or to school financing overall. This request for clarification was filed in early August 1994.

Discussion

As the case summaries in the previous two sections demonstrate, the courts have overturned school funding systems for a number of reasons. Several factors help explain the different rulings. First, plaintiffs have employed a variety of approaches when attempting to overturn school funding laws. They frequently charge that school funding laws are illegal for a host of reasons, including violations of the education clause and the equal protection provisions in the state constitution. Furthermore, in states where the system of school finance was ruled constitutional based on one constitutional clause, plaintiffs may file subsequent suits that overturn the system based on another clause.

Second, state political and education contexts vary considerably. Existing funding patterns and mechanisms and prior judicial precedents with respect to the relevant state constitutional clauses are significantly different. The differences among states affect both how judges rule on these cases and the legal strategies pursued by plaintiffs.

Third, state courts have demonstrated differences in their willingness to rule on these issues. Deference to the legislature is very strong in many states. Thus, plaintiffs in some states have been able to successfully overturn financing schemes while those presenting very similar cases elsewhere have been unsuccessful. Again this fact reflects a variety of factors, including the nature and disposition of the court and concerns with the precedents that such rulings will set for the provision of other public services.

Nevertheless, a few patterns emerge from the decisions summarized in Table 1. First, the decisions to overrule school funding systems took place in three waves. Early decisions used the federal equal protection clause to evaluate the system's constitutionality. Decisions in the 1970s tended to rely on state equal guaranty provisions. And recent decisions to overturn school funding systems have relied heavily on arguments based on the state education clause. Moreover, the more recent cases generally have focused more attention on

the adequacy of resources needed for the educational system to achieve the desired levels of student achievement rather than on disparities in spending and tax raising abilities.

Second, some similarities exist in rulings that have upheld state school finance systems. Many based their rulings on the U.S. Supreme Court's ruling in *Rodriguez*. For example, the basic logic of the *Rodriguez* decision was used to reject the challenges in the Minnesota, Virginia, Illinois, and Nebraska cases.

POLICY ISSUES RAISED BY SUCCESSFUL SCHOOL FINANCE LITIGATION

Successful school finance litigation poses major challenges to education policy. Although the courts have often ruled that existing school finance systems are unconstitutional, a range of professionally accepted views exists on how states should operationalize broad concepts, such as equal educational opportunity, into new revenue raising and resource allocation systems. It thus falls to the courts and, more frequently, state legislatures to weigh often conflicting research along with a host of legal, political and economic factors in constructing new financing arrangements. Below are two major policy issues raised by successful challenges to existing school finance systems: defining resource adequacy in state allocations and defining an appropriate state role in resource collection and allocation.

Defining Resource Adequacy in State Allocations

As noted earlier, recent efforts to remedy educational inequities through the court system have focused judicial attention away from the relationship between disparities in spending and tax raising abilities and toward disparities in student achievement and/or student life outcomes. New cases in Ohio and Missouri are focusing on issues related to both the adequacy of educational programs and the levels of funding required to reach adequacy. Several courts have ruled that the role of the state is to provide all children with an education that will enable them to succeed in life, and that school funding systems that produce large inequities in spending fail to achieve this goal.

Accordingly, states increasingly are being told to allocate resources to provide all children with an adequate education. However, legislatures are left to their own devices to determine how resource adequacy should be operationally defined. The questions that must be answered include:

- Should there be a required level of expenditures?
- If so, what should that level be and on what basis is it justified?
- Should expenditures on the maintenance and construction of school facilities be included?
- Should any variation from the resource standard be permitted and, if so, on what basis?

Alternatively, resource adequacy can be defined in terms of types of required resource inputs or opportunity-to-learn standards. These could include minimum standards for teacher qualifications, course offerings, staffing ratios, and school facilities. But this still

doesn't relieve states from the task of defining and justifying the standard(s) and their purported relationship to more equitable student outcomes.

Making appropriate decisions on these types of questions may prove critical to the success of school finance reform efforts. Setting the required resource levels too low, for example, might be politically appealing but would probably result in little change from current allocation and outcome patterns. Conversely, setting required resource levels too high may create numerous political problems. In addition, employing resource standards or opportunity-to-learn standards that are only loosely related to student outcomes may prove both politically and educationally problematic.

Although the policy community is just beginning to grapple with these issues, the task is difficult and no consensus is likely to emerge soon. Part of the difficulty stems from the continuing debate among educational economists and other researchers over whether strong empirical links between educational spending and outcomes exist. For example, it is unclear how increasing education spending to reduce class size affects student achievement. Similarly, it is unclear what impact the use of computers and other changes in technology have on classroom teaching and, in turn, student outcomes. The lack of adequate knowledge of the relationship between educational resources and educational outcomes makes it difficult to define the appropriate mix and level of services required to bring students up to specified achievement levels.

Defining an Appropriate State Role in Resource Collection and Allocation

The appropriate balance between state and local responsibilities in financing education is another key issue confronting policymakers when redesigning school finance systems. Finance equity reform usually requires states to redistribute tax burdens from poorer to wealthier districts and/or increase state financing responsibilities to raise the spending levels of poor districts to those of more affluent ones. The particular policy instrument used depends heavily on such factors as the nature of the court ruling, state constitutional provisions, established traditions of state and local financing and program responsibilities, the power of specific interest groups, and cultural attitudes toward government taxation, resource redistribution and spending. However, regardless of the method chosen, achieving greater resource equity is always much easier to accomplish when revenues are derived from economic growth as opposed to the redistribution of existing dollars. In times of economic expansion, additional resources for less affluent districts can be derived from revenue sources for which yields are also expanding, rather than from redistributing constant or decreasing revenues from more affluent districts.

Many earlier school finance reform policies sought to use a state's tax base to equalize revenue yields for given local property tax rates. Such "guaranteed tax base" systems redistribute some resources to poorer school districts (by giving them access to a higher effective tax base) but also preserve variations in local spending consistent with community tastes and preferences. The amount of resource redistribution depends heavily on the political decision regarding the tax base level to which the state wishes to guarantee equal local access, the higher the level, the greater the redistribution potential.

Most recent court cases and legislation have moved toward more uniform state spending standards, as opposed to equal access to tax bases. The recent New Jersey ruling, for example, seeks to bring the spending levels of the 28 poorest school districts up to the level of high spending districts, whereas recent rulings in Texas and Kentucky have ordered equalization of school spending levels within a certain range.

To equalize spending levels, states have employed a variety of policy instruments. In some, increased revenue raising and resource allocation responsibilities have been shifted to the state. Minnesota's new system, for example, will eventually increase the state funding share to 70 percent and result in full state responsibility for core instructional services (i.e., monies needed for students to meet basic learner outcomes) and most of the funding responsibility for educational support services. Michigan increased its state sales tax to guarantee each district a minimum of \$4,200 per pupil (increasing to \$5,000 after five years).

However, state context sometimes does not permit spending equalization to be achieved exclusively through a larger state role. For example, partly because the Texas Constitution prohibits both statewide property and income taxes, the state legislature is responding to a Texas Supreme Court ruling by requiring the wealthiest districts to share revenues with poorer ones. In New Jersey, initial attempts to equalize school spending were made through a combination of a tax increase (with much of the proceeds earmarked for the poorest school districts) and expenditure caps on the highest spending districts. However, the state later scaled back these reforms in the face of strong taxpayer resistance and the state supreme court recently ruled this legislative remedy unconstitutional (because it was too vulnerable to the political process and thus would not ensure parity in educational expenditures).

CONCLUSION

State courts have had major impacts on education policy and service delivery in recent years through their rulings on the constitutionality of existing school finance systems. Since 1971 litigation has taken place in the courts of over half of the states, with challenges proving successful in nearly half of these cases. Nearly every state's system of allocating resources to local school districts has been affected by either the threat or the reality of school finance litigation.

State judicial renderings on the constitutionality of school finance systems have typically been based on interpretations of the equal protection and education clauses of state constitutions. Patterns both between states and over time in state court rulings are difficult to discern because of the wide interstate variability in relevant constitutional provisions and case law, the nature of the evidence presented, and the political and educational contexts overlaying the litigation. It does seem, however, that more recent court rulings overturning existing systems have focused directly on rectifying intrastate disparities in student achievement as opposed to merely equalizing differences in spending. Although such rulings are consonant with recent trends in education policy (which focus on the attainment of high academic standards for all students), they raise substantial challenges to state policymakers including operationally defining "adequate" resource levels that will support high academic

outcomes for all and the appropriate balance between state and local governments in raising the necessary revenues.

The years ahead can be expected to witness potent fiscal and ideological constraints to an assertive government role in ensuring educational equity. Lacking other viable options, advocates for such a role will, therefore, probably turn with even greater frequency to the courts as policy instruments. As a result, the prominence of state judicial policymaking in education finance that has existed since the early 1970s is likely to continue and may even accelerate in the foreseeable future.

TABLE 1: State Supreme Court and Key Lower Court School Finance Decisions

| State | Case | Year | Ruling | | Basis for Ruling | |
|----------------|--|--------|----------------|------------------|------------------|------------------|
| | | | Constitutional | Unconstitutional | Equal Protection | Education Clause |
| Alabama | Harper v. Hunt * | 1993 | | X | X | X |
| Arizona | Shofstal v. Hollins | 1973 | | | X | X |
| | Roosevelt Elementary School District 66 v. Bishop | 1994 | X | | | X |
| Arkansas | Alma School District No. 3 v. Dupree | 1983 | | X | X | |
| California | Serrano v. Priest | 1971 | | X | X | |
| | Serrano II | 1977 | | X | X | |
| Colorado | Lujan v. Colorado State Board of Education | 1982 | X | | X | |
| Connecticut | Horton v. Meskill | 1977 | | X | X | X |
| Georgia | McDaniel v. Thomas | 1981 | X | | X | X |
| Idaho | Thompson v. Englekong | 1975 | X | | X | X |
| Illinois | Blase v. State | 1973 | X | | X | X |
| Kentucky | The Council for Better Education v. Rose | 1989 | X | X | X | X |
| Maryland | Hornbeck v. Somerset County | 1983 | X | | X | X |
| Massachusetts | McDuffy v. Secretary of Office of Education | 1993 | | X | | X |
| Michigan | Milliken v. Green | 1973 | X | | | |
| Minnesota | Skeen v. Minnesota | 1993 | X | | | |
| Montana | Helena Elem. School District No. 1 v. State of Montana | 1989 | | X | | X |
| Nebraska | Gould v. Orr | 1993 | X | | | |
| New Jersey | Robinson v. Cahill | 1973 | | X | | X |
| | Abbott v. Burke | 1989 | | X | | X |
| New York | Board of Education, Levittown v. Nyquist | 1982 | X | | X | X |
| North Carolina | Britt v. North Carolina Board of Education | 1987 | X | | | X |
| North Dakota | Bismark Public Schools v. North Dakota | 1993/4 | X | | | |
| Ohio | Bd. of Ed. of City School District of Cincinnati v. Walter | 1979 | X | | X | X |
| Oklahoma | Fair School Finance Council of Oklahoma, Inc. v. State | 1987 | X | | X | X |
| Oregon | Olsen v. Oregon | 1976 | X | | X | X |
| | Coalition for Education Equity v. Oregon | 1991 | X | | | X |

TABLE 1 (continued): State Supreme Court and Key Lower Court School Finance Decisions

| State | Case | Year | Ruling | | | Basis for Ruling | |
|----------------|---|------|----------------|------------------|------------------|------------------|--|
| | | | Constitutional | Unconstitutional | Equal Protection | Education Clause | |
| Pennsylvania | Dansen v. Casey | 1979 | X | | | X | |
| South Carolina | Richland v. Campbell | 1988 | X | | X | X | |
| Tennessee | Tenn. Small School Systems et al. v. McWhorter et al. | 1993 | | X | X | | |
| Texas | Edgewood Independent School District v. Kirby | 1989 | | X | | X | |
| Virginia | Scott v. Virginia | 1994 | X | | X | | |
| Washington | Northshore School District v. Kinnear | 1974 | X | | | X | |
| West Virginia | Seattle School District No. 1 of King County v. State | 1978 | | X | | X | |
| Wisconsin | Pauley v. Bailey | 1979 | | X | X | X | |
| Wisconsin | Kukor v. Grover | 1989 | X | | | X | |
| Wyoming | Washakie County School District No. 1 v. Herschler | 1980 | | X | X | X | |

* County Circuit Court decision

Sources: Fulton and Long, 1993; Odden and Picus, 1992; Hickrod and Anthony, 1994; Thro, 1989.

ENDNOTES

¹ See W. E. Thro, "To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation," Virginia Law Review 75 (1989), pp. 1639, 1641 n.8 (citing U.S. Const.) (hereinafter "To Render Them Safe"); W. E. Thro, "The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation, Decisions on the Future of Public School Finance Reform Litigation," Journal of Law and Education 19 (1990): pp. 219, 220 (1990) (hereinafter "The Third Wave"). For a listing of cases that have challenged school financing under the federal equal protection clause see p.1641 n. 8 of "To Render Them Safe," and p. 220 n. 4 of "The Third Wave."

² See Odden and Picus, "School Finance: A Policy Perspective," p. 25 (herein after "School Finance.")

³ 411 U.S. 1 (1973).

⁴ See "To Render Them Safe" p. 1641; Troy Reynolds, "Education Finance Reform Litigation and Separation of Powers: Kentucky Makes Its Contribution," Kentucky Law Journal 80 (1991): 309, 310.

⁵ See "The Third Wave," pp. 225-232 for a description of the role and use of state constitutions in education finance reform.

⁶ For a listing of the cases in the various states that have addressed constitutional challenges to education financing see "To Render Them Safe," p. 1639 n. 4; "The Third Wave," p. 220 n. 4.

⁷ Jonathan Banks, "State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?," Vanderbilt Law Review 45 (1991): pp 129, 134 n. 22 (hereinafter "Myth or Methodology?")

⁸ "The Third Wave," p. 229.

⁹ *Id.*

¹⁰ Note that this differs from cases that seek to overturn the school finance system based on violations of the education clause.

¹¹ "The Third Wave," p. 230.

¹² See "The Third Wave," pp. 230-231 n. 51-56.

¹³ 557 P.2d 929 (Cal. 1976).

¹⁴ See "Myth or Methodology," pp. 142-143; "To Render Them Safe," pp. 1675-1676.

¹⁵ 557 P.2d at 952.

¹⁶ "Myth or Methodology," p. 143.

¹⁷ "To Render Them Safe," p. 1675.

¹⁸ *Id.*, p. 1676.

¹⁹ 255 S.E. 2d 859 (W. Va. 1979).

²⁰ 606 P.2d 310 (Wyo. 1980).

²¹ "Myth or Methodology," p. 144.

²² "To Render Them Safe," p. 1673 (quoting *Rodriguez*, 411 U.S., pp. 33-34).

²³ See "To Render Them Safe," p. 1674 for a discussion of this argument.

²⁴ "Myth or Methodology," p. 144.

²⁵ *Id.*

²⁶ *Washakie*, 606 P.2d, p. 333.

²⁷ 376 A.2d 359 (Ct. 1977).

²⁸ "To Render Them Safe," p. 1676.

²⁹ *Id.* For a more detailed discussion of the three-prong test used by the Connecticut Court, see "Myth or Methodology," pp. 149-150.

³⁰ 651 S.W.2d (Ark. 1983).

³¹ *Dupree*, 651 S.W.2d p. 93.

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- ³² "To Render Them Safe," p. 1671 n. 147.
- ³³ *Id.* p. 1661 n. 102.
- ³⁴ Odden and Picus, "School Finance," p. 29.
- ³⁵ "To Render Them Safe," p. 1662.
- ³⁶ *Id.*
- ³⁷ *Id.* p. 1662 n. 107.
- ³⁸ *Id.* p. 1663.
- ³⁹ *Id.*
- ⁴⁰ Present in 8 states: California, Indiana, Iowa, Massachusetts, Nevada, Rhode Island, South Dakota, and Wyoming. "To Render Them Safe," p. 1666 n. 118.
- ⁴¹ *Id.* p. 1667 n. 124.
- ⁴² "School Finance," p. 30.
- ⁴³ *Id.*
- ⁴⁴ *Id.*
- ⁴⁵ 495 A.2d 376 (N.J. 1985).
- ⁴⁶ "To Render Them Safe," p. 1656
- ⁴⁷ *Id.* p. 1655.
- ⁴⁸ 495 A.2d 376 (N.J. 1985).
- ⁴⁹ 585 P. 2d 71 (Wash. 1978).
- ⁵⁰ "To Render Them Safe," p. 1669.
- ⁵¹ *Id.*
- ⁵² 777 S.W.2d 391 (Tex. 1989).
- ⁵³ 769 P.2d 684 (Mont. 1989).
- ⁵⁴ 790 S.W. 2d 186 (Ky. 1989).
- ⁵⁵ *Rose*, p. 189.
- ⁵⁶ *Id.* pp. 203-206.
- ⁵⁷ *Id.* p. 207.
- ⁵⁸ See "The Third Wave," p. 234, and "To Render Them Safe," p. 329 for a discussion of why the logical move was to proceed to an equal protection analysis.
- ⁵⁹ "To Render Them Safe," p. 1664 n. 113.
- ⁶⁰ *Id.*
- ⁶¹ Mass. Cost. Ch.5, Sec. 2

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THE FINANCE PROJECT

The Finance Project is a national initiative to improve the effectiveness, efficiency, and equity of public financing for education and other children's services. With leadership and support from a consortium of private foundations, The Finance Project was established as an independent nonprofit organization, located in Washington, DC. Over a three-year period that began in January 1994, the project is undertaking an ambitious array of policy research and development activities, as well as policymaker forums and public education activities.

Specific activities are aimed at increasing knowledge and strengthening the nation's capability to implement promising strategies for generating public resources and improving public investments in children and their families, including:

- examining the ways in which governments at all levels finance public education and other supports and services for children (age 0-18) and their families;
- identifying and highlighting structural and regulatory barriers that impede the effectiveness of programs, institutions, and services, as well as other public investments, aimed at creating and sustaining the conditions and opportunities for children's successful growth and development;
- outlining the nature and characteristics of financing strategies and related structural and administrative arrangements that are important to support improvements in education and other children's services;
- identifying promising approaches for implementing these financing strategies at the federal, state and local levels and assessing their costs, benefits, and feasibility;
- highlighting the necessary steps and cost requirements of converting to new financing strategies; and
- strengthening intellectual, technical, and political capability to initiate major long-term reform and restructuring of public financing systems, as well as interim steps to overcome inefficiencies and inequities within current systems.

The Finance Project is expected to extend the work of many other organizations and blue-ribbon groups that have presented bold agendas for improving supports and services for children and families. It is creating the vision for a more rational approach to generating and investing public resources in education and other children's services. It is also developing policy options and tools to actively foster positive change through broad-based systemic reform, as well as more incremental steps to improve current financing systems.

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