

# From Courthouse to Statehouse— and Back Again

THE ROLE OF LITIGATION IN  
SCHOOL FUNDING REFORM



## EDUCATION LAW CENTER

Founded in 1973, Education Law Center (ELC) is the nation's legal defense fund for public education rights. ELC is widely recognized for successfully advancing equal educational opportunity and justice in New Jersey, New York, and states across the country. ELC pursues its advocacy work through litigation, public engagement, policy development, research, and communications.

ELC's legal and policy advocacy, which includes the landmark court rulings in the *Abbott v. Burke* litigation, has significantly advanced the provision of fair school funding, high quality early education, safe and adequate school facilities, and continuous school improvement, especially for at-risk students and students of color. ELC's core mission is to ensure all children a meaningful opportunity to learn.

To find out more about our work, please visit [www.edlawcenter.org](http://www.edlawcenter.org).

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We would also like to thank the outstanding lawyers and advocates in the four case study states for sharing their stories and experiences with us. This report would not have been possible without them. A complete list of those interviewed for the report is included in appendix II.

## EXTERNAL REVIEWERS

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# Introduction

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Under their respective constitutions, each state is obligated to maintain and support a system of free public education available to all resident children. Yet despite these constitutional mandates, public school funding remains deeply inadequate and inequitable in most states, especially in districts serving high enrollments of low-income and Black and Latino students.

**The synergy created by multi-faceted, political campaigns has resulted in significant new funding for public schools.**

Legal challenges to inadequate school funding, based on these constitutional guarantees, have been pursued in forty-eight states, with varying degrees of success (our appendix includes a state-by-state listing of these cases). Even when successful, however, a victory in the courts is not enough to bring about change. While litigation can play a role—often crucial—litigation alone does not direct new investment to public schools or redistribute education aid to address disparities. In the end, it is the elected branches of state government

that control the level, the distribution, and the use of state dollars for public education. Real change requires action by state legislatures. Consequently, challenges to school finance inequities must be approached as both a legal and political endeavor.

After five decades advocating for school finance reform, Education Law Center (ELC) sees the urgent need to deepen understanding of how differing strategies—from litigation to research to grassroots organizing to communicating with the public—can combine to achieve successful school funding reform in the states. This report, the first of its kind in the field, begins to explore that question.

In *From Courthouse to Statehouse—And Back Again*, we review significant school funding victories in Massachusetts, Kansas, Washington, and New Jersey, to explore the workings of a broad political approach to reform. In each of these states, early legal victories suffered setbacks from economic downturns, shifts in political power, or just plain legislative gridlock. In each case, new campaigns for funding equity were launched, broadening the range of strategies and organizations at the table. And in each case, the synergy created by these multi-faceted campaigns delivered significant new funding for the state's public schools.

From our exploration of success in these four states, we have identified key lessons to guide the work of advocates and lawyers on school funding reform:



- Successful campaigns are multi-faceted and focus on building sufficient support among state lawmakers to adopt new funding systems and/or to appropriate sufficient state revenues to support schools.
  - Litigation and the courts can play a critical role by clarifying or defining the state's responsibility, putting sustained pressure on the legislative branch, or simply by keeping the case open until the votes are there to pass reform measures.
  - Successful campaigns utilize research in many forms, at all stages and for multiple audiences.
  - Successful campaigns include strong, consistent messaging to drive public support and pressure for substantive reforms in the courts and the legislature.
- Finally, and perhaps most of all,
- Successful campaigns require long-term, sustained investment. Every facet of campaign work, from organizing to litigation to research and communications, must have the capacity to engage lawmakers, judges, teachers, and grassroots constituencies and maintain that engagement over the long haul.

## Looking Ahead

In the profiles that follow, we examine the similarities and differences in state political climates and the legal and legislative strategies that yielded significant school finance reforms in four states. But even with these victories, the reform campaigns have not ended. They have moved on to the next phase.

Vigilance and ongoing advocacy are essential in school finance reform campaigns, even after achieving hard-won progress. A prominent issue in every state's political landscape, school finance reform is inevitably caught up in the economic, social, and demographic winds continuously blowing across those fields. As we prepared this report in late 2020, the coronavirus

pandemic was raging across the country, triggering another economic downturn that is pressuring states to reduce their support for K-12 public education. Massachusetts activists made an important point when their Governor signed their new, major school funding legislation in 2019: "We won! Now we keep fighting."

In the face of the difficult and ongoing challenge of ensuring adequately funded and equitably resourced public schools, advocates and lawyers must anchor their work in a singular focus on the ultimate beneficiaries of funding reform—the millions of students who deserve and are entitled to education justice and opportunity.

# A Look Back at Four States

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In this section we profile successful school funding reform campaigns in four states. What was the historical and political context for these campaigns? What contributed to their success? How did litigation fit in, and what additional strategies were crucial? How did these campaigns communicate with the public and with decision-makers? What role did research play in these victories? How were these campaigns funded and sustained over time?

While litigation played a key role in each state, our objective here is primarily to explore what happened *outside* the courtroom. Therefore, these profiles focus less on courtroom arguments, tactics, and rulings and more on how litigation fit within the broader political campaign. What happens as these campaigns move from the courthouse to the statehouse, and back again?

## Is Your Courthouse Open?

The highest courts in a few states—Rhode Island, Indiana, Illinois, and California—have ruled that lawsuits challenging inadequate school funding are not “justiciable” in the courts because they present “political questions” left solely to the legislature. In these four states, the courthouse doors are closed to school funding litigation, at least for now.

But in Pennsylvania, the Supreme Court in 2015 reversed a 1995 ruling and reopened the courts

to review a claim of severe underfunding in the state’s poor districts. The court relied on the Legislature’s adoption of statewide curriculum guidelines and assessments as providing the substantive standards to evaluate whether funding is adequate. In another hopeful decision, in 2020, the Illinois Supreme Court decided to reconsider its 1996 ruling to not allow school funding claims.



# MASSACHUSETTS

“

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it 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, especially the university at Cambridge [and] public schools and grammar schools in the towns...

Mass. Const. Pt. 2, C. 5, § 2.

In November 2019, the Massachusetts Legislature unanimously passed a landmark school funding reform bill called the Student Opportunity Act (SOA). The SOA commits an additional \$1.4 billion annually in state aid for public schools, much of it targeted specifically to high-needs districts.<sup>1</sup>

Massachusetts is often celebrated for its public schools. In 2017, they were ranked first in the nation by US News & World Reports. But that honor obscures a deep in-state divide. The same study ranked the Commonwealth 31<sup>st</sup> in educational equality by race.<sup>2</sup>

Disparities between the state's wealthiest districts and its declining industrial cities and towns have been the core problem with school funding in Massachusetts. The state Legislature adopted a promising foundation formula for school aid back in 1993. But as time went by, the Legislature repeatedly failed to evaluate and update that formula, leading to the reemergence of significant resource gaps, particularly in districts with majorities of Black and Latino students.

Frustrated by the Legislature's repeated failures, a grassroots reform campaign emerged in 2015, lifting the voices of educators, parents, and community members to pressure lawmakers to act. As this campaign moved closer to a legislative victory, the final push came from a school funding lawsuit, *Mussotte v. Peyser*.<sup>3</sup> Threatened with the prospect of the court stepping in, the Legislature passed the SOA just weeks after the case was filed.

The Massachusetts victory reflects the decades-long commitment of the state's largest teachers union to school finance equity. In the latest round, the union not only hosted the litigation effort, but also built a broad-based labor/community alliance to generate the public support and political will for reform. Side by side, these efforts seized every opportunity to drive home a message focused, not only on the legal justification for reform, but also on the daily educational deprivations endured by students and teachers because of the Legislature's refusal to act.

# The State Political Landscape



**Executive Branch:** Republicans held the governor’s office during each of the school finance cases mentioned in this report: Bill Weld (*McDuffy v. Secretary*), Mitt Romney (*Hancock v. Driscoll*), and Charlie Baker (*Mussotte v. Peysen*).



**Legislative Branch:** The Massachusetts General Court, as the state Legislature is called, includes forty senators, and 160 representatives, elected by district. The Legislature is overwhelmingly Democratic.



**Judicial Branch:** The Massachusetts Supreme Judicial Court (SJC) is made up of seven justices appointed by the governor. They hold tenured seats until the mandatory retirement age of 70.

\* In this report, we refer to districts both as high-poverty and majority Black/Latino, given the strong correlation between the two.

# 1990-2010: Major Reform Achieved, Then Erodes

In 1993, the Massachusetts Legislature enacted the Education Reform Act (ERA), one of the first foundation formulas in the country. The ERA was passed in anticipation of an SJC ruling in *McDuffy v. Secretary of Education*,<sup>4</sup> a school funding lawsuit brought by the Massachusetts Teachers Association (MTA). In its opinion, issued just three days before the governor signed the ERA, the court found that existing disparities in educational resources across the state violated the constitution’s guarantee of equal access to public schools.<sup>5</sup> The ERA was designed to remedy that violation.

The ERA formula, which remains in effect, is straightforward. It sets out the minimum capabilities that all students should achieve through their elementary and secondary education and costs out the resources, materials, and learning conditions required for students to reach them. Additional supports are added, based on each district’s enrollment of low-income children, students with disabilities, and English Language Learners. The combined calculation of basic supports plus the weighted supports for vulnerable children establishes the “foundation budget” for each district.

Next, the formula determines the amount each district can afford to contribute to its public schools through local revenues. This amount is called the district’s “minimum required contribution.” The ERA then requires the state to make up the difference between the minimum required local contribution and the full foundation budget.

## Impressive Gains, Followed by Retreat

The implementation of the ERA yielded significant increases in state aid for school districts across Massachusetts, with more funds targeted to districts with high student poverty.

Annual state spending on K-12 education went from \$1.6 billion in 1993, to \$4 billion in 2002.<sup>6</sup> Most



importantly, the spending gap between districts closed dramatically: In FY 1993, the lowest income districts spent about \$1,400 less per pupil than the highest income districts. By FY 2000, this gap had narrowed to \$370 per student, a remarkable accomplishment.<sup>7</sup>

But this progress was short-lived. A series of tax cut initiatives between 1998 and 2002 reduced state revenues by as much as \$3 billion annually, forcing belt-tightening in the state budget.<sup>8</sup> As educational costs rose, state aid failed to keep pace.

The widening gaps between low- and high-poverty districts led the MTA to file a second lawsuit in 1999. In *Hancock v. Driscoll*,<sup>10</sup> the plaintiffs argued that the foundation formula was no longer sufficiently funded to allow students in low-income districts to meet the state's goals for educational achievement.

After hearing evidence in a 2004 trial in *Hancock*, Superior Court Judge Margot Botsford agreed. She acknowledged significant progress in school funding equity under the ERA but noted that many high-poverty schools still lacked sufficient resources and that recent funding cuts had exacerbated these deficits. She recommended the state undertake a thorough cost study to re-assess the needs in low-income districts.

The state appealed the decision. The following year, the SJC overturned Judge Botsford, acknowledging the “far from perfect” implementation of the ERA but anticipating that the Legislature’s good faith efforts would eventually succeed in bringing the state into compliance.

The high court’s ruling in *Hancock* relieved pressure on the Legislature to address the growing crisis in the schools. Other education “reform” trends, including charter schools and test-based accountability measures, gained political traction at the statehouse. The “money doesn’t matter” argument also began to permeate the debates over school funding.

The 2008 Great Recession further eroded the ERA’s school funding levels. Despite rising costs, including for non-negotiable health care and federally-mandated

## Does Money Matter?

For decades, the argument against school funding reform most often heard in statehouses and courthouses across the country is that “money doesn’t matter” for improving children’s educational outcomes. It is the centerpiece of opposition in state legislatures to raising taxes for public education and is typically the state’s main line of defense in school funding lawsuits.

Yet, a growing body of rigorous research is emerging that correlates increases in school funding with improved student performance. This research confirms that money matters a lot and that boosting spending, especially in high-poverty districts, can have a significant, positive impact on student outcomes.<sup>9</sup>



special education costs, the Legislature cut state education aid by over half a billion dollars between 2008 and 2013.<sup>11</sup> And while wealthier districts were largely able to compensate by increasing local revenues, low-wealth districts could not and were forced to raise class sizes, reduce the numbers of teachers and support staff, and eliminate enrichment and other programs to balance their budgets.

By 2010, the ERA formula underestimated health care and special education costs by roughly \$2.1 billion annually.<sup>12</sup> Still, with the recession receding, there was

**Between 2008 and 2013, Massachusetts cut state education aid by over half a billion dollars.**

little political appetite among legislators to take on the contentious issue of fixing a formula that had badly eroded over the preceding decade.

## **2015-2019: Momentum for Reform Builds**

In late 2015, labor, civil rights, and advocacy organizations coalesced to form the Massachusetts Education Justice Alliance (MEJA). The MTA provided financial support for the coalition, recognizing the need for a unified labor/community front to protect and strengthen public education.

With a full-time staff organizer, MEJA built local chapters across the state that brought students, parents, and educators together. They challenged the “money doesn’t matter” argument, pushed back against the expansion of charter schools, and exposed the state’s tax code as allowing some of the nation’s wealthiest individuals to avoid paying their fair share into the state’s coffers.

As MEJA educated and organized the public across the state, three key developments between 2015 and 2018 contributed to their growing political influence.

### **1. A Bipartisan Commission Confirms Shortfalls in State Aid and Calls on the Legislature to Act**

The ERA had a unique requirement: the Legislature had to “periodically” review the sufficiency of the foundation formula and make recommendations for adjustments, as needed.<sup>13</sup> Yet the Legislature failed

to conduct these mandated reviews after 1996, even when Judge Botsford, in her 2006 *Hancock* ruling, called for a detailed cost study. As pressure began to mount in 2014, Governor Deval Patrick finally called for, and the Legislature convened, a bipartisan Foundation Budget Review Commission (FBRC). By statute, the Commission was led by the House and Senate co-chairs of the Legislature’s Joint Committee on Education and included the Secretary and Commissioner of Education along with other government officials and representatives from labor and other stakeholder groups. Six public hearings were held across the state, gathering testimony from superintendents, parents, principals, educators, and community members.

The FBRC released its report in October 2015.<sup>14</sup> In it, they noted that the ERA formula had underestimated and underfunded the needs of students with disabilities, immigrant students, and low-income students, as well as health care costs. While the Commission did not put a price tag on its findings, budget experts quickly calculated that an additional \$1 billion annually in state aid would be needed to implement the Commission’s recommendations.<sup>15</sup> The report galvanized the debate and set school funding reform firmly on the legislative agenda.

## **2. A Ballot Initiative on Charter Schools Fuels Support for Public Schools**

Massachusetts limits the number of charter schools that can operate statewide. For several years, the Legislature had rejected efforts to lift that cap. After another defeat in 2016, charter school proponents waged a successful campaign to put the issue to voters through a ballot initiative called “Question 2.”

The pro-charter, “Yes on 2” campaign was well funded by deep-pocketed interests both in- and out-of-state. MEJA led the grassroots opposition, emphasizing that expanding charters would divert even more funding from already strapped districts. Two experts in municipal finance created an online program that allowed residents to calculate this financial drain in their own communities.<sup>16</sup> It proved to be a powerful communications tool as some communities learned that they were already losing as much as 18 percent of their annual school budgets to charter schools.<sup>17</sup> The grassroots organizing paid off: Question 2 was resoundingly defeated in November 2016. Given the campaign’s heavy focus on the fiscal impact of charter

schools on local districts, the defeat of Question 2 sent legislators a strong message that the public wanted comprehensive school funding reform.

## **3. A Revenue Proposal—Tax the Rich—Offers a Vision of Economic Possibility**

While MEJA continued its advocacy, a separate coalition of workers’ rights organizations called “Raise Up Massachusetts” was laying the groundwork for a constitutional amendment to increase taxes on personal incomes over \$1 million. The “Fair Share Amendment,” or “millionaire’s tax,” would dedicate the anticipated \$2 billion in annual revenues from the tax to education and transportation projects. The widely popular amendment was approved for the ballot in November 2018, and appeared headed for victory. In the Legislature, which had twice voted in favor of the constitutional amendment, the millionaire’s tax offered a revenue stream that would assuage the concerns of fiscal conservatives hesitant to vote in favor of increased spending.

## **Vouchers: A Matter of Public School Funding**

In the last few years, legislatures in 27 states have enacted programs to use public tax dollars to fund private school tuition and other expenses. There are several different types of voucher programs, from those targeted to students with disabilities and/or low-income children to “education savings accounts,” which appeal to more middle-income families.

At their core, voucher programs divert limited tax dollars from public schools, which, unlike private schools, states are constitutionally obligated

to maintain and support. And most states with voucher programs are among those that do not adequately fund public schools, especially in districts segregated by poverty and race.

The bottom line: vouchers deprive public schools of desperately needed public funding. A growing movement opposing vouchers on those grounds, including efforts such as the Public Funds Public Schools campaign, are gaining traction across the country.

## Consensus Builds Towards Addressing the Foundation Formula

Bending with these political winds, the Legislature finally began inching towards school finance reform. More funding for health care benefits was included in the state's FY 2018 budget. In 2019, for the first time, the budget increased the funding rate for English language learners. But these gains, while important, did not guarantee the permanency that would come from a statutory overhaul of the ERA formula. As three proposals to update the formula were debated during the 2018 legislative session, it became clear that the most contentious component would be increased funding for low-income students, the majority of whom were children of color.<sup>18</sup>

## 2019: Litigation Helps Drive Reform Over the Finish Line

As they convened in 2019, public pressure was bearing down on lawmakers. They knew that a failure to resolve the by now obvious crisis in school funding might once again end up in court. And they were right. The MTA was laying the groundwork for new litigation.

The legal team was led by the MTA's general counsel, Ira Fader. A key partner was Massachusetts Lawyers for Civil Rights, which had strong connections to many of the urban communities hit hardest by the lack of funding. The plan was to build the new litigation on a civil rights framework.

Though Fader was new to the field of school finance, the MTA held extensive institutional memory, having led both the *McDuffy* and *Hancock* litigation. And, in addition to legal resources, the union provided the support of their experienced research department. The researchers quickly built an extensive database of school districts across the state, with detailed information about spending and needs. This information was used to identify the most impacted districts and build a narrative based on firsthand stories from students and educators.

The campaign to boost state school aid suffered a serious setback in June 2018, when the SJC struck the Fair Share Amendment from the November ballot. While a blow to the campaign, the broad labor/community coalition doubled down, arguing that the full funding of schools was a moral and legal obligation, even *without* the promise of new revenue just over the horizon. Organizers, as well as legislators, also anticipated that the millionaire's tax would likely be revived and eventually come to a public vote.

Negotiations lasted into the final hours of the legislative session that August, but legislators failed to advance school funding reform. As the session gaveled to a close, MEJA vowed to redouble its efforts to pass a new school funding measure in 2019.

### A "Bottom-Up" Strategy

The Council for Fair School Finance (CFSF) is a non-profit coalition of labor, civil rights, and education organizations across Massachusetts. It was created in 1993 to help fund the *McDuffy* and later *Hancock* cases.<sup>19</sup> The coalition had been inactive since *Hancock*. But in 2019, anticipating that litigation would again be necessary, the groups reconvened.

They contemplated their strategy: The governor and his secretary of education were both arguing that the price tag of reform was too high, and that more money would not make a difference. The legal foundation for reform had been established by previous litigation. The detailed litany of necessary adjustments to the formula had been presented by the bipartisan FBRC. So, what was the missing piece that would overcome the governor's opposition? The CFSF and the legal team devised a "bottom-up" strategy. They would put forward the voices of parents, students, and educators to make the case for reform. They knew that personal stories from individual educators and students—witnesses to austerity—would be difficult for legislators and the governor to ignore or refute.

The CFSF announced its return with a press conference in April 2019. The message, delivered by parents, teachers, and students, was aimed squarely at the political players: schools serving low-income students, Black and Latino children, and large numbers of students with disabilities were disproportionately under-funded. If the Legislature did not act, the Coalition intimated, we'll see you in court.

### **A Devastating Portrait of Inequities**

In September 2019, the legal complaint in *Mussotte v. Peyser* was filed directly with the SJC. The plaintiffs included two community-based organizations, along with a dozen parents and students from seven under-funded school districts. The defendants included the secretary of education, the commissioner of education, and the state school board, among others. This too was deliberate: the leadership of every state office and department involved in school funding would be held responsible.

The *Mussotte* complaint paints a gut-wrenching portrait of structural inequity. After laying out the history and legal grounds for school finance reform, it turns to its core civil rights message: "The failure to modernize the foundation budget formula and provide adequate funding has disproportionately impacted the educational experiences and outcomes of students of color."<sup>20</sup>

In one Lowell elementary school, "children who have few or no toys, balls or other games at recess...amuse themselves by playing a game called 'Litter Laundry,' where they wash garbage in puddles and lay it out to dry."

The complaint presents a litany of shocking conditions in the seven plaintiff districts, including lack of access to librarians and guidance counselors, large class sizes, and textbooks that are over two decades old. It describes school buildings riddled with mold and asbestos or without air conditioning, adequate heat, or even running water. It reads like the outline for a Dickens novel: in a Lowell elementary school, "children who have few or no toys, balls or other games at recess... amuse themselves by playing a game called 'Litter Laundry,' where they wash garbage in puddles and lay it out to dry."<sup>21</sup>

After detailing the severe deficiencies in the plaintiff districts, the complaint turns to the wealthier districts where librarians and counselors are plentiful, course offerings are rich and challenging, teacher turnover is low, and facilities are state-of-the-art. *Mussotte* makes the case that while these districts coexist within a single system, they are light years apart in the educational experiences they offer. And this disparity demands a complete overhaul of the foundation formula to provide basic justice for all Commonwealth students.

The legal team made sure every legislator received a copy of the *Mussotte* complaint. Along with continuing grassroots pressure, the powerful stories in the complaint were a call to action. In November 2019, just four months after *Mussotte* was filed, the Legislature unanimously passed the Student Opportunity Act (SOA), updating the foundation formula and committing to \$1.4 billion annually in new state aid, to be phased in over seven years. Funding for low-income students was increased dramatically. To pay for the reforms, the Legislature tapped into the state's healthy economic condition and its overflowing rainy day fund.

Governor Baker's proposed 2021 budget included the first SOA installment—a \$355 million increase for schools. The CFSF then announced they would drop the case. But they vowed to continue to monitor the state's progress on fully reaching its commitment by 2027, as the SOA requires.<sup>22</sup>



## Keys to Success

The *Mussotte* case was never tried in court. Even so, the litigation played a critical role at the pivotal moment in the Massachusetts campaign for school funding reform.

These key elements in the story stand out:

### A Structurally Sound But Out-of-Date Foundation Formula

The formula enacted in the 1993 ERA remained structurally sound, but the cost parameters and funding allocations had become obsolete. This allowed the FBRC in 2015 to focus on updated education costs rather than debating the basic structure of the formula itself.

### A Long-Term Commitment by the State Teachers Union

The MTA played the leading role in both the litigation and advocacy strategies, working in coalition with parents and community organizations. The union's leadership was essential for both the organizing work and the litigation.

### Grassroots Organizing and Astute Messaging

The MEJA campaign engaged parents, students, educators, and community members through trainings, events, lobbying days at the statehouse, and other activities. In the end, the victory on enacting the Student Opportunity Act was theirs, pushed over the line by the *Mussotte* litigation.





# KANSAS

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The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

Kan. Const. art. 6, § 1.

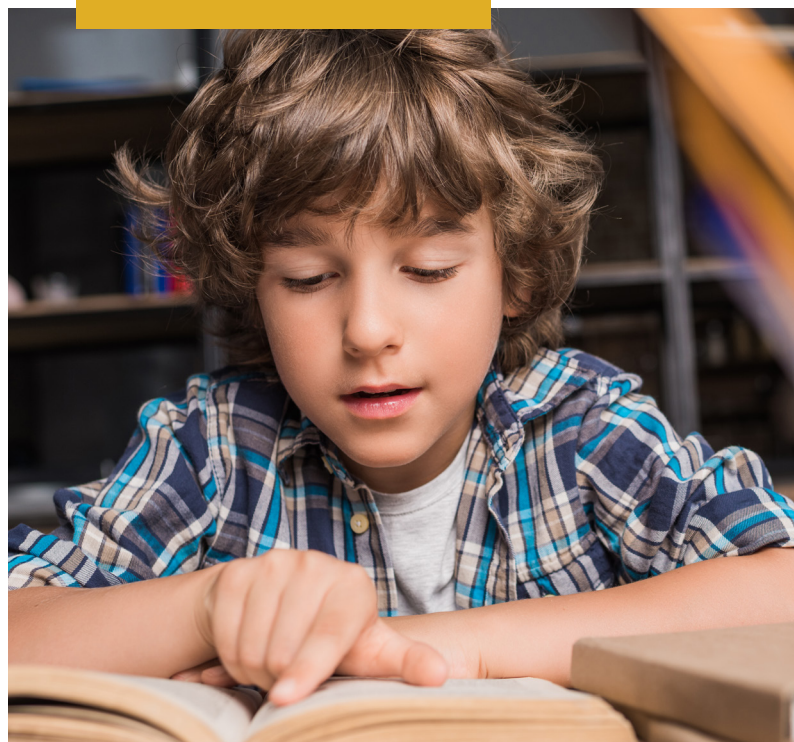
The legislature shall make suitable provision for finance of the educational interests of the state.

Kan. Const. art. 6, § 6.

In 2019, the Kansas Legislature approved a substantial increase in funding for public schools, ending a multi-year standoff with the state Supreme Court. When fully phased in, state aid to schools will have increased by \$1.038 billion, or \$2,231 per pupil.<sup>23</sup>

This most recent legislative victory stemmed from the Court's 2014 ruling in *Gannon v. State*, which found that the school funding formula was neither adequate nor equitable under the state constitution. But the Court's opinion was not the end of the story. For most of the past decade, the Kansas Executive and Legislature were dominated by an anti-government, anti-tax majority that simply refused to invest in public education as required by the Court's ruling.

Between 2014 and 2019, the Kansas Supreme Court issued seven rulings in *Gannon*. But what ultimately broke the logjam was grassroots organizing that shifted the political balance in the Legislature.



## The State Political Landscape



**Executive Branch:** Democrat Kathleen Sebelius held the governor's mansion during earlier litigation on school finance (2003-2009).

In 2010, Republican Sam Brownback was elected governor on the wings of the then-emerging Tea Party movement. Brownback's anti-tax policies eventually lost favor, returning the governor's mansion to the Democrats with the election of Laura Kelly in 2018. Kelly signed legislation ending the *Gannon* case.



**Legislative Branch:** The Kansas State Legislature is made up of a 125-member House, and a 40-member Senate. Both houses have been firmly Republican for decades. Traditionally, lawmakers cluster into thirds, with Democrats and very conservative Republicans at either end of the spectrum and a more moderate Republican center. The path to legislative victory in Kansas runs through this moderate center.



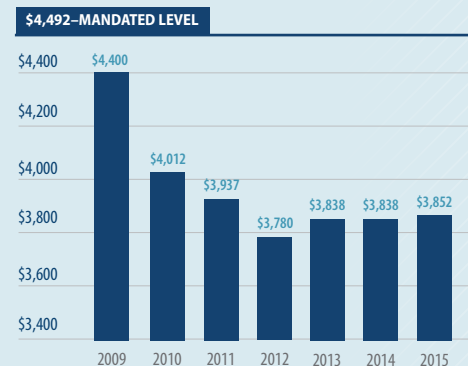
**Judicial Branch:** The Kansas Supreme Court comprises seven justices appointed by the governor on the merit-based recommendation of a nominating commission. Justices serve for life but are subject to retention elections every six years.

## 1999-2010: Reform Achieved, Then Dismantled

State aid to Kansas public schools has been distributed through a succession of funding schemes that have been challenged in the courts for three decades. While all this litigation has been contentious, none was more so than *Montoy v. State*, originally filed in 1999.<sup>24</sup> *Montoy* led to a Kansas Supreme Court holding that the state's school finance system was unconstitutional. The ensuing standoff between the courts and the Legislature was so acrimonious that one scholar coined it "the gunfight at the K-12 corral."<sup>25</sup> Through the course of the *Montoy* case, five decisions were handed down, a new cost-based formula was adopted, and an additional \$756 million in annual state school aid was authorized. *Montoy* was dismissed in 2006, as this new funding, to be phased in over three years, began to flow.

Just two years later, Kansas, along with the rest of the country, was hit with the Great Recession. Beginning in February 2009, Governor Sebelius and the Legislature cut more than \$443 million from the education budget. The phase-in of the funding triggered by *Montoy* ground to a halt.

### BASE STATE AID PER PUPIL



Graphic data courtesy of Game On for Kansas Schools and available at <https://www.youtube.com/watch?v=4cKyazH2lrM>

The following year, Sam Brownback rode the Tea Party tide into the governor's office, along with a cohort of anti-tax, anti-government legislators, creating an ultra-conservative majority bloc in the statehouse. Just weeks after his inauguration in 2011, Gov. Brownback launched his "red-state experiment" to dramatically reduce taxes and government spending. By May of that year, education cuts had reached \$511 million annually. Then, in 2012, Brownback signed a massive tax cut on the promise it would spur an economic recovery. State revenues plummeted by \$700 million in the first year alone.<sup>26</sup>

## 2010-2019: Taking Cuts to Court

In the lead-up to *Montoy* in 1997, plaintiff attorneys John Robb and Alan Rupe created a non-profit organization called Schools for Fair Funding (SFF) made up of 19 Kansas school districts. Two of these served as plaintiffs in *Montoy* and all helped fund the litigation.

As the state retreated from the 2006 funding formula adopted in the wake of *Montoy*, new litigation appeared inevitable. Robb went on the road to recruit more SFF members. Within a year, the coalition grew to 72 districts, enrolling 35 percent of Kansas students.

In January 2010, Robb and Rupe asked the Supreme Court to re-open *Montoy*. They argued that the 2009 budget cuts signaled the abandonment of the funding formula the court had accepted to resolve the case. The Court, however, denied their request, explaining, "there is nothing the plaintiffs are seeking that they cannot accomplish by filing a new lawsuit." *Montoy* was over. Taking up the Court's invitation, the plaintiffs filed a new lawsuit, *Gannon v. State*, in Shawnee County District Court in November 2010.

The *Gannon* plaintiffs included several students and their families and four representative school districts serving tens of thousands of students. The lawsuit charged that the state was violating the requirement in the constitution that the Legislature "make suitable

Between 2009-2014, education funding fell to 16.5 percent *below* the 2008 level,<sup>27</sup> triggering teacher layoffs, increased class sizes and the elimination of academic and extracurricular programs, as well as essential services for at-risk students. By June of 2012, a top official at the Kansas State Department of Education told a local radio station that some school districts were on the brink of insolvency and might soon be unable to meet payroll.<sup>28</sup>

provision for" funding the state's public schools.<sup>29</sup> The plaintiffs argued that the 2009 state aid cuts deprived districts of critical resources and rendered the 2006 formula unconstitutional. They also argued that the cost of educating students had increased, as had overall enrollment, and in particular the number of economically disadvantaged students.

In addition to the litigation, SFF hired a professional lobbyist and an organizer to keep districts informed about progress in the courts and to build support among local school administrators, educators, and parents. Through their work, SFF, which was organized as a non-profit lobbying entity 501(c)(4), generated calls, visits, and emails to targeted members of the Legislature. This advocacy work helped keep the SFF member districts engaged in the campaign and ensured that legislators were hearing from their constituents throughout their debates.

The June 2012 trial in *Gannon* lasted four weeks and included 44 witnesses and over 600 exhibits. The state argued that the cuts to school aid were necessitated by the Great Recession. The plaintiffs focused on testimony from teachers and superintendents about the impact of those cuts. These stories, along with the findings of two previous cost studies commissioned by the Legislature during the *Montoy* litigation, proved compelling to

the three-judge panel. In January 2013, the panel unanimously ruled for the plaintiffs and rejected the State’s defense, noting:

*“It seems completely illogical that the State can argue that a reduction in education funding was necessitated by the downturn in the economy and the state’s diminishing resources and at the same time cut taxes further, thereby further reducing the sources of revenue on the basis of a hope that doing so will create a boost to the state’s economy at some point in the future.”<sup>30</sup>*

**“It seems completely illogical that the State can argue that a reduction in education funding was necessitated by the downturn in the economy...and at the same time cut taxes further...”**

Kansas Superior Court, Third Judicial District,  
in *Gannon v. State of Kansas* (2013)

The state appealed to the Supreme Court, which issued its first *Gannon* decision in the spring of 2014. The Court split the issues in the case. They found school funding *inequitable* (distributed unfairly to students in higher-poverty districts) and ordered a legislative fix by July of that year. They then sent the issue of funding *adequacy* (whether funding was sufficient for all students) back to the trial court for further review. From that point forward, the two concerns—equity and adequacy—were on different tracks, each going from the courthouse to the statehouse, and back again.

The Legislature grappled with state school aid in every session between 2014 and 2019, each time reluctantly putting some new money into the state’s education aid budget. But each year, the plaintiffs returned to the courts, arguing that the increases did not comply with the constitution, and the Supreme Court agreed. In 2015, a frustrated Governor Brownback scrapped the school aid formula altogether in favor of a system of block grants to districts that, upon analysis, had the effect of slashing funding even further. Both the lower court and the Supreme Court rejected this move and in 2016 threatened to close the schools if full funding was not enacted. Governor Brownback called a special session of the Legislature in June to respond.

### **The “Gunfight” Redux**

Conservative lawmakers were incensed at the Court’s continued “interference” in their tax and budget revolution. They argued both that more funding was not needed, that is, “money doesn’t matter,” and that the judicial branch was acting in excess of its authority.

Rather than address the school funding issue, a group of state senators in 2016 introduced three proposed amendments to the constitution aimed not at funding the schools, but at weakening the Court.<sup>31</sup> One proposal prohibited closing schools as a judicial remedy. A second proposed changing the selection process for Supreme Court justices. The third would remove the word “suitable” from the education clause of the constitution and place sole authority over school funding with the Legislature. All three proposals were defeated in the Legislature.

### **An Advocacy Campaign Gathers Steam**

Outside the statehouse, though, Kansans were souring on Brownback’s austerity measures. His promise of renewed economic prosperity through tax cuts had failed to materialize, leaving the state hundreds of billions of dollars in the red. As Brownback cast blame for the shortfall on education spending,<sup>32</sup> parents and educators watched their schools deteriorate. The organizing work of SFF helped channel constituent



complaints to legislators at just the right time, with just the right message, based on the bills and proposals pending in the legislative chambers.

At the same time, education advocacy organizations including the Kansas NEA, the state's largest teachers union; the state PTA; and an energetic, all-volunteer grassroots organization called "Game On for Kansas Schools" (Game On) were coming to the conclusion that school finance reform was unlikely to succeed given the entrenched ideological majority in Topeka. They began coordinating efforts to unseat Brownback's Tea Party bloc.

Game On leaders were savvy at garnering free media attention as they built a statewide base. When a public school mother and a teacher contacted the group in 2013, and said they were planning to walk to Topeka to shine a spotlight on the school funding crisis, Game On jumped in to help. The pair walked 60 miles from a Kansas City suburb to the statehouse. Game On helped publicize their walk and hosted a press conference when they arrived. It became an annual event. In 2016, walkers setting out from three different cities converged in Topeka more than 500 strong. Their message to legislators was clear: fund our schools! Their message to voters: use the ballot box to give Kansas a pro-public school majority in the Legislature.

In addition to the walks, Game On leaders spoke at events across the state. They helped parents, teachers, and community members understand that the untenable conditions in their own schools were mirrored across the state and rooted in Brownback's

failed economic policies and legislative opposition. They created scorecards to let voters know how their state representatives voted on school spending bills. Their efforts lifted school funding to the forefront of the 2016 elections.<sup>33</sup>

The work paid off. In the Republican primaries that August, moderate Republicans unseated nine Brownback supporters in the Senate and over 20 in the House. It was a "stunning rebuke" of the Governor's austerity agenda, according to the *Kansas City Star*.<sup>34</sup>

The political winds shifted further in November, as Democrats netted 12 new House seats along with one additional seat in the Senate. It was enough to shift the balance in the Legislature.<sup>35</sup>

Within a month of taking their seats in January 2017, the new lawmakers had voted to roll back the Brownback tax cuts. Repealing the cuts brought \$1.2 billion in new revenues to the state.<sup>36</sup> That June, the Legislature, as ordered by the Supreme Court in *Gannon*, replaced Brownback's block grants with a new formula based on per pupil funding. They also enacted an increase of \$292 million annually in state aid.

With his political fortunes waning, Brownback left Topeka to join the Trump administration in 2018. The Legislature, still conservative but less extreme, commissioned a new cost study, hoping it would reinforce their continuing argument that additional funds were not necessary to meet the adequacy standard. The move backfired when that cost study concluded that over a billion dollars in additional spending was required to sufficiently fund the schools.<sup>37</sup>



After this rapid turn of events, in both 2018 and 2019, a bipartisan coalition of legislators passed school funding reforms that together will add more than \$600 million annually to state aid when fully phased in by 2023.<sup>38</sup> The last of these bills reached the desk of the new Democratic governor, Laura Kelly, in April of 2019. In response, the Supreme Court shortly thereafter issued

its sixth ruling in *Gannon*, holding that the State was on course to meet its constitutional obligations to sufficiently fund the schools if the phase-in continues through 2022-23 as the reforms require. The Court did not dismiss the case, however. It kept jurisdiction to assure the Legislature's delivery of the increases prescribed by law.

## Keys to Success

The *Gannon* litigation resulted in six major Supreme Court rulings declaring the state's retreat from a prior school funding formula unconstitutional. As the court applied pressure, a grassroots campaign shifted the balance of power in the Legislature and signaled the potency of this issue in the electoral arena. These key elements in the Kansas story stand out:

### School Districts Step Up

Local districts formed the Schools for Fair Funding coalition to challenge the state, not only as plaintiffs in *Gannon*, but also to fund the litigation and the lobbying and grassroots organizing to support school funding reform. For districts to take on this adversarial role is exceedingly difficult, given that they operate under policies and rules set by legislatures and state education agencies. It is also difficult for district leaders to publicly admit they are unable to properly educate all their students, as they must do when spearheading a school funding lawsuit. The SFF districts risked undermining relationships with their legislative delegations and state officials in confronting the state in *Gannon*. The reform victory in Kansas is attributable in large measure to the courage and tenacity of local district leaders who led the funding fight against the State in the courtroom and state capitol, along with working to convince their communities of the need for justice for their children.

### State-Commissioned Education Cost Studies

Two separate cost studies were commissioned during the *Montoy* case and were crucial elements in *Gannon*.<sup>39</sup>

The first, by Colorado consultants *Augenblick & Myers*, was commissioned by the Legislature and released in 2002.<sup>40</sup> This study recommended the state increase spending by around \$277 million to meet state-determined student outcomes.<sup>41</sup>

The second study by the Kansas Legislative Division of Post Audit in 2006<sup>42</sup> identified the need to spend between \$316 and \$399 million more in 2006-2007 dollars. The third by WestEd in 2018, commissioned by the Kansas Legislative Coordinating Council during the *Gannon* proceedings, recommended between \$1.7 and \$2.1 billion in additional annual state aid to meet the state's education outcome goals.<sup>43</sup>

These research studies, based on Kansas data, made it almost impossible for the Legislature to avoid taking action at critical moments on the road to the 2019 finance reform.

### Electoral Organizing

As the back and forth between the judiciary and the Legislature wore on, it became clear that winning a new formula with increases in funding would require shifting the balance of power in the Legislature.

Elevating school funding to an election issue for the 2016 primaries and general election proved pivotal in Kansas. While not connected to the *Gannon* legal team, the extraordinary work of Game On for Kansas Schools and other organizations altered the political landscape for reform.



# WASHINGTON

“

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Washington State Constitution, art. IX, § 1.

In 2018 and 2019, the Washington State Legislature directed a total of \$7 billion annually in new revenues to support public schools.

The road to reform began in the 1970s, when the Washington Supreme Court ordered the state to fund a “basic education” for all students. In the decades since, lawmakers have struggled to define what comprises a basic education, how much it should cost, and how to pay for it. The debate dragged on for more than four decades, generating some 100 task forces, commissions, committees, reports, and cost studies.

Only a return to court in *McCleary v. State* finally forced the Legislature to generate the additional revenue required to “make ample provision” for the education of the state’s children, as the constitution requires. An intransigent Legislature, under pressure from a tenacious judicial branch, is the hallmark of this story.



## The State Political Landscape



**Executive Branch:** Washington has had two decades of Democratic governors. The current governor, Jay Inslee, was inaugurated in January 2013. He succeeded Christine Gregoire, who served from January 2005 through January 2013.



**Legislative Branch:** The Washington Legislature has 98 House members and 49 Senators. The Legislature meets annually, alternating between short, general sessions in even-numbered years and longer sessions during which a biennial budget is passed in odd-numbered years. Both houses are under Democratic control.



**Judicial Branch:** The Washington Supreme Court comprises nine justices elected to six-year terms through non-partisan public elections. In case of a vacancy, the governor appoints a replacement who must stand for election at the end of the seat's term.

## 1975-2007: Setting the Stage

In 1975, the Seattle School District sued the State of Washington, claiming that public schools relied too heavily on local property taxes for basic school operations. After a nine-week trial (*Seattle School District No. 1 v. State*),<sup>44</sup> the Superior Court agreed, finding it the responsibility of the state to pay the costs for all students to access a “basic education.”

The court’s ruling, however, left it to the Legislature to define what comprises a “basic education” and to determine its cost and how to pay for it.

While the lower court ruling in *Seattle* was on appeal to the Washington Supreme Court, the Legislature passed the Basic Education Act of 1977 (BEA). The BEA acknowledged the state’s primary responsibility for funding a basic education and substantially increased state school aid. It established goals, minimum program hours (“seat time”), teacher contact hours, and a mix of course offerings as the parameters of a basic education.<sup>45</sup> That same year, the Legislature also attempted to address the overreliance on local property taxes by imposing a cap on the local share of a district’s budget.

In September 1978, the Supreme Court in *Seattle I* affirmed the state’s responsibility for making “ample provision for a basic education by means of dependable and regular tax sources.”<sup>46</sup> The Court dismissed the Seattle case, confident that the BEA’s provisions would achieve compliance.

Five years later, the plaintiffs returned to court, arguing that the state continued to underfund the BEA. In *Seattle II* (1983), the trial court agreed that the state was not meeting its constitutional obligations under *Seattle I* but, expressing confidence that the Legislature would act, did not order a remedy.<sup>47</sup>

### Delay by a Thousand Committees

The years following the *Seattle* rulings marked a running debate in the Legislature over state school aid. Few lawmakers wanted to touch the third rail—raising

taxes—in an era of anti-tax activism. By the end of the 1980s, consensus was emerging that the BEA was outdated, both in its definition of a “basic education” and in its provisions for vulnerable students. Yet, the Legislature was unable to agree on funding formula reforms or a price tag or revenue source to support those reforms. A series of commissions, task forces,

and study groups were convened to consider the problem or, more accurately, to kick the can down the road. The reports and recommendations piled up, further acknowledging the state’s responsibility to fix the broken funding system but without yielding substantive solutions.

## 2007-2019: The Court Takes Charge

By the early 2000s, anyone who spent time in classrooms across the Evergreen state knew there wasn’t enough “green” to go around. Teachers especially, grew more and more convinced that the BEA was in urgent need of reform. They began to pressure their union, the Washington Education Association (WEA), to take legal action. When the WEA agreed, union members approved a temporary dues assessment to cover the costs of the new litigation.

The union hired Seattle-based litigator Tom Ahearne as lead counsel to explore and develop a lawsuit. Ahearne was eventually retained by two families with young students to file suit on their behalf. He also understood the need for a broad base of support for the case and a strong, consistent public message throughout the proceedings. So, in 2005, Ahearne and the WEA created a non-profit coalition called NEWS, or the Network for Excellence in Washington Schools, that would also serve as a plaintiff. NEWS began with 11 organizational members, but quickly grew to include 442 school districts, community groups, civil rights organizations, and local teacher union affiliates.

In 2007, Ahearne filed *McCleary v. State of Washington*, arguing that the state was failing to provide access to a basic education, particularly for its most vulnerable children.<sup>48</sup> The *McCleary* complaint emphasized that Washington was still funding its public schools under the nearly 30-year-old BEA formula, even though the state’s own studies showed it was outdated and insufficient.

*McCleary* was crafted to compel the courts to clarify the state’s obligation to its school children by interpreting the meaning of three words in the constitution’s education clause: “paramount,” “ample,” and “all.” The team anticipated that, with those terms clarified, they could then systematically gather the evidence to demonstrate a violation of those standards.



## HB 2261: The Legislature Attempts to Fend Off a Court Order

With the *McCleary* case underway, the Legislature responded with yet another study group, the Basic Education Joint Finance Task Force, to recommend options for a new funding formula.<sup>49</sup> After the Task Force released its report in January 2009, the Legislature enacted HB 2261. The bill redefined the components of a “basic education,” adding new programs including all-day kindergarten, additional services for students with special needs, and bilingual education. It also committed state funding for lower class sizes in grades K-3 and to cover most of the cost of teacher salaries.

Though HB 2261 expanded the state’s *programmatic* obligations to its public schools, it did not address funding levels or sources of revenue. Instead, the legislation directed the Office of Financial Management and the Superintendent of Public Instruction to create a technical working group to develop a fiscal plan, recommend a timeframe for implementation, and explore potential revenue sources.

This new effort yielded a second law, HB 2776, passed in 2010.<sup>50</sup> This bill laid out a timeline for implementation of the new basic education model, committing the Legislature to sequentially fund its various components, culminating with the teacher salary component, the most contentious. The total cost was estimated at \$1 billion in the 2013-2015 budget, rising to \$3.3 billion by 2017-2019,<sup>51</sup> although other cost studies suggested the price could be far higher. In HB 2776, the Legislature committed to full implementation by the start of the 2018-2019 school year.<sup>52</sup>

The Legislature hoped these steps would stave off a court order in the *McCleary* case. They were partially right. And partially mistaken.

### Ample, Paramount and All

In 2010, following a three-month trial with over 500 exhibits, the trial court found for the *McCleary* plaintiffs, concluding that, “state funding is not ample, it is not

stable, and it is not dependable.”<sup>53</sup> The court ordered the Legislature to establish the *actual* cost of providing all Washington children with the education mandated by the constitution and to establish how the state would fully pay for it with stable and dependable sources. The state appealed, and in 2012, the Supreme Court affirmed the lower court ruling.

As the legal team had hoped, the *McCleary* trial court defined, and the Supreme Court affirmed, the definitions of three words that have proved pivotal in Washington school finance.

**Paramount** means the state’s first and highest priority before any other state programs or operations.

**Ample** means considerably more than just adequate.

**All** means each and every child. No child is excluded.

“Paramount,” the Court declared, means the state must “provide for the education of all Washington children as the state’s first and highest priority before any other State programs or operations.”

“Ample” means “fully, sufficient, and considerably more than just adequate.”

And “all” means “all.” “All children,” wrote the Court, encompasses “each and every child since each will be a member of, and participant in, this state’s democracy, society, and economy.” No child is excluded.<sup>54</sup>

As the state had argued, the Court held that taken together the passage of HB 2261 and HB 2776 showed that the Legislature was making progress towards a functioning and constitutionally compliant finance system. Yet unexpectedly, the Court kept the case under its jurisdiction, ordering the Legislature to report annually on progress towards meeting the September 2018 deadline for full implementation.<sup>55</sup> Twenty years after Seattle, the Court wanted to make certain the Legislature would follow through on the promised reforms within the time frame they set for themselves.

### The Court Turns Up the Heat

While the justices were grappling with the *McCleary* litigation, the Legislature responded to the Great Recession by cutting the state's operating budget. Between 2009 and 2011, statewide enrollment grew by over 12,000 students, but the biennial budget for those years slashed state K-12 aid by just over \$1 billion. Layoffs reduced the teacher workforce by 3,000.<sup>56</sup>

The fallout from the cuts reverberated across the state. With school levies on the ballot in most districts, educational needs and resources were a constant topic of debate at the local level. Collective bargaining negotiations in each district also raised questions about the state's responsibility for school funding. The Legislature's budget cuts increased awareness of the *McCleary* rulings and began to organically generate a "bottom up" demand on lawmakers for more support.

Still, the Legislature made only incremental progress. The 2013-2015 state budget included \$758 million<sup>57</sup> for student transportation and the expansion of all-day kindergarten, but fell short of the universal kindergarten program promised in HB 2261.

Meanwhile, the Supreme Court continued to receive the annual progress reports mandated by *McCleary*. In response to the 2013 progress report, the plaintiffs again asked the Court to intervene. In January 2014, the Court found that the state was falling behind in implementation<sup>58</sup> and ordered that, by April 30, the state submit a plan for corrective action, addressing

each area of K-12 education to be funded, as well as a year-by-year, phase-in schedule. Insisting on a quick turnaround on the new plan, the justices wrote, "it is clear that the pace of progress must quicken."<sup>59</sup>

It did not. In September of that year, the Supreme Court, for the first time in its history, unanimously voted to hold the Legislature in contempt. In a stunning rebuke, the Court wrote that the state "is engaged in an ongoing violation of its constitutional duty to K-12 children" and "has known for decades that its funding of public education is constitutionally inadequate."<sup>60</sup>

By 2015, teachers, too, were fed up with the delays. In April, union locals began a series of rolling one-day walk-outs. Within weeks, more than 60 locals representing over 35,000 teachers had taken to the streets, aiming their message directly at the Legislature. An estimated 6,000 educators marched in Seattle and traveled to Olympia to protest in front of the state capitol, with parents, other labor groups, and elected officials standing with them. That spring, the Legislature passed a new biennial budget that included a \$1.3 billion increase for K-12 schools. Funding was targeted at class size reduction and continued expansion of full-day kindergarten.<sup>61</sup>

It was not enough. In August, the Supreme Court imposed a *daily* penalty of \$100,000 to be put into a dedicated fund until compliance was reached.<sup>62</sup> The key failing was the lack of an adequate plan to attract and retain a high-quality teacher workforce across the state.

In its short session in 2016, the Legislature established an Education Funding Task Force to come up with a proposal on teacher salaries.<sup>63</sup> But once again, the bipartisan panel could not reach consensus. Faced with the mounting daily penalty, lawmakers rushed through a last-minute revenue deal in their 2017 biennial budget session to spend an additional \$6.1 billion over four years. The budget included an increase in the state property tax, the extension of some business taxes, and the elimination of several tax breaks.<sup>64</sup> The new funding would provide cost-of-living adjustments for



teachers and increase spending for schools serving at-risk students. It was scheduled to roll out over *two* years, pushing full implementation to 2019.

Unyielding, the Court found the budget was still \$1 billion short of what was needed and refused to allow the 2018 deadline to slide. The justices maintained the sanctions and threatened to shut down the schools.<sup>65</sup>

With their backs against the wall and the state's economy booming, lawmakers secured the votes for

the final budgetary allocation necessary to fully fund the teacher salary component of the formula and allocated the collected \$105 million in court-assessed fines, as the Court had ordered, reaching nearly a billion dollars in additional funding.<sup>66</sup> At the state's request, and without objection from the plaintiffs, the Supreme Court issued an order dismissing the *McCleary* case in June 2018.<sup>67</sup>

## Keys to Success

The *McCleary* litigation resulted in a key Supreme Court ruling defining the state's responsibility for public education under the constitution, along with several subsequent follow-up orders to pressure the Legislature to enact needed reforms. These key elements in the Washington story stand out:

### A Skilled Legal Team and Determined Judiciary

The skill of the *McCleary* plaintiffs' legal team in understanding the historical, political, and legal context for the litigation, and the willingness of the Supreme Court to enforce its rulings in response to requests for continued intervention, may well be the cornerstone of Washington's successful school funding reform. The Court's crucial decision in *McCleary* to retain jurisdiction to ensure a final remedy is a testament to the legal team's effectiveness in convincing the justices to remain skeptical of the Legislature's ability to do more than create another task force or produce another study.

It should be noted that the Court's staying power in driving the political process in the Legislature did not go unnoticed by those opposed to increased school funding. In 2016, they mounted a concerted, but ultimately unsuccessful, campaign to unseat three justices, at least in part based on their rulings in *McCleary*.<sup>68</sup>

### Mounting, Organic Public Pressure

The constant vigilance and activism of teachers in communities across the state was a key component of the campaign for funding reform. The WEA provided important support through regular *McCleary* updates to teachers and work with local unions to facilitate communication with their representatives in Olympia.

### Constant Public Attention

Ironically, the Legislature's resistance to school funding reform also ended up making the issue a continuing source of front-page news, especially during the back and forth between the Supreme Court and the Legislature beginning in 2015. For example, each filing of the court-mandated annual progress reports by lawmakers drew new media, and thus public, attention to the Legislature's failure to make sufficient progress. The contempt order and the mounting daily fines similarly made state aid to education a regular feature of the news cycle, leading to increasing frustration in the public over the Legislature's failure to act.



# NEW JERSEY

“

The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

N.J. Const., art. 8 § IV, ¶ 1.

New Jersey's *Abbott v. Burke* lawsuit is among the most successful school funding cases in the country. *Abbott* is a class action consisting of over 300,000 students in 31 low-wealth, urban districts, including Newark, Jersey City, and Camden. In 1990, the New Jersey Supreme Court upheld a trial court decision finding the state's school funding formula unconstitutional because it perpetuated glaring resource disparities between the urban, or "Abbott," districts and wealthy suburban districts.

In several rulings in the 1990s, the Supreme Court pressed the Legislature to enact reforms, including funding for research-proven supplemental programs for students in high-poverty districts. In a 1998 ruling, the Court became the first in the nation to order universal, high-quality preschool starting at age three in the Abbott districts as part of that package of supplemental programs.<sup>69</sup>

Today, the Abbott Preschool Program, with its genesis in the *Abbott* litigation, serves nearly 50,000 youngsters and is a national model for the delivery of effective early education for children in high-poverty, racially isolated communities.



*Abbott Preschool: West New York, NJ.*

## The State Political Landscape



**Executive Branch:** Enacted in 1947, the modern New Jersey Constitution provides for a powerful governor with the authority to appoint the attorney general, judges, and other key state officials. The governor is also deeply involved in the creation and adoption of the state budget and has the power of a line-item veto in the budget.

The *Abbott* preschool litigation occurred mostly during the tenure of Republican Governors Christine Todd Whitman (1994-2001) and Donald DeFrancesco (2001-2002). Democratic Governors James McGreevey (2002-2005) and Jon Corzine (2006-2010) presided over funding and implementation of the program in the state's urban districts. The next goal was expanding the program statewide. Momentum slowed under Republican Governor Chris Christie (2010-2018), who included funding for expansion of the program in his final, 2017 budget. Democratic Governor Phil Murphy has aggressively carried the program forward.



**Legislative Branch:** The New Jersey Legislature consists of a 40-member Senate and an 80-member General Assembly. Partisan control of the Legislature shifted over the last few decades from being heavily Republican to overwhelmingly Democratic, with Democrats taking control of the General Assembly in 2001, and the Senate in 2003.



**Judicial Branch:** The New Jersey Supreme Court is composed of a chief justice and six associate justices, who are nominated by the governor and must be approved by the Senate. After seven years of service on the bench, the governor may tenure the justice for a lifetime term, with a mandatory retirement age of 70.

## 1990-1997: Erecting the Framework

The road to high-quality preschool began in 1986, during a nine-month trial in the *Abbott* school funding case. The plaintiff's legal team, led by the late Marilyn Morheuser of ELC, developed an exhaustive record of the deep disparities in school funding, resources, and outcomes between students attending schools in cities and those in more affluent suburbs. The legal team also put on expert testimony to show that low-income students needed *more* supports than their wealthier peers in the form of supplemental programs. Among those mentioned was high-quality preschool.

In the landmark *Abbott II* (1990) ruling, the Supreme Court affirmed the trial court's ruling that the school funding formula was unconstitutional and directed the Executive branch defendants to work with the Legislature to enact a new funding formula with two key components: 1) "foundational" funding for the urban districts in an amount "substantially equivalent" to that expended in successful suburban districts; and 2) additional funding for supplemental programs to address the academic, social, and health needs of students in high-poverty schools. The Court expressly identified preschool as a program the state should consider funding.<sup>70</sup>

The task given the Legislature was a challenging and divisive one. Just beneath the surface of the political dialogue lingered biases against districts serving New Jersey's intensely segregated urban communities. Over 90 percent of students in the *Abbott* districts were children of color. Legislators representing predominantly white suburban areas opined that the primary problem in the urban districts was local waste and mismanagement, not a lack of funding.<sup>71</sup>

This toxic political environment resulted in the Legislature twice failing to enact reforms to remedy the glaring disparities found by the Supreme Court. The first attempt was the Quality Education Act (QEA)

in 1990, which modestly increased state aid for the Abbott districts, but failed to reach “parity” with suburban funding levels. The QEA also failed to identify and fund supplemental programs for disadvantaged students. The Court sent the Legislature back to the drawing board.

In December 1996, the Legislature enacted the Comprehensive Education Improvement and Financing Act (CEIFA), a formula that simply repeated the fundamental flaws of the QEA. Just a month after its enactment, the plaintiffs were back at the Supreme Court.

## 1998: The Nation’s First Court Order for Preschool

At the special court proceeding ordered in *Abbott IV*, the commissioner and the plaintiffs agreed on the need for preschool but presented varying proposals and program details. Sifting through those proposals, the hearing judge recommended to the Supreme Court that the state fund and implement a half-day of preschool for three- and four-year-olds.

The Supreme Court agreed, and in 1998 directed the commissioner to provide a “well-planned, high-quality,” half-day preschool program to all three- and four-year-olds residing in the urban districts and to seek funding for the program from the Legislature.

In its ruling on preschool, the Supreme Court was able to weave several key factors together into the tapestry that became the Abbott Preschool Program. First, the Court found that designation of preschool as a supplemental program in the CEIFA law “demonstrated the Legislature itself has recognized the necessity of early childhood education... in the poorest school districts.”<sup>72</sup> Second, the Court observed that the commissioner’s own studies and proposals supported the need for a well-planned, high-quality preschool program to close the kindergarten gap between affluent and disadvantaged students. And finally, the Court cited powerful research from experts at the Center for Early Education Research (CEER) at

The Court quickly found CEIFA unconstitutional as well. The justices ordered the state to increase aid to the urban districts to achieve funding parity with the suburbs—an immediate price tag of \$246 million for the ‘97-‘98 school year. The Court went even further on supplemental programs, appointing a judge to hold hearings to evaluate proposals from the commissioner of education and the plaintiffs for supplemental programs, including preschool, and to provide recommendations to the court. The stage was set for the momentous ruling to follow.

Rutgers University (now the National Institute for Early Education Research, or NIEER), who had testified in the special hearing.<sup>73</sup> Ultimately, the court was “convinced that such a [preschool] program will have a significant positive impact on academic achievement in both early and later school years.”<sup>74</sup>

In keeping with the proposals made at the special hearing, the Supreme Court allowed the state to authorize districts to cooperate with, and make use of, existing private childcare providers and Head Start programs in addition to public schools, to create a

**The Supreme Court, in *Abbott V*, ordered the state to provide a well-planned, high-quality, half-day preschool program for three- and four-year-olds, with adequate funding.**

mixed-delivery system of preschool classrooms. And, although not ordered, the Court urged the state to go

further and implement a full-day of preschool, which it ultimately did voluntarily.

## 2000-2019: A Bumpy Start with a Big Payoff

The Supreme Court directed the commissioner to provide “the resources and additional funds” to implement preschool programs in all 31 Abbott districts by the commencement of the 1999-2000 school year. Given this one-year timeframe, state education officials ran headlong into political resistance and a lack of institutional capacity. Implementing universal, high-quality preschool from scratch was a massive new undertaking, bringing together private childcare centers, Head Start programs, and public school classrooms, entities with no history of collaboration. Binding these providers together under uniform quality standards and with adequate funding required much more time, money, expertise, and human capital than anyone involved—from the plaintiffs’ lawyers to state and local education officials and the Legislature—could have initially imagined.

The first major bump occurred right out of the gate. Governor Whitman, instead of promulgating standards to ensure quality and providing adequate funding, attempted to meet the Supreme Court’s mandate by merely “deputizing” existing, private childcare providers as preschools with almost no additional funding or support. Although the governor was able to publicly say she delivered on preschool, key stakeholders and advocates saw that it fell far short of meeting the Court’s directives. Many childcare providers, for example, housed 25 or more children in classrooms with mostly untrained staff, uncertified teachers, no aides, and no developmentally appropriate curriculum.

### Advocates and Experts Come Together to Shape the Program

The reaction to Governor Whitman’s plan for “glorified daycare” was swift and critical. Almost immediately, a coalition of about 40 organizations formed, led by the

statewide Advocates for Children of New Jersey (ACNJ). The Early Care and Education Coalition (ECEC) included representatives from all three sectors crucial to preschool implementation: childcare, Head Start, and public schools. With financial support from the Fund for New Jersey and other foundations, the coalition worked to develop detailed, evidence-based standards for class size, curriculum, teacher certification, and salary guidelines and comparability for teachers and staff in all programs.

As the ECEC began to assert itself on the political front, the *Abbott* plaintiffs asked the Supreme Court in 2000 to reopen the case to correct Governor Whitman’s fundamentally flawed implementation of the preschool order. The court accepted the request and acted quickly based on submissions detailing the state’s failings not only from the plaintiffs, but also from a wide range of diverse groups, including the Black Ministers Council, ACNJ, the New Jersey Education Association, the NJ Head Start Association, several Abbott districts, and local community organizations.

The Court found in *Abbott VI* that the state’s use of community-based providers staffed by uncertified teachers and governed by childcare (as opposed to preschool) standards did not comport with the order for high-quality preschool.<sup>75</sup> The Court then detailed essential quality standards for all classrooms in all sectors. These included class sizes of no more than 15 students with a certified teacher and assistant, developmentally appropriate curriculum linked to K-12 standards, and teachers with a BA degree and P-3 certification. Again, the Court stressed the mandate for full state funding for the program, writing that although it may not have been feasible in the early stages of implementation to set a specific funding level, adequate funding “remains critical.”

Even with those clarifications, bumps in implementation continued under Governors Whitman and DiFrancesco. In 2002, the *Abbott* plaintiffs again asked the Court to revisit its preschool requirements, asserting flaws and delays in program implementation. In its third ruling on preschool, *Abbott VIII*, the Court also clarified several additional key points, including comparable pay for certified teachers in all three sectors.<sup>76</sup>

With the election of Democratic Governor McGreevy in 2002, implementation of the Abbott Preschool Program, guided by the Supreme Court's clarifications, began to pick up steam. A big boost came with the Governor's appointment of Dr. Ellen Frede, a leading early childhood expert, to oversee state-level implementation. Dr. Frede and her staff began the hard work of building out critical program infrastructure, including district plans and budgeting; teacher preparation, training and certification; funding requests to the Legislature; and independent expert evaluations to track both program quality and progress in closing early learning gaps.

The final push for reform came in 2008, when, under Governor Corzine, the Legislature passed the School Funding Reform Act (SFRA), a new statewide weighted funding formula to replace the Supreme Court's funding orders for the 31 Abbott districts. The SFRA incorporated "preschool education aid" as a "locked-box," categorical funding stream strictly for the Abbott Preschool Program. The SFRA also included a five-year expansion of preschool to other high-needs districts and to all low-income children across the state.

### **The Struggle to Sustain the Program Continues**

While litigation won a Court mandate for high-quality preschool, the ongoing *political* struggle for funding to provide access to all at-risk children was, and is, not over. No sooner was the ink dry on the SFRA formula than Governor Christie in 2010 dramatically cut state K-12 aid, blaming the Great Recession. While the governor did not cut preschool funding (even



though during his campaign he called the program "babysitting"), he refused to ask the Legislature for increased resources to expand the program beyond the Abbott districts, as SFRA required.

Despite Governor Christie's disparagement of it, by 2010, the Abbott Preschool Program had been in operation for long enough that its effects could be demonstrated. In 2013, the National Institute for Early Education Research (NIEER) found that, among children who attended two years of Abbott Preschool, standardized test scores improved, and the achievement gap narrowed by 20–40 percent through the fifth grade.<sup>77</sup> This research supported the court's prediction that high-quality preschool for three- and four-year-olds would have a "significant and substantial positive impact."

After a six-year lull, a new organization was launched in 2015: "Pre-K Our Way" is a nonprofit with a strategic focus to make expansion of Abbott Preschool a statewide priority and secure funding for that expansion in the state budget. Pre-K Our Way worked to educate elected officials and the public on the importance of high-quality preschool, and in 2017, the Legislature included \$25 million for expansion in Governor Chris Christie's final budget. Governor Phil Murphy has provided incremental installments for preschool expansion in each of the subsequent budget years.

The strategy adopted by advocates has been to fund preschool expansion as a component of the public school funding formula, not through an annual grant process. A recent decision to reduce the threshold for eligibility for preschool aid from districts with 40 percent low-income enrollment to 20 percent has raised the number of "expansion" districts to 289. As of the 2020-21 school year, New Jersey's preschool program has expanded from the original 31 Abbott districts to 156 districts statewide.





## Keys to Success

The preschool program sparked by the Supreme Court's ruling in the *Abbott* case serves nearly 50,000 children, predominantly low-income, Black, and Latino.<sup>78</sup> It is supported with a nearly \$700 million appropriation through the state's K-12 funding formula. These key elements of the New Jersey success story stand out:

### A Coalition of Unusual Suspects

The 1998 *Abbott* preschool ruling struck like a bolt of lightning. As the unprecedented opportunity to put in place universal, high-quality, early education for low-income children came into focus, ACNJ sprang into action. The Early Care and Education Coalition (ECEC) built by ACNJ, in coordination with the ELC legal team, was itself unprecedented, working to unify three separate sectors with vastly different cultures and no history of collaboration. Through years of hard work, the ECEC mobilized grassroots advocates and experts at NIEER to shape key program elements; overcome the many hurdles of local and state roll-out; and secure political support with successive legislatures, governors, and the public. Over two decades, major investments of state preschool aid necessary to maintain quality and ensure universal access have been made and sustained. The ECEC continues to work, joined by the Pre-K Our Way campaign, to make good on the promise of expanding Abbott Preschool statewide.

### A Sustained Campaign Led by Philanthropy

The *Abbott* plaintiffs and legal team are unique. The plaintiffs are not school districts or organizations, but rather the school children themselves, represented pro bono by ELC, consistent with the organization's non-profit mission to enforce students' education rights. ACNJ and Pre-K Our Way are also non-profit organizations. Financing for the litigation and the advocacy campaigns to bring Abbott Preschool to fruition and keep it going relied heavily on New Jersey's philanthropic community.

Unusual in the school finance reform field, a cadre of core funders provided ongoing support for ELC to continue its work in court, for multiple organizations such as ACNJ, Pre-K Our Way and others to develop advocacy efforts, and for NIEER to provide critical research and expertise. The Fund for New Jersey led the funder effort with an early grant—the largest in its history—and continues to provide critical support year after year. The Prudential Foundation, Dodge Foundation, Schuman Fund, Maher Charitable Foundation and others have actively supported ELC, ACNJ, Pre-K Our Way, NIEER, and others engaged in preschool advocacy. To be sure, the New Jersey Education Association, ETS, and others have also provided crucial support. But the success of Abbott Preschool in improving the lives of generations of children in New Jersey's cities is attributable to the core foundations that invested millions year after year to sustain the advocacy campaign for preschool reform.



# Looking Ahead: A Strategic Approach to Future Campaigns

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To achieve concrete benefits for children, school finance reform efforts must be viewed as political campaigns. While litigation often plays a critical role, in the end it is elected state lawmakers who vote to fund their public schools. Our “look back” at four school finance victories in Massachusetts, Kansas, Washington,

and New Jersey examined how organizing, advocacy, research, communications, and litigation combined to win significant new investments in public education.

In this section, we look ahead to explore what can be learned from these examples and how they can inform strategies for building successful campaigns.

## **1 | Winning a Majority of Lawmakers Requires a Broad-Based Effort**

Securing new resources for schools requires a majority of elected lawmakers to support finance reform and, more critically, to fund it. These legislative debates trigger complicated political calculations about taxation, public and social services, the role of government, and, inevitably, race, income, and wealth.

The profiles in this report demonstrate that labor and grassroots organizations can play a significant

part in galvanizing public opinion and breaking down resistance or deadlock inside the statehouse. In Massachusetts, a statewide grassroots campaign mobilized a wave of public support for schools. In Kansas, changing votes meant literally changing who was voting, through an electoral campaign. In Washington, tens of thousands of teachers walked out of school in protest of the Legislature’s failure to act.

## The Power of Grassroots Campaigns

Our profiled campaigns are not the only examples of coordination between legal and community-based efforts for school funding reform. New York's Alliance for Quality Education (AQE) and California's Partnership for the Future of Learning have also demonstrated the effectiveness of well-funded, multi-faceted campaigns.

AQE, which emerged from New York's Campaign for Fiscal Equity school funding litigation, is noted for its use of research and communications, coupled with parent organizing and deep connections to education activists and advocacy groups in urban and rural communities. AQE has brought the voices of students and parents to the table around school funding in Albany and has centered racial justice in New York's school finance debates.

There is growing recognition of the central role of strong, multi-faceted campaigns and coalitions in advancing state school funding reform. But these potentially powerful grassroots organizing and advocacy groups need support to build capacity and sustainability. Foundations have recently begun to invest in these campaigns, through the PEER (Partnership for Equity & Education Rights) network, housed at ELC, and the newly-launched Resource Equity Funders Collaborative.

In New Jersey, advocates, practitioners, and lawyers eventually convinced all three branches of state government of the importance of preschool for low-income children. Once the courts ordered lawmakers to move forward, these same advocates went on to press for a detailed framework for funding and implementation.

In these states, litigation alone was insufficient to turn the tide. Without the engagement of parents, teachers, grassroots organizers, advocates, and the public, significant finance reforms and increased funding would not have been achieved.

Coalitions of advocates and education stakeholder groups can be found hard at work in every state capitol. What distinguishes the campaigns profiled here are the coordination between legal initiatives for school funding reform and strategic political organizing and the recognition, most clearly visible in Massachusetts and New Jersey, by those who were funding the legal effort that political and advocacy partners also needed the financial security and stability to engage at a sophisticated, statewide level. The ongoing work of these partners was conceptualized and funded as a well-coordinated, multi-faceted, and sustained political campaign.

## 2 | Litigation in the Service of Campaigns

In each state, when faced with ongoing inaction and/or deep resistance from the elected branches to adequately fund public education, advocates asked the courts to step in.

As seen in our profiles, courts do matter, and in fact they can matter a lot. They can interpret and give meaning to the constitution; they can, based on evidence, rule that schools are not adequately funded; and they can direct the elected branches to pass reforms and increase revenues to remedy inadequacies. Put simply, the Washington, Kansas, and New Jersey courts applied substantial and often



crucial pressure on politicians to act, even, or especially, when the primary beneficiaries of that action are low-income, Black, Latino, homeless, and other at-risk children who are not their direct constituents.

Even in Massachusetts, where the courts never heard or issued a ruling in the *Mussotte* case, the litigation was crucial to the 2019 legislative victory. The *Mussotte* complaint was not only a legal, but also a political, document. It laid bare the devastating conditions in public schools in hyper-segregated Black and Latino districts. It used legal arguments to tell intensely compelling human stories and delivered those stories to the desks of every legislator, at the same time raising

the specter of imminent judicial intervention. *Mussotte* was timed to seal the deal, propelling school funding reforms over the legislative finish line.

The ability of litigators to strategically use the courts in the service of political campaigns for school funding reform is evidenced in each of these examples. The legal teams had the capacity and skill to bring and litigate complex cases in tune with the unique politics, cultures, and histories of their states. And they possessed the dedication and tenacity to return to the courthouse to ratchet up the pressure when necessary to break political gridlock in the statehouse.

### 3 | Courts Are Political Too

School funding litigation is solely a state matter, requiring a legal team with deep understanding of the politics and practicalities of each state's judicial playing field. Judges must not be viewed passively as the arbiters of litigation, but as instrumental actors in school finance reform. Litigators must be attuned to a range of indicators when it comes to litigation timing and strategy, and even to whether a court case should be filed at all. How does the judicial selection process in the state impact the court's view of school funding claims? Will judges and justices, and the very institution of the court itself, stand up to potentially strong pushback from the elected branches, as occurred in Kansas and Washington? How familiar are the courts with the complexities of school finance reform? What can be learned from the trial court's and supreme court's involvement in past school finance litigation?

And what can be done to enable the judicial branch to gain expertise and seek assistance in unraveling complicated questions about how to fashion a remedy for a constitutional violation and enforce that remedy when encountering executive and legislative resistance?

At the same time, litigation offers a unique public platform for revealing how underfunding is impacting children and schools. Litigators should be acutely aware of the opportunity to utilize story-telling in the context of the legal process. Website and social media posts, expert reports, legal arguments, and other aspects of the case can serve as powerful tools to communicate to media, advocates, stakeholders, and elected officials. Litigation can present "the case for reform," built on a trial record that enhances the broader political campaign and sets the stage for executive and legislative action.

### 4 | Research Is Crucial

As our profiled states show, successful campaigns require research at all stages and for multiple audiences. An expansive view of what constitutes research

and how it can be used can provide a substantive foundation for reform campaigns.

It is imperative that research go beyond academic circles and be tailored and marketed to broader groups and the public at large. In Massachusetts, MEJA and Raise Up created materials and tools to educate parents, teachers, taxpayers, and voters about school funding issues and to implicate lawmakers' roles in exacerbating funding shortages through the state's inequitable tax code.

In Kansas, the research-based dissemination of important information in the form of voting records of state legislators helped convince voters to support candidates who would pass school finance bills.

Of course, quantitative research on the condition of the state's school funding system, usually in the form of costing out studies, was crucial in Washington, Kansas, and Massachusetts to identify deficiencies, spell out solutions, and set the bar for the state's funding obligations.

The research in New Jersey informed both the court and the Legislature, first on the need for preschool, then on standards, process, and other details critical to successful program implementation.

New Jersey offers another important lesson: the need for research on the *outcomes* of successful reform. NIEER's evaluation of the effects of preschool on urban youngsters proved the program's efficacy. When the Great Recession hit, NIEER's evaluation of Abbott Preschool formed a protective moat around the program from Governor Christie's budget cuts.<sup>80</sup>

Campaigns for school finance reform require a realistic assessment of research needs and the state-based capacity for meeting them. Where does the expertise reside? Who can provide the financial backing for such research? What roles can policy entities and advocacy organizations play in producing high-quality quantitative research? What types of research and materials can be aimed explicitly at mobilizing and educating the public, and who is best suited to develop those?

## Judicial Tools to Manage School Funding Remedies

Critics of school finance litigation argue that courts, when they hold state funding of schools unconstitutional, are ill-equipped to develop orders to remedy the deficiencies and then oversee compliance when faced with political resistance. But as our profiles show, the courts have used a variety of institutional tools to successfully move the process along.

At critical junctures in the *Abbott* litigation, the New Jersey Supreme Court used "remand" hearings before a specially assigned judge to help fashion its orders. The judge reviews reports and testimony from both parties and then recommends specific remedial actions. In a North Carolina case, a judge recently retained an independent expert to prepare an in-depth research report to improve the state's finance system and then issued an order for state action based on the report. North Carolina-based foundations stepped up to help pay for the court-ordered research.<sup>79</sup>



## 5 | Aggressive Communications is Also Crucial

The campaigns in all four states showcase why strategic use of the media is so important. In each state, the stakeholder coalitions helped maintain a unified message throughout both the legal proceedings and legislative deliberations. These coalitions also helped contain potential schisms among stakeholder groups, keeping them internal rather than spilling out and muddying the public debate.

Communications work can be embedded in the legal team or among the political partners or both. In Kansas, message discipline was coordinated by the legal team. Whenever the *Gannon* case was in the news, either because of a court ruling or legislative action, attorneys devised a series of messages and reached out to the plaintiff districts and members of the SFF coalition to let them know to expect media calls and to talk through how to respond to questions. This attention paid to messaging assured consistency in how the case was presented to the public.

In Massachusetts, MEJA carefully scripted campaign messaging through regular press conferences and releases and by working statewide with partners. The

coalition was able to utilize events such as the ballot initiative on charter schools, Raise Up's promotion of the millionaire's tax, and the release of the Foundation Budget Review Commission report to put forward a crystal clear case for school finance reform.

New Jersey's push for preschool included an active and sustained effort by the ECEC and the ELC legal team to, at first, highlight the fundamental flaws in early program implementation and the need for adequate funding. Messaging then transitioned to highlighting program success and the positive impacts on child readiness for kindergarten documented by NIEER research.

Communications and messaging on the need for and benefits of school funding reform are too often overlooked when advocates rely too heavily on the outcome of litigation in the courts. A strong and strategic communications strategy, executed over time, is essential for building a persuasive political campaign for multiple audiences, especially elected lawmakers. Whether coordinated internally or through a professional firm, the role of communications in achieving successful reforms cannot be overstated.

## 6 | Campaigns Need Significant and Sustained Support

School funding reform is a long-term project. On the ground and in state capitols, the political struggle to secure and sustain adequately funded schools is never over. Even significant victories like those showcased here are subject to backsliding when economic and political conditions change and shift. This means that it is critical for the work—in the statehouse, at the courthouse and in the community—to be backed by long-term, stable financial support. Our profiles offer different models.

School finance litigation in Washington and Massachusetts has enjoyed primary support from teachers unions. In Washington, the *McCleary* case was led by the WEA and funded through a time-limited

special assessment on members that was approved by a membership vote. In Massachusetts, the MTA has paved the way for school finance litigation since *McDuffy* in the early 1990s. The union has built an institutional home that includes legal and policy expertise as well as research capacity.

In Kansas, the bulk of the financial support for the *Gannon* case and its adjunct advocacy campaign came from school districts that joined the SFF coalition. These districts contributed towards the campaign through an assessment of roughly \$1 per student enrolled in the district. This assessment also covered the hiring of a community organizer and a lobbyist for the *Gannon* case.



Unions and districts have an obvious stake in the outcome of school finance campaigns. Both have statewide reach, provide a stable presence for the long haul, and are important sources of expertise, data, witnesses, and spokespeople with first-hand experience and deep knowledge of educational practices. Nevertheless, unions and school districts can be viewed as pursuing their own organizational self-interest. The campaigns backed by them are much more impactful when done in close partnership with grassroots parent, community, and civil rights organizations. These partnerships ensure that the interest of the most important beneficiaries of the campaigns—the students themselves—remain front and center.

New Jersey's *Abbott* case provides another model for long-term, sustained effort. ELC, which served as lead counsel for the plaintiff class of urban school children, is a nonprofit and raises funds from multiple sources, including foundations, the state teachers union, education organizations, and individual donors. Philanthropy has played a key role in school finance reform in New Jersey. The *Abbott* case persevered over decades with support from the Fund for New Jersey and other New Jersey-based foundations, including

the Prudential and Dodge Foundations. These core funders provided, and continue to provide, recurring grants throughout the years of litigation and ensuing implementation and budget advocacy.

The working “theory of action” of each of the various entities supporting the campaigns in our profile states was that school funding reforms cannot be achieved through a court case alone. And all believed the positive impact from a multi-faceted campaign was worth the investment, not just for the state’s public schools, but for its economic, social, and cultural future as well.

As our profiles starkly demonstrate, the road to school funding reform can hit potholes or run off into a ditch when legislators and governors renege on commitments to increase funding in future state budgets or fail to retool the state’s aid formula to account for increased costs and new programs. In each state, at some point along the way, finance reforms were derailed by the reaction of elected officials to economic downturns, shifting political winds, tax-cutting and privatization ideologies, or simple political gridlock. Sustained financial backing allowed advocates to be at the ready to re-enter the fray when the inevitable setbacks occurred.

## Building Litigation Capacity in the States

Suing states over inequities in school funding and resources is specialized and labor-intensive legal work. It requires amassing detailed and complex facts, working with finance researchers and education policy experts, understanding the intricacies of school funding formulas, defending against well-resourced state adversaries, connecting the litigation to the broader political movement for structural change, and building powerful narratives and stories that can inform judges and the public at large about the deprivation endured by students in their schools.

These cases not only take time, but also money for research, communications and outreach,

retaining experts, conducting discovery, and a host of other critical litigation tasks.

Lawyers with the expertise and capacity to take on this litigation are few and far between in many states. In more recent cases, such as in Pennsylvania, New York, Delaware, and New Mexico, private law firms have helped fill the breach on a pro bono basis. In the late 1960’s, the Ford Foundation funded a multi-state initiative that resulted in many of the most important school finance decisions of that era. A new appreciation of the key role of litigation in the broader movement for finance reform, along with a national initiative to build legal capacity in states, is urgently needed.

# Conclusion

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Adequate, equitable, and stable school funding is arguably the most pressing issue facing public education today. Yet, how our schools are funded is the subject of oft-repeated misconceptions. One is that local districts are responsible for funding their schools. Another is that underfunded schools in communities segregated by race and poverty are the result of mismanagement by the districts that operate them. Still another is that a lawsuit alone can fix the enduring and pervasive disparities in school funding across the country.

This report attempts to dispel these misconceptions. While each state's constitution obligates it to educate all its residents, the level and distribution of school funding is controlled by elected state legislators and governors. In the end, improving the education of our nation's children, especially the most vulnerable, depends on building strong, multi-dimensional political campaigns that can place and sustain the demand for well-funded and well-resourced schools squarely at the feet of state elected representatives and governors. Lawyers, when working in deep connection to those campaigns, can use the courts to amplify and advance that demand.

These campaigns inevitably must weather the storms of economic and political change. In 2020, another such storm arrived: the global coronavirus pandemic.

The impact of the pandemic will put the political commitment of state lawmakers to adequately fund their schools to another stern test. As happened in the Great Recession, states are starting to reduce their

support for public education at the very moment when even *more* educational resources are needed for remote learning; the safe reopening of schools; and the programs, staff, and services to meet the academic and social-emotional needs of students even after the pandemic. As always, schools in the nation's poorest communities are, and will continue to be, hardest hit.

**The impact of the pandemic will put the political commitment of state lawmakers to adequately fund their schools to another stern test.**

In the face of the pandemic, even the significant victories we describe in this report may soon be at risk. It is our hope that this report offers some fresh insights into how we can collectively make sure our most vulnerable students do not yet again bear the brunt of another crisis not of their making. Coming together as attorneys, parents, students, advocates, educators, and funders, we must answer the call to ensure the right to public education possessed by future generations of children "remains prominent, paramount and fully protected."<sup>81</sup>

# Appendix I

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## Demographics and School Funding in our Profile States

Demographic, economic, and context information for each of our four profile states is included below, as well as information regarding the current state of school funding fairness.

Public school demographic and district data is from the Nation's Report Card, a database kept by the U.S. Department of Education and the Institute for Education Statistics, and is available here:

<https://www.nationsreportcard.gov/profiles/stateprofile?chort=1&sub=MAT&sj=&sfj=NP&st=MN&year=2019R3>.

The data reported is from the 2018-2019 school year.

Each year, Education Law Center develops an analysis of the condition of public school funding at the state level. ELC's most recent report is called *Making the Grade 2020*:

*How Fair is School Funding in Your State?* The report ranks and grades each state on three core measures:

**Funding Level:** the cost-adjusted, per pupil revenue from state and local sources.

**Funding Distribution:** the extent to which additional funds are distributed to school districts with high levels of student poverty.

**Funding Effort:** the level of investment in PK-12 public education as a percentage of the state's economic activity (GDP).

The full report is available here: <https://edlawcenter.org/research/making-the-grade-2020.html>

The data analyzed in the current report is from the 2017-18 school year.

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## MASSACHUSETTS

### Districts and Demographics

Massachusetts public schools enroll 962,297 students in 432 districts (including charter schools).

Of those students, 59 percent are white, 21 percent Latino, and 9 percent African American. Fifty percent of students are eligible for free or reduced-price meals (FARMS).<sup>1</sup>

### School Finance System and Spending Status

According to Education Law Center, in 2018, Massachusetts ranked 10th in the nation in revenue per pupil and 23rd in how fairly the state distributes funds among rich and poor districts, but 33rd in “funding effort,” defined as investment in PK-12 as a proportion/percentage of state GDP.

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## WASHINGTON

### Districts and Demographics

Washington State is home to 336 school districts serving 1,123,736 students. The student population is 53 percent white, 24 percent Hispanic, 8 percent Asian, and 4 percent Black.

### School Finance and Spending Status

According to Education Law Center, in 2018, Washington ranked 26th on per pupil funding level, 39th on the distribution of funds between high- and low-poverty districts, and 40th on investment in PK-12 as a proportion/percentage of state GDP.

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## KANSAS

### Districts and Demographics

Kansas is home to 311 school districts in rural, suburban, and urban communities. The state’s 497,733 public school students are 64 percent white, 20 percent Latino, and 7 percent African American. Forty-six percent are eligible for free and reduced-price meals.

### School Finance System and Spending Status

According to Education Law Center, in 2019, the state ranked 23rd in per pupil funding level, 25th in how fairly it distributes funds among rich and poor districts and schools, and 14th in the amount of state per capita GDP spending dedicated to K-12 schools.

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## NEW JERSEY

### Districts and Demographics

New Jersey has 688 school districts, including charter and renaissance schools, and enrolls 1,400,069 students. The student population is 43 percent white, 29 percent Latino, 15 percent Black, and 10 percent Asian. Thirty-seven percent of students are eligible for free or reduced-priced meals.

The 31 Abbott districts discussed in this report enroll 20 percent of all New Jersey public school students, or about 276,911 students, with 10 percent white, 58 percent Latino, 28 percent Black, and 3 percent Asian. Seventy-three percent of these students are eligible for free or reduced-priced meals.

### School Finance System and Spending Status

According to Education Law Center, in 2019, New Jersey ranked 5th in the nation in per pupil funding level, but 29th in how fairly the state distributes funds among rich and low-income districts. New Jersey ranks 2nd in “funding effort,” that is, investment in PK-12 as a proportion/percentage of state GDP.

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<sup>1</sup>The FARMS-eligible data is not included for Massachusetts in the Nation’s Report Card Database. This figure was retrieved from the Massachusetts Department of Elementary and Secondary Education, Office for Food and Nutrition Programs. Available at <https://www.doe.mass.edu/cnp/nprograms/fy2020-free-meals.html>

# Appendix II

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## List of Interviewees

*We are grateful to the following individuals, who provided their firsthand knowledge of the campaigns profiled in this report.*

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### MASSACHUSETTS

**Ira Fader**, General Counsel, Massachusetts Teachers Association (retired)

**Max Page**, Vice President, Massachusetts Teachers Association

**David Danning**, Research Director, Center for Education Policy and Practice, Massachusetts Teachers Association

**Laurie Houle**, Interim General Counsel, Massachusetts Teachers Association

**Charlotte Kelly**, (former) Executive Director, Massachusetts Education Justice Alliance

**Jonathan Rodriguez**, Organizer, American Federation of Teachers

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### WASHINGTON

**Thomas F. Ahearne**, Attorney, Foster Garvey PC

**Aimee Iverson**, Executive Director, Washington Education Association

**Rod Regan**, (former) Director of Public Policy, Washington Education Association

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### KANSAS

**John Robb**, Attorney, Somers, Robb & Robb; General Counsel, Schools for Fair Funding, Inc.

**Gail Jamison**, Education Advocate, Speak Up For Kansas Kids

**Judith Deedy**, Executive Director, Game On for Kansas Schools

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### NEW JERSEY

**Gordon MacInnes**, (former) Assistant Commissioner at NJ Department of Education; Senior Distinguished Fellow, New Jersey Policy Perspective

**Mark Murphy**, (former) Executive Director and President of The Fund for New Jersey; President, Lead NJ

**Ellen Frede**, Senior Co-Director, National Institute for Early Education Research

**Cecilia Zalkind**, President and CEO, Advocates for Children of New Jersey

**Cynthia Rice**, Senior Policy Analyst, Advocates for Children of New Jersey

**Deborah T. Poritz**, Chief Justice, NJ Supreme Court (retired)



# Appendix III

## List of School Funding Cases

*NOTE: The case information provided here is for general informational purposes only and may not constitute the most up-to-date legal or other information. The case citations are for the convenience of the reader.*

STATE NAME	YEAR	CASE NAME	CITATION	RULING
Alabama	1993	Alabama Coalition for Equity, Inc. v. Hunt	1993 WL 204083	Plaintiffs
Alabama	1993	Opinion of the Justices	624 So.2d 107, 1993 WL 134710	Plaintiffs
Alabama	1997	Ex parte James	713 So.2d 869, 1997 WL 907987	State
Alabama	2002	Ex Parte James	836 So. 2d 813, 2002 WL 1150823	State
Alaska	1997	Matanuska-Susitna Borough School District v. State	931 P.2d 391, 1997 WL 34731	State
Alaska	1999	Kasayulie v. State	1999 WL 34793390 (Alaska Super. Sep. 1, 1999)	Plaintiffs
Alaska	2007	Moore v. State	2007 WL 8310251 (Alaska Super. June 21, 2007)	Plaintiffs
Alaska	2009	Moore v. State	2009 WL 5164488 (Alaska Super. Feb. 4, 2009)	Plaintiffs
Arizona	1994	Roosevelt Elementary School Dist. No. 66 v. Bishop	179 Ariz. 233, 877 P.2d 806	Plaintiffs
Arizona	1998	Hull v. Albrecht	192 Ariz. 34, 960 P.2d 634	Plaintiffs
Arizona	2003	Roosevelt Elementary School Dist. No. 66 v. State	205 Ariz. 584, 74 P.3d 258	State
Arizona	2006	Crane Elementary School District v. State	No. 1 CA-CV 04-0076 (Ariz. Ct. App. Nov. 22, 2006)	State
Arizona	2013	Cave Creek Unified School District v. Ducey	233 Ariz. 1, 308 P.3d 1152	Plaintiffs
Arizona	2017	Glendale Elementary School District v. State	No. CV2017-006975 (Super. Ct. Maricopa Cty.)	Pending
Arkansas	2002	Lake View School District No. 25 v. Huckabee	351 Ark. 31, 91 S.W.3d 472	Plaintiffs

STATE NAME	YEAR	CASE NAME	CITATION	RULING
Arkansas	2004	Lake View School District No. 25 v. Huckabee	351 Ark. 31, 41, 91 S.W.3d 472, supplemented, 358 Ark. 137 S.W.3d 1	Plaintiffs
Arkansas	2005	Lake View School District No. 25 v. Huckabee	362 Ark. 520, 210 S.W.3d 28	Plaintiffs
Arkansas	2005	Lake View School District No. 25 v. Huckabee	364 Ark. 398, 220 S.W.3d 645	Plaintiffs
Arkansas	2007	Lake View School District No. 25 v. Huckabee	370 Ark. 139, 257 S.W.3d 879	State
California	2004	Williams v. State	No. 312236 (Super. Ct. S.F. Cty. Dec. 10, 2004)	Settled
California	2016	Campaign for Quality Education v. State of California	246 Cal.App.4th 896, 209 Cal. Rptr.3d 888	State
California	2016	Vergara v. State of California	246 Cal.App.4th 619, 209 Cal.Rptr.3d 532	State
Colorado	2009	Lobato v. Colorado	218 P.3d 358	Plaintiffs
Colorado	2013	Lobato v. Colorado	304 P.3d 1132	State
Colorado	2015	Dwyer v. Colorado	357 P.3d 185	State
Connecticut	2010	Connecticut Coalition for Justice in Education Funding, Inc., et al. v. Rell, et al.	295 Conn. 240	Plaintiffs
Connecticut	2018	Connecticut Coalition for Justice in Education Funding, Inc., et al. v. Rell, et al.	327 Conn. 650	State
Delaware	2020	Delawareans for Educational Opportunity v. Carney	No. 2018-0029-VCL (Ct. Ch. Oct. 12, 2020)	Settled
Florida	1996	Coalition for Adequacy and Fairness in School Funding v. Chiles	680 So.2d 400	State
Florida	2019	Citizens for Strong Schools, Inc. v. Florida State Board of Education	262 So.3d 127	State
Georgia	2008	Consortium for Adequate School Funding in Georgia v. State	No. 2004CV91004 (Super. Ct. Fulton Cty. Sept. 16, 2008)	Withdrawn
Idaho	1993	Idaho Schools for Equal Educ. Opportunity (ISEEO I) v. Evans	123 Idaho 573, 850 P.2d 724	Mixed
Idaho	1998	Idaho Schools for Equal Educ. Opportunity (ISEEO III) v. State	132 Idaho 559, 976 P.2d 913	Plaintiffs
Idaho	2005	Idaho Schools for Equal Educ. Opportunity (ISEEO V) v. State	142 Idaho 450129 P.3d 1199	Plaintiffs
Illinois	1996	Committee for Educational Rights v. Edgar	174 Ill.2d 1, 672 N.E.2d 1178	State
Illinois	1999	Lewis v. Spagnolo	186 Ill.2d 198, 710 N.E.2d 798	State
Illinois	2012	Carr v. Koch	2012 IL 113414, 981 N.E.2d 326	State
Illinois	2020	Cahokia Unit School District No. 187 v. Pritzker	2020 IL App (5th) 180542, 2020 WL 2481518	State
Indiana	2009	Bonner v. Daniels	907 N.E.2d 516, 2009 WL 1562813	State
Iowa	2017	Woods v. State	No. LACE128389 (Dist. Ct.)	State
Kansas	1994	Unified School District No. 229 v. State	256 Kan. 232, 885 P.2d 1170	State
Kansas	2005	Montoy v. State (Montoy II)	278 Kan. 769, 102 P.3d 1160	Plaintiffs

STATE NAME	YEAR	CASE NAME	CITATION	RULING
Kansas	2006	Montoy v. State (Montoy IV)	282 Kan. 9, 138 P.3d 755	State
Kansas	2014	Gannon v. State	298 Kan. 1107, 319 P.3d 1196	Plaintiffs
Kansas	2016	Gannon v. State	303 Kan. 682, 368 P.3d 1024	Plaintiffs
Kansas	2016	Gannon v. State	304 Kan. 490, 372 P.3d 1181	Plaintiffs
Kansas	2017	Gannon v. State	305 Kan. 850, 390 P.3d 461	Plaintiffs
Kansas	2017	Gannon v. State	306 Kan. 1170, 402 P.3d 513	Plaintiffs
Kansas	2018	Gannon v. State	308 Kan. 372, 420 P.3d 477	Plaintiffs
Kansas	2019	Gannon v. State	309 Kan. 1185, 443 P.3d 294	State
Kentucky	2007	Council for Better Education v. Williams	No. 03-CI00055 and 03-CI01152 (Cir. Ct.)	State
Louisiana	1998	Charlet v. State	713 So.2d 1199, 1998 WL 355031	State
Louisiana	2005	Jones v. State Board of Elementary and Secondary Educ.	927 So.2d 426, 2005 WL 2898708	State
Louisiana	2016	St. John the Baptist Parish School Board v. State	213 So.3d 384, 2016 WL 7048798	State
Maine	1995	School Administrative District No. 1 v. Commissioner	659 A.2d 854, 1995 WL 354206	State
Maryland	2005	Bradford v. Maryland State Board of Education	387 Md. 353, 875 A.2d 703	State
Maryland	2020	Bradford v. Maryland State Board of Education	No. 24-C-94-340058 (Cir. Ct. Balt.)	Plaintiffs
Massachusetts	1993	McDuffy v. Secretary of Executive Office of Education	415 Mass. 545, 615 N.E.2d 516	Plaintiffs
Massachusetts	2005	Hancock v. Driscoll	443 Mass. 428, 822 N.E.2d 1134	State
Massachusetts	2019	Mussotte v. Peyser	No. SJ-2019-0244 (Jan. 2020 )	Withdrawn
Minnesota	1993	Skeen v. State	505 N.W.2d 299	State
Mississippi	2017	Clarksdale Municipal School District v. Mississippi	233 So.3d 299, 2017 WL 4699559	State
Missouri	1993	Committee for Educational Equality v. State	No. CV190-1371CC, slip op. (Cir. Ct.)	Plaintiffs
Missouri	1998	Committee for Educational Equality v. State	967 S.W.2d 62	State
Missouri	2007	Committee for Educational Equality v. State	2007 WL 5361087	State
Missouri	2009	Committee for Educational Equality v. State	294 S.W.3d 477	State
Montana	2005	Columbia Falls Elementary School District No. 6 v. Montana	326 Mont. 304, 109 P.3d 257	Plaintiffs
Montana	2012	Montana Quality Education Coalition v. Montana	No. ADV-2011-1076 (1st Jud. Dist. Ct. Apr. 3, 2012)	Settled
Nebraska	1993	Gould v. Orr	244 Neb. 163, 506 N.W.2d 349	State
Nebraska	2007	Nebraska Coalition for Educational Equity and Adequacy v. Heineman	273 Neb. 531, 731 N.W.2d 164	State
Nebraska	2008	Douglas County School v. Heineman	No. 1028-017 (Dist. Ct. Apr. 2008)	Withdrawn

STATE NAME	YEAR	CASE NAME	CITATION	RULING
Nevada	2020	Shea v. State	No. 20 OC 00042 1B (1st Jud. Dist. Ct. Oct. 7, 2020)	State
New Hampshire	1993	Claremont School District v. Governor	138 N.H. 183, 635 A.2d 1375	Plaintiffs
New Hampshire	1997	Claremont School District v. Governor	142 N.H. 462, 703 A.2d 1353	Plaintiffs
New Hampshire	1998	Opinion of the Justices (School Financing)	142 N.H. 892, 712 A.2d 1080	Plaintiffs
New Hampshire	1999	Claremont School District v. Governor	144 N.H. 210, 744 A.2d 1107	Plaintiffs
New Hampshire	2000	Opinion of the Justices (School Financing)	145 N.H. 474, 765 A.2d 673	Plaintiffs
New Hampshire	2002	Claremont School District v. Governor	147 N.H. 499, 794 A.2d 744	Plaintiffs
New Hampshire	2008	Londonderry School District v. State	157 N.H. 734, 958 A.2d 930	State
New Hampshire	2016	Dover v. State	No. 219-2015-CV-312 (Super. Ct.)	Plaintiffs
New Hampshire	2019	Contoocook Valley School District v. State	No. 213-2019-CV-00069 (Super Ct.)	Plaintiffs
New Hampshire	2020	Contoocook Valley School District v. State	No. 2019-0500 (N.H.)	Pending
New Jersey	1990	Abbott v. Burke (Abbott II)	119 N.J. 287, 575 A.2d 359	Plaintiffs
New Jersey	1994	Abbott v. Burke (Abbott III)	136 N.J. 444, 643 A.2d 575	Plaintiffs
New Jersey	1997	Abbott v. Burke (Abbott IV)	149 N.J. 145, 693 A.2d 417	Plaintiffs
New Jersey	1998	Abbott v. Burke (Abbott V)	153 N.J. 480, 710 A.2d 450	Plaintiffs
New Jersey	2009	Abbott v. Burke (Abbott XX)	199 N.J. 140, 971 A.2d 989	State
New Jersey	2011	Abbott v. Burke (Abbott XXI)	206 N.J. 332, 20 A.3d 1018	Plaintiffs
New Jersey	2008	Bacon v. New Jersey State Dept. of Educ.	398 N.J.Super. 600, 942 A.2d 827	Plaintiffs
New Jersey	2015	Bacon v. New Jersey State Dept. of Educ.	443 N.J.Super. 24, 126 A.3d 1244	State
New Mexico	2018	Martinez v. State consolidated with Yazzie v. State	No. D-101-CV-2014-00793, No. D-101-CV-2014-02224 (Cnty. Santa Fe 1st Jud. Dist.)	Plaintiffs
New York	1995	Reform Educational Financing Inequities Today (REFIT) v. Cuomo	86 N.Y.2d 279, 655 N.E.2d 647	State
New York	2003	Campaign for Fiscal Equity, Inc. v. New York	100 N.Y.2d 893, 801 N.E.2d 326	Plaintiffs
New York	2006	Campaign for Fiscal Equity, Inc. v. New York	8 N.Y.3d 14, 861 N.E.2d 50	Plaintiffs
New York	2017	New Yorkers for Students' Educational Rights (NYSER) v. State	29 N.Y.3d 501, 81 N.E.3d 360	Mixed
New York	2017	New Yorkers for Students' Educational Rights (NYSER) v. State	No. 100274/2013, (Sup. Ct. Cnty. N.Y.)	Pending
New York	2019	Maisto v. State	No. 8997-08 (Sup. Ct. Cnty. Albany)	State
North Carolina	1997	Hoke County Board of Education v. North Carolina (Leandro I)	346 N.C. 336, 488 S.E.2d 249	Plaintiffs
North Carolina	2004	Hoke County Board of Education v. North Carolina (Leandro II)	358 N.C. 605, 599 S.E.2d 365	Plaintiffs

STATE NAME	YEAR	CASE NAME	CITATION	RULING
North Carolina	2018	Silver v. Halifax County Board of Commissioners	371 N.C. 855, 821 S.E.2d 755	State
North Carolina	2020	Hoke County Board of Education v. North Carolina	No. 95-CVS-1158 (Gen. Ct. Just. Super. Ct., Consent Decree Jan. 21, 2020)	Plaintiffs
North Dakota	1994	Bismarck Public School District No. 1 v. North Dakota	511 N.W.2d 247	State
North Dakota	2007	Williston Public School District v. State	(NW. Jud. Dist. May 3, 2007)	Withdrawn
Ohio	1997	DeRolph v. Ohio (DeRolph I)	78 Ohio St.3d 193, 677 N.E.2d 733, as clarified 78 Ohio St.3d 419, 678 N.E.2d 886	Plaintiffs
Ohio	2000	DeRolph v. Ohio (DeRolph II)	89 Ohio St.3d 1, 728 N.E.2d 993	Plaintiffs
Ohio	2001	DeRolph v. Ohio (DeRolph III)	93 Ohio St.3d 309, 754 N.E.2d 1184	Plaintiffs
Ohio	2002	DeRolph v. Ohio (DeRolph IV)	97 Ohio St.3d 434, 780 N.E. 2d 529	Plaintiffs
Ohio	2003	State v. Lewis	99 Ohio St.3d 97, 789 N.E.2d 195	State
Oklahoma	2007	Oklahoma Education Association, et al. v. State of Oklahoma	158 P.3d 1058, 2007 WL 1334550	State
Oregon	1991	Coalition for Equitable School Funding, Inc. v. State	311 Or. 300, 811 P.2d 116	State
Oregon	1995	Withers v. State	133 Or.App. 377, 891 P.2d 675	State
Oregon	1999	Withers v. State	163 Or.App. 298, 987 P.2d 1247	State
Oregon	2009	Pendleton School District v. State	345 Or. 596, 200 P.3d 133	State
Pennsylvania	1998	Marrero v. Commonwealth	709 A.2d 956, 1998 WL 87628	State
Pennsylvania	1999	Pennsylvania Association of Rural and Small Schools v. Ridge	558 Pa. 374, 737 A.2d 246	State
Pennsylvania	2017	William Penn School District v. Pennsylvania Department of Education	642 Pa. 236, 2017 WL 4287879	Plaintiffs
Rhode Island	1995	City of Pawtucket v. Sundlin	662 A.2d 40	State
Rhode Island	2014	Woonsocket v. Carcieri	89 A.3d 778, 2014 WL 1765383	State
South Carolina	1999	Abbeville County School Dist. v. State	335 S.C. 58, 515 S.E.2d 535	Plaintiffs
South Carolina	2014	Abbeville County School Dist. v. State	410 S.C. 619, 767 S.E.2d 157	Plaintiffs
South Carolina	2017	Abbeville County School Dist. v. State	No. 2007-065159 (S.C., order terminating jurisdiction, Nov. 17, 2017)	State
South Dakota	1995	Bezdicheck v. State	No. CIV 91-209 (Cir. Ct.)	State
South Dakota	2009	Olson v. Guindon	2009 S.D. 63, 771 N.W.2d 318	Plaintiffs
South Dakota	2011	Davis v. South Dakota	2011 S.D. 51, 804 N.W.2d 618	Plaintiffs
Tennessee	1993	Tennessee Small School Systems v. McWherter (I)	851 S.W.2d 139	Plaintiffs
Tennessee	1995	Tennessee Small School Systems v. McWherter (II)	894 S.W.2d 734	Plaintiffs
Tennessee	2002	Tennessee Small School Systems v. McWherter (III)	91 S.W.3d 232	Plaintiffs
Tennessee	2015	Shelby County Board of Education v. Haslam	No. 15-1048-III (Ch. Ct.)	Pending



STATE NAME	YEAR	CASE NAME	CITATION	RULING
Texas	1991	Edgewood Independent School District v. Meno (Edgewood II)	804 S.W.2d 491	Plaintiffs
Texas	1992	Edgewood Independent School District v. Meno (Edgewood III)	826 S.W.2d 489	Plaintiffs
Texas	1995	Edgewood Independent School District v. Meno (Edgewood IV)	893 S.W.2d 450	State
Texas	2005	West Orange-Cove Consolidated ISD v. Neeley	176 S.W.3d 746	Mixed
Texas	2016	Morath v. The Texas Taxpayer and Student Fairness Coalition	490 S.W.3d 826, 2016 WL 2853868	State
Vermont	1997	Brigham v. Vermont	166 Vt. 246, 692 A.2d 384	Plaintiffs
Virginia	1994	Scott v. Commonwealth of Virginia	247 Va. 379, 443 S.E.2d 138	State
Washington	2009	Federal Way School District v. State	167 Wash.2d 514, 219 P.3d 941	State
Washington	2010	School Districts' Alliance for Adequate Funding of Special Educ. v. State	170 Wash.2d 599, 244 P.3d 1	State
Washington	2012	McCleary v. State	173 Wash.2d 477, 269 P.3d 227	Plaintiffs
Washington	2014	McCleary v. State	No. 84362-7 (Wash., order holding state in contempt)	Plaintiffs
Washington	2016	McCleary v. State	No. 84362-7 (Wash., compliance order, Oct. 6, 2016)	Plaintiffs
Washington	2017	McCleary v. State	No. 84362-7 (Wash., compliance order, Nov. 15, 2017)	Plaintiffs
Washington	2018	McCleary v. State	No. 84362-7 (Wash., order terminating jurisdiction, June 7, 2018)	State
West Virginia	1995	Tomblin v. Gainer	No. 75-1268 (Cir. Ct.)	Plaintiffs
West Virginia	2003	Tomblin v. State Board of Education	No. 75-1268 (Cir. Ct.)	State
Wisconsin	2000	Vincent v. Voight	236 Wis.2d 588, 614 N.W.2d 388	State
Wyoming	1995	Campbell County School District v. Wyoming	907 P.2d 1238	Plaintiffs
Wyoming	2001	Campbell County School District v. Wyoming	19 P.3d 518	State
Wyoming	2008	Campbell County School District v. Wyoming	181 P.3d 43	State

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