

SCHOOL FUNDING LITIGATION AS A TOOL TO ACHIEVE EDUCATION ACCESS & OPPORTUNITY

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ABSTRACT

Public K-12 education plays an essential role in preparing the next generation of Americans for participation in our democracy. Funding for education comes primarily through state and local funds, with some supplementation federally. Much of the local funding for K-12 education comes through the assessment of property taxes at the local level. This leads to significant per-pupil disparities in funding both within a given state and certainly between states.

This Article explores the use of school funding litigation as a tool to increase K-12 funding and to improve adequacy and equity of educational opportunities for students. The Article opens with a review of the history of school funding litigation. It then reviews research on educational outcomes in states post-successful school funding litigation on the part of litigants. The Article concludes that school funding

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litigation can be an important tool that can be used to improve educational opportunities for all students.

INTRODUCTION

One of the greatest strengths of the United States is its robust system of public K-12 schools. The Supreme Court, in *Brown v. Board of Education*, notably asserted that “education is perhaps the most important function of state and local governments.”¹ Unlike many countries with nationalized systems of education, public K-12 education in the United States is controlled by the states.² Public school revenue and how it is dispersed varies widely based on state law, however generally speaking there are three primary sources of funding: federal, state, and local.³ Federal funding accounts for approximately eight percent of K-12 spending nationally, coming primarily from the U.S. Department of Education (Title I and IDEIA funding, etc.), with additional funding from the Departments of Health and Human Services (Head Start program funding), and Agriculture (school lunches for students living below the poverty line).⁴ The remainder of funding available for public schools is split between state and local sources. In most states, local funds come primarily through the assessment of property taxes.⁵ As a result, property-wealthy neighborhoods can raise far more money per-pupil (often with comparatively lower tax rates) than property-poor neighborhoods.⁶ Further compounding this issue, property-

1. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2. See Jenn Hatfield, *Here’s How Different the US Education System is vs. Other Nations*, AM. ENTER. INST. (Feb. 23, 2015), <https://www.aei.org/education/global-perspective-features-american-education/>. The U.S. Constitution does not contain any mention of schools or students. The absence of this subject matter coupled with the Tenth Amendment has resulted in education being a matter left to the purview of states. See U.S. CONST. amend. X.

3. See R. CRAIG WOOD ET AL., *MONEY AND SCHOOLS* 116 (8th ed. 2023).

4. See U.S. DEP’T OF EDUC., *The Federal Role in Education*, <https://www2.ed.gov/about/overview/fed/role.html>, (last modified June 15, 2021); see also Mitchell L. Yell et al., *Individuals with Disabilities Education Improvement Act of 2004 and IDEA Regulations of 2006: Implications for Educators, Administrators, and Teacher Trainers*, 39 FOCUS ON EXCEPTIONAL CHILD. 1, 1 (2006).

5. See MATTHEW M. CHINGOS & KRISTIN BLAGG, URB. INST., *DO POOR KIDS GET THEIR FAIR SHARE OF SCHOOL FUNDING?* 1 (2017), https://www.urban.org/sites/default/files/publication/90586/school_funding_brief_1.pdf.

6. See Christine Rienstra Kiracofe & Spencer Weiler, *Surfing the Waves: An Examination of School Funding Litigation from Serrano v. Priest to Cook v. Raimondo and the Possible Transition to the Fourth Wave*, 2021 BYU EDUC. & L. J. 189, 195, 222 (2021).

poor neighborhoods often send more children to public schools per dollar of assessed property than in property-wealthy neighborhoods: five million dollars of assessed property in the former might represent a housing complex with fifty students to educate, whereas in the latter, a single-family home may send just one or two students to the public schools.⁷ Additionally, research shows that students living in poverty require substantial increases in per-pupil funding to be successful.⁸ As a result, many states experience significant per-pupil funding gaps based on district property wealth.

When parents are concerned that the amount of money available for their child's education is either inequitable or inadequate they have several paths of recourse available to them. Parent groups could petition lawmakers for additional education funding, perhaps aided by special interest groups with a vested interest in education funding reform. However, this approach is time intensive and frequently unsuccessful.⁹ A second path is for parents to file litigation (often class action) in an attempt to force the hand of often reluctant state lawmakers. This second path, school finance litigation, has been employed in the United States for more than fifty-five years to varying degrees of success.¹⁰

I. HISTORY OF SCHOOL FINANCE LITIGATION IN THE UNITED STATES

A. *The Federal Origins of School Finance Litigation*

While school funding is solidly a state issue, the initial wave of litigation challenging school funding mechanisms originated in federal courts. In the late 1960s, district courts in Illinois and Virginia issued decisions in two cases with similar fact patterns. Petitioners in *McInnis v. Shapiro* argued that Illinois' mechanism of funding public schools violated students' equal protection and due process rights

7. See BRUCE D. BAKER, *CTR. AM. PROGRESS, AMERICA'S MOST FINANCIALLY DISADVANTAGED SCHOOL DISTRICTS AND HOW THEY GOT THAT WAY* 6, 26–27 (2014), <https://files.eric.ed.gov/fulltext/ED561094.pdf> (noting the disparities in local tax revenue per pupil between densely-populated, racially- and economically-segregated metropolitan areas and wealthy suburbs).

8. For a comprehensive overview of school funding inequalities, see BRUCE D. BAKER, *EDUCATIONAL INEQUALITY AND SCHOOL FINANCE: WHY MONEY MATTERS FOR AMERICA'S STUDENTS* 85 (2018).

9. See L. Dean Webb, *The Role of Special Interest Groups in the Shaping of State Educational Policy Relative to School Finance: A Case Study*, 7 J. EDUC. FIN. 168, 184–88 (1981).

10. See Kiracofe & Weiler, *supra* note 6, at 190–91.

under the Fourteenth Amendment.¹¹ At issue were the “wide variations in the expenditures per student from district to district, thereby providing some students with a good education and depriving others, who have equal or greater educational need.”¹² The court rejected petitioners’ assertion that “*only* a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment,”¹³ holding that the type of relief sought by plaintiffs should come from the legislature and not the judiciary.¹⁴

The second federal case, *Burruss v. Wilkerson*, involved facts that were, in the words of the court, “scarcely distinguishable from the facts [in *McInnis*], Virginia’s division of school funds closely paralleling Illinois.”¹⁵ Petitioners’ allegation that Virginia’s funding mechanism violated the Fourteenth Amendment was likewise dismissed.

B. Serrano v. Priest

With two plaintiff losses, and dozens of schoolchildren in states experiencing differential funding much like students in Illinois and Virginia, petitioners turned their attention to state courts. The first state high court to issue a school funding decision was California in *Serrano v. Priest (Serrano I)*¹⁶ in 1971. Much like the earlier federal cases, *Serrano I* was a class action suit challenging the constitutionality of the California funding formula under both federal and state constitutions.¹⁷ The petitioners also argued that dramatic differences in per-pupil funding between school districts amounted to an equal protection violation of both state and federal constitutions.¹⁸ The state high court found for the petitioners, notably holding that education was a fundamental right and applying strict scrutiny, stating “the need for an educated populace assumes greater importance as the problems of our diverse society become increasingly complex.”¹⁹

11. See *McInnis v. Shapiro*, 293 F. Supp. 327, 329 (N.D. Ill. 1968).

12. *Id.*

13. *Id.* at 331.

14. *Id.* at 332.

15. See *Burruss v. Wilkerson*, 310 F. Supp. 572, 574 (W.D. Va. 1969).

16. See *Serrano v. Priest*, 487 P.2d 1241, 1244 (Cal. 1971).

17. See *id.* at 1244–45.

18. See *id.* at 1244.

19. *Id.* at 1258.

C. San Antonio v. Rodriguez

Buoyed by the plaintiff victory in *Serrano*, school funding petitioners in another case out of Texas, *San Antonio Independent School District v. Rodriguez*,²⁰ hoped to secure a similar victory in federal court, ending the necessity of state-by-state litigation. However, that was not to be the case. Much like earlier cases, petitioners in *Rodriguez* came from school districts that had dramatically lower per-pupil spending amounts than other districts despite paying higher property tax rates.²¹ In stark contrast to the California high court's decision, the U.S. Supreme Court held that education was *not* a fundamental right and rejected petitioners' argument that wealth should constitute a suspect class.²² The Court's definitive ruling essentially put an end to federal school finance litigation for decades to come, and set would-be litigants' focus squarely on state claims. The impact *Rodriguez* had on school funding litigation was swift and clear. In *Serrano II*,²³ decided three years after *Rodriguez*, the California high court noted:

We — along with the trial court and the parties — think it is clear that *Rodriguez* undercuts our decision in *Serrano I* to the extent that we held the California public school financing system . . . to be invalid as in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.²⁴

However, the *Rodriguez* decision did not signal a death knell for the court's holding in *Serrano II*. As the court noted, "our decision in *Serrano I* was based not only on the provisions of the federal Constitution but on the provisions of our own state Constitution as well."²⁵ What the decision did force, however, was a new strategy for school finance litigants nationwide.

20. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4–6 (1973).

21. See Kiracofe & Weiler, *supra* note 6, at 196–97 (citing *Rodriguez*, 411 U.S. at 12–13). Petitioners compared their district, Edgewood Independent School District (EISD) in San Antonio, with the neighboring Alamo Heights Independent School District (AHISD), noting that "EISD had an average assessed property value . . . more than 8 times less than the per-pupil assessed property value of . . . AHISD students." *Id.* at 197. This resulted in EISD paying taxes at a rate of 124% of those paid by AHISD residents, despite the fact that the former spent significantly less per-pupil (\$356) than the latter (\$594) annually. See *Rodriguez*, 411 U.S. at 12–13.

22. See *Rodriguez*, 411 U.S. at 18, 37.

23. See *Serrano v. Priest*, 557 P.2d 929, 949 (Cal. 1976).

24. *Id.*

25. *Id.*

D. Second Wave School Finance Litigation

During the second wave of school finance litigation (post-*Rodriguez*), litigants centered their claims on language in state constitutions, including a mix of equal protection and education article claims.²⁶ The primary focus of second wave school funding litigation was on equity. Cases highlighted evidence from districts within a given state that spent dramatically different amounts of money per-pupil to educate students. Petitioners argued (with success, roughly about half of the time, excepting the cases where no further complaints were filed nor were successful after losses) that their public schools were inequitably funded.²⁷ This line of argumentation was problematic, however, in states where *all* schools were under-funded:

[I]f all schools in a given state were funded equitably — but at a sub-optimal level — the Equal Protection clause was likely not violated; however, receiving an equal amount of school funding did little for schools when the overall amount was inadequate for schools to educate students to any reasonable standard.²⁸

After decades of litigation addressing equity concerns, beginning in 1989, litigants changed the focus of their argument to adequacy arguments, an era that has been coined the “third wave” of school funding litigation.²⁹

E. Third Wave School Finance Litigation

The first case of the third wave of school funding litigation was *Rose v. Council for Better Education*³⁰ out of Kentucky. As one scholar has characterized *Rose* and third wave litigation in general, it represented a “‘paradigm shift’ in litigation from negative . . . to positive constitutional rights.”³¹ Instead of comparing poorer to richer school districts or per-pupil funding amounts, the *Rose* litigants questioned whether Kentucky was meeting its constitutional mandate to

26. See Michael Heise, *State Constitutions, School Finance Litigation, and the “Third Wave”*: From Equity to Adequacy, 68 TEMP. L. REV. 1151, 1157 (1995).

27. See *id.*; see also G. Alan Hickrod et al., *The Effect of Constitutional Litigation on Education Finance: A Preliminary Analysis*, 18 J. EDUC. FIN. 180 app. at 208–10 (1992); see also Spencer C. Weiler et al., *Applying Odds Ratio to the Study of School Finance Litigation*, 392 EDUC. L. REP. 1, 4 (2021).

28. Weiler et al., *supra* note 27, at 4.

29. See Kiracofe & Weiler, *supra* note 6, at 223.

30. See *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 189–90 (Ky. 1989).

31. S. Patrick Riley, *Revisiting Rose and its Effects: A Thirty-Year Retrospective*, 108 KY. L. J. 557, 560 (2019).

provide an “efficient system of common schools throughout the State.”³² In a landmark decision that would become a template to be followed by litigants for years to follow, the Kentucky high court found for the petitioners, identifying seven educational components mandated by the state constitution. These included:

- (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.³³

This ruling led to sweeping changes in Kentucky’s system of K-12 education, resulting in significant positive outcomes for students. Prior to the post-*Rose* reforms, Kentucky public schools were in rather dismal condition. The state was in the lowest quintile for per-pupil educational expenditures, and dead last for citizens over twenty-five years of age with a high school diploma.³⁴ Nearly three decades after *Rose*, educational outcomes for Kentucky students have dramatically improved in several areas. For example, the state is on track to have the seventh highest high school graduation rate in the nation by 2020, and reading scores at the fourth grade level and science scores at the eighth grade level have notably increased.³⁵ While it is impossible to determine the direct effect of school funding reform on educational outcomes in the state, correlational data suggest that the condition of education in Kentucky post-*Rose* had significantly improved.

32. *Rose*, 790 S.W.2d at 190; KY. CONST. § 183.

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

34. See Riley, *supra* note 31, at 566 (citing Debra H. Dawahare, *Public School Reform: Kentucky’s Solution*, 27 UNIV. ARK. LITTLE ROCK L. REV. 27, 32 (2004)).

35. See PRICHARD COMM., *TOP 20 BY 2020: 2018 UPDATE (2018)*, <http://www.prichardcommittee.org/library/wp-content/uploads/2018/11/Top2018-FINAL-VERSION.pdf>.

II. DOES SCHOOL FUNDING LITIGATION MAKE A DIFFERENCE?

One economic analysis of school funding litigation outcomes on post-*Rose* litigant districts suggests that “plaintiff victories appear to lead to a redistribution of resources that favors districts with the most high-need students,”³⁶ suggesting an outcome that the author characterizes as an “overly simplistic description” of the idea that “adequacy lawsuits . . . lift[] all boats.”³⁷ Positive outcomes were similarly noted in other states that had experienced school funding litigation. A 2001 study evaluating Tennessee school funding pre- and post-litigation showed that “the lawsuit had led to much more equalization in the funding system”; however, this did not translate to academic outcomes with “students in the prevailing districts show[ing] greater gains on some assessments and less on others, with the overall gain not being significantly different from students in other parts of the state.”³⁸ However, multi-state economic analyses have identified stronger educational outcomes after school funding reforms are enacted post-litigation.³⁹

While the goal of most funding litigation is financial, the key concern of litigants is not simply the influx of additional monies into the system. Thus, to truly determine if school funding litigation is successful, it is important to look at the outcomes bought by the new funds. Even controlling for outside factors, scholars have identified significant gains in states post successful school finance litigation. A 2019 study found that within seven years of court-mandated school finance formula reforms, students in states’ high-poverty districts experienced an 11.5–12.1% increase in per-pupil funding, and even more notably a 6.8–11.5% increase in graduation rates.⁴⁰ Another longitudinal study identified significant positive impacts on school districts that had been impacted by school finance litigation, finding “[a]s adequacy plaintiffs

36. David P. Sims, *Lifting All Boats? Finance Litigation, Education Resources, and Student Needs in the Post-Rose Era*, 6 EDUC. FIN. & POL’Y 455, 482–83 (2011).

37. *Id.* at 482.

38. William J. Glenn, *School Finance Adequacy Litigation and Student Achievement: A Longitudinal Analysis*, 34 J. EDUC. FIN. 247, 249–50 (2009) (citing Gary L. Peevely & John R. Ray, *Does Equalization Litigation Effect a Narrowing of the Gap of Value Added Achievement Outcomes Among School Districts?*, 26 J. EDUC. FIN. 319, 331 (2001)).

39. *See id.* at 250.

40. *See* Christopher A. Candelaria & Kenneth A. Shores, *Court-Ordered Finance Reforms in the Adequacy Era: Heterogeneous Causal Effects and Sensitivity*, 14 EDUC. FIN. & POL’Y 31, 33 (2019).

would hope, the preliminary analysis makes a plausible case that successful litigation had a positive impact on student outcomes.”⁴¹

A 2020 study examined school funding trends in states experiencing litigation with the highest and lowest teacher satisfaction indicators. Data from this study show that “a favorable ruling in school funding lawsuits generally results in a measurable increase in total aid for public education.”⁴² The study also found a correlation between successful school funding litigation and teacher satisfaction – a factor research has linked positively with increased student outcomes.⁴³ Researchers have been careful to note that litigation is not the be-all end-all answer to improving educational outcomes, noting that “the courts cannot be expected to be a panacea for public-school reform in the absence of other efforts.”⁴⁴ However, litigation can be an important tool in helping states and school districts positively impact student outcomes.

CONCLUSION

Public schools in the United States are an important part, if not the most important part, of preparing the next generation of Americans to participate in our democracy. Compulsory education laws in all fifty states ensure that all students have access to a K-12 education.⁴⁵ However, access to education is just the starting point. For students to receive the type of educational opportunities prescribed by state constitutions, issues of equity and adequacy must be taken into account.

In these tough economic times, extra funding for public services is not at the disposal of most states. Thus, funding for public education is something that must be ensured through civic activity and political activism. Concerned parents and citizens should petition their states to ensure that funding for education is robust and sufficient. However, in many states such calls have been ineffective at best, or ignored at worst. When a state’s school funding is inadequate or inequitable and

41. Glenn, *supra* note 38, at 260.

42. Jason R. Kopanke et al., *Can’t get no Satisfaction: An Examination of 65 Years of School Finance Litigation and State Aid for K-12 Public Education in States with High and Low Teacher Satisfaction Indicators*, 374 EDUC. L. REP. 1, 21 (2020).

43. *See id.* at 20; *see also* Glenn, *supra* note 38, at 262.

44. Glenn, *supra* note 38, at 263.

45. *See* JOHN DAYTON, EDUCATION LAW: PRINCIPLES, POLICIES, AND PRACTICE 52 (1st ed. 2012).

the legislature is unresponsive, school funding litigation can be an important tool used to bring attention and much needed funds into school coffers.

This Article opened with a discussion of the history of school funding litigation, outlining its federal origins and the turn to state courts after the Supreme Court decision in *San Antonio v. Rodriguez*. The change from equity to adequacy claims provides concerned parties and would-be litigants with a road map for litigation strategies that have been successful. The Article concluded with a discussion of the impact of school funding litigation on funding for K-12 schools and — more importantly — addressed whether funding changes made a measurable impact on educational outcomes for students. The studies reviewed suggest that successful school funding litigation can and does make a positive impact on the education received by students impacted by the litigation.