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THE GOOD, THE BAD, AND THE UGLY: AN EMPIRICAL ANALYSIS OF LITIGATION-PROMPTED SCHOOL FINANCE REFORM

Bradley W. Joondeph*

I. INTRODUCTION

Basic notions of equity dictate that public school students should not receive a lesser education simply because they live in disadvantaged neighborhoods.\(^1\) Indeed, a school system that consistently and systematically devotes fewer resources to the education of its neediest students contravenes traditional American values of social mobility and equality of opportunity.\(^2\)

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\(\ast\) Law clerk to the Honorable Deanell Reece Tacha, United States Court of Appeals for the Tenth Circuit; Adjunct Instructor, University of Kansas School of Law; J.D., 1994, Stanford Law School; B.A., 1990, Stanford University. The author is grateful to Andrew Berke, Mark Coyne, Carla Garrett, and Chris Guthrie for their thoughtful contributions. Special thanks to Professor Ian Ayres for his guidance, support, and suggestions on earlier drafts of this article.

1. See, e.g., Kern Alexander, The Common School Ideal and the Limits of Legislative Authority: The Kentucky Case, 28 HARV. J. ON LEGIS. 341, 341 (1991) ("Even the most conservative and anti-egalitarian person, who argues against state correction of marketplace inequalities, can scarcely maintain that the state, without strong justification, can itself create inequalities.") (citing A.B. ATKINSON, UNEQUAL SHARES: WEALTH IN BRITAIN 79 (1974)).

2. See, e.g., JONATHAN KOZOL, SAVAGE INEQUALITIES 207 (1991) (stating that America's "official" goal is "a society in which a family's wealth has no relation to the probability of future educational attainment and the wealth and station it affords," and that "[b]y this standard, education offered to poor children should be at least as good as that which is provided to the children of the upper-middle class"); CASS R. SUNSTEIN, THE PARTIAL CONSTITUTION 139 (1993) (contending the Constitution embodies the principle of "rough equality of opportunity" such that "the life prospects of a child born to one family should not be radically different from those of another child born elsewhere"); R. CRAIG WOOD & DAVID C. THOMPSON, EDUCATIONAL FINANCE LAW: CONSTITUTIONAL CHALLENGES TO STATE AID—AN ANALYSIS OF STRATEGIES 97 (1993) ("In this nation, with its living constitution, equality has long been the goal of social and eco-
But while America has long been willing to provide free primary education to all of its citizens, it has stopped well short of assuring students an education of equal quality. For example, until 1954 (and for some time thereafter), most African American children in the South attended school in crowded, underfunded, and dilapidated schoolhouses; local governments often spent ten times as much per white student as black.  

3. See, e.g., Juan Williams, Eyes on the Prize: America's Civil Rights Years, 1954-1965 2 (1987) ("In 1930, South Carolina spent ten times as much on educating each white child as on each black child. Other southern states did little better—Florida, Georgia, Mississippi, and Alabama devoted five times more money to the education of white children than to that of black children."); Richard Kluger, Simple Justice 256-57 (1977) ("In 1945, the South was spending twice as much to educate each white child as it was per black child. It was investing four times as much in white school plants, paying white teachers salaries 30 percent higher, and virtually ignoring the critical logistics of transporting rural Negroes to their schoolhouses."); National Research Council, A Common Destiny: Blacks and American Society 59 (1989) (explaining that southern states spent roughly twice as much on each white student's education as on each black student's education in 1940). In fact, at the inception of primary education in the United States in the 1820s and 1830s, the education of African Americans, both slave and free, was illegal in the South. See Kluger, supra, at 28; Denise C. Morgan, What Is Left to Argue in Desegregation Law?: The Right to Minimally Adequate Education, 8 Harv. Blackletter J. 99, 102 (1991). After the collapse of Reconstruction in 1877, southern states, through both legal and extralegal means (such as the Ku Klux Klan), ensured that schools for African American children remained inferior, if available at all. Morgan, supra, at 103-04. In Cumming v. Richmond County Bd. of Educ., the Supreme Court upheld a Georgia school board's decision to maintain a high school for white children but not for African Americans. 175 U.S. 528 (1899). The Court held that the state court's decision to deny the plaintiff's injunction was not, "within the meaning of the Fourteenth Amendment, a denial by the State to the plaintiffs and those associated with them of the equal protection of
Although court-mandated desegregation has eliminated most of these disparities where they were based intentionally on race, expenditures per student in America's public schools still vary widely. Expenditures vary not only from state to state but also from district to district within each state (interdistrict disparities). The cause of these disparities is that most public school financing systems in the United States rely heavily on local ad valorem property tax revenue. Per pupil expenditures in each school district therefore often mirror the relative wealth of a district's surrounding community; school districts encompassing more valuable property generate more property tax revenue than "property poor" districts and, as a result, can spend substantially more per student.

The origins of this system for financing primary education lie in America's dearly held tradition of local control over public schools. Local control of public elementary and high
schools has been a foundational principle of American public education since its inception in the early 1800s. Within this sphere of control has rested the power of each community to determine how much of the local public fiscal budget should be devoted to educating the community's children.

9. See John E. Chubb & Terry M. Moe, Politics, Markets, and America's Schools 3 (1990) (explaining that until the early 1900s "[s]chooling was a local affair. Basic issues of organization and control—issues that today would be classified as budgeting, curriculum, personnel, purchasing, accountability, and the like—tended to be handled by the people closest to each school: parents, interested citizens, and their elected representatives."); Griffiatt, supra note 2, at 773 (noting that local control "is a basic organizational principle of American public elementary and secondary education"). Loyalty to the tradition of local control of public schools has played an important role in the Supreme Court's primary education jurisprudence. As early as 1899, the Court stated:

[While all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land.

Cumming v. Richmond County Bd. of Educ., 175 U.S. 528, 545 (1899). More recently, the Supreme Court held in San Antonio v. Rodriguez, 411 U.S. 1 (1973), that Texas's interest in preserving local control over educational funding justified the state's financing scheme, even where it resulted in wide disparities among districts. See infra text accompanying notes 14-15, 73-83. The Supreme Court has repeatedly emphasized the importance of local control in the context of school desegregation. See, e.g., Freeman v. Pitts, 112 S. Ct. 1430, 1445 (1992) ("Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system."); Board of Educ. v. Dowell, 498 U.S. 237, 248 (1991) ("Local control over the education of children allows citizens to participate in decision-making, and allows innovation so that school programs can fit local needs."); Dayton Bd. of Educ. v. Brinkman, 433 U.S. 406, 410 (1977) ("[O]ur cases have . . . firmly recognized that local autonomy of school districts is a vital national tradition."); Miliken v. Bradley, 418 U.S. 717, 741-42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the education process."). Indeed, the Court has favored the return of more control to local officials by supervising district courts even when it may aggravate existing racial imbalances. See Bradley W. Joondeph, Note, Killing Brown Softly: The Subtle Undermining of Effective Desegregation in Freeman v. Pitts, 46 Stan. L. Rev. 147, 161-67 (1993).


The entire debate over public school funding has to do with political traditions . . . . It has to do with the perception that education is a local
Recently, however, the inequities inherent in this system have prompted several legal challenges. Beginning in the late 1960s, education finance reformers in several states started filing legal actions charging that traditional school financing schemes, based predominantly on local property tax revenue, violated federal and state constitutional guarantees of equal protection. They argued that states should embrace the principle of "fiscal neutrality," a maxim requiring that the quality of a student's education operate independent of wealth other than the state's overall wealth. Equal protection, they contended, meant that states had to devote equivalent resources to each student's education, regardless of individual or community affluence.

In 1973, just as the first wave of school finance litigation was gathering steam, the United States Supreme Court held in *San Antonio v. Rodriguez* that traditional school financing schemes, based predominantly on local property tax revenue, do not violate the Constitution, even when they produce...
sizable interdistrict funding disparities. The Court specifically held that wealth does not constitute a "suspect classification" and that education was not a "fundamental right" under the Fourteenth Amendment. Because Rodriguez effectively closed the door on any federal constitutional challenge to school financing systems, reformers have subsequently pressed their claims in state courts. And these actions, based on state constitutional equal protection guarantees and education clauses, have been remarkably successful. By July of 1994, the highest courts of thirteen states had struck down public school financing plans as unconstitutional.

15. Id. at 30-34.

16. See, e.g., Alexander, supra note 1, at 343 (stating that Rodriguez "eviscerat[ed] a federal constitutional basis for school finance reform"); Christopher F. Edley, Jr., Lawyers and Education Reform, 28 Harv. J. on Legis. 293, 294-95 (1991) (noting that, in Rodriguez, "the United States Supreme Court signaled ... that the federal constitution does not provide the tool that advocates need to challenge even radically unequal distribution of educational funding").

17. Reformers were essentially encouraged to bring such claims as a result of Justice Marshall's dissenting opinion in Rodriguez: "[o]f course, nothing in the Court's decision today should inhibit further review of state educational funding schemes under state constitutional provisions." Rodriguez, 411 U.S. at 133 n.100 (Marshall, J., dissenting).


19. See, e.g., Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989). These claims can be further divided into equity claims and minimum standards claims. See Molly McCusic, The Use of Education Clauses in School Finance Reform Litigation, 28 Harv. J. on Legis. 307, 308 (1991). The former are essentially indistinguishable from equal protection clause claims, alleging that educational opportunity is distributed unequally and discriminatorily. Id. The latter assert that the state has failed to provide all of its students with a minimally adequate education. Id.

Although school finance litigation is intuitively appealing to those who wish to expand the educational opportunities of disadvantaged children, it is unclear how much reform undertaken in response to litigation has actually benefited poor students. Despite substantial empirical research on the subject, the link between educational expenditures and student achievement remains tenuous, particularly for poor students. However, all else being equal, greater resources should improve the educational opportunities of disadvantaged students. But all things are obviously not equal, such as socioeconomic status, the educational achievement of one's parents, parental involvement and support, and the social


22. In an influential recent study of effective schools, Professors Chubb and Moe write:

It makes sense to think that schools ought to operate more successfully the more resources they have to work with. Schools that offer higher salaries and smaller classes—both of which require more financial resources—should attract more talented teachers, who in turn should do a better job of teaching. Similarly, schools with superior facilities, equipment, and supplies—for example, bright, clean buildings and classrooms, state-of-the-art laboratories and computers, current and innovative instructional materials—should be more successful than schools that are physically antiquated or dilapidated.

Chubb & Moe, supra note 10, at 102; see also William I. Garms et al., School Finance: The Economics and Politics of Public Education 22 (1978) ("All other things being equal, it is hard to imagine that students from poorly funded school districts with large classes, inadequately prepared teachers, and limited course offerings have the same opportunity to learn as their more fortunate counterparts in districts spending two or three times the state average."); Jonathan Banks, Note, State Constitutional Analyses of Public School Finance Reform Cases: Myth or Methodology?, 45 Vand. L. Rev. 129, 131 (1991) (reviewing the empirical research and concluding "few educators or commentators argue that educational expenditure is not at least a factor in academic achievement"); Edley, Jr., supra note 16, at 296 ("The mainstream, conventional wisdom is justifiably unshaken by such skepticism [regarding the relationship between educational spending and student achievement]: if we are interested in better education results, higher per-pupil expenditures are neither necessary nor sufficient in all cases, but money is very likely to help.").
class of one's peers. \(^{23}\) Research appears to demonstrate that increasing educational expenditures, if directed appropriately, can overcome some of these preexisting barriers to student achievement. \(^{24}\) Nonetheless, many studies indicate that increasing a school's resources has little effect on educational outcomes. \(^{25}\)

\(^{23}\) Research indicates that each of these factors is influential in determining levels of student achievement. For instance, a recent study of school districts in Washington state conducted by the Seattle Post-Intelligencer revealed a strong correlation between student test scores and four independent factors: median family income, percentage of children in poverty, percentage of parents with college degrees, and percentage of mothers with no diplomas. Kathy George, *Parent Income, Education Levels Matter*, SEATTLE POST-INTEL., Feb. 13, 1995, at A4.

\(^{24}\) See MICHAEL RUTTER ET AL., FIFTEEN THOUSAND HOURS: SECONDARY SCHOOLS AND THEIR EFFECTS ON CHILDREN (1979) (showing that factors such as class size and teacher experience are significant factors in determining educational outcomes); WOOD & THOMPSON, supra note 2, at 55 (stating that expenditures on direct instructional activities demonstrate a "positive relationship between student outcomes and moneys expended"); Carl M.S. Lee et al., *An Analysis of Michigan Educational Assessment Program (MEAP) Scores and School District Revenues and Expenditures*, 13 J. EDUC. FIN. 496 (1988) (showing that per pupil expenditures are highly correlated with standardized test scores); Bettye MacPhail-Wilcox & Richard A. King, *Resource Allocation Studies: Implications for School Improvement and School Finance Research*, 11 J. EDUC. FIN. 416 (1986) (demonstrating that resource allocation within classrooms affects student achievement); Stewart C. Purkey & Marshall S. Smith, *Effective Schools: A Review*, 83 ELEMENTARY SCH. J. 427-28 (1983) (contending that nine organization-structure variables—school-site management, instructional leadership, staff stability, curriculum articulation and organization, schoolwide staff development, parental involvement and support, schoolwide recognition of academic success, maximized learning time, and district support—significantly affect student achievement); Anita A. Summers & Barbara L. Wolfe, *Do Schools Make a Difference?*, 67 AM. ECON. REV. 639, 639 (1977) (showing that in the Philadelphia School District "many school inputs do matter" and that "disadvantaged students can be helped by particular types of inputs").

\(^{25}\) The author of a comprehensive review of the empirical research in this area recently concluded: "[r]each research has demonstrated conclusively that, within the current organization and operation of schools, there is no consistent relationship between resources and student performance. Common policy arguments, used to justify the plea for added resources to school districts, simply are not supported by evidence." Hanushek, *When School Finance "Reform" May Not Be Good Policy*, supra note 21, at 454; see also Frederick Mosteller & Daniel P. Moynihan, *A Pathbreaking Report, in On Equality of Educational Opportunity* 3, 21 (Frederick Mosteller & Daniel P. Moynihan eds., 1972) ("[S]chools receive children who already differ widely in their levels of educational achievement. The schools thereafter do not close the gaps between students aggregated into ethnic/racial groups. Things end up much as they began.").

At least two state courts have expressly refused to recognize a connection between educational expenditures and achievement. In Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1982), the Supreme Court of Colorado
Furthermore, finance reform aimed at equalizing expenditures across school districts may actually disadvantage a state's neediest students. Poor students and poor school districts do not always coincide. Many needy students live in urban areas that contain commercial and industrial real estate, which augments a school district's tax revenues without adding students. As a result, some districts with concentrations of disadvantaged students are "property wealthy" relative to other districts in the state and spend more than

emphasized that "fundamental disagreement exists concerning the extent to which there is a demonstrable correlation between educational expenditures and the quality of education." Id. at 1018. And in Thompson v. Engelking, 537 P.2d 635 (Idaho 1975), the Idaho Supreme Court stated that, even assuming that the Idaho constitution required equal educational opportunity, it could not "adopt the ultimate conclusion advanced by respondents, i.e., that unless a substantially equal amount of funds are expended per pupil throughout the state . . . students in those districts receiving less than the district with the greatest expenditure per student are denied equal educational opportunities." Id. at 641-42. The uncertainty surrounding whether greater resources would improve the educational outcomes of children in disadvantaged school districts clearly influenced the Supreme Court's decision in Rodriguez. As Justice Powell wrote in the Court's majority opinion, the plaintiffs' claims assumed "that the quality of education varies directly with the amount of funds expended on it and that therefore the difference in quality between two schools can be determined simplistically by looking at the difference in per-pupil expenditures. This is a matter of considerable dispute among educators and commentators." San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 24 n.56 (1973). But see Banks, supra note 22, at 131 ("Most recent cases sustaining challenges to school financing schemes recognize the correlation between spending and achievement and address it in determining whether states are maintaining a sufficient level of educational opportunity.").

26. An empirical analysis of Connecticut school districts in 1970 revealed that "the correlation between poverty families and . . . district wealth [was] not significant." Note, A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars, 81 YALE L.J. 1303, 1327 (1972) [hereinafter On Winning Battles]; see also Hanushek, When School Finance "Reform" May Not Be Good Policy, supra note 21, at 444 (stating that "there is no clear relationship between district wealth and the concentration of student poverty"); Martha Minow, School Finance: Does Money Matter?, 28 HARV. J. ON LEGIS. 395, 398 (1991) (stating that "'wealthy' school districts often correspond less to the presence of 'wealthy' residents than to industrial and commercial establishments strengthening the local tax base"). Recent Minnesota school finance litigation is a clear testament to this phenomenon. The plaintiffs in Skeen v. Minnesota, 505 N.W.2d 299 (Minn. 1993), were 52 suburban school districts that contained mostly above average residential incomes and home values but below average property values per student. See David Dormont, Separate and Unequal: School District Financing, 11 LAW & INEQ. 261, 278-79 n.129 (1992); Hogan Memorandum, supra note 20, at 6. Significantly, none of the state's three largest urban school districts—Minneapolis, St. Paul, and Duluth—joined the plaintiffs. Dormont, supra, at 278 n.129.
average per pupil. Mandating fiscal neutrality can therefore take resources away from poor students. These criticisms, among others, have raised doubts as to whether finance reform litigation has actually improved the educational outcomes of disadvantaged students.

While the impact of school finance litigation on poor students remains confounded with uncertainties, evaluating its success in reducing funding disparities is still important. First, the questions surrounding the effect of additional expenditures on educational achievement do not justify states continuing to maintain inequitable school financing systems.

27. The Connecticut study demonstrated a "significant positive correlation between family poverty and business wealth. Thus, the 'poor' tend to live in districts which are actually 'wealthier' in terms of commercial and industrial property." On Winning Battles, supra note 26, at 1328; see also Hanushek, When School Financing "Reform" May Not Be Good Policy, supra note 21, at 444 ("Some states find that wealthier districts in terms of property wealth per student also have concentrations of poorer families and children.").

28. As one commentator explained at the dawn of school finance litigation in the early 1970's:

A high concentration of commercial or industrial property in a district with many poor residents may skew the relationship between district and individual wealth. Four combinations are obviously possible: (i) districts where both property value and family income are high; (ii) districts where both are low; (iii) districts where property value is high but income is low; and (iv) districts where property value is low but income is high. Individual wealth and district wealth do not correlate in the last two situations. A policy shift in funds to low-wealth districts, while rewarding those in situation (ii), will needlessly aid situation (iv) residents, and yet bypass the poor in situation (iii) districts. Thus, a policy favoring low-wealth districts could shift resources toward the "rich" and away from the "poor."

On Winning Battles, supra note 26, at 1308-09.

Indeed, William Clune, one of the co-authors of the principle of fiscal neutrality, now admits that the criticism of finance litigation that "poor students might predominantly live in urban districts of above-average wealth and would be harmed by a redistribution of state aid toward poorer districts" was "justified." William H. Clune, New Answers to Hard Questions Posed by Rodriguez: Ending the Separation of School Finance and Educational Policy by Bridging the Gap Between Wrong and Remedy, 24 Conn. L. Rev. 721, 735 (1992). Clune concedes:

[M]any districts with concentrations of poor students lose money under fiscally neutral remedies. Disadvantaged students therefore do not get what they need because there is often a redistribution of state aid from wealthier urban districts and a lack of any special, constitutional status for their needs in the turmoil of legislative planning.

Id. (footnotes omitted); see also Hanushek, When School Financing "Reform" May Not Be Good Policy, supra note 21, at 444 ("It is likely that funds going to many districts with concentrations of poor children actually will be reduced by plans to neutralize expenditures on the basis of district wealth.").
While the odds may be against poor school districts in their efforts to substantially improve the educational outcomes of their students, states should at least afford those districts the opportunity to make a difference. Moreover, the empirical question concerning the impact of additional educational expenditures remains far from settled. Second, it would be impossible to evaluate the impact of finance litigation unless one first determines whether states have actually followed through with meaningful reform. One cannot draw any intelligible conclusions about the effects of school finance litigation unless one first knows whether litigation-prompted reform has actually achieved the more limited goal of reducing interdistrict funding disparities.

This article offers an assessment of reform undertaken in response to school finance litigation. Specifically, it presents an empirical study of per pupil expenditures in five of the six states in which the state's highest court held the school financing scheme unconstitutional prior to 1984. The study has two parts. The first examines whether litigation-prompted reform has narrowed spending gaps between rich and poor school districts. The second part evaluates the rates of increase in educational funding in these five states relative to the nation as a whole. By placing states' efforts to equalize per pupil expenditures in the broader context of overall educational spending patterns, this article explores whether there is a relationship between equality and overall funding for public schools.

For proponents of school finance litigation, the results of the study are mixed. The good news is that, over a period in

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29. For instance, despite considerable research supporting the findings of The Coleman Report, see supra notes 21 and 25, Professors Chubb and Moe have concluded, based on a considerable amount of data, that "it appears that resources may matter for school performance. When differences in expenditures at the school level and the district level are averaged, schools in the top quartile of student achievement gains spend about 20 percent more per pupil than schools in the bottom quartile." CHUBB & MOE, supra note 9, at 102-03.

30. The study excluded New Jersey because comprehensive data on per pupil expenditures by school district were unavailable for the relevant years.

31. See infra text accompanying notes 214-219.

32. See discussion infra part III.B.

33. See discussion infra part III.B.

34. See discussion infra part III.C.
which interdistrict disparities remained unchanged in the nation as a whole, all five states narrowed spending gaps between poor and affluent school districts. This confirms that school finance litigation has been at least moderately successful in producing a more equal distribution of educational resources. The bad news is that in four of the five states educational funding grew at a rate below the national average. Moreover, there appears to be a rough negative correlation between equalization and overall educational expenditures such that, as a general matter, those states that reduced interdistrict disparities the most increased educational funding the least. Finally, the study’s revelation concerning expenditures in California’s poorest school districts is just plain ugly: despite significant equalization between poor and affluent districts, per pupil expenditures in California’s poorest districts grew more slowly than the national average, suggesting that disadvantaged school districts might have been better off under the pre-reform financing system.

Part I offers a brief background of finance reform litigation, focusing on the landmark decisions of Rodriguez and Serrano v. Priest. Part II discusses the decisions that prompted reform in each state and presents the findings of the study, examining each state’s record in narrowing interdistrict disparities and in increasing educational expenditures. Finally, Part III discusses the study’s possible implications for the future of school finance litigation. Although the study confirms that litigation-prompted reform has reduced funding inequalities, it also suggests that equalization may have triggered countervailing forces that undermined the states’ financial commitments to public education. The study’s overarching conclusion is therefore somewhat pessimistic, albeit predictable: in the context of tight budgetary constraints and existing political priorities, fiscal equality and quality public education may be practically incompatible.

35. See infra text accompanying notes 214-217.
36. See infra Table 3.A.
37. See infra Table 3.B.
38. See infra text accompanying notes 220-221.
39. See infra Table 3.E.
II. THE ORIGINS OF SCHOOL FINANCE LITIGATION

Modern school finance litigation began in earnest in 1968 with the filing of lawsuits in Texas and California.\(^{41}\) Fourteen years after the Supreme Court decided Brown v. Board of Education,\(^{42}\) educational opportunities for many American children, particularly racial minorities, remained largely unequal.\(^{43}\) Language in Brown seemed to indicate the Court was establishing a constitutional right to equal educational opportunity.\(^{44}\) In the opinion's most inspired passage, the Court stated:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the

\(^{41}\) Most commentators have mistakenly described Serrano as the first decision holding that a school financing scheme that relies predominantly on property taxes may violate that state's constitution. In fact, the first case to so hold was handed down by the Indiana Supreme Court 117 years earlier in Greencastle Township v. Black, 5 Ind. 557 (1854), overruled by Robinson v. Schenck, 1 N.E. 698 (Ind. 1885). See Kirk J. Stark, Note, Rethinking Statewide Taxation of Nonresidential Property for Public Schools, 102 Yale L.J. 805, 805 (1992).

\(^{42}\) 347 U.S. 483 (1954) (Brown I).

\(^{43}\) Some of the inequality stemmed from the recalcitrance of many southern school districts in dismantling their de jure segregated systems. See generally Davison M. Douglas, The Rhetoric of Moderation: Desegregating the South During the Decade after Brown, 89 Nw. U. L. Rev. 92 (1994). As of 1964, only 2.3% of African American children in the South attended desegregated schools. Geoffrey R. Stone, et al., Constitutional Law 474 (1986). It was not until 1968 that the Supreme Court conclusively announced that the time for "all deliberate speed," the standard for implementation articulated in Brown v. Board of Educ., 349 U.S. 294 (1955) (Brown II), had run out. The Court held in Green v. County Sch. Bd., 391 U.S. 430 (1968), that "the burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." Id. at 439.

\(^{44}\) See Briffaut, supra note 2, at 783 (stating Brown appeared to indicate how far courts would go to "challang[e] long-standing, deeply-rooted and legislatively authorized social institutions in the name of equal access to education"); Douglas McKiege, Inequality in Louisiana Public School Finance: Should Educational Quality Depend on a Student's School District Residency?, 60 Tul. L. Rev. 1269, 1284 (1986) (noting "[t]his language [in Brown] suggest[ed] that education is a fundamental right under the Federal Constitution"); David C. Thompson, School Finance and the Courts: A Reanalysis of Progress, 53 Educ. L. Rep. 945, 946 (West 1990) ("If the Court's apparent mandate in Brown were to be satisfied, education, with all its dimensions and implications, would be placed among constitutionally protected rights, which would in turn require that appropriate resources for equal opportunity be made equally available.").
performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.45

To most American children living in disadvantaged communities, however, Brown's promising language turned out to be more of a rhetorical flourish than a substantive guarantee to equal educational opportunity. First, the remedies mandated by Brown, such as court-ordered integration, were available only to combat racial segregation caused by intentional discrimination.46 Thus, Brown's holding was of little use to most students outside the southern and border states where schools had been segregated by law.47 Second, Brown said nothing about the pervasive segregation of students by economic class, an inevitable byproduct of the combination of neighborhood attendance zones and de facto residential seg-

46. See, e.g., Washington v. Davis, 426 U.S. 229, 240 (1976) (remarking that the existence of "both predominantly white and predominantly black schools in a community is not alone violative of the Equal Protection Clause"); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 17-18 (1971) (emphasizing courts may not act "where racial imbalance exists in the schools but with no showing that this was brought about by discriminatory action of state authorities"); GERALD GUNTHER, CONSTITUTIONAL LAW 710 (12th ed. 1991) (explaining "purposeful discrimination is a necessary basis to demonstrate a constitutional violation" under the Fourteenth Amendment); James S. Liebman, Implementing Brown in the Nineties: Political Reconstruction, Liberal Recollection, and Litigatively Enforced Legislative Reform, 76 VA. L. REV. 349, 354 (1990) (noting that Brown and subsequent Supreme Court desegregation decisions have made clear that "racial separation itself, even when coupled with vast disparities in economic input and educational outcome, did not suffice" to make out a colorable claim).
47. But see Milliken v. Bradley, 433 U.S. 267 (1977) (Milliken II) (approving a lower court's order that the Detroit School Board adopt remedial educational programs to alleviate the effects of unlawful racial segregation in Detroit schools); Pasadena Bd. of Educ. v. Spangler, 427 U.S. 424 (1976) (involving de jure segregation of public schools in Pasadena, California); Keyes v. School Dist. No. 1, 413 U.S. 189 (1973) (holding the public school system in Denver, Colorado, was unlawfully segregated by race).
regation by socioeconomic status.\footnote{48} Against this background, school finance litigation emerged as a modern, post-Jim Crow analogue to the enforcement of the Supreme Court's holding in \textit{Plessy v. Ferguson}:\footnote{49} if children from different socioeconomic backgrounds (and races) were to attend separate schools because of de facto residential segregation, those schools should at least be equal.\footnote{50}

\section*{A. San Antonio, 1968}

The Supreme Court's holding in \textit{Rodriguez} has received significant commentary\footnote{51} and hardly needs much rehashing here. The central importance of that decision to the subsequent development of school finance litigation, however, makes a brief review of its specific facts and holding useful. The condition of San Antonio's public schools in 1968 is illustrative of the issues that school finance litigation has attempted to address.

The San Antonio metropolitan area in 1968 comprised seven school districts,\footnote{52} including the Alamo Heights In-

\begin{itemize}
  \item \textbf{48.} Cf. Morgan, \textit{supra} note 3, at 106-07 ("While the Brown Court recognized the stigmatizing effects of legally sanctioned segregation, it made no mention of the harm caused by providing inadequate educational opportunities for people of color.").
  \item \textbf{49.} 163 U.S. 537 (1896) (adopting the principle that racially segregated public accommodations do not violate the Fourteenth Amendment so long as they are "equal").
    \begin{quote}
      If \textit{Plessy}, in theory, but not in fact, required tangible equality in a state's funding of the separate black schools compared to the white schools, then \textit{Rodriguez} allows for inequality in fact, in a state's funding mechanism for impoverished (largely minority) school districts compared with the wealthy (largely white) school districts.
    \end{quote}
  \item \textbf{51.} \textit{Id.; see also} Minow, \textit{supra} note 26, at 395 (noting the debate concerning the effect of educational expenditures is traceable to the NAACP's efforts to desegregate schools in the 1930's and 1940's through the enforcement of \textit{Plessy}); Morgan, \textit{supra} note 3, at 101 (contending efforts to desegregate and integrate public schools have proven largely unsuccessful in equalizing educational opportunities for African American children, and that litigation strategies should now focus on "establishing a right to minimally adequate education").
\end{itemize}
dependent School District and the Edgewood Independent School District. Alamo Heights is an affluent suburb that rests in the hills overlooking the city, while Edgewood is a Mexican-American community in the core-city section of San Antonio. In 1968, Alamo Heights had six schools and approximately 5,000 students, eighty-one percent of whom were white, and a median family income of $8,001. Edgewood’s twenty-five schools had an enrollment of 22,000 students, ninety-six percent of whom were either Hispanic or African American, and a median family income of $4,686 (see Table 1.A below). Almost twice as many Alamo Heights teachers as Edgewood teachers were credentialed, and more than twice as many had masters degrees. Most significantly, the assessed property value per student in Alamo Heights was more than ten times that in Edgewood, so that local taxes produced $333 per pupil in Alamo Heights but only $26 per student in Edgewood. Including all revenue sources, Alamo Heights spent $594 per pupil compared to Edgewood’s $356.

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Alamo Heights</td>
</tr>
<tr>
<td>Median income of students’ families</td>
<td>$8,001</td>
</tr>
<tr>
<td>Percent of teachers with college degrees</td>
<td>100%</td>
</tr>
<tr>
<td>Percent of teachers with teaching credentials</td>
<td>89%</td>
</tr>
<tr>
<td>Percent of teachers with masters degrees</td>
<td>37%</td>
</tr>
<tr>
<td>Student-teacher ratio</td>
<td>20.5 : 1</td>
</tr>
<tr>
<td>Assessed property value per student</td>
<td>$49,000</td>
</tr>
<tr>
<td>Local property tax rate</td>
<td>0.85/$100</td>
</tr>
<tr>
<td>Property tax revenue per student</td>
<td>$333</td>
</tr>
<tr>
<td>State foundation program aid per student</td>
<td>$225</td>
</tr>
<tr>
<td>Federal aid per student</td>
<td>$36</td>
</tr>
<tr>
<td>Per pupil expenditure (total)</td>
<td>$594</td>
</tr>
</tbody>
</table>

53. MAY IT PLEASE THE COURT . . . 322 (Peter Irons & Stephanie Guitton eds., 1993).
55. Id. at 12-13.
56. Id. at 13.
57. Id. at 11-12.
59. Id.
60. Id.
61. Id.
62. Id.
On July 10, 1968, a 42-year-old sheet-metal worker named Demetrio Rodriguez, along with six other parents whose children attended Edgewood schools, filed a class action in federal district court claiming that Texas's system of financing its public schools violated the Equal Protection Clause of the Fourteenth Amendment. They alleged that the existing scheme unlawfully discriminated against all Texas children attending "property poor" school districts. A study prepared by a plaintiff's expert prior to trial supported their claim: of 110 Texas school districts surveyed, the ten most affluent districts generated an average of $585 per pupil in local tax revenue with a tax rate of $0.31 per $100 valuation while the four poorest districts in the study produced only $60 per pupil with a tax rate of $0.70 per $100 valuation.

A special three-judge federal district court panel declared the existing scheme unconstitutional. The court stated that Texas's reliance on local property tax revenues to fund its schools "assumes that the value of property within the various districts will be sufficiently equal to sustain comparable expenditures from one district to another." To the court, the "adverse effects of this erroneous assumption ha[d] been vividly demonstrated." The system discriminated on the basis of wealth, which the panel treated as a constitutionally suspect classification. The court also held that, "[b]ecause of the grave significance of education both to the individual and to our society," education was a "fundamental interest" for purposes of equal protection analysis. As a result, it subjected the Texas system to strict scrutiny and found that the state had not demonstrated a compelling interest for its financing scheme. It therefore ordered the Texas legislature to devise a new plan within two years that "does not

67. Id. at 281.
68. Id. at 282.
69. Id.
71. Id. at 282.
make the quality of education a function of wealth other than the wealth of the state as a whole.”

In a 5-4 decision, the United States Supreme Court reversed. Writing for the Court, Justice Powell found “neither the suspect-classification nor the fundamental-interest analysis [of the district court] persuasive.” The Court noted that in each of the previous cases where it invalidated laws discriminating on the basis on wealth, the plaintiffs “were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.” The Edgewood parents, stated the Court, had met neither of these conditions. First, the plaintiffs had “made no effort to demonstrate that [the Texas school financing system] operates to the peculiar disadvantage of any class fairly definable as indigent, or as composed of persons whose incomes are beneath any designated poverty level.” Second, the Edgewood students had not suffered “an absolute deprivation of the desired benefit” due to their lack of resources. Rather, the Texas scheme, if anything, only resulted in unequal quality of education, and “the Equal Protection Clause does not require absolute equality or precisely equal advantages.” The Court therefore concluded that, in “the absence of any evidence that the financing system discriminates against any definable category of ‘poor’ people or that it results in the absolute deprivation of education,” the plaintiffs did not comprise a suspect class for purposes of constitutional analysis.

Despite the broad language in Brown concerning the importance of education, the Court rejected the district court’s reasoning that education constituted a “fundamental inter-

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72. Id. at 285. This is the principle of fiscal neutrality introduced by Professors Coons, Clune, and Sugarman. See supra note 12 and accompanying text.
74. Id. at 18.
75. Id. at 20. The cases cited by the Court included Griffin v. Illinois, 351 U.S. 12 (1956), where the Court struck down a state law that denied the provision of free trial transcripts to indigent criminal defendants, and Douglas v. California, 372 U.S. 353 (1963), where the Court established the right of indigent defendants to court-appointed counsel on direct appeal.
76. Rodriguez, 411 U.S. at 22-23.
77. Id. at 23.
78. Id. at 24.
79. Id. at 25.
The issue was not “the relative social significance of education” but “whether there is a right to education explicitly or implicitly guaranteed by the Constitution.” Finding neither that the plaintiffs were a suspect class nor that education was a fundamental interest, the Court subjected the Texas scheme to the deferential “rational basis” test. Because the system “rationally further[ed] a legitimate state purpose,” namely preserving local control over primary education, the Court concluded that “the Texas plan abundantly satisfied this standard.” Despite the significant inequalities between districts like Edgewood and Alamo Heights, Texas’s school financing scheme was nonetheless constitutional.

B. Serrano v. Priest and State School Finance Litigation

Simultaneous to the Texas litigation, a group of high school parents and students from Los Angeles County initiated a similar action in California. Like the Edgewood parents, they claimed California’s method of financing its public schools violated the requirements of equal protection because its reliance on local property tax revenue produced wide funding disparities between districts.

California’s school financing system was much like that in Texas. In the 1968-69 school year, 55.7 percent of funding for California’s public schools came from local property tax revenue. And because assessed property valuations per pupil varied widely between districts, the system produced substantial interdistrict disparities in expenditures per student. In the plaintiffs’ own Los Angeles County, for instance, Beverly Hills Unified School District spent $1,232

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80. The Court quoted the precise language in Brown, see supra text accompanying note 45, that seemed to create a constitutional right to equal educational opportunity. Rodriguez v. San Antonio Indep. Sch. Dist., 411 U.S. 1, 29-30 (1973). The Court nevertheless reasoned that “the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause." Id. at 30.
81. Id. at 33-34.
82. Id. at 40.
83. Id. at 55.
85. Id. at 1244-45.
86. Id. at 1246 n.2. The balance was composed of 35.5% from the state, 6.1% from the federal government, and 2.7% from miscellaneous sources. Id.
87. Id. at 1247 (“Although equalization aid and supplemental aid temper the disparities which result from vast variations in real property assessed valu-
per pupil while Baldwin Park Unified School District spent only $577. The inequalities in Alameda County near Oakland were even more stark: Newark Unified spent only $616 per student while nearby Emery Unified expended $2223 for each child. Moreover, these disparities existed despite higher tax rates in property poor districts. For example, Newark Unified taxed local residents $5.65 per $100 assessed valuation while Emery Unified taxed its residents only $2.57.

Unlike in Rodriguez, the plaintiffs in the California litigation, Serrano v. Priest, initiated their action in state court. Although the trial court first dismissed the action for failure to state a claim, the Supreme Court of California reversed, holding that the financing scheme "invidiously discriminate[d] against the poor because it made the quality of a child's education a function of the wealth of his parents and neighbors." Ruling eighteen months before the U.S. Supreme Court's decision in Rodriguez, the court found both that wealth was a suspect classification and that education

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88. Id. at 1248.
90. Id. The confluence of relatively high property tax rates and relatively low per pupil expenditures often forces school districts in disadvantaged communities into a truly unenviable position. Districts rich in property may generate ample revenues with modest tax rates, while property-poor districts may have to impose onerous tax rates to generate even modest sums. This creates a "Catch-22" for the property-poor districts with respect to economic development. When deciding where to locate, companies often consider a community's school system and its taxes. In poorer districts, the school system is often not on a par with more affluent districts. Yet, raising the tax rate to the level needed to improve the school[s] will itself discourage firms from locating in the district. As a result, the property-rich districts get the good schools, pay the low tax rates and attract the jobs that may be needed more desperately in their less-developed neighboring districts.
91. 487 P.2d 1241 (Cal. 1971) (Serrano I).
92. Id.
93. Id. at 1244.
94. Id. at 1250 (stating "the United States Supreme Court has demonstrated a marked antipathy toward legislative classifications which discriminate on the basis of certain 'suspect' personal characteristics," and that "[o]ne
was a fundamental interest under the Equal Protection Clause of the Fourteenth Amendment. It therefore stated that the scheme must be subjected to strict scrutiny, meaning the scheme must be “necessary to achieve a compelling state interest.” Because the trial court had dismissed the plaintiffs’ claims on summary judgment, the Serrano I court did not reach a final judgment on the merits but instead remanded the case, holding that the plaintiffs’ claims were “legally sufficient.” Nevertheless, the court stated that if the trial court were to sustain the plaintiffs’ allegations on remand, the “system must fall and the statutes comprising it must be found unconstitutional.”

The U.S. Supreme Court decided Rodriguez just as the trial proceedings in Serrano II were closing, essentially eviscerating plaintiffs’ claims under the Fourteenth Amendment. The trial court nevertheless ruled that California’s school financing scheme violated California’s state constitution. The Supreme Court of California affirmed, holding that the state constitution’s equal protection clause, although “substantially the equivalent of the guarantees contained in the Fourteenth Amendment,” possessed “independent vitality” that requires different analysis in some circumstances. The court was buoyed by the Supreme Court of New Jersey’s decision thirteen months earlier in Robinson v. Cahill, which held that, Rodriguez notwithstanding, New Jersey’s school financing scheme violated its state constitution.

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95. Id. at 1258 (“We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a ‘fundamental interest.’”).
97. Id. at 1266.
98. Id. at 1263.
99. See Serrano v. Priest, 557 P.2d 929, 931 (Cal. 1976) (Serrano II) (explaining that the trial proceedings began on Dec. 26, 1972, and lasted more than 60 days).
100. YUDOF ET AL., supra note 5, at 638.
103. Robinson I, 303 A.2d at 295.
Similarly, the Serrano II court stated that Rodriguez did not alter its judgment that "discrimination in educational opportunity on the basis of district wealth involves a suspect classification and [that] education is a fundamental interest" under California's constitution. The court therefore applied strict scrutiny and concluded "without hesitation" that California's financing scheme, "because it render[ed] the educational opportunity available to the students of this state a function of the taxable wealth per ADA (Average Daily Attendance) of the districts in which they live, ha[d] not been shown by the state to be necessary to achieve a compelling state interest."

The Robinson and Serrano decisions inspired a flood of school finance litigation in state courts across the country premised on various state constitutional provisions. Between 1972 and 1974, fifty-three suits were filed challenging the constitutionality of thirty-eight states' financing schemes under their state constitutions. By 1984, the supreme courts of six states had invalidated their states' school financing schemes. How much have these decisions actually affected the funding of public education? The following study offers an assessment.

III. THE STUDY

A. Methodology

The study examines per pupil expenditures in Arkansas, California, Connecticut, Washington, and Wyoming—five of

104. Serrano v. Priest, 557 P.2d 929, 950-51 (Cal. 1976) (Serrano II) ("[T]he fact that a majority of the United States Supreme Court have now chosen to contract the area of active and critical analysis under the strict scrutiny test for federal constitutional purposes can have no effect upon the existing construction and application afforded our own constitutional provisions.").

105. Id. at 953. Average Daily Attendance is simply the average number of students attending school or with excused absences per day over the course of the year. EDSOURCE, CALIFORNIA'S K-12 SCHOOL FINANCE SYSTEM 8 (1992).

106. See Thompson, supra note 44, at 953 ("The decisions in Serrano and Robinson led to myriad state cases which were generally brought on the same issues of fundamentality, equal opportunity, and equal protection.").

107. YUDOF ET AL., supra note 5, at 606.

the six states in which the state supreme court invalidated the public school funding system as unconstitutional prior to 1984.\textsuperscript{109} It compares expenditures per student in a base year (usually the year of the state supreme court's decision)\textsuperscript{110} to expenditures in the 1991-92 school year. To parcel out real increases in educational funding from the effects of inflation, figures from the base years are presented in January 1992 values.\textsuperscript{111}

The expenditure figures represent total educational expenditures per student, including funding from local, state, and federal sources. Importantly, the disparities in per pupil expenditures revealed in the study do not necessarily reflect unequal educational resources. Most states, as well as the federal government,\textsuperscript{112} supplement school districts' resources with categorical funding for special programs.\textsuperscript{113} For example, California has more than fifty categorical funding programs that target needs such as special education, transportation, desegregation, and child care.\textsuperscript{114} Thus, to some extent, interdistrict disparities may reflect a disproportional distribution of students with special needs, and true equality

\textsuperscript{109} New Jersey was the only state excluded. \textit{See supra} note 30.

\textsuperscript{110} Due to the unavailability of particular data, the base year statistics for California and Wyoming are not from the exact school year in which the state supreme court decisions were handed down. Neither state's Department of Education could provide information from the exact years of the court decisions. For California, the base year is the 1977-78 school year, one year after the Supreme Court of California decided \textit{Serrano II}. For Wyoming, the base year is the 1977-78 school year, two years before the Supreme Court of Wyoming decided \textit{Washakie County School District}.

\textsuperscript{111} Dollar values were converted using the Consumer Price Index for All Urban Consumers (CPI-U, Average of U.S. Cities), as computed by the U.S. Department of Labor's Bureau of Statistics. The Bureau computes the CPI-U on a monthly basis. The CPI-U is based on consumer prices in 44 U.S. cities.

\textsuperscript{112} School districts receive federal assistance through the Department of Education pursuant to 20 U.S.C. §§ 2701-3386 (1992), originally enacted as the Elementary and Secondary Education Act of 1965. The stated purpose of the federal program is to address:

\begin{enumerate}
\item the special educational needs of children of low-income families and the impact of concentrations of low-income families on the ability of local educational agencies to provide educational programs which meet such needs, and
\item the special educational needs of children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children.
\end{enumerate}


\textsuperscript{113} For detailed descriptions of how states typically calculate the amount of aid they distribute to each school district, see generally \textit{WOOD \\ & THOMPSON, supra} note 2, at 19-45, and \textit{YUDOF ET AL., supra} note 5, at 592-94.

\textsuperscript{114} \textit{EdSOURCE, supra} note 105, at 9-11.
would likely entail some degree of nominal inequality in per pupil expenditures. But where the disparities between poor and affluent school districts exceed 20 percent, as they did in all five states studied, the inequalities probably reflect more than just legitimate differences in district needs targeted by categorical programs.

The study has two basic aims. The first is to determine how much states have narrowed disparities between poor and affluent school districts; it uses two measures of inequality for this purpose. The first is percentile comparison, which juxtaposes the average per pupil expenditure for schools in opposite funding percentiles of the state. It compares the wealthiest and poorest 5 percent, 10 percent, 15 percent, and 20 percent of each state's school districts. Percentile comparison analysis illustrates the disparities between school districts at the poles of the expenditure spectrum.

The study's second measure of inequality is the Gini coefficient. Developed in 1912 by Italian economist Corrado

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115. See Rosemary C. Salomone, Equal Education Under Law: Legal Rights and Federal Policy in the Post-Brown Era 202-03 (1986) (stating that "justice demands a pluralistic perspective on equality whereby equality for all means different or more is equal for some"); Wood & Thompson, supra note 2, at 95 (noting "equity may require deviations from absolute mathematical equality so that fairness may be served with regard to children with special needs"); Julie K. Underwood & William K. Sparkman, School Finance Litigation: A New Wave of Reform, 14 Harv. J.L. & Pub. Pol'y 517-18 (1991) (arguing that per pupil expenditures "ha[ve] proven to be an inadequate measure of equity" because the "education that some children require to meet their needs is more expensive than the education required by others," such as where the student is "economically deprived, non-English speaking, or disabled").

116. Moreover, categorical programs nominally created to address the particular problems of districts may simply become a mechanism by which politically powerful regions within a state are able to appropriate more funds to their school districts. For instance, the Washington legislature created the "complex needs" program in 1991 to help districts "deal with the cumulative impact of problems such as poverty and multiple foreign languages." Kathy George, Washington's Education Funding Formulas Flawed, Seattle Post-Intell., Feb. 14, 1995, at A1, A6. But a computer analysis conducted by the Seattle Post-Intelligencer showed that "complex needs" funding "goes mostly to big urban districts that had comparatively low percentages of low-income, bilingual or disabled children in 1993." Id. Indeed, of the 17 districts annually receiving monies under the program, only three are among the lowest-scoring and poorest districts in the state, and two of the 17 districts "have some of the State's most affluent populations and highest test scores." Id.

117. The study compares the wealthiest and poorest 10 percent, 15 percent, 20 percent, and 25 percent in Wyoming because there were only 39 school districts in Wyoming with 300 or more students in the 1977-78 school year, and only 40 in the 1991-92 school year.
Gini,\textsuperscript{118} the Gini coefficient is a traditional measure of income disparity that has been widely used by economists as a comprehensive measure of income inequality.\textsuperscript{119} Increasingly, legal scholars have used the Gini coefficient in a variety of contexts to measure a given regime’s effect on distributional equality.\textsuperscript{120} It has also been employed by litigants in at least one school finance case to demonstrate interdistrict disparities.\textsuperscript{121} The Gini coefficient equals one half the relative mean difference of income\textsuperscript{122}—in other words, one half the expected difference between the incomes of two randomly selected individuals as a proportion of the average income.\textsuperscript{123} Its advantage over percentile comparison analysis is that it measures disparity over the entire range of data rather than at arbitrary intervals. For purposes of this study, the Gini coefficient represents one half the expected difference between the per pupil expenditure figures of two randomly selected school districts as a proportion of the state’s average per pupil expenditure.\textsuperscript{124}

\textsuperscript{118} CORRADO GINI, VARIABILITA E MUTABILITA 21-33 (1912).

\textsuperscript{119} See, e.g., ANTHONY B. ATKINSON, THE ECONOMICS OF INEQUALITY 53-56 (2d ed. 1983); AMARTYA K. SEN, ON ECONOMIC INEQUALITY 29-31 (1973).


\textsuperscript{121} See James G. Ward, Remedies in School Finance Litigation, 36 EDUC. L. REP. 1, 3 (West 1987) (noting a California appellate court sanctioned the use of the Gini coefficient as a measure of equality in Serrano v. Priest, 226 Cal. Rptr. 584 (Ct. App. 1986) (Serrano III)).

\textsuperscript{122} Collat, supra note 120, at 827-32 (explaining derivation and function of Gini coefficient).

\textsuperscript{123} Griffith, supra note 120, at 356.

\textsuperscript{124} The Gini coefficient can be expressed numerically as follows:

\[
G = \frac{1}{2n^2 Y_a} \sum_{i=1}^{n} \sum_{j=1}^{n} |Y_i - Y_j|
\]

where $G$ represents the Gini coefficient, $n$ represents the number of school districts, $y_i$ represents the average per pupil expenditure for the school districts included in the survey, and $y_i$ and $y_j$ represent the per pupil expenditure figures for each of the state’s school districts. See SEN, supra note 119, at 31.

One can also demonstrate the Gini coefficient graphically. The x-axis is the percentile of school districts by per pupil expenditure and the y-axis is the
The second aim of the study is to examine whether judicial mandates for greater equalization of per pupil expenditures have influenced overall funding for public education. For this purpose, the study uses figures for net current expenditures per ADA compiled by the U.S. Department of Education and the Education Commission of the States. By comparing real growth in educational expenditures in each state to the U.S. average over the same periods, the study explores whether there has been a negative correlation between equalization of per pupil expenditures and overall financial commitment to public education.

A few details about the data sample warrant explanation. First, to avoid statistical distortions, the first part of the study excludes school districts with less than five hundred students. The data revealed that, all else equal, smaller school districts spent significantly more per student than the average district. This disparity can be attributed to economies of scale in administration and facilities achieved by larger school districts. These economies dissipated at roughly the level of 500 students. Moreover, the averages presented in the percentile comparison analysis are an average of all a state's school districts, so that the inclusion of too many small districts in the sample would have inaccurately reflected the expenditures for the majority of a state's students.

percentage of total school districts that are in the percentile. A 45 degree line from the origin—the line of equality—represents perfect equality among school districts, so that the area between the line of equality and the actual plot (the Lorenz curve) reveals the degree of interdistrict disparities. The Gini coefficient equals the area between the Lorenz curve and the line of equality divided by the total area beneath the line of equality. See id.


126. EDUCATION COMMISSION OF THE STATES, HOW MUCH ARE SCHOOLS SPENDING?: A 50-STATE EXAMINATION OF EXPENDITURE PATTERNS OVER THE LAST DECADE 22-23 (1993). The figures presented in this report were adjusted for cost of living variances across states. Id. at 23. The study converted the figures back into nominal dollars unadjusted for cost of living differences. See id.

127. The Wyoming study excludes school districts with less than 300, rather than 500, students, largely because the data set would have been simply too small had it included only school districts with 500 or more students.

128. In the 1990-91 school year, for instance, 33% of California school districts had less than 500 students. EdSOURCE, supra note 105, at 3. These districts, however, represent only 1.44% of the state's public school students (69,672 of the state's total of 4,835,166 students). Id. Thus, their inclusion would distort the study's averages.
Second, due to the different statistical compilation practices of each state department of education, the study uses slightly different measures of per pupil expenditures to demonstrate interdistrict disparities. For instance, the relevant unit for California is total expenditures per ADA, while for Connecticut it is net current expenditures per average daily membership (ADM), and for Washington it is net expenditures per pupil not including transportation. Although similar, these units differ in important respects. In addition, the cost of living varies widely from state to state. For these reasons, the per pupil expenditure figures should not be compared across states. Because the relevant units are consistent within each state from the base year to the 1991-92 school year, however, comparisons within each state over time, as well as comparisons of the rates of increase across states, are statistically valid.

B. Findings

The following section briefly describes the court decision and judicial mandate that prompted school finance reform in each state and summarizes the results of the study.

1. Arkansas

In 1979, eleven Arkansas school districts filed a class action suit against the state board of education claiming that

129. Connecticut law defines average daily membership as:
[The number of all pupils of the local or regional board of education enrolled in public schools at the expense of such board of education on October first or full school day immediately preceding such date, provided the number so obtained shall be reduced by one one-hundred-eightieth for each full school day by which the board of education fails to maintain a school year of one hundred eighty days and shall be increased by one one-hundred-eightieth for each full school day by which the board of education maintains a school year beyond one hundred eighty days, and be increased by the aggregate days of membership of all pupils of the town attending school at the expense of the town during the summer session divided by one hundred eighty, except that if a board of education has implemented scheduling of school sessions year-round, the state board of education may adjust the number so that no loss or gain in state aid occurs because of the type of scheduling used.]


130. See Education Commission of the States, supra note 126, at 47 (listing cost of living adjustment factors for all 50 states in 1992).

131. The data for per pupil expenditures in Arkansas school districts comes from Arkansas Department of Education, Annual Statistical Report of the Public Schools of Arkansas (1985), for the 1983-84 school year and
the state's public school financing scheme violated state constitutional guarantees to equal protection and to a thorough and efficient public education. The plaintiffs' basic charge was the same as that alleged in Rodriguez and Serrano—that the financing scheme relied too heavily on local property tax revenue, causing significant interdistrict inequalities that were not adequately ameliorated by the state foundation program.

The Supreme Court of Arkansas found "undisputed evidence" of "sharp disparities among school districts in the expenditures per pupil and the education opportunities available as reflected by staff, class size, curriculum, remedial services, facilities, materials and equipment." These disparities, stated the court, were a direct result of the property wealth of each district, and aid from the state did nothing to mitigate these inequalities. Finding that the system "only promote[d] greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged," the court held that there was "no legitimate state purpose to support the system." Because property wealth was "what primarily dictate[d] the amount of revenue each district receive[d] and the quality of education in that district," the financing scheme could not survive even a "rational basis" test and therefore violated the Arkansas constitution. The court commanded the legislature to devise a system that bore a "rational relationship to the educational needs of the individual districts," so that educational opportunities for Arkansas's children were not "controlled by the fortuitous circumstance of residence."


133. Id. In the 1978-79 school year, 38.1% of funding for Arkansas' public schools came from local revenues, 51.6% from the state, and 10.3% from the federal government. Id.
134. Id. at 92.
135. Id. In fact, the court stated that the state program actually aggravated absolute disparities between property poor and property rich school districts.
136. Id. at 93.
138. Id. at 95.
139. Id. at 93.
140. Id.
a. Interdistrict Disparities

Percentile comparison analysis of school districts’ current expenses per ADA\textsuperscript{141} shows that Arkansas reduced interdistrict disparities by between eleven and nineteen percent. For example, between the 1983-84 and 1991-92 school years, the disparity between the wealthiest and poorest 5 percent of Arkansas’ school districts decreased from 51.53 percent to 45.68 percent, a reduction of 11.35 percent. Meanwhile, the disparity between the richest and poorest 20 percent of Arkansas’ school districts fell by 18.25 percent.

\begin{table}[h]
\centering
\caption{Interdistrict Disparities in Current Expense per ADA in Arkansas School Districts (500 or More Students)}
\begin{tabular}{lccc}
\toprule
 & 1983-84 & 1991-92 & Reduction in Disparity \\
\midrule
Wealthiest Five Percent & $2,967$ & $3,852$ & \\
Poorest Five Percent & $1,958$ & $2,644$ & \\
DISPARITY & 51.53\% & 45.68\% & 11.35\% \\
Wealthiest Ten Percent & $2,808$ & $3,581$ & \\
Poorest Ten Percent & $1,986$ & $2,676$ & \\
DISPARITY & 41.39\% & 33.82\% & 18.29\% \\
Wealthiest Fifteen Percent & $2,699$ & $3,453$ & \\
Poorest Fifteen Percent & $2,011$ & $2,701$ & \\
DISPARITY & 34.21\% & 27.84\% & 18.62\% \\
Wealthiest Twenty Percent & $2,623$ & $3,372$ & \\
Poorest Twenty Percent & $2,031$ & $2,723$ & \\
DISPARITY & 29.15\% & 23.83\% & 18.25\% \\
\bottomrule
\end{tabular}
\end{table}

\textsuperscript{141} The Arkansas Department of Education defines average daily attendance as the “total days of attendance divided by the number of days taught. This number includes those who attend outside the district on a tuition agreement between the respective districts.” 1993 Annual Statistical Report, supra note 131, at 3. “Current Expense per ADA” is defined as “[t]he current expense less the amount received from other districts divided by the resident ADA.” Id.

The Gini coefficients from the 1983-84 and 1991-92 school years revealed a similar reduction in inequality. The Gini coefficient for Arkansas school districts for 1983-84 was 0.05167,\textsuperscript{143} while in 1991-92 it was 0.04318.\textsuperscript{144} This represented a 16.3 percent reduction in inequality.

b. Increases in Per Pupil Expenditures

Educational funding as measured by current expenditures per ADA between the 1983-84 and 1991-92 school years increased at a rate below the national average. Current expenditures per ADA in Arkansas school districts grew in real dollars from $3,030 to $3,770, an increase of 24.42 percent. Over the same period, the U.S. average for current expenditures per ADA grew by 26.73 percent, from $4,302 to $5,452.

2. California\textsuperscript{145}

The history of the Serrano litigation has already been discussed,\textsuperscript{146} but some details concerning subsequent changes to California's public school financing system warrant mention. On June 6, 1978, in the wake of the California Supreme Court's holding in Serrano II, California voters ap-

\textsuperscript{143} The Gini calculation for Arkansas school districts for the 1983-84 school year was based on the following figures:
\begin{align*}
\text{Average current expense per ADA} & = \$1,674 \\
\text{Total sum of differences between pairs} & = 7,056,484 \\
\text{Number of school districts} & = 202
\end{align*}

The Gini coefficient therefore equaled:
\[1/(2(202^2 \times 1,674)) (7,056,484) = 0.051666384\]

\textsuperscript{144} The Gini calculation for Arkansas school districts for the 1991-92 school year was based on the following figures:
\begin{align*}
\text{Average current expense per ADA} & = \$2,988 \\
\text{Total sum of differences between pairs} & = 10,842,072 \\
\text{Number of school districts} & = 205
\end{align*}

The Gini coefficient therefore equaled:
\[1/(2(205^2 \times 2,988)) (10,842,072) = 0.043175979\]


\textsuperscript{146} See supra text accompanying notes 84-105.
proved Proposition 13. The initiative, which is still in effect, contained six basic provisions: (1) all property taxes were limited to 1 percent of 1975-76 assessed market value; (2) annual increases in the valuation of property for purposes of taxation were limited to 2 percent; (3) valuation of property for purposes of taxation return to market value only when property is sold or transferred; (4) local governments were prohibited from passing new property taxes; (5) communities could not impose special taxes unless approved by the voters by a two-thirds majority; and (6) any change in the tax law by the state legislature required a two-thirds majority.

Proposition 13 dramatically reduced the ability of local governments in California to generate revenue through property taxes and therefore had an immediate impact on school finance. In the first year of its operation, California school districts faced a $7 billion budget shortfall, forcing the state government to partially bail them out. With Proposition 13 still in effect, funding schools through local property tax revenue is now impossible for all but the wealthiest communities in California. As a result, California now relies heavily on state funding sources, such as income and sales tax revenues, to finance its public schools. In the 1991-92 school year, 63.6 percent of funding for primary education came from state revenue, comprised mostly of revenue from income taxes, sales taxes, and the state lottery.

a. Interdistrict Disparities

The California Department of Education separates the state's school districts into three groups for purposes of data compilation: elementary, high school, and unified school districts (containing both elementary and high schools). Per-
centile comparison analysis demonstrates that interdistrict disparities for all three groups of school districts have decreased between 20 and 30 percent. The gap between the wealthiest 10 percent and poorest 10 percent of California's elementary school districts decreased from 72.39 percent to 55.33 percent, a reduction of 23.57 percent. And the disparity between the richest and poorest 20 percent of its elementary school districts fell by 31.57 percent, from 52.20 percent to 35.72 percent.

Table 2.B: Interdistrict Disparities in Current Expenditures per ADA\(^\text{152}\) in California Elementary School Districts (500 or More Students)

<table>
<thead>
<tr>
<th>Disparity Group</th>
<th>1977-78</th>
<th>1991-92</th>
<th>Reduction in Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wealthiest five percent</td>
<td>$5,243</td>
<td>$5,981</td>
<td></td>
</tr>
<tr>
<td>Poorest five percent</td>
<td>$2,761</td>
<td>$3,352</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>89.89%</td>
<td>78.43%</td>
<td>12.75%</td>
</tr>
<tr>
<td>Wealthiest ten percent</td>
<td>$4,901</td>
<td>$5,317</td>
<td></td>
</tr>
<tr>
<td>Poorest ten percent</td>
<td>$2,843</td>
<td>$3,423</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>72.39%</td>
<td>55.33%</td>
<td>23.57%</td>
</tr>
<tr>
<td>Wealthiest fifteen percent</td>
<td>$4,675</td>
<td>$5,006</td>
<td></td>
</tr>
<tr>
<td>Poorest fifteen percent</td>
<td>$2,913</td>
<td>$3,466</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>60.49%</td>
<td>44.43%</td>
<td>26.55%</td>
</tr>
<tr>
<td>Wealthiest twenty percent</td>
<td>$4,525</td>
<td>$4,825</td>
<td></td>
</tr>
<tr>
<td>Poorest twenty percent</td>
<td>$2,973</td>
<td>$3,555</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>52.20%</td>
<td>35.72%</td>
<td>31.57%</td>
</tr>
</tbody>
</table>

California reduced disparities between high school districts by a comparable amount. The disparity between the richest and poorest 5 percent of high school districts fell from 107.33 percent to 80.72 percent, a reduction of 24.79 percent.

---

152. California defines average daily attendance as "the attendance of pupils in the schools of the districts within the indicated grade span." Annual Report 1977-78, supra note 145, at viii. Neither of California's statistical compilation reports defines total current expenditures.

The gap between the wealthiest 15 percent and the poorest 15 percent fell by 27.47 percent, from 67.13 percent to 48.69 percent.

**Table 2.C**

**INTERDISTRICT DISPARITIES IN CURRENT EXPENDITURES PER ADA IN CALIFORNIA HIGH SCHOOL DISTRICTS (500 OR MORE STUDENTS)**

<table>
<thead>
<tr>
<th></th>
<th>1977-78</th>
<th>1991-92</th>
<th>Reduction in Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wealthiest five percent</td>
<td>$6,788</td>
<td>$7,563</td>
<td></td>
</tr>
<tr>
<td>Poorest five percent</td>
<td>$3,274</td>
<td>$4,185</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>107.33%</td>
<td>80.72%</td>
<td>24.79%</td>
</tr>
<tr>
<td>Wealthiest ten percent</td>
<td>$6,116</td>
<td>$6,826</td>
<td></td>
</tr>
<tr>
<td>Poorest ten percent</td>
<td>$3,382</td>
<td>$4,248</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>80.84%</td>
<td>60.69%</td>
<td>24.93%</td>
</tr>
<tr>
<td>Wealthiest fifteen percent</td>
<td>$5,756</td>
<td>$6,410</td>
<td></td>
</tr>
<tr>
<td>Poorest fifteen percent</td>
<td>$3,444</td>
<td>$4,311</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>67.13%</td>
<td>48.69%</td>
<td>27.47%</td>
</tr>
<tr>
<td>Wealthiest twenty percent</td>
<td>$5,508</td>
<td>$6,220</td>
<td></td>
</tr>
<tr>
<td>Poorest twenty percent</td>
<td>$3,495</td>
<td>$4,355</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>57.60%</td>
<td>42.82%</td>
<td>25.66%</td>
</tr>
</tbody>
</table>

California was not quite as successful in reducing the disparities between the poorest and most affluent unified school districts. The gap between the wealthiest and poorest 10 percent fell by 20.14 percent, from 78.99 percent to 63.08 percent. Similarly, the disparity between the wealthiest and poorest 20 percent decreased from 59.06 percent to 44.16 percent, a reduction of 25.23 percent.

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154. These figures are in January 1992 dollar values. See supra note 153.
### Table 2.D

**Interdistrict Disparities in Current Expenditures Per ADA in California Unified School Districts (500 or More Students)**

<table>
<thead>
<tr>
<th></th>
<th>1977-78 155</th>
<th>1991-92</th>
<th>Reduction in Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wealthiest five percent</td>
<td>$6,335</td>
<td>$6,742</td>
<td></td>
</tr>
<tr>
<td>Poorest five percent</td>
<td>$3,108</td>
<td>$3,681</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>103.83%</td>
<td>83.16%</td>
<td>19.91%</td>
</tr>
<tr>
<td>Wealthiest ten percent</td>
<td>$5,665</td>
<td>$6,086</td>
<td></td>
</tr>
<tr>
<td>Poorest ten percent</td>
<td>$3,165</td>
<td>$3,732</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>78.99%</td>
<td>63.08%</td>
<td>20.14%</td>
</tr>
<tr>
<td>Wealthiest fifteen percent</td>
<td>$5,290</td>
<td>$5,692</td>
<td></td>
</tr>
<tr>
<td>Poorest fifteen percent</td>
<td>$3,207</td>
<td>$3,766</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>64.95%</td>
<td>51.14%</td>
<td>21.26%</td>
</tr>
<tr>
<td>Wealthiest twenty percent</td>
<td>$5,155</td>
<td>$5,468</td>
<td></td>
</tr>
<tr>
<td>Poorest twenty percent</td>
<td>$3,241</td>
<td>$3,793</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>59.06%</td>
<td>44.16%</td>
<td>25.23%</td>
</tr>
</tbody>
</table>

Gini coefficient analysis shows similar reductions of inequality in all three groups of California school districts. The Gini coefficient for California's elementary school districts fell from 0.08320156 in the 1977-78 school year to 0.06664157 in the 1991-92 school year, a reduction of 19.90 percent. The Gini calculation for high school districts decreased by 20.27 percent, from 0.09312158 to 0.07425.159 Finally, the Gini cal-

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155. These figures are in January 1992 dollar values. See supra note 153.
156. The Gini calculation for California elementary school districts for the 1977-78 school year was based on the following figures:
   - Average current expenditure per ADA = $1640.35
   - Total sum of differences between pairs = 22,797,725
   - Number of school districts = 289

   The Gini coefficient therefore equaled:
   $$1/(2(289^2 \times 1640.35)) (22,797,725) = 0.083201331$$

157. The Gini calculation for California elementary school districts for the 1991-92 school year was based on the following figures:
   - Average current expenditure per ADA = $3,988.88
   - Total sum of differences between pairs = 53,426,080
   - Number of school districts = 317

   The Gini coefficient therefore equaled:
   $$1/(2(317^2 \times 3988.88)) (53,426,080) = 0.066642928$$

158. The Gini calculation for California high school districts for the 1977-78 school year was based on the following figures:
   - Average current expenditure per ADA = $1,933.14
   - Total sum of differences between pairs = 3,600,227
   - Number of school districts = 100

   The Gini coefficient therefore equaled:
   $$1/(2(100^2 \times 1933.14)) (3,600,227) = 0.093118495$$
calculation for California’s unified school districts dropped from 0.09412\textsuperscript{160} to 0.07556,\textsuperscript{161} a reduction of 19.72 percent.

b. Increases in Per Pupil Expenditures

The increase in per pupil expenditures in California school districts lagged well behind the U.S. average between Serrano II and the 1991-92 school year. The average increase in current expenditures per ADA for all California school districts grew in real dollars from $4,120 to $4,866 between the 1977-78 and 1991-92 school years. This represented an increase of 18.11 percent. Average current expenditures per ADA in the nation as a whole over the same period increased by 35.29 percent, from $4,030 to $5,452.

3. Connecticut\textsuperscript{162}

The Connecticut case, Horton v. Meskill,\textsuperscript{163} also involved a challenge to the state’s reliance on local property tax revenue to fund its public schools.\textsuperscript{164} Local revenues, comprised almost entirely of property tax receipts, provided seventy per-

\begin{align*}
159. \text{ The Gini calculation for California high school districts for the 1991-92 school year was based on the following figures:} \\
\text{Average current expenditure per ADA} &= \$5,049.03 \\
\text{Total sum of differences between pairs} &= 5,938,659 \\
\text{Number of school districts} &= 89 \\
\text{The Gini coefficient therefore equaled:} \\
\frac{1}{2} (2(89^2 \times 5,049.03)) (5,938,659) &= 0.07424551 \\
160. \text{ The Gini calculation for California unified school districts for the 1977-78 school year was based on the following figures:} \\
\text{Average current expenditure per ADA} &= \$1,771 \\
\text{Total sum of differences between pairs} &= 18,094,901 \\
\text{Number of school districts} &= 233 \\
\text{The Gini coefficient therefore equaled:} \\
\frac{1}{2} (2(233^2 \times 1,771)) (18,094,901) &= 0.094115687 \\
161. \text{ The Gini calculation for California unified school districts for the 1991-92 school year was based on the following figures:} \\
\text{Average current expenditure per ADA} &= \$4,339 \\
\text{Total sum of differences between pairs} &= 46,392,279 \\
\text{Number of school districts} &= 266 \\
\text{The Gini coefficient therefore equaled:} \\
\frac{1}{2} (2(266^2 \times 4,339)) (46,392,279) &= 0.075558889 \\
163. 376 A.2d 359 (Conn. 1977). \\
164. \text{Id. at 361.}
cent of the funding for public education in Connecticut.\textsuperscript{165} This system "ensure[d] that, regardless of the educational needs or wants of children, more educational dollars [would] be allotted to children who live in property-rich towns than to children who live in property-poor towns."\textsuperscript{166}

Upholding the decision of the trial court, the Supreme Court of Connecticut held that primary education was a fundamental right under the Connecticut constitution,\textsuperscript{167} and "pupils in the public schools are entitled to the equal enjoyment of that right."\textsuperscript{168} Subjecting the financing scheme to strict scrutiny, the court struck it down.\textsuperscript{169} In the court's words, a system that depends "primarily on a local property tax base without regard to the disparity in financial ability of the towns . . . is not 'appropriate legislation' to implement the requirement that the state provide a substantially equal educational opportunity to its youth in its free public elementary and secondary schools."\textsuperscript{170}

The court clarified that the Connecticut constitution did not mandate "absolute equality or precisely equal advantages" in educational opportunity.\textsuperscript{171} It also explained that the decision did not "requir[e] total state financing [or] loss of local administrative control over educational decisions,"\textsuperscript{172} and that the local property tax could be "a viable means of producing income for education."\textsuperscript{173} On balance, however, the court was reluctant to delineate the specific parameters of a constitutional financing scheme. It emphasized that the primary role in such matters belonged to the legislature, stating that "the fashioning of a constitutional system for financing elementary and secondary education in the state is not only the proper function of the legislative department but its expressly mandated duty under the provisions of the constitution of Connecticut."\textsuperscript{174} Nevertheless, the court's holding clearly required that the new system rely less on local reve-

\textsuperscript{165} Id.
\textsuperscript{166} Id. at 367-68.
\textsuperscript{167} Horton v. Meskill, 376 A.2d 359, 373 (Conn. 1977).
\textsuperscript{168} Id. at 374.
\textsuperscript{169} Id.
\textsuperscript{170} Id. at 374-75 (citations omitted).
\textsuperscript{171} Id. at 376.
\textsuperscript{172} Horton v. Meskill, 376 A.2d 359, 375 (Conn. 1977).
\textsuperscript{173} Id. at 376.
\textsuperscript{174} Id. at 375.
nues and produce a more equal distribution of educational resources.

a. Interdistrict Disparities

Percentile comparison analysis demonstrates that Connecticut reduced interdistrict disparities by approximately 35 percent between the 1977-78 and 1991-92 school years. In 1977-78, the wealthiest 5 percent of Connecticut's school districts spent just over twice as much per student as the poorest 5 percent. By 1991-92, the disparity had decreased to 66 percent, a reduction of 35 percent. Similarly, the discrepancy between the richest and poorest 20 percent of Connecticut's school districts decreased from 61 percent to 39 percent, also a reduction of 35 percent.
Table 2.E
Interdistrict Disparities in Net Current Expenditures Per ADM in Connecticut School Districts (500 or More Students)

<table>
<thead>
<tr>
<th></th>
<th>1977-78</th>
<th>1991-92</th>
<th>Reduction in Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wealthiest five percent</td>
<td>$4,980</td>
<td>$9,227</td>
<td></td>
</tr>
<tr>
<td>Poorest five percent</td>
<td>$2,469</td>
<td>$5,556</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>101.70%</td>
<td>66.07%</td>
<td>35.03%</td>
</tr>
<tr>
<td>Wealthiest ten percent</td>
<td>$4,735</td>
<td>$8,703</td>
<td></td>
</tr>
<tr>
<td>Poorest ten percent</td>
<td>$2,586</td>
<td>$5,708</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>83.10%</td>
<td>52.47%</td>
<td>36.86%</td>
</tr>
<tr>
<td>Wealthiest fifteen percent</td>
<td>$4,518</td>
<td>$8,381</td>
<td></td>
</tr>
<tr>
<td>Poorest fifteen percent</td>
<td>$2,668</td>
<td>$5,805</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>69.34%</td>
<td>44.38%</td>
<td>36.00%</td>
</tr>
<tr>
<td>Wealthiest twenty percent</td>
<td>$4,381</td>
<td>$8,180</td>
<td></td>
</tr>
<tr>
<td>Poorest twenty percent</td>
<td>$2,723</td>
<td>$5,877</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>60.89%</td>
<td>39.19%</td>
<td>35.64%</td>
</tr>
</tbody>
</table>

Gini coefficient analysis of interdistrict disparities reveals a slightly less significant reduction of inequality among Connecticut districts. For the 1977-78 school year, the Gini coefficient was 0.09714, while for the 1991-92

175. For Connecticut's definition of average daily membership, see supra note 129. Connecticut defines net current expenditures as:

[T]otal current educational expenditures, less expenditures for (A) pupil transportation; (B) capital expenditures for land, buildings, equipment . . . and debt service . . . (C) adult education; (D) health and welfare services for nonpublic school children; (E) all tuition received on account of nonresident pupils; (F) food services directly attributable to state and federal aid for child nutrition and to receipts derived from the operation of such services; and (G) student activities directly attributable to receipts derived from the operation of such services.


176. These figures are in January 1992 dollar values. The conversion factor from January 1978 dollars to January 1992 dollars was 2.21047. See supra note 153.

177. The Gini calculation for Connecticut school districts for the 1977-78 school year was based on the following figures:

Average net current expenditure per ADM = $1,566
Total sum of differences between pairs = 6,486,124
Number of school districts = 146

The Gini coefficient therefore equaled:

\[
\frac{1}{2(146^2 \times 1,566)} (6,486,124) = 0.097144853
\]
school year it was 0.07010. This constituted a 27.84 percent reduction in the Gini coefficient.

b. Increases in Per Pupil Expenditures

Unlike any of the other four states, per pupil expenditures in Connecticut school districts grew at a rate that substantially outpaced the nation as a whole. From the 1977-78 to the 1991-92 school year, the average current expenditure per ADA in Connecticut school districts grew in real terms from $4,337 to $8,308, an increase of more than 91 percent. Over the same time period, the national average for current expenditures per ADA increased by only 35 percent.

4. Washington

The constitutional flaw in Washington's school financing scheme was not that it relied too heavily on local property tax revenue but that it depended too much on special excess levies. Although the state provided school districts with basic funding, it required districts to fund the balance of their budgets through special levies. In the 1975-76 school year, excess levy revenue constituted more than 25 percent of the operating budgets of Washington school districts. The plaintiffs in Seattle School District No. 1 v. State therefore sought declaratory judgment invalidating the system because of its failure to provide a basic program of education as mandated by the state constitution. The plaintiffs had been particularly aggrieved by the system because, in 1975, two spe-

178. The Gini calculation for Connecticut school districts for the 1991-92 school year was based on the following figures:

\[
\text{Average net current expenditure per ADM} = \frac{1}{142} \\
\text{Total sum of differences between pairs} = 19,387,481 \\
\text{Number of school districts} = 142
\]

The Gini coefficient therefore equaled:

\[
\frac{1}{2(142^2 \times \$6,858)} \times 19,387,481 = 0.070100443
\]


cial excess levies had been rejected by Seattle voters. This had left the district in financial chaos, forcing the state legislature to extend emergency assistance so that the district could meet its immediate obligations.\footnote{182} The Supreme Court of Washington held that article nine, section one of the state constitution, which states that “[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders,”\footnote{183} was not merely a “preamble” but created a “judicially enforceable affirmative duty.”\footnote{184} Specifically, it required the state to provide a uniform system of public schools with regular and dependable sources of funding.\footnote{185} Special excess levy revenue was “neither dependable nor regular” because it was “wholly dependent upon the whim of the electorate and is then available only on a temporary basis.”\footnote{186} Because Washington’s system relied on such an irregular source of funding to discharge its “paramount duty” to provide primary and secondary education, the financing scheme was unconstitutional.\footnote{187}

The Washington court charged the legislature to enact a financing system that produced “fully sufficient funds for the ‘general and uniform system of public schools.’”\footnote{188} While rejecting the plaintiffs’ request that it adopt specific guidelines for the new system with respect to issues such as local control, staffing ratios and salaries, and specialized educational programs, the court directed the legislature to define and give “substantive content” to “a basic program of education.”\footnote{189} This meant that the legislature had a constitutional obligation to “make ample provision for the ‘basic education’ of [Washington’s] resident children through a general and uniform system supported by dependable and regular tax sources.”\footnote{190}

\footnote{182. \textit{Id.} at 98 n.15. In the 1975-76 school year, 40% of Washington students attended districts that had suffered levy failures. \textit{Id.} at 98.}
\footnote{183. \textit{WASH. CONST.} art. IX, § 1.}
\footnote{184. \textit{Seattle Sch. Dist. No. 1}, 585 P.2d at 85-86.}
\footnote{185. \textit{Id.} at 98.}
\footnote{186. \textit{Id.}}
\footnote{187. \textit{Id.} at 99.}
\footnote{188. \textit{Seattle Sch. Dist. v. State}, 585 P.2d 71, 95 (Wash. 1978).}
\footnote{189. \textit{Id.}}
\footnote{190. \textit{Id.} at 97.}
THE GOOD, THE BAD, AND THE UGLY 803

a. Interdistrict Disparities

Percentile comparison analysis showed that Washington roughly halved interdistrict disparities between the time of the court's decision in Seattle School District No. 1 and the 1991-92 school year. In the 1978-79 school year, the disparity between the wealthiest and poorest 5 percent of Washington's school districts was 73.13 percent. For the 1991-92 school year, the disparity was 35.54 percent, a reduction of 51.40 percent. Similarly, the disparity between the richest and poorest 20 percent of Washington's school districts decreased by 55.62 percent, from 45.31 percent to 20.11 percent.

<table>
<thead>
<tr>
<th></th>
<th>1978-79</th>
<th>1991-92</th>
<th>Reduction in Disparity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wealthiest five percent</td>
<td>$3,802</td>
<td>$4,409</td>
<td>51.40%</td>
</tr>
<tr>
<td>Poorest five percent</td>
<td>$2,196</td>
<td>$3,253</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>73.13%</td>
<td>35.54%</td>
<td></td>
</tr>
<tr>
<td>Wealthiest ten percent</td>
<td>$3,670</td>
<td>$4,294</td>
<td>54.24%</td>
</tr>
<tr>
<td>Poorest ten percent</td>
<td>$2,270</td>
<td>$3,349</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>61.67%</td>
<td>28.22%</td>
<td></td>
</tr>
<tr>
<td>Wealthiest fifteen percent</td>
<td>$3,505</td>
<td>$4,206</td>
<td>54.27%</td>
</tr>
<tr>
<td>Poorest fifteen percent</td>
<td>$2,318</td>
<td>$3,408</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>51.21%</td>
<td>23.42%</td>
<td></td>
</tr>
<tr>
<td>Wealthiest twenty percent</td>
<td>$3,438</td>
<td>$4,139</td>
<td>55.62%</td>
</tr>
<tr>
<td>Poorest twenty percent</td>
<td>$2,366</td>
<td>$3,446</td>
<td></td>
</tr>
<tr>
<td>DISPARITY</td>
<td>45.31%</td>
<td>20.11%</td>
<td></td>
</tr>
</tbody>
</table>

Table 2.F
Interdistrict Disparities in Net Cost Per Pupil Without Transportation\(^{191}\) in Washington School Districts (500 or More Students)

Gini coefficient analysis demonstrated an almost identical reduction in interdistrict inequalities. The Gini coefficient for Washington school districts in the 1978-79 school

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\(^{191}\) Neither Washington annual report provides a technical definition for net cost per pupil without transportation, nor does a definition appear in Washington's statutes.

\(^{192}\) These figures are in January 1992 dollar values. The CPI-U for January, 1979, was 204.7 (with 1967 dollars equaling 100). BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, CONSUMER PRICE INDEX NEWSLETTER (Feb. 1979). It was 413.8 for January 1992. BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, CONSUMER PRICE INDEX NEWSLETTER (Feb. 1992). Thus, the conversion factor for 1979 dollars to 1992 dollars was 413.8 over 204.7, or 2.0214949.
b. Increases in Per Pupil Expenditures

The growth of per pupil expenditures in Washington school districts lagged significantly behind the U.S. average. The average current expenditure per ADA in Washington school districts increased in real terms from $4,393 for the 1978-79 school year to $5,317 for the 1991-92 school year. This represented an increase of 21.03 percent. Meanwhile, current expenditures per ADA for the nation as a whole grew by 33.53 percent during the same period, from $4,083 to $5,452.

5. Wyoming

In 1978, several Wyoming school districts sought declaratory judgment that their school financing system violated the state constitutional guarantee of equal protection. In the 1977-78 school year, more than 65 percent of school funding came from local and county sources, the majority of which

193. The Gini calculation for Washington school districts for the 1978-79 school year was based on the following figures:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average net cost per pupil without transportation</td>
<td>$1,431.87</td>
</tr>
<tr>
<td>Total sum of differences between pairs</td>
<td>5,179,342</td>
</tr>
<tr>
<td>Number of school districts</td>
<td>155</td>
</tr>
</tbody>
</table>

The Gini coefficient therefore equaled:

\[
\frac{1}{2(155^2 \times 1,431.87)} (5,179,342) = 0.075279647
\]

194. The Gini calculation for Washington school districts for the 1991-92 school year was based on the following figures:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average net cost per pupil without transportation</td>
<td>$3,781.89</td>
</tr>
<tr>
<td>Total sum of differences between pairs</td>
<td>7,509,490</td>
</tr>
<tr>
<td>Number of school districts</td>
<td>164</td>
</tr>
</tbody>
</table>

The Gini coefficient therefore equaled:

\[
\frac{1}{2(164^2 \times 3,781.89)} (7,509,490) = 0.03691343
\]


196. See Washakie County Sch. Dist. No. 1, 606 P.2d at 310.
were property tax revenues.\textsuperscript{197} Assessed property valuation per pupil ranged from $10,899 to $209,543 among the districts, creating sizable interdistrict disparities in total revenues per ADM.\textsuperscript{198} "[T]he property-richer school districts uniformly ha[d] more revenue per student than the property-poorer ones."\textsuperscript{199} As a result, the "quality of a child's education in Wyoming, measured in terms of dollars available for that purpose, was dependent upon the property tax resources of his school district."\textsuperscript{200}

The Supreme Court of Wyoming found that education was a fundamental interest under the Wyoming constitution\textsuperscript{201} and that classifications based on wealth were constitutionally suspect.\textsuperscript{202} Because the state failed to demonstrate a compelling interest for the system, the court declared it unconstitutional.\textsuperscript{203} A scheme that "allot[s] more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of [valuable] property... make[s] the quality of a child's education dependent upon the location of private, commercial, industrial and mineral establishments," factors irrelevant to educational needs.\textsuperscript{204} Where the state conditions the right to education on a school district's property wealth, it "does not afford equal protection."\textsuperscript{205}

The court specified that its ruling did not invalidate any particular statute. Rather, it declared that, taken as a whole, "the entire system from organization of school districts through tax bases and levies and distribution of foundation funds" denied Wyoming students equal protection.\textsuperscript{206} Moreover, the court was reticent to outline precisely what charac-
characteristics the new system must contain. Clarifying that its holding did not require "that each school district receive exactly the same number of dollars per pupil as every other school district," the court emphasized that "[t]he ultimate solutions must be shaped by the legislature." The court's mandate to the Wyoming legislature was to enact a financing scheme consistent with the principle of fiscal neutrality: "[W]hatever system is adopted . . . it must not create a level of spending which is a function of wealth other than the wealth of the state as a whole."

a. Interdistrict Disparities

Percentile comparison analysis reveals that Wyoming made relatively small strides toward narrowing interdistrict funding inequalities. For example, for the 1977-78 school year, revenue per ADM for the richest 10 percent of Wyoming's school districts exceeded that for the poorest 10 percent by 103.28 percent. For the 1991-92 school year, the disparity was 92.37 percent, a reduction of only 10.56 percent. Similarly, the disparity between the richest and poorest 25 percent decreased by only 9.75 percent from 1977-78 to 1991-92, from 74.63 percent to 67.35 percent.

207. See id. at 335-36. The court stated:

Everything from the abolition of local school districts and placing all school administration on a statewide basis, to dividing the state into a few multi-county districts, to making all mineral, commercial and industrial property in the state subject to a state tax for school purposes have been suggested, but we make no recommendations in that regard.

Id. at 336.

208. Id. at 336.

209. Id.

210. Under Wyoming law, average daily membership "means the aggregate number of pupils present plus the aggregate number of pupils absent, divided by the actual number of days the school is in session for the year." WYO. STAT. § 21-13-101(a)(i) (1994). Revenue is simply presented as the sum of all local, county, state, and federal revenue. See Washakie County Sch. Dist. No. 1 v. Herschler, 606 P.2d 310, 338-39 (Wyo. 1980).
Gini coefficient analysis demonstrates a greater reduction of inequality among Wyoming school districts. The Gini coefficient for Wyoming districts in the 1977-78 school year was 0.12011.212 By 1991-92, the Gini coefficient fell to 0.09779,213 a decrease of 18.58 percent.

b. Increases in Per Pupil Expenditures

As in Arkansas, California, and Washington, the growth of per pupil expenditures for Wyoming school districts trailed the national average. Between the 1977-78 and 1991-92 school years, current expenditures per ADA in Wyoming school districts grew in real dollars from $4,321 to $5,355, an

---

211. These figures are in January 1992 dollar values. The conversion factor from January 1978 dollars to January 1992 dollars was 2.21047. See supra note 153.

212. The Gini calculation for Wyoming school districts for the 1977-78 school year was based on the following figures:

- Average revenue per ADM = $2,097
- Total sum of difference between pairs = 766,176
- Number of school districts = 39

The Gini coefficient therefore equaled:

\[ \frac{1}{(2(39^2 \times 2,097)) (766,176)} = 0.120107715 \]

213. The Gini calculation for Wyoming school districts for the 1991-92 school year was based on the following figures:

- Average revenue per ADM = $6,154
- Total sum of differences between pairs = 1,925,962
- Number of school districts = 40

The Gini coefficient therefore equaled:

\[ \frac{1}{(2(40^2 \times 6,154)) (1,925,962)} = 0.097793162 \]
increase of 23.93 percent. The average increase for current expenditures per ADA for all U.S. school districts was 35.29% over the same period.

IV. DISCUSSION

A. The Good: Reduction of Interdistrict Disparities

The study’s examination of interdistrict disparities shows that school finance reform undertaken in response to litigation has successfully narrowed spending gaps between rich and poor school districts. Although their measure of equalization varied, all five states included in the study reduced the inequalities between their affluent and poor school districts (see Table 3.A below). This held true under either percentile comparison or Gini coefficient analysis, indicating that equalization was comprehensive: disparities decreased between the poles of the expenditure spectrum as well as over the entire range of school districts.

<table>
<thead>
<tr>
<th>State</th>
<th>Reduction of Disparity Between Wealthiest and Poorest 5 Percent</th>
<th>Reduction of Disparity Between Wealthiest and Poorest 10 Percent</th>
<th>Reduction of Disparity Between Wealthiest and Poorest 15 Percent</th>
<th>Reduction of Disparity Between Wealthiest and Poorest 20 Percent</th>
<th>Reduction in Gini Coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>11.35%</td>
<td>18.29%</td>
<td>18.62%</td>
<td>18.25%</td>
<td>16.43%</td>
</tr>
<tr>
<td>California</td>
<td>Elementary: 12.75%</td>
<td>23.57%</td>
<td>26.55%</td>
<td>31.57%</td>
<td>19.90%</td>
</tr>
<tr>
<td></td>
<td>High School: 24.79%</td>
<td>24.93%</td>
<td>27.47%</td>
<td>25.66%</td>
<td>20.27%</td>
</tr>
<tr>
<td></td>
<td>Unified:19.91%</td>
<td>20.14%</td>
<td>21.26%</td>
<td>25.23%</td>
<td>19.72%</td>
</tr>
<tr>
<td></td>
<td>Connecticut: 35.03%</td>
<td>36.86%</td>
<td>36.00%</td>
<td>35.64%</td>
<td>27.84%</td>
</tr>
<tr>
<td></td>
<td>Washington: 51.40%</td>
<td>54.24%</td>
<td>54.27%</td>
<td>55.62%</td>
<td>50.96%</td>
</tr>
<tr>
<td></td>
<td>Wyoming: --</td>
<td>10.56%</td>
<td>9.65%</td>
<td>9.37%</td>
<td>18.58%</td>
</tr>
</tbody>
</table>

These findings are more impressive in light of recent research demonstrating that interdistrict disparities in the nation as a whole remained roughly constant during the 1980s. A study by Professor Wycoff indicates that spending inequalities between American school districts decreased only
slightly from 1980 to 1987. Meanwhile, a study by Professors Schwartz and Markowitz showed that, from the mid-1970s to the mid-1980s, disparities in per pupil expenditures actually modestly increased. These results are corroborated by data showing that local revenue as a percentage of non-federal funding for all U.S. public schools remained virtually unchanged between the 1982-83 and 1991-92 school years. Thus, as Professor Odden concluded, the available information indicates that interdistrict inequalities for the U.S. as a whole "did not change significantly" during this period.

Some of the studied states were more successful than others in narrowing interdistrict disparities. For instance, Washington roughly halved the disparities between its rich and poor school districts, and Connecticut reduced inequalities by nearly 35 percent. Meanwhile, Wyoming narrowed the spending gaps from the 1977-78 school year by only 10 to 15 percent. Moreover, it should be noted that even in states that substantially reduced inequalities, significant disparities in per pupil expenditures persisted. In California, for example, the Trona Unified School District spent $9,618 per pupil in 1991-92, while the Denair Unified School District expended only $3,387 per student. In Washington, the per pupil expenditure of Mercer Island School District was $4,649 while Mabton School District spent only $3,036 per student. And in Connecticut, Weston School District spent $9,907 per student in 1991-92 while Columbia School District spent only $5,223.

Despite these lingering inequalities, litigation-prompted finance reform substantially reduced interdistrict disparities in the five states as a whole, confirming school finance litigation’s ability to effectuate a more equitable distribution of educational resources. This finding dispels the fears articulated by some commentators that school finance litigation has been
plagued by a significant gap between right and remedy. To the contrary, each decision prior to 1984 led directly to greater equalization of educational funding among school districts by the 1991-92 school year.

B. The Bad: Rates of Increase for Per Pupil Expenditures

The findings from the second part of the study are more discouraging. They reveal that in four of the five studied states, educational spending grew at a slower pace than in the nation as a whole in the years between the court decisions and the 1991-92 school year (see Table 3.B below). Increases in current expenditures per ADA in Arkansas, California, Washington, and Wyoming all trailed the national average, and the disparity was substantial in each of the states except Arkansas. Funding for public schools in California, for example, grew at only half the rate of the national average between the 1977-78 and 1991-92 school years. Of the five states, only Connecticut exceeded the national average for increasing current expenditures per ADA, although it did so by a wide margin.

<table>
<thead>
<tr>
<th>State</th>
<th>Base Year of Study</th>
<th>National Average Increase</th>
<th>State Average Increase</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>1977-78</td>
<td>35.29%</td>
<td>18.11%</td>
<td>-17.18%</td>
</tr>
<tr>
<td>Washington</td>
<td>1978-79</td>
<td>33.53%</td>
<td>21.03%</td>
<td>-12.50%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1977-78</td>
<td>35.29%</td>
<td>23.93%</td>
<td>-11.36%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1983-84</td>
<td>26.73%</td>
<td>24.42%</td>
<td>-2.31%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1977-78</td>
<td>35.29%</td>
<td>91.56%</td>
<td>+56.27%</td>
</tr>
</tbody>
</table>

218. For instance, two commentators recently asserted: "The rise in litigation challenging school finance laws was a direct result of state legislators' unwillingness to initiate reform without political pressure or court intervention. Even with court intervention, the states have been slow to make changes." James & Hoffman, supra note 4, at 561; see also Note, Unfulfilled Promises: School Finance Remedies and State Courts, 104 Harv. L. Rev. 1072, 1078 (1991) ("Even when school finance plaintiffs emerge victorious from court . . . full constitutional redress is often more elusive.").

219. Whether reform has created as much equalization as reformers had hoped is a separate issue.
A majority of the states also slid in their national rankings for current expenditures per ADA over the relevant time periods. A year after the California Supreme Court decided *Serrano II*, California ranked twenty-first nationally in funding for public primary education, spending $1,864 per student annually. By the 1991-92 school year, California's place had fallen to thirty-second in the nation. Similarly, Washington ranked seventeenth in 1979, spending $2,173 per student. In 1991-92, it ranked thirty-first. Wyoming fell from eighteenth in 1977-78 to twenty-first in 1991-92, while Arkansas moved up just one place, from forty-fifth to forty-fourth. Connecticut stands in sharp contrast; as the only state to improve its ranking, it moved from seventeenth to first in the nation.

The study also revealed that, with the exception of Connecticut, educational funding generally increased the least in those states that reduced interdistrict disparities the most (see Table 3.C below). For instance, in California, where funding inequalities decreased by 30 to 35 percent, current expenditures per ADA increased in real dollars by only 18.11 percent, 17.18 percent below the national average. In fact, in three of the five states—California, Washington, and Wyoming—the growth of educational funding trailed the national average by more than 30 percent.

### Table 3.C

<table>
<thead>
<tr>
<th>State</th>
<th>Reduction in Disparity Between Wealthiest and Poorest Ten Percent</th>
<th>Reduction in Disparity Between Wealthiest and Poorest Twenty Percent</th>
<th>Reduction in Gini Coefficient</th>
<th>Increase in Current Expenditures Per ADA Relative to U.S. Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington</td>
<td>54.24%</td>
<td>55.62%</td>
<td>50.96%</td>
<td>-12.50%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>36.86%</td>
<td>35.64%</td>
<td>27.84%</td>
<td>+56.27%</td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elementary</td>
<td>23.57%</td>
<td>31.57%</td>
<td>19.90%</td>
<td>-17.18%</td>
</tr>
<tr>
<td>High School</td>
<td>24.93%</td>
<td>25.66%</td>
<td>20.27%</td>
<td></td>
</tr>
<tr>
<td>Unified</td>
<td>20.14%</td>
<td>25.23%</td>
<td>19.72%</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>18.29%</td>
<td>18.25%</td>
<td>16.43%</td>
<td>-2.31%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>10.56%</td>
<td>9.37%</td>
<td>18.58%</td>
<td>-11.36%</td>
</tr>
</tbody>
</table>
The study also demonstrated that the level of equality for the 1991-92 school year and recent growth in educational funding may be correlated, although this relationship appears to be much weaker than that between equalization and growth of educational spending (see Table 3.D below). Again, with the exception of Connecticut, educational expenditures generally expanded less in those states where funding was most equal. For instance, in Washington, the state with the lowest Gini coefficient for the 1991-92 school year (and therefore statistically the greatest level of equality across all school districts), educational funding grew by 21.03 percent in real dollars from 1978-79 to 1991-92. This compares to the average increase of 33.53 percent over the same period in all U.S. school districts. In California, the state with the third lowest Gini coefficient for the 1991-92 school year, the real growth of educational funding between the 1977-78 and 1991-92 school years was only half that for the nation as a whole.

Table 3.D
Levels of Equality and Rates of Increase for Current Expenditures Per ADA, Ordered by Level of Equality

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington</td>
<td>28.22%</td>
<td>20.11%</td>
<td>0.03691</td>
<td>-12.50%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>33.82%</td>
<td>23.83%</td>
<td>0.04318</td>
<td>-2.31%</td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td></td>
<td>-17.18%</td>
</tr>
<tr>
<td>Elementary</td>
<td>55.33%</td>
<td>35.72%</td>
<td>0.06664</td>
<td></td>
</tr>
<tr>
<td>High School</td>
<td>60.69%</td>
<td>42.82%</td>
<td>0.07425</td>
<td></td>
</tr>
<tr>
<td>Unified</td>
<td>63.08%</td>
<td>44.16%</td>
<td>0.07556</td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>52.47%</td>
<td>39.19%</td>
<td>0.07010</td>
<td>+56.27%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>92.37%</td>
<td>75.68%</td>
<td>0.09779</td>
<td>-11.36%</td>
</tr>
</tbody>
</table>

These correlations suggest a relationship between equality and educational funding that could seriously undermine the effectiveness of litigation-prompted school finance reform: reform that assures a more equal distribution of educational funding may trigger forces that pressure overall spending on public education downward. That is, the reduction of interdistrict disparities may be incompatible with maintaining the same level of financial commitment to public educa-
Connecticut, which has both increased spending and substantially reduced disparities, certainly illustrates that these goals are not necessarily mutually exclusive. Nevertheless, four of the five states conform to the pattern, suggesting there may be systemic, institutional forces that cause states to spend less on education as they attempt to equalize funding. Given existing budgetary and political constraints, states may be practically incapable of committing themselves simultaneously to both equality and excellence in public education.

C. The Ugly: Funding for Disadvantaged School Districts in California

The study's most troubling finding concerns the rather paltry growth in per pupil expenditures in California's poorest school districts. Despite gaining significant ground on the state's wealthier districts, funding for California's poorest school districts grew by only half the national average in the years subsequent to Serrano. For instance, between the 1977-78 and 1991-92 school years, per pupil expenditures in the poorest 15 percent of California's unified school districts grew by only 17.43 percent in real dollars, and spending in the poorest 15 percent of California's elementary school districts increased by only 18.98 percent. During the same period, spending per student in United States schools as a whole increased by 35.29 percent. The same held true across the entire range of poor school districts in California: for each percentile group and for all three types of school districts,

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220. This is not to say that poor school districts have been disadvantaged by finance reform. Indeed, in every state except California, see infra Table 3.E, the growth of per pupil expenditures in poor school districts exceeded the national average. But this does not answer the more nuanced question of whether reform that requires greater equality—but which undermines a state's overall financial commitment to public education—is in the long-term interests of school districts in disadvantaged communities.

221. Cf. SALOMONE, supra note 115, at 9-13 (contending that, in practice, equality and excellence have been mutually exclusive goals in American public education, but this division is a false dichotomy). Professor Salomone contends "[t]he equality/quality debate actually has little merit" and "equality and quality are mutually supportive." Id. at 198-99. While this may be theoretically true, equality and true excellence in public schools may be incompatible in the context of current budgetary and political pressures. See infra text accompanying notes 222-232.
spending increased at a rate that significantly trailed the national average.

**Table 3.E**

**GROWTH OF PER PUPIL EXPENDITURES IN POOR SCHOOL DISTRICTS IN CALIFORNIA RELATIVE TO THE NATIONAL AVERAGE**

<table>
<thead>
<tr>
<th>Type of School Districts</th>
<th>National Average Increase</th>
<th>Increase in Poorest 5 Percent</th>
<th>Increase in Poorest 10 Percent</th>
<th>Increase in Poorest 15 Percent</th>
<th>Increase in Poorest 20 Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elementary</td>
<td>35.29%</td>
<td>21.41%</td>
<td>20.40%</td>
<td>18.98%</td>
<td>19.58%</td>
</tr>
<tr>
<td>High School</td>
<td>35.29%</td>
<td>27.83%</td>
<td>25.61%</td>
<td>25.17%</td>
<td>24.61%</td>
</tr>
<tr>
<td>Unified</td>
<td>35.29%</td>
<td>18.44%</td>
<td>17.91%</td>
<td>17.43%</td>
<td>17.03%</td>
</tr>
</tbody>
</table>

These results demonstrate that, from the perspective of poor school districts, the victory for reform in *Serrano* may have been Pyrrhic. Assuming that, absent reform, per pupil expenditures in California's poor school districts would have increased at the same rate as the national average, those districts would have actually spent significantly more per student in the 1991-92 school year under the old property tax system. In other words, while reform improved poor districts' standing relative to wealthy districts, it appears to have disadvantaged them in absolute terms. Of course, it is impossible to know how much educational funding would have grown in these districts had *Serrano* and school finance reform never occurred; it may be that forces completely independent of equality undermined California's financial commitment to public education. Nevertheless, these results call into question a foundational premise of school finance litigation—that litigation-prompted reform will necessarily bring greater resources to a state’s poorest school districts.

**D. Plausible Explanations**

The actual reasons for the lower rates of increase in educational spending in Arkansas, California, Washington, and Wyoming are unclear and perhaps unknowable. It could be that factors wholly unrelated to school finance reform—such as recessions in these states' economies or broad political pressure to alleviate tax burdens—have been principally responsible for the relative decline in these states' financial commitment to public education. But there are at least three plausible explanations for why equality (or equalization) and
growth of overall school funding may be negatively correlated. The most compelling explanation is that finance reform adopted to reduce interdistrict disparities decreases the incentive for taxpayers in wealthy school districts to pay into the public school system.\textsuperscript{222} Quite simply, a state can reduce inequalities between school districts in only one of three ways: (1) augmenting the resources of poor school districts, (2) reducing the resources of affluent districts, or (3) implementing some combination of the two. Given states' limited fiscal capacities, the first option is likely a nonstarter; states forced to reform their financing schemes almost certainly will not have the resources to raise poor school districts' budgets to a level commensurate with wealthy districts. As a practical matter, judicial mandates for greater equalization will therefore force states to redistribute resources in some way from affluent to poor districts.

As more local revenue is redistributed from wealthy to poor districts, the incentive for affluent school districts to maintain their pre-reform level of local taxation to support public education declines.\textsuperscript{223} Consider, for example, finance reform that redistributes 30 percent of local property tax revenue from wealthy districts to poorer districts throughout the state. Whereas prior to reform local schools retained all property tax revenue in affluent communities, now only seventy percent goes to local schools and the rest subsidizes poor districts. Although residents of wealthy districts (particularly those with school-age children) certainly retain an incentive to continue contributing to the public school system through local taxes, the "return" on their investment has been re-

\textsuperscript{222} See Stark, supra note 41, at 814 (stating a "worrisome possibility" for redistributive school finance reform is that "support for public schools will diminish if the direct connection between local wealth and local schools is severed").

\textsuperscript{223} See, e.g., Joe Ball, Efficient and Suitable Provision for the Texas School Finance System: An Impossible Dream?, 46 SMU L. Rev. 763, 799 (1992) ("Higher local taxes yielding less returns will discourage taxpayers from agreeing to increases in the already burdensome property tax."). The incentive discussed here is the direct personal benefit of better local schools. This applies most forcefully to those residents who have school-age children. Of course, all residents of a given state have a more diffuse interest in promoting an educated citizenry. The author contends the former interest is more likely to influence taxpayer preferences, so that measures that improve educational opportunities for children in the state as a whole by taking resources from wealthy districts will generally make residents of wealthy districts less inclined to favor taxation that supports public education.
duced by nearly a third. 224 That is, the connection between the burden of taxation and the benefit of better local schools is more attenuated because only seventy percent of the revenue is retained by the community. 225 Affluent communities will therefore be less responsive to the needs of public education; they will no longer have as strong an influence on the quality of their schools through funding and, consequently, will have less incentive to maintain or increase pre-reform levels of local taxation. 226 And as tax revenue from wealthy communities declines (or increases at a slower rate), the state will have less total funding available for public schools.

This explanation applies with particular force to the finance reform experience in California. Two years after the California Supreme Court decided Serrano II, California voters approved Proposition 13, which dramatically reduced the property tax burden on residents in affluent communities. 227 As Professor Fischel noted, "Proposition 13 was a rational response by voters who were faced with implementation of Serrano." 228 The judicial mandate for equality transformed local property taxes from a means to ensure quality in public schools into a "deadweight loss" for wealthy communities. 229 Fischel continued:

224. This effect will be particularly strong if the new financing scheme dictates that the amount retained by an affluent school district declines at the margin. In other words, if wealthy districts are progressively "taxed" by the new system, so that as they raise more local revenue they must contribute a higher percentage to the rest of the state, this disincentive effect will be particularly acute.

225. As one commentator explained:

[I]n the absence of a clear, local connection between burden (taxation) and benefit (education), continued support for basic school funding rests on a dubious foundation. Local taxpayers are likely to perceive the social benefit of their own local public schools, but may be more resistant to taxes which are funneled through the state capital to schools in other corners of the state. Therefore, the crucial variable in protecting local fiscal control is the local resident voter's perception as to where her property tax revenues are being spent. Stark, supra note 41, at 815.

226. Id. ("The theory behind local fiscal control is that communities will be most responsive to educational needs if given the means to express their support of local schools through locally assessed property taxes.").

227. See supra notes 147-150 and accompanying text.

228. William A. Fischel, Did Serrano Cause Proposition 13?, 42 NAT'L TAX J. 465, 467 (1989); see also James & Hoffman, supra note 4, at 571 (contending Serrano's mandate of equality "so shocked citizens that it provided the catalyst for Proposition 13 and other tax revolt measures").

229. Fischel, supra note 228, at 469.
In the absence of the court's equalizing remedy, a vote for Prop 13 would have been irrational for voters in more affluent communities; they would have been eliminating a system that provided net benefits to them, in that they got good schools without having to pay, through increased statewide taxation, for the schooling of people in poorer areas. After Serrano, however, this argument no longer applied... As a result, a large constituency that might have opposed Prop 13 was indifferent to or favored its passage.

This hypothesis is corroborated by polling data indicating that, out of all income levels, Californians in the highest brackets voted in the strongest majority for Proposition 13.231

This is not to say financing schemes that redistribute funds from wealthy to poor school districts will inevitably lead to reduced overall funding for primary education.232 It may be that, up to a certain point, the effective "tax" for cross-subsidization does not affect taxpayer incentives; it seems unlikely that a redistribution of only 5 or 10 percent of local property tax revenue would significantly affect the tax preferences of affluent communities. Or it may be that redistributive reform would actually increase the incentive for some affluent communities to tax themselves because it would require them to raise their tax rates to preserve pre-reform funding levels in their schools. Moreover, there may be a "tipping point" of equality—a level of equality up to which a state can both reduce inequality and increase per pupil expenditures, but beyond which taxpayers will no longer be willing to subsidize other school districts. In any event, it seems clear that the incentive for wealthy communities to sustain pre-reform levels of local taxation to support public education will generally decline as more of that revenue is redistributed throughout the state.

230. Id. at 467; see also Yudof et al., supra note 5, at 641 ("[S]ince under Serrano local voters could no longer 'buy' good local schools without supporting public education in poorer communities, the voters may prefer a system in which local property taxes are significantly reduced.").

231. Fischel, supra note 228, at 468.

232. Nor is it even clear that this is what actually happened in California. As one author contends, the hypothesis that Serrano caused Proposition 13 "is no doubt disputable." Stark, supra note 41, at 815. The same author admits, however, that the argument that taxpayer incentives with respect to supporting public schools are influenced by the connection between the benefit and the burden is a forceful one. Id.; see also supra note 225.
A second, related explanation for the negative correlation between equality and educational funding concerns the availability of private schools. Wealthy parents can always opt out of the public school system entirely by sending their children to private schools. There are clear financial disincentives to doing so; by choosing private schools, parents forego a benefit they will still have to pay for in taxes, and they take on the often significant burden of private school tuition. But assuming the family has sufficient resources, parents will favor private schools if they believe the difference in quality between private and public education is great enough to justify the additional costs. Thus, as one would intuitively conclude, the number of students who attend private schools is sensitive to parents' perceptions of the quality of local public schools.

Finance reform that redistributes resources from wealthy to poor school districts is apt to create the perception among many parents in wealthy communities that the quality of their public schools has declined. Indeed, if quality is equated purely with per pupil expenditures, reform in three of the five studied states appears to have adversely affected the quality of education in affluent school districts. In California, Washington, and Wyoming, the growth of per pupil expenditures in affluent school districts substantially trailed that in American school districts as a whole (see Table 3.F below). This result is not surprising in light of limited state resources. Because states have no choice but to implement some measure of redistribution, wealthy districts will have fewer resources under the new financing system than they would have had under the old one.

233. See Chubb & Moe, supra note 9, at 34 ("Because of the cost differential, the perceived value of private schools must far outweigh that of public schools if they are to win students.").

234. This does not mean that per pupil expenditures in affluent districts will decrease, although they might. Rather, it means that expenditures in these districts will increase more slowly than they would have absent reform.
Table 3.F

<table>
<thead>
<tr>
<th>State</th>
<th>Year of Study</th>
<th>U.S. Average Increase</th>
<th>Increase in Wealthiest Five Percent</th>
<th>Increase in Wealthiest Ten Percent</th>
<th>Increase in Wealthiest Fifteen Percent</th>
<th>Increase in Wealthiest Twenty Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>1977-78</td>
<td>35.29%</td>
<td>14.08%</td>
<td>8.49%</td>
<td>7.08%</td>
<td>6.63%</td>
</tr>
<tr>
<td>Elementary</td>
<td></td>
<td></td>
<td>11.42%</td>
<td>11.61%</td>
<td>11.36%</td>
<td>12.93%</td>
</tr>
<tr>
<td>High School</td>
<td></td>
<td></td>
<td>6.42%</td>
<td>7.43%</td>
<td>7.60%</td>
<td>6.07%</td>
</tr>
<tr>
<td>Unified</td>
<td>1978-79</td>
<td>33.53%</td>
<td>15.97%</td>
<td>17.00%</td>
<td>20.00%</td>
<td>20.39%</td>
</tr>
<tr>
<td>Washington</td>
<td>1977-78</td>
<td>35.29%</td>
<td>-</td>
<td>33.34%</td>
<td>32.22%</td>
<td>31.68%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1977-78</td>
<td>35.29%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

If the perception that the quality of local public schools has slipped becomes more widespread in affluent communities, more parents will send their children to private schools. In the short term, this will increase funding per student in the public school system: parents who send their children to private schools will still pay taxes, but the total revenue available for public education will be divided among fewer students. In the long term, however, it may seriously undermine a state's financial commitment to public education. As more parents place their children in private schools, fewer taxpayers— and, importantly, fewer wealthy taxpayers—will have a personal stake in the public school system. Once these parents are no longer directly concerned with the quality of public schools, they will have a personal financial incentive to see that equalization of per pupil expenditures occurs at the lowest possible level. In their participation in the political process, both at the local and state levels, these parents will be less likely to support tax measures that fund public education.

235. See Ball, supra note 223, at 786 (noting that, in response to a mandate for equality, "communities and individuals may look for escape routes" such as private schools). The flight of affluent parents' children from public to private schools in response to judicial mandates for equal educational opportunity has a strong precedent: in many southern communities, white parents removed their children from the public school system in response to court-ordered desegregation, and they largely remain in private schools today. See Peter Applebome, In Selma, Everything and Nothing Has Changed, N.Y. TIMES, Aug. 2, 1994, at A1, A12 (noting the schools in Selma, Alabama, "are generally still segregated, with the old white public schools virtually all black and the whites—working class as well as wealthy—in private academies").
More broadly, as more children in a particular community enroll in private schools, the community will be less inclined to tax itself at the same rate or to support statewide taxation that finances public schools. And if affluent communities' taste for taxation to support public education declines, funding for public schools will suffer. The result may be a sort of downward spiral: as enrollment in private schools increases, fewer taxpayers have an incentive to pay into the public school system, which in turn reduces the resources for public education and further encourages parents to send their children to private schools.

A third plausible explanation for the negative correlation involves the removal of responsibility for funding primary education from the local to the state level. To narrow interdistrict disparities, the state government must assume a greater role in financing primary education, both to redirect funds obtained from affluent districts and to supplement the resources of poor districts. For instance, before Serrano, only 44 percent of California public school funding came from the state government. By the 1991-92 school year, the state's share had grown to 85 percent—64 percent derived directly from state general revenues and 21 percent from property tax revenue controlled by the state. Similarly, in response to the decision in Seattle School District No. 1, Washington has

236. This effect is likely to be strongest in wealthy communities, where more taxpayers will perceive that reform has reduced the quality of public schools, and where more parents can afford private education for their children. The loss of funds for primary education could therefore be significant, because a small percentage drop in the property tax in affluent communities would mean a substantial loss of property tax revenue to the state as a whole.

237. Cf. Ball, supra note 223, at 786 (contending “concerned parents may increasingly seek out private schools, pushing their legislators to increase financial incentives for entering private schools at the expense of public school funding”).

238. See Faber, supra note 8, at 451-52 (stating recent court challenges to school financing systems have led to less local control and greater state control of public education); Odden, supra note 5, at 5 (noting the states' share of primary educational funding increased an average of 40% to 47% during the 1970s, and this “expanded role is not surprising since only the state can equalize local education tax bases or school spending across districts”).

239. Picus, supra note 147, at 1; see generally Henke, supra note 10, at 1 (noting in the wake of Serrano and Proposition 13, school funding has become “centralized,” so that “[t]he state controls the revenue and decides how much each district shall have”).
almost completely centralized funding for primary education in the state government.\textsuperscript{240}

The centralization of funding for public schools at the state level can retard the growth of funding for public schools in two ways. First, if primary education becomes one of many items in a state budget, its funding will be more susceptible to reduction through the state budget process. At the state level, education must compete with several additional pressing social concerns, such as crime prevention, health care, and various other state responsibilities.\textsuperscript{241} This stands in sharp contrast to public schools' place in a local government's budget, where funding for public schools is the most prominent of only a handful of budgetary obligations.\textsuperscript{242} In addition, decisions concerning budget allocations and appropriations tend not to be as political at the local level. School boards and local governments are not subject to the massive popular pressures or organized political action that influences state legislators. And these pressures, as they exist at the state level, are likely to steer funding away from primary education.

Second, states that centralize school funding at the state level make funding for primary education more vulnerable to fluctuations in the state economy.\textsuperscript{243} As the state assumes a larger role in financing primary education, public schools will rely less on property tax revenue—a means traditionally left exclusively to local governments—and more on those means traditionally available to state governments, such as income and sales taxes.\textsuperscript{244} The revenues produced by these sources vary more widely with the health of the state's economy than

\textsuperscript{240} Picus, supra note 147, at 4 (stating Washington "has virtually eliminated the role of local school districts in school funding").

\textsuperscript{241} See Stubbs, supra note 90, at 341 (stating funding at the state level for "education reform will have to compete with demands on the state treasury for more prisons, better health benefits, higher pay for state employees and many other programs").

\textsuperscript{242} For instance, in New Jersey, roughly 60% of local property tax revenue goes toward funding public elementary and secondary schools. Iver Peterson, New Jersey Shows Links in Tax Are Complex, N.Y. Times, Feb. 20, 1995, at B1, B5.

\textsuperscript{243} See EdSource, supra note 105, at 17 (noting "[t]he dependence of education on the state's budget is problematical" because of its reliance on "the health of the state's economy").

\textsuperscript{244} This is precisely what has occurred in California, where state revenues and lottery proceeds constituted 63.6% of school funding for the 1991-92 school year. See supra note 150 and accompanying text.
does property tax revenue because real estate values are more stable than income or consumption.\textsuperscript{245} Thus, as the state’s responsibility for funding primary education increases, the amount of revenue available to public schools will become more sensitive to fluctuations in the state’s economy.

Whatever its causes, the relationship between equalization and educational funding could be crucial to the future of school finance litigation. If redistributive reform does in fact trigger forces that retard educational spending, reformers should attempt to anticipate the consequences of these forces, both in deciding whether to pursue litigation and in designing new financing schemes. It may be that these forces only exist under certain circumstances that happened to prevail in Arkansas, California, Washington, and Wyoming. Or it may be that, through creative financing systems, their detrimental effects can be circumvented. It may even be that these states’ deflated rates of increase in educational spending were unrelated to equalization, although intuitively this seems unlikely. Regardless, reformers aiming to improve the educational opportunities of disadvantaged children should earnestly confront the questions raised by these results. Without careful advance consideration, victories in the name of reform could bring more harm than good to those students most in need.\textsuperscript{246}

V. CONCLUSION

This study’s analysis of per pupil expenditures in five states that have implemented litigation-prompted reform yields bittersweet results for proponents of school finance litigation. All five states reduced funding disparities between wealthy and poor school districts, demonstrating that litiga-

\textsuperscript{245} EdSource, supra note 105, at 5.

\textsuperscript{246} Two authors who generally support school finance litigation have recently been highly critical of legal actions initiated by overly “zealous” reformers:

Oftentimes, these suits emerge largely based on anecdotal data and simplistic statistical overviews. In fact, in several suits currently in existence, plaintiffs’ arguments are ill-conceived and poorly designed, perhaps even based on faulty methodology. In these instances, if plaintiffs prevail, greater inequities may emerge. In certain instances, the relatively poorer districts would in fact be harmed by such judicial actions.

Wood & Thompson, supra note 2, at 98-99.
tion-prompted reform has produced a more equal distribution of educational resources. But the study also reveals a troubling relationship between equalization and educational expenditures: in four of the five states, overall educational spending increased at a rate below the national average. This suggests it may be impracticable for states to commit themselves financially both to equality and to excellence in public education. Judicial mandates that require a reduction in interdistrict disparities may set forces in motion that undermine overall funding for public schools. In some cases, such as California, these forces may so diminish a state's financial commitment to public education that reform leaves poor school districts with fewer resources than they would have had under the old financing scheme.

This study does not show that this response is inevitable. The experience of Connecticut clearly demonstrates that states can reduce inequalities while increasing educational funding at a rate well above the national average. Nor does the study necessarily demonstrate a causal relationship between litigation-prompted reform and education spending. It may be that forces unrelated to school finance reform have undermined these states' commitment to funding public education. Nevertheless, four of the five states conformed to the negative correlation. These results, combined with the credibility of the plausible explanations for the relationship, should give reformers reason to carefully reexamine whether school finance litigation is truly an efficacious means to expanding educational opportunities.

In his dissenting opinion in Rodriguez, Justice Thurgood Marshall wrote that the Court's decision was "a retreat from our historic commitment to equality of educational opportunity and [an] unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens." Twenty years later, few would dispute the assertion that America's public schools are shortchanging their disadvantaged and minority students.


248. For vivid descriptions of the inequality of educational opportunity for students attending inner-city schools with predominantly minority student bodies, see generally ALEX KOTLOWITZ, THERE ARE NO CHILDREN HERE: THE STORY OF TWO BOYS GROWING UP IN THE OTHER AMERICA (1991), and KOZOL, supra note 1.
Nor would many deny the importance of education in providing each child "an equal start in life." But the unfortunate and even brutally unfair condition of public education in disadvantaged communities does not necessarily validate the wisdom of pursuing school finance reform in the courts. Poor children clearly deserve better educational opportunities than states currently afford them, but whether school finance litigation is an effective or efficient means to create such opportunities remains an open question.