

School Finance Reform: The Role of U.S. Courts From 1968-1998

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ABSTRACT

Fiscal disparities in financing education have been the focus of court challenges in every state and have influenced school finance legislation for decades. Over time, tensions in the court have shifted from equity to adequacy of funding and from issues of race to issues of wealth. This article traces the shift by revisiting relevant court decisions that impacted school finance from 1968-1998. With an understanding of the courts' role in finance reform, current and aspiring school leaders can better understand how the issues of equity, adequacy, and wealth have influenced school finance policy.

Background

At the heart of American education is the long-held belief that local communities should control the education of school-aged youth. Because the method of funding public schools originally was considered a local responsibility, for many years educational spending decision were based solely on the amount of money that each district had available and how local officials wanted to spend it (Education Commission of the States, 2005).

When states began to provide public education in the mid-1880s, state legislatures added clauses in their constitutions that clarified their state's role in maintaining a public system of schooling (Augenblick, Myers, Anderson 1997). From then forward, the fiscal responsibility for funding public education was shared between the state and local taxpayers. The revenues varied greatly from state to state, as did the decisions about which schools would receive funding and how much.

The 1950s ushered in a dramatic time of change and clearly demonstrated the power of the courts to intervene and set the direction for school finance reform. In *Brown v. Board of Education of Topeka*, the U.S. Supreme Court ruled that no child, regardless of race or national origin, will be deprived equal protection of the laws under the Fourteenth Amendment of the U.S. Constitution. The *Brown* decision emphasized the significance of a proper and equal public education for all citizens. Chief Justice Earl Warren was clear in his opinion.

Today, education is perhaps the most important function of state and local governments...In these days, it is doubtful that any child may reasonably be expected to succeed in life if ... denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is the right which must be made available to all on equal terms (*Brown v. Board of Education of Topeka*, 1954).

The *Brown* ruling, and others that followed, mandated schools to provide equitable offerings to all students and set in motion an even greater fiscal responsibility of states for children's education. As states became more active in financing public education, state officials began designing funding formulas to collect and distribute monies to districts in an equitable way. This task was challenging because the ability to finance public education was heavily tied to the collection of assessable property values in each local district whose contributions differed according to the wealth of each community.

Although the intended outcome of the states' fiscal formulas was to provide educational opportunities for all children, in actuality, there continued to be wide variations in per-student funding. These fiscal disparities became the focus of court challenges in every state and formed the basis of school finance reform for decades (Biddle and Berliner, 2002; Odden, 2003). Over a number of years, as states tied their funding plans to property values in local districts, the equity tensions in school finance reform began to shift from race to wealth, and the focus of litigation shifted from issues of equity to issues of adequacy of funding.

This article traces the shift by revisiting some of the relevant court decisions that impacted school finance from 1968-1998. Although the judicial and legislative branches of government perform different functions in the formation of school finance policy, court rulings can stimulate legislation that alters the direction of reform efforts. With an understanding of the courts' role in school finance reform, current and aspiring school leaders can better understand the issues of equity, adequacy, and wealth that preceded the recent No Child Left Behind (NCLB) legislation.

Early Legal Challenges

The first legal challenge to school finance systems occurred in 1968. The Detroit School Board brought a suit against the state of Michigan asking that the state be required to disperse funds according to the educational needs of the particular school districts. Though the suit failed, it was the first of subsequent challenges based on “educational need.”

Soon after the Michigan case, a suit was brought against the Illinois method of school finance. In *McInnis v. Shapiro* the plaintiffs claimed the state’s system to finance education was inequitable in that it allowed great discrepancies in expenditures per student and did not distribute funds based on the educational needs of the districts. *McInnis* and the subsequent *Burruss v. Wilkerson*, an almost identical case in Virginia, were dismissed as the court ruled that a “need standard is impossible for judicial measurement or implementation due to a lack of manageable standards” (LaMorte, 1996, p. 341).

In stating its decision in *McInnis*, the court held that, “the lack of judicially manageable standards made non-justifiable a controversy as to the constitutionality of Illinois statutes permitting wide variations in expenditures per student from school district to school district.” The court also ruled: “the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils’ educational needs” (*McInnis v. Shapiro*, 1969). With a lack of data, quantifiable standards, and a clear consensus on the aims of these lawsuits, it became obvious the “educational need” reformers would have to find another approach.

Although *McInnis* and *Burruss* did not specifically question the constitutionality of tax limits, taxing equity surfaced as the next legal challenge to school finance in *Askew v. Kirk*. The plaintiffs, Florida students and taxpayers, claimed that state-imposed tax rate limits disproportionately restricted educational opportunities in poor districts by limiting public school revenue, thus exaggerating inequities of educational expenditures. The U.S. Supreme Court remanded the case to the state court. The Florida legislature eventually amended the tax law and the suit was withdrawn (*Askew v. Kirk*, 1971). However, the issue of tax equity was now a major issue of contention.

Serrano v. Priest

In the 1971 landmark case, *Serrano v. Priest*, the plaintiffs challenged the school funding program in California and provided the courts with the manageable standards missing in *McInnis* and *Burruss*. Plaintiffs demonstrated that the system of financing in California allowed great disparities in funding from district to district. In the richest school districts, elementary school children were receiving an education at an annual per-child expenditure level of \$2,500, while children in the poorest district were receiving a \$400 education, a disproportion of more than 6 to 1. The plaintiffs also produced evidence that in many of the high expenditure districts, property owners were paying lower school tax rates than the taxpayers in the poor districts, yet, realizing greater school revenues (Silard, 1973, p.9)

The plaintiffs in *Serrano* alleged that students’ equal protection rights were violated under the Fourteenth Amendment of the United States Constitution and under

provisions of the California Constitution. The California Supreme Court agreed, establishing the principle of fiscal neutrality under which states may not make the quality of a child's education dependent on the wealth of the child's school district, but rather it must be based on the wealth of the state as a whole. In addition, the Court declared education as a constitutionally protected fundamental right and wealth as a suspect classification, requiring judicial review known as strict scrutiny under which the state must provide a compelling interest to justify the state action or law.

Precedent had been set. Education clearly was established as a fundamental right, protected by the equal protection clause of the Fourteenth Amendment. Furthermore, the state could not pass strict scrutiny judicial review, eliminating individual wealth as a basis for school financing.

Serrano v. Priest was the first in a wave of lawsuits filed on behalf of individuals in low-wealth districts who argued that their schools were unable to provide as good an education to students as wealthier districts (Education Commission of the States, 2005). Soon after the decision, similar suits were filed in about three dozen states throughout the country. But the victory was short-lived.

San Antonio Independent School District v. Rodriguez

Two years following the *Serrano* judgement, the U.S. Supreme Court reversed a lower court ruling in *San Antonio Independent School District v. Rodriguez*. With its reversal, the Court struck down the notion that education is a fundamental right and concluded that the Texas system of school finance did not operate to the disadvantage of a suspect class.

In *Rodriguez*, the plaintiffs attempted to demonstrate that inter-district inequalities were a result of state law and that by using property tax as a revenue source wealthy districts could raise more money with less effort. Though poorer districts were permitted to raise taxes to produce more revenue, additional tax increases were politically and economically impossible.

Aware that the state would have difficulty passing strict scrutiny, the plaintiffs tried to show that the Texas system created a suspect class of people by discriminating on the basis of wealth and residence. Furthermore, the plaintiffs claimed that education was a fundamental interest because of its social importance and value in exercising one's constitutional right of free speech. Finally, the plaintiffs tried to demonstrate that the Texas system did not meet standards of fiscal neutrality established in *Serrano* and that the differences in spending resulted in differences in the quality of educational services.

In its opinion, the court found that although the plaintiffs were receiving a poor education, they were not being denied an education entirely and were educated at a level that allowed them to exercise their First Amendment freedoms. Thus, equal protection was not violated and, according to the court, the constitution does not require equality or precisely equal advantages. In its ruling the court not only reversed the earlier decision but constitutionally upheld unequal treatment based on one's wealth:

It has simply never been within the constitutional prerogative of this court to nullify statewide measures for financing public services merely because the burdens of benefits thereof fall unevenly depending upon the relative

wealth of the political subdivision in which citizens live (San Antonio Independent School District v. Rodriguez, 1973).

The opinion also cited a study of Connecticut school districts that concluded “it is clearly incorrect to contend that the ‘poor’ live in ‘poor’ districts...Thus, the major factual assumption of *Serrano* --- that the educational financing system discriminates against the ‘poor’ --- is simply false in Connecticut.”

Although the significance of education was recognized, the court’s opinion broke sharply from *Serrano* and Chief Justice Warren’s opinion in *Brown* by explaining that education is no more important than many other services provided by the state and is therefore not a fundamental interest. The court also stated that the finance system does not create a suspect class because, although receiving an education of poor quality, they were not denied an education. In fact, the opinion continued, there is “considerable dispute” as to whether there is a relationship between expenditures and the quality of education. Finally, the court cited local control as a rationale for the finance system and emphasized that it is not the role of the court to dictate to the state courts and legislatures in matters of education.

Rodriguez sent a strong message. The federal courts were no longer sympathetic to school finance reform issues. The courts made it clear that school finance reform should come from state legislatures, not federal courtrooms. Subsequently, the focus of legal challenges shifted to state constitutional provisions and responsibilities.

School Finance Reformers Challenge State Constitutions

Advocates for school finance reform asked the courts to test if the fiscal policies of states satisfied the educational expectations that were expressed in state constitution. Plaintiffs alleged that states’ funding plans violated the educational articles in the state constitutions by not producing educational systems that met the specific mandates expressed in the documents. For example, in Arkansas the state constitution mandated the state to “maintain a general, suitable and efficient system of free schools.” Delaware had to establish and maintain a “general and efficient system of free schools.” Colorado’s constitution required the system to be “thorough and uniform.” Maryland’s state public school system must be thorough and efficient” and Virginia must “ensure a system of high quality.”

Plaintiffs who brought finance litigation to the courts claimed that discrepancies in funding and resources resulted in differences in educational quality and, therefore, did not create systems that were “thorough,” “efficient,” “uniform,” or of “high quality.” And, many of the courts agreed. As reformers began to achieve success in courts at the state level, suits were filed in almost every state.

During the remainder of the 1970s and into the 1980s, the constitutionality of school finance systems was challenged in 17 states. Some systems were found to be unconstitutional and were required by the court to change the financing structure. These states were Arkansas, California, Connecticut, New Jersey, Washington, West Virginia, and Wyoming. The finance systems of Colorado, Georgia, Idaho, Illinois, Maryland, Michigan, New York, Ohio, Oregon, and Pennsylvania were upheld by the highest courts (Hunter, 2005; Swanson & King, 1991, p.226).

Finance reformers received a significant and decisive boost when the Supreme Court of Kentucky ordered the entire revamping of the state's public school system in *Rose v. The Council of Better Education*. In its decision the court held that the Kentucky General Assembly, through its school finance plan, did not meet its obligations, as stated in the state constitution, to provide an "efficient" school system.

It is crystal clear that the General Assembly has fallen short of its duty to enact legislation to provide for an efficient system of common schools through the state. In a word, the present system of common schools in Kentucky is not an "efficient" one in our view of the clear mandate of Section 183. The common school system in Kentucky is constitutionally deficient (*Rose v. The Council of Better Education*, 1989).

The court also found that education was a fundamental right in Kentucky and its financing plan was discriminatory and in violation of the equal protection provisions in the state constitution. "Lest there be any doubt," wrote the court in its opinion, "the result of our decision is that Kentucky's entire system of common schools is unconstitutional" (*Rose v. The Council of Better Education*, 1989).

Other states also had their fiscal plans declared unconstitutional by the courts. One example was Texas. In *Edgewood Independent School District v. Meno*, the Texas Supreme Court gave state legislators a clear message for fiscal reform by describing its state finance plan in no uncertain terms:

Plainly, it is the Legislature's duty to make suitable provision for an efficient system of public education in Texas. Given the prominence of this concern throughout Texas history, there can be no dispute that education of our children is an essential Texas value. An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system—instruction and facilities—are inseparable.

The existence of more than 1,000 independent school districts in Texas, each with a duplicative administrative bureaucracy, combined with widely varying tax bases and an excessive reliance on local property taxes, has resulted in a state of affairs that can only charitably be called a "system" (*Edgewood Independent School District v. Meno*, 1995).

In the 1960s, the legal challenges for the court involved the distribution of state funds based on the needs of the student population. In the 1970s, school finance reform focused on the equitable distribution of funding to bring more of a balance to the wide variations in per-student funding that existed in most states. During this decade lawsuits were filed to ensure that students from low-wealth districts received as good an education as students from high-wealth districts. In the 1980s, equity issues were still filed in state courts but the focus was on improving schools, after the *Nation At Risk* report questioned the academic achievement levels of students across the nation. Throughout the 1990s, the

finance reform agenda shifted again to include litigation that linked state funding directly with educational programs and facilities construction. In these lawsuits, courts were asked to rule on the adequacy of state funds to help districts actually achieve the educational mandates required by the states. In the years following the *Brown v. Board of Education of Topeka* decision, the major court challenges shifted from issues of equity to the adequacy of funding and from issues of race to issues of wealth. The court's role was mixed in shaping the direction of reform. In some cases, the courts were dramatically influential, such as in Texas and Kentucky. In other rulings, the courts took a hands-off approach. What was consistent with the courts was their continued respect for the role of legislatures to make and oversee the implementation of policy.

Attacks on school finance systems occurred at both the federal and state levels. In federal courts, plaintiffs alleged that funding plans violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. In state courts litigation challenged whether states upheld the educational provisions espoused in their state constitutions. What did *not* emerge from these cases was a standard by which to determine the levels of equity and adequacy. Even the definition of the terms varied from state to state. Consequently, what was considered equitable in one state may have been considered inequitable in another.

Inconsistencies, Disuniformity, and Conflicting Court Rulings

Clearly the courts from 1968 – 1998 were inconsistent in regards to the constitutionality of school finance system. In situations where courts agreed there were inequities, yet failed to rule these systems unconstitutional, school finance reform evolved slowly, if at all.

Throughout this time period, advocates of school finance reform maintained that using the local property tax as the major source of revenue was unfair because of the disparity in both taxable wealth and educational costs from district to district. As a result, finance reformers claimed that states' fiscal systems created and sustained inequalities in educational resources and opportunities. A review of the litigation that challenged inequalities in states' fiscal plans also showed inconsistencies, disuniformity, and conflicting decisions by the courts themselves.

For example, *Scott v. Commonwealth of Virginia* is one of a number of cases where the courts conceded that the state's system of financing schools had created numerous inequities between wealthy and poorer school districts, yet, ruled in favor of the defendants. In *Scott*, the plaintiffs alleged the state constitution mandated "substantial equality" in spending programs. In their claim, the plaintiffs cited the provision in the Virginia Constitution that required the General Assembly to "seek to ensure that an educational program of high quality is established and continually maintained" (*Scott v. Commonwealth of Virginia*, 1994). Plaintiffs alleged that the Virginia system of financing public schools violated the state constitution by denying "educational

opportunity substantially equal to that of children who attend public schools in wealthier divisions” (Scott v. Commonwealth of Virginia, 1994).

In its opinion, the court stated that the system of funding districts at the level of minimum statewide educational standards resulted in per-pupil expenditures that ranged from \$2,895 to \$7,268. School districts with low fiscal capacities paid teachers much lower salaries than districts with high fiscal capacities. (The average salaries for classroom teachers were 39 percent higher in certain localities than in others.) The court also found great disparities in instructional personnel/pupil ratio between the ten wealthiest and the ten poorest districts in Virginia. Wealthier districts had an average ratio of 24 percent higher than in poorer districts. Spending for instructional materials was nearly 12 times greater in some school divisions than in others and school divisions with high fiscal capacities had instructional programs with greater breadth and depth than school districts with low fiscal capacities.

Despite these illustrations of the inequity of the Virginia public education finance system, the court held that the system was not unconstitutional. In fact, the court determined the state had no constitutional responsibility to fund schools equally. The courts upheld the defendant’s contention that the state constitution did not mandate equal spending. The court also ruled that “an ‘effective system’ does not require substantial equality” and the state had no obligation to fund public schools equally beyond the level that ensured minimum educational standards (Scott v. Commonwealth of Virginia, 1994). Again, *Scott* is an example of how courts conceded that state school finance systems created great disparities in revenue, resulting in great differences in expenditures, but failed to regard the funding systems as unconstitutional.

In other cases where the courts viewed education as necessary for citizens to exercise their First Amendment rights, such as free expression, courts tended to rule that education was a fundamental right, protected by the Fourteenth Amendment. When courts considered finance systems as discriminatory, causing disadvantages to a suspect class, then strict scrutiny revealed the funding systems were unconstitutional. At the same time, other state courts ruled that financing schools unequally was not unconstitutional. In these cases the courts claimed that, while school funding was required by law, equal funding was not.

In some instances courts found funding systems to be unconstitutional, but allowed states to take years to repair the problem. An example is *Abbott v. Burke*, a 1994 judgement in which the Supreme Court of New Jersey ruled that the state system of school finance was in violation of the state constitution because it failed to assure equal expenditures. The court refused to intervene. Instead, it gave the state until the 1997-98 school year to improve its system. In its opinion, the court stated that the reliance on property tax to raise school revenue created an unfair disadvantage to poorer districts. While the court claimed that equality of money did not assure equality of education, it nevertheless recognized the state’s responsibility to see that revenue was well spent. In its opinion on *Abbott*, the court cited another New Jersey case, *Robinson v. Cahill*:

“...obviously, equality of dollar input will not assure equality in educational results...But, it is nonetheless clear that there is a significant connection between the sums expended and the quality of the educational opportunity” (Robinson v. Cahill, 1973).

In *Abbott*, the court made a candid observation regarding the need to fund schools sufficiently, both for the children and for society as a whole:

Those students in the special needs (poorer) districts, given their educational disadvantages and the circumstances of their environment, will not be able to compete as workers. They are entitled at least to the chance of doing so, and without an equal educational opportunity, they will not have that chance. Their situation in society is one of extreme disadvantage; the state must not compound it by providing an unequal opportunity to take advantage of the gift of education. So it is not just that their future depends on the State, the state’s future depends on them (*Abbott v. Burke*, 1994).

Summary

A review of school finance litigation shows that legal challenges to public education finance systems historically have focused on four basic legal questions: (a) does the operation of a finance system that creates unequal educational opportunities represent a violation of the Equal Protection Clause of the Fourteenth Amendment, (b) is public education a fundamental right requiring strict scrutiny under the Equal Protection Clause, (c) are the revenue formulas based on wealth thus representing a suspect classification, (d) do these systems violate the provisions of the various state constitutions requiring a thorough and adequate education? A brief look at how these questions played out in federal and state courts between 1968 and 1998 was a major focus of this article.

By the late 1990s, the funding plans of nearly every state had been challenged in court. Plaintiffs had won at the state supreme court level in eight states and failed in 11. In six other states, plaintiffs were successful, however, further compliance litigation was filed. And, in six states the plaintiffs lost cases but filed additional complaints.

Thirteen state supreme courts ruled that education was a fundamental constitutional right, while in 10 states the supreme courts declared it was not. Appellate courts sided with the fundamental constitutional right approach in seven other states, while siding with the defendants in two states (Hickrod, 1995; Whitney & Verstegen, 1997).

Clearly the courts from 1968 – 1998 had been inconsistent in their rulings on the school finance systems. In some court rulings, the direction for finance reform was clear and was followed up with legislative policy revisions by state legislatures. In other cases, rather than indicating a distinct direction to follow, the disuniformity of court rulings

caused confusion among both reformers and opponents of finance reform. With courts conceding the funding inequities, yet often failing to rule state systems unconstitutional, reform came slowly in most states, if at all. The inconsistent and contradictory reasoning behind the various school finance decisions suggests there was not a consensus among the judiciary to act and protect the equal rights of all school-aged youth, regardless of wealth.

Therefore, the issues faced by courts and legislatures in 1998 was no longer how to achieve racial balance, as it was a half century ago. Rather, the issue had become how to achieve fiscal balance, with more equitable and adequate funding for both rich and poor school systems.

In his book, *Savage Inequalities*, Johathan Kozol (1991) described the system of financing public education as one that not only created and perpetuated inequality in education, but also demands it.

While government does not assign us to our homes, it does assign us to our public schools. Unless we have the wealth to pay for private education, we are compelled by law to go to public school and to the public school in our district [or neighborhood] (p.56).

Conclusion

In 1998, there was no common requirement or expectation for equity in school funding among states to address the schooling of all school-aged children across the United States, regardless of the level of wealth of their families, communities or school districts. Furthermore, there was no required basic level of professional competence expected of all educators who work with our nation's youth, and no common level of academic competence expected of all students regardless of their geographical or financial conditions. Whether or not there should be expectations in any of these areas beyond each state's border, or to what extent, would have produced a heated debate among many Americans.

In 2001, federal policy makers of the United States made the decision that too many school-aged children were at risk within a system whose states and state courts couldn't agree with some consistency on how to address the educational issues surrounding school finance revenue sources and distributions methods. The result of their decision was the No Child Left Behind (NCLB) legislation. Although the legislative mandates to states are not supported with additional federal dollars, this legislation, as with many of the previous court decisions on school finance, has the intent of causing state legislatures to re-conceptualize, revise, and redesign their methods for funding education. In other words, it is time for another shift in school finance reform. As in the past, the direction of school finance reform will be determined by the goal of the reformers, the issues they present to the court, and the social consciousness of state legislatures.

John Silard, a legal advocate for school finance reform, suggests that the states are required to provide students an education, not money. And, if the education of students differs greatly in quality, depending on location, then it is hard to claim that “equal protection” has been afforded.

In short, within the contemplation of the Fourteenth Amendment’s ‘equal protection’ clause, the persons who are granted equal protection in the state’s public school system are not the taxpayers but the students, and the commodity which the state must afford them on an equal basis is not money but education (Silard, 1973, p. 74).

Silard also offers an alternative argument to the most common challenges to the Fourteenth Amendment. He suggests that in the future, advocates of school finance reform need to consider challenging finance systems under the First Amendment as well as the Fourteenth, recognizing its more stringent constitutional restrictions that often invoke strict scrutiny analysis.

In view of that central purpose of the Amendment, it becomes immediately clear that First Amendment interests are intimately involved when the state operates a public education system.

There can be no question but that the Supreme Court gives “fundamental interest’ protection to First Amendment rights and imposes the greatest burden upon the state to justify any infringements thereon...(p. 71).

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