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## School Finance Litigation and Adequacy Studies

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The adequacy approach to challenging school funding systems has proven the most successful of the waves of finance litigation, and the approach serves as the foundation for new or ongoing litigation and reform in many states today, including Arkansas. The standards reform movement has provided courts with a way to measure plaintiffs' claims that school finance systems do not provide for an adequate education, and many courts have found school funding formulae unconstitutional. In this paper, we review the history of school finance litigation across the United States and focus specifically on cases related to educational adequacy. In the final section, we highlight the Arkansas Adequacy Study conducted by Lawrence O. Picus & Associates and consider the implications.

The equity or adequacy of state funding for public education has been challenged in 45 out of the 50 states during the previous four decades. Four eras in school finance litigation have emerged. In the first era of litigation, plaintiffs claimed that disparities in funding meant that some students' educational needs were not met. With no way of measuring educational need, courts declared the cases non-justiciable, meaning that plaintiffs' claims could not be measured.

In the second era, a new strategy led litigants to the U.S. Supreme Court. In the landmark case *Serrano v. Priest*, the California Supreme Court found that disparities in funding across California school districts led to unequal education opportunities. The Court classified education as a fundamental right and defined per-pupil property wealth as a suspect class. Governmental action that either impedes a fundamental right or treats individuals differently on the basis of a suspect class is subject to strict judicial scrutiny by the courts. The California Supreme Court ruled that the state's school funding system violated the Equal Protection Clause of both the California Constitution and the U.S. Constitution. Encouraged by the California Supreme Court decision, plaintiffs hoped for a victory in the federal courts. *San Antonio School District v. Rodriguez*, a case originating in Texas, was the first to reach the U.S. Supreme Court.

The U.S. Supreme Court ruled that the U.S. Constitution did not protect education as a fundamental right or per-pupil property wealth as a suspect class. In the 5-4 ruling, the justices suggested that school finance systems might be in violation of state constitutions, but did not violate the U.S. Constitution. The U.S. Supreme Court ruling in *Rodriguez* ended the second era of school finance litigation, leaving plaintiffs to battle in state courts.

The development of statistical measures of equity and a focus on the equal protection and education clauses in state constitutions led to the third wave of litigation. In the third wave of school finance litigation, plaintiffs asked state courts to overturn school finance systems based on the inequity of education opportunities. Litigants could prove the existence of funding disparities, but were unable to convince the courts that education was a fundamental right protected by the state constitution or that the disparities in funding had a detrimental effect on student learning. The most successful of the first three eras, this legal strategy resulted in plaintiff victories only one-third of the time.

The standards-based reform movement provided plaintiffs with a way to measure the effect of disparities on student learning and enter the fourth era of litigation based upon school finance adequacy. Plaintiffs were able to demonstrate that certain school districts did not provide the educational opportunities to meet educational standards. In the landmark adequacy case, *Rose v. Council for Better Education* (1989), the Kentucky Supreme Court declared the entire state education system in violation of the state constitution. The court identified seven standards of an education system that would meet state constitutional requirements and left the task of developing the system to the General Assembly. The seven standards, now known as the Rose Standards, and the Kentucky Education Reform Act have served as a model to other states facing education reform. The Rose decision set the stage for other adequacy cases, and plaintiffs have prevailed in about two-thirds of the school finance cases in this era.

To develop an adequate school finance system, state policymakers must be able to estimate the cost of an adequate education. Four approaches to estimating the cost of an adequate education have been developed over the last three decades: historical spending, econometric, professional judgment, and successful schools. Adequacy studies commissioned to date have utilized either the professional judgment or successful schools approach.

The professional judgment approach creates prototype schools that would meet state standards and then uses a panel of qualified educators and school finance experts to determine exactly what resources the prototype schools would need. The cost of the resources is estimated, yielding a base cost and the necessary extra funding (weights) for students with special needs. Seven states have used this approach, sometimes in combination with the successful schools approach, to determine the base cost of education.

The successful schools approach examines the expenditures of schools that are already meeting the state adequacy standards. The average of expenditures across the selected schools provides the base cost to educate an average child in the state. Seven states have used the successful schools approach to conduct adequacy studies.

Each approach has unique advantages. The professional judgment approach usually offers a higher base cost, but it allows for the accurate calculation of weighting for students with special needs. The successful schools approach provides a lower target base cost, which is generally more appealing to lawmakers, but this approach sometimes fails to provide reliable weights. In completed adequacy studies, both approaches suggest a higher base cost than what is currently provided by the state. According to the adequacy studies in Indiana and Montana, school funding would need to be increased 62 to 80 percent respectively to reach adequate levels. These increases can be compared to the relatively low increases suggested by studies in other states (2 to 49 percent).

Lawrence O. Picus & Associates completed an adequacy study for Arkansas using the professional judgment approach on September 1, 2003, outlining a reform package that Picus promises will place Arkansas on the cutting edge of statewide education reform. The cost of the proposed package is \$847.3

million more than the 2001-2002 funding of \$1.588 billion. Thus, the adoption of this proposal would increase state funding by more than 50 percent. Lawmakers were not enthusiastic about asking the taxpayers for such a large funding increase in one year. Nevertheless, at the end of the special session of the legislature in February 2004, the Arkansas legislature approved a bill for an additional 7/8 cent on the sales tax to support the reform. The tax hike is expected to raise about one-half of the increase suggested by the adequacy study. Time will tell whether this increase in resources results in positive change. The special masters appointed by the Arkansas Supreme Court to examine the state's compliance with the Lake View decision have filed a report to the Court concluding, effectively, that any judgments on the compliance of the legislature should be withheld until some time has passed and the outcomes of the reforms can be examined. In fact, the special masters suggest that the effectiveness of the reform cannot be fully assessed until five to ten years have passed.

As this review clearly shows, litigation and adequacy studies are not unique to the state of Arkansas. The outcomes of such legal and political battles vary from state to state. It is clear that the recent tax increase passed by the Arkansas legislature, although less than that suggested by the adequacy study, represents a major financial commitment by the state to the education of the nearly half-million elementary and secondary students in the state of Arkansas. How effectively these new funds are utilized, and how firmly policymakers can "stay the course" of education reform, will be key factors in determining the impact the litigation will have on our students. As the special masters' report suggests, time will tell.

*This paper was written by Janet D. McDonald, Educational Administration doctoral student, Mary F. Hughes, associate professor in Educational Leadership, Counseling, & Foundations, and Gary W. Ritter, associate professor in Educational Leadership, Counseling, & Foundations.*