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School Infrastructure Funding Need

A state-by-state assessment and an analysis of recent court cases

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Executive Summary

The quality of the physical environment in which children learn is a critical education capacity factor that contributes to their academic success and well-being. Adequate levels of fiscal investment in school infrastructure are essential to ensure that all students and staff have access to a physical environment conducive to learning; that is, one that is safe, healthy, and educationally appropriate. To that end, the objectives of this study were threefold:

- To estimate the current level of school infrastructure funding need on a state-by-state basis;
- To compare these estimates to those of the previous state-by-state assessment in 2001; and
- To determine the nature and impact of recent court cases that have addressed school infrastructure.

Major findings of the study include the following:

- Total estimated school infrastructure need across the 50 states remains substantial at approximately \$254.6 billion.
- At the state level, funding need ranges from \$326 million in Vermont to \$25.4 billion in California. The average state funding need is approximately \$5.1 billion.
- This total represents a 4.3% decrease in funding need from 2001, in unadjusted dollars.
- Litigation related to school finance generally and school infrastructure funding specifically continues to be found predominantly at the state level.
- Over the last seven years, there have been major, new court decisions around school infrastructure and its funding in states such as Arkansas and New York. In a number of states, litigation or implementation of previous court decisions requiring additional infrastructure funding is ongoing.
- Overall, major court decisions have resulted in substantial increases in school infrastructure funding in some states. However, litigation as a strategy to meet total school infrastructure funding need has limitations.

Major policy recommendations of the study are as follows:

- The nature and scope of school infrastructure funding need calls for a new federal/state/local partnership with the federal government assuming a strong leadership role.
- Immediate federal action through direct funding to address inequities and inadequacies in school facilities attended by low-income children as well as infrastructure-related health, safety, and accessibility issues should be a national priority.
- To encourage states to assume their constitutional responsibilities for funding education, the federal government should consider providing direct incentives to state, such as matching funds, to encourage them to develop and implement comprehensive school infrastructure planning and funding models.
- At the same time, the AFT, alone or in partnership with other like-minded organizations, may want to consider providing greater support and assistance to state and local affiliates to pursue litigation in states where recalcitrant elected officials cling to inadequate, inequitable school infrastructure funding systems (or provide no funding at all) that harm children and demoralize staff.

SECTION I

INTRODUCTION

CHAPTER ONE

BACKGROUND AND RATIONALE FOR THE STUDY

In 2001, Crampton, Thompson, and Hagey published a ground-breaking study estimating school infrastructure funding need on a state-by-state basis totaling approximately \$266 billion.¹ Unlike previous studies limited to deferred maintenance,² this research considered the full range of school infrastructure needs, such as the cost of new construction to accommodate projected enrollment growth and capital costs related to education reforms, such as class size reduction efforts designed to improve student achievement. Previous estimates were also limited in their policy applications due to their use of national samples.³ Crampton and colleagues asserted that research structured to yield state estimates was essential in order to inform federal and state policymakers of the scope of funding need across the country and to stimulate policy discussions on the need for adequate and equitable funding of school infrastructure.

Several years have passed since the initial study. In the interim, the implementation of the sweeping federal law, the *No Child Left Behind Act*, has placed growing pressure upon schools to ensure that all children are making adequate academic progress.⁴ At the same time, student poverty in many parts of the nation remains unacceptably high and has even increased in some locales bringing new challenges to communities and schools. In addition, recent economic challenges have resulted in high levels of unemployment and record numbers of home foreclosures making the always difficult task of convincing local voters to agree to pay higher property taxes to support adequate school facilities nearly impossible. Yet, a growing body of research has established that the physical environment of schools is an educational

¹ Faith E. Crampton, David C. Thompson, and Janis M. Hagey, "Creating and Sustaining School Capacity in the Twenty-First Century: Funding a Physical Environment Conducive to Student Learning," *Journal of Education Finance* 27 (Fall 2001): 633-652.

² See, American Association of School Administrators, Council of Great City Schools, and National School Boards Association, *The Maintenance Gap: Deferred Repair and Renovation in the Nation's Elementary and Secondary Schools* (Arlington, Virginia: January 1983); Ann Lewis, *Wolves at the Schoolhouse Door: An Investigation of the Condition of Public School Buildings* (Washington, D.C.: Education Writers Association, 1989); Sharon J. Hansen, *Schoolhouse in the Red: A Guidebook for Cutting Our Losses* (Arlington, Virginia: American Association of School Administrators, 1992); United States General Accounting Office, *School Facilities: The Condition of America's Schools* (Washington, DC: February 1995); Laurie Lewis, Kyle Snow, Elizabeth Faris, Becky Smerdon, Stephanie Cronen, and Jessica Kaplan, *Condition of America's Public School Facilities: 1999* (Washington, DC: U.S. Department of Education, National Center for Education Statistics, June 2000).

³ See, U.S. GAO, *The Condition of America's Schools*. Lewis et al., *Condition of America's Public School Facilities*.

⁴ No Child Left Behind Act of 2001. Public Law 107-110.

capacity factor critical to student achievement.⁵ As such, a state-by-state update of the scope of school infrastructure funding need is a timely piece of research to determine what, if any, progress has been made over the past seven years in addressing the staggering funding need. In addition, traditional school finance litigation, with its emphasis on operating expenditure, has evolved over recent years with a greater recognition of the importance of the role school infrastructure plays in supporting student success. An integral part of this study was an analysis of relevant court cases to determine their impact on school infrastructure funding.⁶

⁵ Faith E. Crampton and David C. Thompson, ed., *Saving America's School Infrastructure* (Greenwich, CT: Information Age Publishing, 2003); Faith E. Crampton, "Investment in School Infrastructure as a Critical Educational Capacity Issue: A National Study, A research monograph of the Council of Educational Facilities Planners International (Scottsdale, Arizona: Council of Educational Facilities Planners International, 2007); Faith E. Crampton, "Investment in School Facilities Is Critical to Student Achievement," *IssueTrak* (Scottsdale, Arizona: Council of Educational Facilities Planners International, June 2008).

⁶ The authors recognize that there are a wide range of legislative, judicial, and policy tools for addressing school infrastructure funding need. Litigation represents only one of those tools.

SECTION II

STATE-BY-STATE ASSESSMENT OF SCHOOL INFRASTRUCTURE FUNDING NEED

CHAPTER TWO

RESEARCH QUESTIONS AND DEFINITIONS OF VARIABLES

This study was guided by the following three research questions.

- What is the current level of school infrastructure funding need on a state-by-state basis?
- How does this funding need compare to that of the previous state-by-state assessment?
- What has been the nature and impact of recent court cases that addressed school infrastructure?

For the purposes of this study, school infrastructure was defined comprehensively to include: deferred maintenance; new construction; renovation; retrofitting; additions to existing facilities; and major improvements. (See the textbox for further explanation of these terms.)⁷ Use of the same comprehensive definition as that of the 2001 study was critical not only to make the results of the research as comparable as possible, but also to overcome the issue of incomplete definitions of school infrastructure found in much previous research.⁸

⁷ This definition was developed based upon a review of multiple authoritative sources. See R. Craig Wood, David C. Thompson, Lawrence O. Picus, and Don I. Tharpe, *Principles of School Business Management*, 2d ed. (Reston, Virginia: Association of School Business Officials International, 1995); William T. Hartman, *School District Budgeting* (Reston, Virginia: Association of School Business Officials International, 1999); and John R. Ray, Walter G. Hack, and I. Carl Candoli, *School Business Administration: A Planning Approach*, 7th ed. (Boston, Massachusetts: Allyn & Bacon, 2001).

⁸ In 1999, Lewis et al. “updated” the 1995 U.S. GAO study. Importantly, the Lewis et al. study was referred to as an update rather than a replication for a number of reasons explained in detail in the study itself. Hence, the results of the two studies were not comparable. See Crampton et al. (2001) for an indepth analysis of the methodological differences between the two studies.

Comprehensive Definition of School Infrastructure

- ***Deferred maintenance.*** Deferred maintenance refers to maintenance necessary to bring a school facility up to good condition; that is, a condition where only routine maintenance is required. If a facility is in such poor condition that it cannot be brought up to good condition, or if it would cost more to do so than to construct a new facility, deferred maintenance can refer to replacement of an existing facility.
- ***New construction.*** New construction may be a response to current overcrowding; to federal, state, or local mandates that require additional facilities, such as class size reduction measures; or to projected enrollment growth. The construction of a new facility includes the building(s); grounds (purchase, landscaping, and paving); and fixtures, major equipment, and furniture necessary to furnish it.
- ***Renovation.*** Renovation of an existing facility includes renovations for health, safety, and accessibility for the disabled. Renovation may also include renovations necessary to accommodate mandated educational programs.
- ***Retrofitting.*** Retrofitting of an existing facility applies to such areas as energy conservation (for example, installation of insulation or energy-efficient windows) and technology readiness (for example, electrical wiring, phone lines, and fiber optic cables).
- ***Additions to existing facilities.*** Additions to existing facilities may be necessary to relieve overcrowding; to meet federal, state, or local mandates, such as class size reduction measures; or to accommodate projected enrollment growth. The cost of additions usually includes the fixtures, major equipment, and furniture necessary to furnish them.
- ***Major improvements to grounds,*** such as landscaping and paving.

Note: Some states use the term *capital outlay* rather than *school infrastructure*. Capital outlay is an older and more traditional term. In some states, the definition of capital outlay may be broader than that of school infrastructure. For example, in some states, capital outlay includes major equipment and/or any equipment above a certain purchase price. Depending on the definition of capital outlay in a particular state, a wide range of equipment might be included—from school buses to photocopiers.

Source: Crampton, Thompson, and Hagey (2001); Thompson, Wood, and Crampton (2008).

CHAPTER THREE

METHODS, UNIT OF ANALYSIS, AND DATA SOURCES

To develop state-by-state estimates, this study drew upon the methodology of the 2001 study. All 50 states were included, and the state was selected as the most appropriate unit of analysis.⁹ Official state assessments, defined as assessments conducted by a state agency or entity, represented the major data source for estimating school infrastructure funding need. Official state assessments were identified through a number of sources and included an exhaustive review of relevant proprietary and public access policy, legislative, legal, and research databases, as follows:¹⁰

1. Relevant proprietary policy and research databases (searchable) included LexisNexis, WestLaw, and EconLit.
 - LexisNexis and WestLaw are the premier searchable databases for legislation, law, judicial rulings, and law-related research.
 - LexisNexis is also a powerful searchable database on local, state, national, and international print media.
 - Econlit, created and owned by the American Economic Association, is the premier searchable database for published research in economics and public finance.
2. Relevant open-access policy and research (searchable) databases included ERIC and NCEF.
 - ERIC (Education Resource Information Center) is a federally supported, searchable database of the U.S. Department of Education that includes a wide range of education-related publications dating back to 1966.
 - NCEF (National Clearinghouse for Educational Facilities) is a federally funded, searchable database that collects school infrastructure related publications. It began operations in 1997.
3. Archival materials from the 2001 study of state-by-state estimates of unmet school infrastructure funding need.

⁹ A population, here defined as the 50 states, is generally considered superior to a sample in part because the use of statistical measures to adjust results for potential sampling error is unnecessary.

¹⁰ Many of these sources were also utilized to assist in the identification of litigation related to school infrastructure.

The same hierarchical, three-tiered model was used to estimate school infrastructure funding need.¹¹ At the first level, state assessments were analyzed to determine if they met the study criteria of being recent, reasonable, and comprehensive. Preference was given to assessments conducted within the last five years. Assessments were analyzed to determine if they were comprehensive in their definition of school infrastructure and demonstrated a clear, rational approach to calculation of funding need.

At the second tier, those states without assessments or whose assessments were not usable were matched with states with similar demographic and student profiles to impute funding need using a regional typology developed by the National Conference of State Legislatures. The data source for student enrollment trends and student poverty was the U.S. Department of Education, National Center for Education Statistics, and the U.S. Census Bureau. Student eligibility for free or reduced-price lunch was used as a poverty indicator.¹²

At the third tier, states with no realistic match were benchmarked to the median state funding need per pupil for the base year. All in all, the methodology was designed to take a deliberately conservative approach to state estimates.

¹¹ If a sufficient number of states have recent, comprehensive assessments of infrastructure funding needs, a multivariate statistical approach, such as multiple regression analysis, will be used to impute funding need for states without assessments based upon an analysis of variables that best predict funding need.

¹² Note that the latest year for data by state on eligibility for free or reduced-price lunch at the time of this study was 2004.

CHAPTER FOUR ANALYSIS OF RESULTS

This section presents the results of the 50 state assessment of funding need followed by a comparison of results with the initial study published in 2001, titled "Creating and Sustaining School Capacity in the Twenty-First Century: Funding a Physical Environment Conducive to Student Learning,"¹³ .

Identification of Statewide School Infrastructure Assessments

A number of sources, listed in the previous chapter, were used to identify statewide school infrastructure assessments. In addition, for those states where these methods did not identify statewide school infrastructure assessments, the chief state school administrator responsible for school facilities was contacted, and the authors are very appreciative of the assistance they provided. (See Appendix A for a list of these resource persons.) A total of 28 states had some type of assessment, but of these 9 did not meet the criteria for inclusion. (See Table 1 for a state-by-state listing. See Appendix B for a reference list of state assessments of school infrastructure funding need.)

Of the remaining 22 states, 19 confirmed that no such assessment existed. For three states, existence of an assessment was not confirmed after repeated requests, and an exhaustive search of relevant state agency web sites and research and policy literature databases.

Table 1

**Summary Table of Statewide
School Infrastructure Assessments**

State	Assessment		State	Assessment	
	Yes	No		Yes	No
Alabama	x		Montana ^a	x	
Alaska	x		Nebraska		x
Arizona ^b		x	Nevada		x
Arkansas	x		New Hampshire		x
California	x		New Jersey ^a	x	
Colorado	x		New Mexico ^a	x	
Connecticut ^a	x		New York ^c	x	
Delaware ^a	x		North Carolina	x	
Florida		x	North Dakota		x
Georgia	x		Ohio	x	

¹³ Crampton, Thompson, and Hagey, 2001.

Hawaii	x		Oklahoma		x
Idaho	x		Oregon		x
Illinois	x		Pennsylvania ^a	x	
Indiana		x	Rhode Island		x
Iowa		x	South Carolina	x	
Kansas		x	South Dakota		x
Kentucky	x		Tennessee	x	
Louisiana		x	Texas	x	
Maine	x		Utah		x
Maryland	x		Vermont		x
Massachusetts ^a	x		Virginia ^a	x	
Michigan ^b		x	Washington ^a	x	
Minnesota		x	West Virginia	x	
Mississippi		x	Wisconsin		x
Missouri		x	Wyoming ^b		x

^aAssessment did not meet criteria for study and, hence, was not usable.

^bExistence of an assessment was not confirmed by the relevant state agency, usually a department of education or a school facilities authority. Searches of relevant web site and research and policy literature databases did not yield a state assessment.

^cNew York City Schools' estimate was used to extrapolate state funding need.

Estimation of Funding Need Via Matching or Benchmarking Methods

For those states without a usable assessment or no assessment, school infrastructure funding need was estimated using either a matching or benchmarking process described in the previous chapter. Prior to the matching process, states were sorted by a regional typology to control for regional cost factors.¹⁴ States were then matched along two dimensions: enrollment trends and the incidence of poverty as measured by the percentage of students eligible for free or reduced-price lunch. (See Appendix C, Table C-1.) The optimal outcome was a two dimensional match, but if that was not feasible, a unidimensional match was sought with a state in the same geographic region. Where a match could not be made along either dimension, the process was repeated in adjacent geographic regions. Once a matching state was found, funding need was extrapolated for the state without a usable school infrastructure assessment or no assessment. Using the matching state's funding need, a weighted per pupil dollar figure was developed by dividing total school infrastructure funding need by base year student enrollment.¹⁵ This

¹⁴ Source of regional typology: National Conference of State Legislatures.

¹⁵ Base year student enrollment for determining pupil need was 2004, the latest year of actual data available from U.S.. Department of Education National Center for Education Statistics.

figure was then multiplied by the base year enrollment of the matched state to estimate its total funding need for school infrastructure.

If this matching strategy was unsuccessful, benchmarking was used. In the study, three states had no reasonable match, and so their funding need was estimated using the median state funding need per pupil of \$4,453. This number, referred to as the benchmark, was multiplied by the state's base year student enrollment to estimate the state's total school infrastructure funding need. Table 2 presents a summary of matching and benchmarking results.

Based upon the application of the methods outlined in the previous section, the 50 state total funding need for school infrastructure was estimated at \$254.6 billion in unadjusted dollars.¹⁶ (See Table 3 for a listing alphabetically by state.) State funding need ranged from \$325.7 million in Vermont to \$25.4 billion in California. (See Table 4 for a ranked listing by funding need.) The average state funding need was \$5.1 billion while the median state funding need was substantially lower at \$3.9 billion. The gap between the mean and median indicates a skewed distribution of state funding need. In particular, the average funding need was skewed upward by a small group of high need states like California, New York, Texas, and New Jersey. (See Table 5 for descriptive statistics.)

In contrast, total funding need in 2001 was approximately \$11.5 billion higher in unadjusted dollars.¹⁷ (See Table 6 for a side-by-side comparison of 2001 and 2008 results.) In 2001, the range in state funding need was larger as well, from \$220 million in Vermont to \$47.6 billion in New York. Also, average state funding need was slightly higher at 5.3 billion. (See Table 7 for descriptive statistics for 2001.) In contrast, median state need in 2008 was almost 40% higher. Here too, the difference between the mean and median state funding need, \$2.8 billion and \$5.3 billion respectively, reflected skewing of the mean upward due to a somewhat different group of very high need states such as New York, California, Ohio, and New Jersey. (See Table 5 for descriptive statistics.) Altogether, these estimates point to a long-term deficit in terms of funding school infrastructure needs for most states.

¹⁶ These dollars were unadjusted in the sense that state school infrastructure needs assessments estimated funding need for five to ten years. Also, the authors did not adjust state funding need for regional cost variations.

¹⁷ These dollars were unadjusted for the potential effects of inflation between 2001 and 2008 on founding need.

Table 2
Summary Table of Matching and Benchmarking Results

States with Usable Assessments	Base Year Per Pupil Need (\$)	Matched States	Benchmarked States ¹⁸
Alabama ¹⁹	6,943	Mississippi	Delaware Minnesota Oregon
Alaska ²⁰	5,834		
Arkansas	9,726	Iowa, Kansas, Missouri, Nebraska	
California	3,943		
Colorado ²¹	6,158	Arizona, Montana, Nevada, New Mexico, Utah, Washington	
Georgia ²²	3,365	Florida	
Hawaii ²³	18,373		
Illinois	3,909		
Kentucky ²⁴	1,505		
Maine ²⁵	3,312	New Hampshire, Vermont	
Maryland ²⁶	4,453	Connecticut, Rhode Island, Massachusetts	
New York ²⁷	7,463	New Jersey	
North Carolina	7,086	Virginia	
Ohio	5,065	Michigan, Pennsylvania, Wisconsin	
South Carolina	10,070	Louisiana	
Tennessee	3,807	Indiana, Oklahoma	
Texas ²⁸	2,855		
West Virginia	4,257	Idaho, North Dakota, South Dakota, Wyoming	

¹⁸ Base need for benchmarking was the median state need of \$4,453 per pupil.

¹⁹ Total state need was based upon five year projections from locally developed assessments.

²⁰ Statewide assessment was limited to one year of capital improvements.

²¹ Statewide assessment was limited to deferred maintenance. Advocacy group places funding need as high as \$10 billion.

²² Five year funding need was generated from school district assessments.

²³ Statewide assessment includes five year plan for new buildings, renovations, repair, and maintenance; two year plan for additions; and airconditioning for all schools.

²⁴ Statewide assessment addressed only deferred maintenance, i.e., bringing facilities up to good condition.

²⁵ Assessment was limited to “critical priorities” reported by school districts, with 50% response rate.

²⁶ Statewide assessment’s focus was on health and safety and bringing schools up to good condition (deferred maintenance).

²⁷ New York state’s base year per pupil need was extrapolated from the New York City Schools ten-year assessment. New York City Schools’ per pupil need was adjusted downward to 30% for students outside New York City Schools.

²⁸ Assessments administered by the state collected estimates solely for deferred maintenance. Base per pupil need was adjusted to reflect response rate of approximately 30% on district assessments.

Table 3**State-by-State Estimates of School Infrastructure Funding Need
(alphabetical by state)**

State	Funding Need (\$)	State	Funding Need (\$)
Alabama	5,069,059,471	Montana	903,409,390
Alaska	775,715,820	Nebraska	2,779,311,486
Arizona	6,424,629,084	Nevada	2,463,711,114
Arkansas	4,504,230,180	New Hampshire	685,093,824
California	25,400,000,000	New Jersey	10,398,548,661
Colorado	4,717,014,029	New Mexico	2,008,136,116
Connecticut	2,571,117,670	New York	21,167,156,040
Delaware	530,312,223	North Carolina	9,819,859,212
Florida	8,881,365,640	North Dakota	427,883,841
Georgia	5,227,583,658	Ohio	9,320,000,000
Hawaii	3,365,700,000	Oklahoma	2,396,415,132
Idaho	1,090,149,588	Oregon	2,459,489,866
Illinois	8,200,000,000	Pennsylvania	9,259,270,785
Indiana	3,888,271,836	Rhode Island	696,885,594
Iowa	4,652,130,594	South Carolina	7,086,687,050
Kansas	4,562,816,736	South Dakota	522,751,086
Kentucky	1,015,791,056	Tennessee	3,583,000,000
Louisiana	7,293,509,670	Texas	12,575,827,059
Maine	658,548,867	Utah	3,101,211,906
Maryland	3,854,108,000	Vermont	325,741,824
Massachusetts	4,344,231,022	Virginia	8,536,780,554
Michigan	8,868,404,735	Washington	6,281,190,790
Minnesota	3,733,853,859	West Virginia	1,192,639,251
Mississippi	3,439,395,568	Wisconsin	4,379,994,205
Missouri	8,806,396,974	Wyoming	360,708,381
Total \$254,606,228,518			

Table 4
State-by-State Estimates of School Infrastructure Funding Need
(rank-ordered)

State	Funding Need (\$)	State	Funding Need (\$)
California	25,400,000,000	Maryland	3,854,108,000
New York	21,167,156,040	Minnesota	3,733,853,859
Texas	12,575,827,059	Tennessee	3,583,000,000
New Jersey	10,398,548,661	Mississippi	3,439,395,568
North Carolina	9,819,859,212	Hawaii	3,365,700,000
Ohio	9,319,762,080	Utah	3,101,211,906
Pennsylvania	9,259,270,785	Nebraska	2,779,311,486
Florida	8,881,365,640	Connecticut	2,571,117,670
Michigan	8,868,404,735	Nevada	2,463,711,114
Missouri	8,806,396,974	Oregon	2,459,489,866
Virginia	8,536,780,554	Oklahoma	2,396,415,132
Illinois	8,200,000,000	New Mexico	2,008,136,116
Louisiana	7,293,509,670	West Virginia	1,192,639,251
South Carolina	7,086,687,050	Idaho	1,090,149,588
Arizona	6,424,629,084	Kentucky	1,015,791,056
Washington	6,281,190,790	Montana	903,409,390
Georgia	5,227,583,658	Alaska	775,715,820
Alabama	5,069,059,471	Rhode Island	696,885,594
Colorado	4,717,014,029	New Hampshire	685,093,824
Iowa	4,652,130,594	Maine	658,548,867
Kansas	4,562,816,736	Delaware	530,312,223
Arkansas	4,504,230,180	South Dakota	522,751,086
Wisconsin	4,379,994,205	North Dakota	427,883,841
Massachusetts	4,344,231,022	Wyoming	360,708,381
Indiana	3,888,271,836	Vermont	325,741,824
Total \$254,606,228,518			

Table 5
Descriptive Statistics: 2008

Minimum	325,741,824
Maximum	25,400,000,000
Mean	5,092,124,570
Median	3,871,189,918
Range	25,074,258,176
Standard Deviation	4,950,045,358
Sum	254,606,228,518
N	50

Table 6
Comparison of Estimates of School Infrastructure
Funding Need: 2001 and 2008 (in unadjusted dollars)

State	Funding Need(\$) 2001	Funding Need(\$) 2008
Alabama	1,519,210,061*	5,069,059,471*
Alaska	727,014,291	775,715,820*
Arizona	4,748,568,494*	6,424,629,084
Arkansas	1,761,701,495	4,504,230,180*
California	22,000,000,000*	25,400,000,000*
Colorado	3,805,239,627*	4,717,014,029*
Connecticut	5,000,000,000*	2,571,117,670
Delaware	1,046,354,648	530,312,223
Florida	3,300,000,000 *	8,881,365,640
Georgia	7,061,967,931	5,227,583,658*
Hawaii	752,533,936	3,365,700,000*
Idaho	699,469,537*	1,090,149,588
Illinois	9,213,000,000*	8,200,000,000*
Indiana	2,477,797,613	3,888,271,836
Iowa	3,359,129,953*	4,652,130,594
Kansas	1,793,241,845	4,562,816,736
Kentucky	2,441,607,196 *	1,015,791,056*
Louisiana	3,104,098,619	7,293,509,670
Maine	452,064,540*	658,548,867*
Maryland	3,891,926,876	3,854,108,000*
Massachusetts	8,919,014,500	4,344,231,022
Michigan	8,071,127,040	8,868,404,735
Minnesota	4,517,232,516*	3,733,853,859
Mississippi	1,038,890,864	3,439,395,568
Missouri	3,475,160,989	8,806,396,974
Montana	901,492,663	903,409,390
Nebraska	1,608,849,896	2,779,311,486
Nevada	5,256,000,000	2,463,711,114
New Hampshire	409,511,478	685,093,824
New Jersey	20,709,650,065	10,398,548,661
New Mexico	1,410,624,747*	2,008,136,116
New York	47,640,000,000 *	21,167,156,040*
North Carolina	6,210,938,727*	9,819,859,212*
North Dakota	420,000,000*	427,883,841
Ohio	20,900,000,000 *	9,320,000,000*
Oklahoma	2,204,070,041*	2,396,415,132
Oregon	2,407,425,974	2,459,489,866
Pennsylvania	8,465,134,387	9,259,270,785
Rhode Island	1,420,952,603	696,885,594
South Carolina	2,574,018,400 *	7,086,687,050*
South Dakota	498,604,766	522,751,086
Tennessee	2,273,702,904 *	3,583,000,000*

Table 6 (continued)		
State	Funding Need(\$)	2001
Texas	9,467,620,774*	12,575,827,059*
Utah	8,490,336,757	3,101,211,906
Vermont	220,090,007	325,741,824
Virginia	5,701,313,528	8,536,780,554
Washington	5,478,902,777	6,281,190,790
West Virginia	1,000,000,000*	1,192,639,251
Wisconsin	4,762,337,059	4,379,994,205
Wyoming	530,888,665*	360,708,381
Total	\$266,138,818,788	\$ 254,606,228,518

*Denotes state with usable assessment.

Table 7
Descriptive Statistics (2001)

Minimum	220,090,007
Maximum	47,640,000,000
Mean	5,322,776,376
Median	2,839,058,509
Range	47,419,909,993
Standard Deviation	7,908,712,728
Sum	266,138,818,788
N	50

CHAPTER FIVE CONCLUSIONS AND POLICY IMPLICATIONS

In comparing the current \$254.6 billion of estimated school infrastructure funding need to that of \$266.1 billion in 2001, one might be tempted to conclude that a reduction in total need of approximately \$11.5 billion, or 4.3%, is a strong indication that states and local school districts are successfully chipping away at this enormous amount of funding need. However, the comparison and interpretation of these amounts is more nuanced.

To that end, it is helpful to discuss how best to interpret and compare these results. First, even the most rigorous research efforts at replication of studies must contend with the realities of less than perfect data at a particular point in time and across time. Second, the use of secondary data, that is, existing state-conducted school infrastructure needs assessment, introduces some inconsistencies within and across the data sets, even after the application of strong, objective criteria for admissibility into the study. Because it would be prohibitively expensive and time-consuming to collect state-by-state raw data, and because the inconsistencies in such a primary dataset might be even more pronounced, studies like this rely on either large secondary data sets or small samples of primary data.²⁹

As such, policy-relevant research, like all research, has both strengths and weaknesses. Its major strength lies with its ability to place into the hands of key decisionmakers the kind of information needed to inform sound policy choices. Potential weaknesses relate to the quality of the data, the ability of the research methods used to address potential limitations, and realistic interpretation of results. Sound research always acknowledges potential weaknesses and the possible impact on results.

In this study, the authors had a distinct advantage in having designed and carried out the original research published in 2001. As such, they were familiar with the methods, having designed them, and they were familiar with the challenges the quality and availability of data might present. Because the methodological approach for estimating need for states whose assessments did not meet the study criteria or who had no assessment at all was found to be robust in the earlier study, it was used in this study also. The ability to replicate the same methodological approach is foundational for comparability of results.

However, there was a range for admissibility criteria in that state assessments with five to ten year projections of need were accepted, and the date of a state's school infrastructure needs assessment could be up to five

²⁹ Note that even the federal government does not collect this type of data.

years old. While this set of criteria introduced some inconsistencies within and across the data sets, it also addressed the real-world of how states approach school infrastructure funding needs assessments, and, at the same time, it addressed best practices in that such assessments are most reliable when they cover a longer time span, rather than one or two years.

Finally, the authors made the conscious choice not to attempt to control within or across years for differences in regional costs or inflation. This was a pragmatic decision in that such adjustments are not only complex but also may be less than compelling in their accuracy. Furthermore, from both a policy and legislative perspective, it is less important that dollar amounts be adjusted across states and over time, than it is to grapple with the reality that funding need has grown to this magnitude whereby, on average, each state needs approximately \$5 billion to address its school infrastructure needs.

Given the above caveats, it is safe to conclude that there still exists an enormous and disturbing school infrastructure funding need in almost every state and across the country. By just about any measure, a funding gap of over \$250 billion in our educational system is of grave concern. It is also an amount that cannot be realistically addressed by states and localities alone. As the next part of this study demonstrates, litigation, predominantly at the state level, has been used in some instances as a lever to mandate greater state funding of school infrastructure. However, the adequate and equitable funding of school infrastructure is a multifaceted policy challenge, and, as such, will most likely require multifaceted and multilevel solutions in the short-run and long-term.

SECTION III

HISTORICAL OVERVIEW AND ANALYSIS OF SCHOOL INFRASTRUCTURE FUNDING LITIGATION

CHAPTER 6

HISTORICAL OVERVIEW

For more than a century, public school funding struggles have been at the heart of American society. Legal battles often have been at the forefront of these struggles, as teachers have fought for recognition as true professionals and as federal, state, and local units of government have had to cope with both the enormous costs of public education *and* an underlying conflict of principles about who should pay for schools. The result has been a massive body of federal and state legislation governing public education and its costs, accompanied by an equally vast body of litigation in federal and state courts seeking determination and redress for perceived injustice. Indeed, nearly every aspect of public education has been heavily litigated in the name of equal educational opportunity, so that any analysis of public school facility funding litigation must be initially grounded in a survey and understanding of the broader disputes over school money, particularly given the similarity and interconnectedness of the fundamental issues.

Brief History of Public School Finance Litigation³⁰

The struggle over appropriate siting of responsibility for public education and who should pay for schools has been longstanding and vexatious. From the earliest days of the nation, taxpayers have resisted the “cost” of tax-funded institutions, and public schools have been a target of tax resistance because—at the very least—schools are highly visible at the local level, highly dependent on local tax dollars, and consequently highly vulnerable to political attack given strongly-held beliefs about local control of education and given the structure of federal and state laws that consciously defer many tax-and-spend decisions to the lowest unit of government. Under these cultural circumstances and bolstered by the Tenth Amendment³¹ to the United States Constitution restricting central powers, the federal government has largely excused itself from public education funding except via a general sense of benevolence and political interest;³² under the most extreme conditions such as certain types of inequality of educational opportunity, particularly race-

³⁰ This section draws partly from *Money and Schools*, 4th ed., by David C. Thompson, R. Craig Wood, and Faith E. Crampton (Larchmont, NY: Eye on Education, 2008). See Chapter 2 for a fuller history of school funding roots in tradition, legislation, and litigation.

³¹ The Tenth Amendment reads, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” A loophole, however, is found in the General Welfare Clause of the Constitution wherein Congress has extended its grasp on schooling (see fn. 34 below).

³² See, e.g., *Morrill Act of 1862* granting the sixteenth section of surveyed lands in states for educational purposes.

based discrimination or the impact of disabilities on educational opportunity;³³ or under other exhortatory circumstances involving selected social and economic justice topics such as standards-based reform.³⁴

The unavoidable consequence of deflecting a federal obligation for education's costs has been to shift those same costs downward to lesser units of government. The long history of the United States has been one of intense struggle over which lower unit of government (i.e., individual localities or states) should assume either primary, or at least co-equal, responsibility for funding public schools. Although the framers of the various state constitutions were, in many instances, grandly verbose when envisioning state education systems and seemingly intent on ensuring equal provision for all citizens, the structure of actual laws and statutes emanating from state constitutional provisions typically resulted in placing a principal duty on local communities to pay for schools. Indeed, it is precisely this history that has engendered the intense legal battles over the last hundred years, as local schools and communities have found themselves increasingly governed by federal and state laws and regulations that have consistently increased education's costs, while the local tax base has found itself unable to singularly bear such spiraling costs.

Although states were successful for many years at shifting public education's costs to local units of government (i.e., school districts), the last 50 years have been characterized by seemingly endless attempts at reversing that determination. Beginning with the logical extension of the demand for equality in *Brown v. Board of Education*,³⁵ pressure to persuade—or coerce—states into assuming a primary funding role has been relentless. Efforts to persuade state legislatures to assume a greater funding duty has followed the expected path of political influence, but has been greatly aided by the constant specter of litigation which, in most states' view, would undesirably diminish legislative control—i.e., the combination of political pressure and threat of litigation has repeatedly sparked “voluntary” school funding reform via legislation as state legislatures have weighed the financial and political costs of acting affirmatively against the financial and political costs of facing potentially successful litigation. As a consequence, litigation has been a powerful school funding reform tool wherein litigants have variously sought relief in either federal or state courts—or both simultaneously.

The Federal Claim

Given the intensely anti-centrist development of government in the United States, the outcome of a claim for federal responsibility to fund public

³³ See, e.g., *Civil Rights Act of 1964* (Public Law 88-352); *Elementary and Secondary Education Act* (Public Law 89-910) in 1965; *Education of the Handicapped Act* (Public Law 94-142) in 1976, with subsequent reauthorizations and expansions.

³⁴ See, e.g., a myriad of federal legislation invoking the selective interests of Congress under the General Welfare Clause of the U.S. Constitution, extending and continuing through such legislation as the current *No Child Left Behind Act* (Public Law 107-110) in 2001 and subsequent reauthorization and expansion.

³⁵ 347 U.S. (1954).

schools should not have surprised anyone. Although *Brown* was about equality of educational opportunity, including equality of resources, the federal court posture on school funding *per se* was truly first revealed in the late 1960s as plaintiffs began claiming unequal fiscal resource impacts under Fourteenth Amendment³⁶ equal protections.

The first major federal suit over public school funding took shape in Virginia as *Burruss v. Wilkerson*³⁷ in 1969. Plaintiffs based their claims on the Fourteenth Amendment to the U.S. Constitution, arguing that state aid was not given to school districts on the basis of educational need. The U.S. District Court, however, held that while “...deficiencies and differences are forcefully put by plaintiffs’ counsel...we do not believe they are creatures of discrimination by the State....We can only see to it that the outlays on one group are not invidiously greater or less than that of another.”³⁸ The federal court added that, “...the courts have neither the knowledge, nor means, nor the power to tailor the public monies to fit the varying needs of these students throughout the state.”³⁹

The tone of *Burruss* foretold much of the potential failure of a federal interest in equalized school funding. Over the coming years, plaintiffs in other cases frequently encountered the same logic, often as federal courts in other jurisdictions drew on the words of sister courts to express their own limitations. The nearly lone exception came in 1972 in *Van Dusartz v. Hatfield*,⁴⁰ as a Minnesota federal court held that wealthy school districts not only had greater revenue per child but also paid lower tax rates—conditions tied to the child’s happenstance of residence. *Van Dusartz* was hardly the rule, however, as other federal courts continually complained that—while often sympathetic to plaintiffs’ plight—their hands were tied by a lack of judicially manageable standards and by strict interpretation of federal authority—fiscal equality in federal court, in other words, was stated negatively in that absence of money was not the same as discrimination that could be acted upon from a federal duty to protect citizens on equality claims.

Although disappointed by the apparent standard for a federal claim, plaintiffs’ strategy had long anticipated an appeal directly to the U.S. Supreme Court. The theory was that other difficult gains had required repeated assaults to overturn lower federal court rulings *and* that a ruling for plaintiffs would be binding as the law of the land. The underlying high Court assault logic was

³⁶ The Fourteenth Amendment to the U.S. Constitution reads, in relevant part: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

³⁷ *Burruss v. Wilkerson*, 310 F. Supp. 572 (1969).

³⁸ *Id.*, at 574.

³⁹ *Id.*

⁴⁰ *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (Minn. 1971).

appealing to plaintiffs, as this line of thinking took sustenance from similar lawsuits wherein the Supreme Court had, at various times, slowly expanded the scope of rights under federal law by holding some new claims to be so meritorious that equality under the law should be expanded.⁴¹ In effect, plaintiffs hoped that a nexus could be drawn between the powerful equality language in *Brown* stating that education “...is a right which must be available to all on equal terms”⁴² and other fundamental rights, wherein unequal financial resources would come to be viewed as a violation of a fundamental right to education—i.e., a condition that would demand the strictest application of equality under law.

A test case styled as *San Antonio Independent School District v. Rodriguez*⁴³ was chosen, in which a near-lone U.S. District Court had earlier upheld plaintiffs’ claim that the state must be neutral in aiding schools. The federal district court ruling had particularly encouraged reformers, as it also held that education is of fundamental interest to the state. On appeal to the U.S. Supreme Court, plaintiffs argued that the Texas funding system violated federal equal protections by discriminating against a suspect class of poor and that students making up that class were consequently denied the right to equal education. The Court rejected the suspect class argument, however, as it saw only students living in poor school districts, rather than being poor themselves. The Court noted that individual income did not correlate exactly with district wealth, and that even if the link had been strong, the Court’s view of wealth suspectness is limited to absolute deprivation. Because no student was absolutely deprived of an education, the federal system could only perceive that fiscal inequalities were a matter of relative difference. The Court also rejected education as a fundamental right. Plaintiffs had argued that education was so prerequisite to other rights (e.g., right to vote) that it created a nexus to other

⁴¹ The logic was based in a three-strand approach in search of a Supreme Court ruling that would find a fundamental right to education and a holding of wealth as a suspect class. The first strand was a series of lawsuits culminating in the *Brown* decision, in which racial equality was guaranteed. The second strand was a series of cases known as the reapportionment decisions, establishing the principle of “one man, one vote.” The third strand sprang from lawsuits that became known as the indigent defendants and administration of criminal justice cases, which established that defendants cannot be denied right of appeal simply because of inability to pay for a transcript of trial proceedings. These three strands were actually the expression and extension of judicial sympathy to a liberal construction of equality in which the Court had expanded fundamental rights under the Constitution beyond those specifically enumerated therein, so that “new” rights such as a fundamental right to interstate travel (e.g., *Shapiro v. Thompson*, 394 U.S. 618 [1969]), procreation (e.g., *Skinner v. Oklahoma*, 316 U.S. 535 [1942]), voting (e.g., *Reynolds v. Simms*, 377 U.S. 533 [1964]), and criminal appeal e.g., *Griffin v. Illinois*, 351 U.S. 12 [1956] were established. In effect, then, school finance plaintiffs hoped for a federal ruling that low school district wealth (like inability to pay for a trial transcript) would be held to constitute wealth-based discrimination and that education (like racial inequality) would be held to create a fundamental right thereto and consequently invoking strict scrutiny by the court—a condition compelling defendants to accept the formidable burden of defending the status quo.

⁴² 347 U.S. (1954) at 493.

⁴³ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

established fundamental rights. The Court disagreed, seeing no link. Although the Court criticized the financial disparities among Texas school districts, only a rational basis for the state funding formula was required to defend the state aid plan absent invidious discrimination. A rational basis could be found in Texas's goal of promoting local control of schools, and the Court refused to intervene in the legislative arena.

Although *Rodriguez* had a chilling effect on federal claims, other cases were filed as the Supreme Court had not fully closed the door on future claims. Thirteen years later, plaintiffs in Mississippi sued in *Papasan v. Allain*⁴⁴ for equal protection against revenue disparity based on Section Sixteen lands lost during the Civil War. Dismissed in federal district court, the Fifth Circuit Court held on appeal in *Papasan* that although the Eleventh Amendment to the U.S. Constitution did not bar equal protection claims, *Rodriguez* was the federal standard regarding fiscal disparity. The U.S. Supreme Court affirmed, but it also sent the case back for development. *Papasan* was thus notable because a small window of federal interest in school funding was opened by remanding to the lower court, as the Supreme Court noted that unreasonable government action would draw the Court's interest. Shortly after, a second important case arose in Texas, as the U.S. Supreme Court ruled in *Plyler v. Doe*⁴⁵ that refusal by a state to educate illegal aliens could invoke federal equal protections. Although the Court stopped short of declaring education a fundamental right, it approved a higher level of judicial scrutiny in cases of absolute educational deprivation and again enticed plaintiffs with words which spoke to how "[e]ducation provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society."⁴⁶ Still a third insight came in *Kadrmas v. Dickinson*,⁴⁷ as plaintiffs in North Dakota alleged that fees for bus service denied equal protection because the plaintiff could not afford to pay for transportation. The Supreme Court again held for the defendant state, but its 5–4 vote was a bare majority and warned that *Rodriguez* was not the last word in that there are nuances that deeply interest the Court. The minority opinion expressed this well when saying, "The Court...does not address the question whether a state constitutionally could deny a child access to a minimally adequate education. In prior cases this court explicitly has left open the question whether such a deprivation of access would violate a fundamental constitutional right. That question remains open today."⁴⁸

Although *Rodriguez* has been said to preempt a successful federal claim, the record suggests a potentially different eventuality. Federal courts are indeed sympathetic to judicially unmanageable standards, and they are uniformly watchful of legislative prerogative. Likewise, the nation's highest

⁴⁴ *Papasan v. Allain*, 478 U.S. 265 (1986); *Papasan v. United States*, 756 F.2d 1087 (5th Cir. 1985).

⁴⁵ *Plyler v. Doe*, 457 U.S. 202 (1982).

⁴⁶ 457 U.S. 202 at 221.

⁴⁷ *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 108 S.Ct. 2481 (1988).

⁴⁸ 108 S.Ct. at 2491.

court is reluctant to rule that education is a fundamental right. But it is also clear the Court takes genuine interest in education, as it occasionally revisits and refines its own rulings. But in the end, the case for school finance reform has had to rely on state courts to experience timely, measurable, and sustained success.

The State Claim

With “failure” of a controlling federal claim, school finance litigants have had to turn to state courts in search of relief from fiscal inequality. Automatically far more complex and uncertain, if for no other reason than 50 different adversaries given 50 different state governments, the state-level strategy nonetheless has been considerably more fruitful. Notwithstanding, the road has not been easy nor has the outcome been entirely—or even consistently—favorable.

Earlier reference to simultaneous attacks at federal and state court levels is first and best portrayed in *Serrano v. Priest*,⁴⁹ which is largely regarded as the seminal case in modern school finance litigation.⁵⁰ Plaintiffs in California sought a ruling on issues of a fundamental right to education, wealth as a suspect class, and federal and state equal protection on these same grounds. Plaintiffs charged that the state aid plan created disparity and that these differences impacted the quality of schools. Plaintiffs also charged that some taxpayers paid higher tax rates and received a poorer education. The net sum, plaintiffs argued, made the quality of education impermissibly dependent on local property wealth.

In a sweeping victory for plaintiffs, the state supreme court overturned the method of funding schools in California, finding that it violated both the federal Fourteenth Amendment and the state constitution’s equal protection clause. In handing down an earth-shaking win for normally frustrated plaintiffs, the California high court was harsh in its condemnation of wealth-based relationships to schooling, declaring:

We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child’s education a function of the wealth of his parents and neighbors. Recognizing, as we must, that the right to an education in our public

⁴⁹ *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971).

⁵⁰ School finance litigation can be traced into the 19th century. For example, school finance-related litigation can be seen in *Stuart v. School District No. 1 of the Village of Kalamazoo*, 30 Mich. 69 (1874) where a court determined the power to lay and collect taxes for the support of secondary schools; see also *Sawyer v. Gilmore*, 109 Me. 169 (1912) in which a court enunciated the *Rodriguez*-like principle of legislative discretion in the manner and amount of tax distributions to schools; similarly, *Morton Salt Co. v. City of South Hutchinson*, 177 F.2d 889 (10th Cir. 1949) in which the court noted that no direct benefit need accrue to taxpayers if the taxes are uniform and for public purposes benefiting the entire public; and *Lewis v. Mosley*, 204 So.2d 197 (Fla. 1967) in which the court ruled that laws providing for taxation must be construed in favor of the taxpayer when questions of court discretion arise.

schools is a fundamental interest that cannot be conditional on wealth, we can discern no compelling state purpose necessitating the present method of financing.⁵¹

Although the federal claim was later overturned by *Rodriguez*, the impact of *Serrano* was powerful at the state level because the lesson was that state courts might not adopt the same posture as federal courts—i.e., states may independently rule on their own constitutional requirements as long as there is no contravention of federal law. As a consequence, *Serrano* provided a blueprint for state-level litigation by its success with state-level fundamentality and equal protection claims, and it suggested that other state constitutions might be vulnerable in ways unavailable at the federal level.

Although *Serrano* was a resounding success for plaintiffs, the subsequent record revealed that state-level litigants were also destined to endure difficult proofs for their claims. Shortly after *Serrano*, the Michigan Supreme Court ruled in *Milliken v. Green*,⁵² giving pause to any belief about having found a magic bullet. Although the trial court's ruling had favored plaintiffs and was modeled after *Serrano*, the Michigan supreme court experienced a change of sitting judges and subsequently reversed the ruling based on reinterpretation of evidence wherein it concluded that there was no proof that equal protection of children in low-wealth districts was violated. Predictive of some future litigation, it was of particular importance to the court that plaintiffs were unable to create a dispositive link between fiscal inputs and achievement, so that greater fiscal equalization could not be shown to guarantee greater and more equal learning outcomes.

The case for state-level funding reform soon went badly again as, shortly after *Rodriguez*, the Arizona supreme court held for the defendant state in *Shofstall v. Hollins*.⁵³ The court had been asked to decide if that state's school funding law violated the state equal protection clause and its "general and uniform" provision in the state's constitution. The court interpreted general and uniform to mean that the state would provide a minimum calendar, license school personnel, and set academic requirements and standards. Although the Arizona court held a fundamental right to education, it still saw legislative redress as the solution to "political" problems, including school funding. Still a third defeat came as the Illinois supreme court ruled in *Blase v. Illinois*,⁵⁴ holding against plaintiffs despite that state's constitutional language mandating an efficient system of public educational institutions and services and specifically saying that "...the State has the primary responsibility for financing the system of public education."⁵⁵ Plaintiffs had wanted the state to provide no

⁵¹ 487 P.2d at 1244.

⁵² *Milliken v. Green*, vacated, 212 N.W.2d 711 (Mich. 1973); *Milliken v. Green*, 203 N.W.2d 457 (Mich. 1972).

⁵³ *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973).

⁵⁴ *Blase v. Illinois*, 55 Ill. 2d 94, 302 N.E.2d 46 (Ill. 1973).

⁵⁵ *Id.*, at 48.

less than 50% of costs, along with being held to other strict equality provisions. The Illinois high court disagreed, ruling that the language only expressed a goal rather than a specific command. Even stronger state constitution language also failed shortly thereafter, as plaintiffs lost in the state of Washington in *Northshore v. Kinnear*,⁵⁶ where—despite state constitutional language reading “...it is the paramount duty of the state to make ample provision for the education of all children”⁵⁷—the Washington supreme court refused to see a violation of that state’s requirement to provide a “general and uniform system of public schools” because, even if the state were only one school district, spending per child would still depend on geography, climate, terrain, social and economic conditions, transportation, special services, and local choices in curriculum. Clearly discouraging to plaintiffs, the strength of constitutional language about ample provision for education was not persuasive, as the court noted, “...constitutionally speaking, the duty or function is the same as any other major duty or function of state government.”⁵⁸

The state case for school finance reform nonetheless offered considerable hope, as plaintiffs also won similar cases in other states over time. Importantly, while plaintiffs lost many cases at the state level in the early years of school finance reform, a number of victories dramatically affected how schools are currently funded and have offered some insight into predictability.

The “blueprint” for state-level funding reform was aided by another victory soon after *Serrano*, as the state supreme court in New Jersey ruled in *Robinson v. Cahill*.⁵⁹ The high court reviewed a lower court’s holding for plaintiffs, wherein it was charged that the state aid plan violated federal and state equal protections and denied students’ fundamental right to an education because tax revenue varied with district wealth and was unequalized by the state. Although the New Jersey court denied claims for fundamentality and wealth suspectness, the court still overturned the school funding system by turning to the education article of the state constitution, which demanded a “thorough and efficient” system of schools—a requirement violated by lack of equalization in school revenue and thereby violating the state’s equal protection clause.

Other plaintiff victories followed, by some accounts as if a dam had broken. One of the more expansive state supreme court rulings came in the Wyoming case of *Washakie v. Herschler*⁶⁰ in 1980, as the court held that poor districts showed a pattern of less revenue deriving from local wealth variation. Significantly, the court accepted plaintiff arguments that the quality of education is related to money and stated, “...until equality of financing is

⁵⁶ *Northshore v. Kinnear*, 530 P.2d 178 (Wash. 1974).

⁵⁷ *Id.*, at 198.

⁵⁸ *Id.*, at 64.

⁵⁹ *Robinson v. Cahill*, 287 A.2d 187 (N.J. Super. 1972), *aff’d as mod.*, 303 A.2d 273 (N.J. 1973).

⁶⁰ *Washakie County School District v. Herschler*, 606 P.2d 310 (1980).

achieved, there is no practicable method of achieving equality of quality.”⁶¹ The court reached its decision based on a belief that education was of such compelling value to the state that it ranked among the protected fundamental rights. Unlike all other courts, the Wyoming court embraced wealth as a suspect class, saying, “the state has the burden of demonstrating a compelling interest...served by the challenged legislation and which cannot be satisfied by any other convenient legal structure.”⁶²

The difficult and protracted nature of state-level struggles is grandly illustrated by the battle over school funding that began in Texas with *Rodriguez* in federal court in 1973 and later moved to the state level. Upon failure in *Rodriguez*, plaintiffs had next turned to the Texas state supreme court, which ruled in *Edgewood v. Kirby*⁶³ in 1988. The court found education to be a fundamental right in Texas and ordered the legislature to devise a satisfactory remedy to funding inequalities. Again foretelling of the enduring nature of school finance litigation, the case was forced to repeatedly return for judicial review due to the political impossibility of meaningful fiscal reform at the legislative level. Moving through multiple iterations of *Edgewood*—and beyond—solutions were so contentious that by 2001 high wealth school districts had sued again under *West Orange-Cove*,⁶⁴ wherein plaintiff intervenors joined hundreds of Texas school districts to the case and reshaped the basic nature of the suit, with a trial court in 2004 subsequently holding both the funding system *and* the property tax system unconstitutional,⁶⁵ and with a subsequent state supreme court ruling enjoining state aid distribution pending legislative action on Texas’ school finance woes.⁶⁶ In sum, while a win for plaintiffs in Texas, the question in part became who actually had won? And equally important, winning had become an expensive prize for the victor when the timeline was factored into consideration—i.e., that Texas school finance had improved since *Rodriguez* seemed unarguable, but the unintended outcomes were solemn reminders of the intergenerational stakes involved in constitutional litigation over control of schools and the attendant billions of dollars in school resources.

Similar drama can be recounted in other states, with the same anxiety about outcomes. One of the key plaintiff wins that caused state legislatures to revise both their academic systems and their funding schemes in anticipation of a lawsuit was the Kentucky supreme court’s ruling in *Rose v. Council for*

⁶¹ 606 P.2d 310 at 334.

⁶² 606 P.2d 310 at 335.

⁶³ *Edgewood v. Kirby*, 761 S.W.2d 859 (Tex. 1988).

⁶⁴ *West Orange-Cove Consolidated ISD v. Nelson*, 107 S.W.3d 558 (2001).

⁶⁵ *West Orange-Cove Consol. Indep. Sch. Dist. et al. v. Neeley et al.*, No. GV-100528 (250th Dist. Ct., Travis County, Tex., Nov. 30, 2004).

⁶⁶ *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, No. 04-1144 consolidated with No. 05-0145 consolidated with No. 05-0148, Supreme Court of Texas, 176 S.W.3d 746 (2005). Reh’g denied by *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 2005 Tex. LEXIS 966 (Tex., Dec. 16, 2005).

*Better Education*⁶⁷ in 1989. In a decision emblazoned in national headlines, the Kentucky court held that the system of common schools was not “efficient”. Finding a fundamental right to education, the court concluded that this right was denied when the state’s schools were poorly funded and inadequate in educational programs—observations that led that court to order new funds and a total school system redesign. Simultaneously and much like the trauma of Texas school finance, the New Jersey case of *Abbott v. Burke*,⁶⁸ a continuation of the original *Robinson* case from 1973, captured national headlines in 1990 as that state’s school finance system was again overturned because the state’s aid formula did not meet the needs of poor urban school districts and because the formula still violated the “thorough and efficient” clause. Although the court was later satisfied after multiple iterations of *Abbott*, New Jersey’s experience stood as a monument to the state-level struggle over school funding.

Although a state-level claim also appears uncertain—at least compared to hopes of reformers for a magic bullet—it is far more promising and predictable than any prospect for a current successful federal claim. Plaintiffs in states having stronger state constitutional language relating to education have greater likelihood of a sympathetic court hearing—e.g., Wyoming. Plaintiffs in states having legislatures that are more educationally responsive to the potential for litigation generally experience greater litigation reform success—e.g., Kentucky. Plaintiffs in states where favorable extant state high court decisions were strongly worded have a greater likelihood that courts will continue judicial monitoring and have greater likelihood of success when returning to court in compliance litigation—e.g., New Jersey. Yet plaintiffs cannot be assured that any legal argument or litigation strategy is transferable, universal, or fail-proof across jurisdictions: witness, a ruling holding education to be a fundamental right is no guarantee of strict judicial scrutiny—e.g., Arizona, and plaintiffs in states where courts relinquish oversight after impressive plaintiff victories risk sliding backward as economic reversals and politics backlash and erode reforms—e.g., California. All that is certain is that the key to a successful federal claim awaits undefined; that equality of opportunity is always tensioned against privilege and wealth; that politics reclaims at least some forfeited ground over time; that enduring systemic change occurs only over very long periods of time; and that a national awakening to a fundamental right to education is the only incontrovertible answer to unequal educational opportunity. All other measures, then, are merely surrogates and manipulatives in a high-stakes game—a game that spills over into other aspects of the duty to fund schools, as new learnings and subtle social change slowly worm their way into broader definitions of equal opportunity, including challenges to how public schools’ physical infrastructure is funded.⁶⁹

⁶⁷ *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989).

⁶⁸ *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990).

⁶⁹ For related development, see “The Impact of School Finance Litigation: A Long View,” by David C. Thompson and Faith E. Crampton, *Journal of Education Finance* 27 (Winter 2002): 783-816. See also “Politics of Plaintiffs and Defendants,” by R. Craig Wood and David C.

Brief History of Public School Infrastructure Litigation⁷⁰

While headlines about struggles over school funding have nearly always focused on general state aid schemes, an underlying theme has been concern for the overwhelming cost of bricks and mortar and the potential impact of school facilities on equal educational opportunity. Frequently mistaken to be of recent origin, this concern is at once emergent and longstanding, both in the literature⁷¹ of school finance and as a sub-theme in a sizable portion of broader school finance litigation.⁷² Indeed, the major point of recounting the brief history of wider litigation claims was to reveal the principles of such claims and to advance the fact that school facility funding litigation has relied upon those same claims over time, with much the same lessons and results—at least until very recently, wherein plaintiff successes have surged and as school facility equity/ adequacy claims have, in some cases, newly taken center stage.

Federal-Level Litigation

Although the development of public school finance systems and related litigation have been carried out largely on the state-level stage, the federal government has taken an active interest in school facility concerns,⁷³ and

Thompson, in *Money, Politics, and Law: Intersections and Conflicts in the Provision of Educational Opportunity*, ed. Karen DeMoss and Kenneth Wong, Twenty-Third Annual Yearbook of the American Education Finance Association (Larchmont, NY: Eye on Education, 2004), 37-45. Relatedly, see “When the Legislative Process Fails: The Politics of Litigation in School Infrastructure Funding Equity,” by Faith E. Crampton and David C. Thompson, in *Money, Politics, and Law*, ed. Demoss and Wong, 69-88.

⁷⁰ This section draws partly on Crampton and Thompson, *Saving America’s School Infrastructure*. See Chapter 8 for fuller development.

⁷¹ See special issue on school infrastructure funding, *Journal of Education Finance*, 27 (Fall 2001), guest editors, David C. Thompson and Faith E. Crampton. See also two special issues of the *Journal of Education Finance* on the status of state and local funding of capital outlay, guest editors, David S. Honeyman, R. Craig Wood, and David C. Thompson, 27: (Winter 1988 and Spring 1988); *Fiscal Leadership for Schools: Concepts and Practices*, by David C. Thompson, R. Craig Wood, and David S. Honeyman (New York: Longman, 1994); Crampton and Thompson, *Saving America’s School Infrastructure*; Thompson, Wood, and Crampton, *Money and Schools*, 4th edition. And of course other older sources: American Association of School Administrators, Council of Great City Schools, and National School Boards Association, *The Maintenance Gap*; Education Writers Association, *Wolves at the Schoolhouse Door*; and very old records, such as William A. Alcott’s “Essay on the Construction of School Houses” (1831) complaining about miserable school conditions, not greatly different from Jonathan Kozol’s *Savage Inequalities: Children in America’s Schools* (New York: Harper Perennial, 1992), published 161 years later.

⁷² *Supra* fn. 69.

⁷³ See, e.g., *Lanham Act* of 1946, amended to grant federal aid to construct and operate schools in areas impacted by federal facilities; later in the 1950s the impact aid programs (Public Law 81-874 and Public Law 81-815) enhancing aid to federally impacted areas. More recently in 1997, also see Qualified Academy Zone Bonds (QZABs) providing a \$400 million tax credit for school facility project bondholders. Other attempts at federal aid are ongoing—e.g., House Resolution 3021, “21st Century Green High-Performing Public Schools Facilities Act” (2008) seeking to authorize \$6.4 billion in annual grants for modernization, renovation, and repair of public schools and seeking to authorize \$500 million to aid repairs in hurricane-affected states. For a fuller development of various issues, see Thompson, Wood, and Crampton, *Money and Schools*, 4th ed. See also Crampton and Thompson, *Saving America’s School Infrastructure*.

federal courts have adjudicated a significant number of disputes involving public school facilities. But unlike attempts to litigate other constitutional issues in school funding, no case has ever been decided in federal court strictly on the merits of broad public school facility equalization.⁷⁴ Rather, the impact of federal litigation on school facility matters has been more indirect, but with some implication for current practice and future development.

By far the most frequent federal court involvement in school facility issues has been in the areas of religion and desegregation. Issues involving religion typically have revolved around free speech and equal access to public school facilities for religious uses and have had no significant relationship to funding matters of interest to this study. The issue of desegregation, however, has generated important implications, particularly relating to inequality in school facilities, increased investment in facilities, *and*—importantly—relating to majority and dissenting opinions on the U.S. Supreme Court that may have some predictive value for the future.

Of greatest applicability to the question(s) at hand have been the actions in *Brown v. Board of Education*⁷⁵ in 1954 and *San Antonio Independent School District v. Rodriguez*⁷⁶ in 1973. *Brown* represented a profound reversal in the struggle for equality, as the longstanding doctrine of “separate but equal” enunciated in 1896 in *Plessy v. Ferguson*⁷⁷ was struck down. In invalidating race-based education systems, including separate school facilities, the Court effectively gave rise to an extended roadmap of continued litigation for desegregation purposes, thereby engendering expenditure of massive sums of money to reorder how schooling is carried out. Certainly, *Brown* was not the first such educational equality case to come before the Court, but—in true developmental fashion—*Brown* gave impetus and voice to an evolution of thinking that both proved itself nascent and predictive of the expansion of equal opportunity logic. Such a thread of *Brown*-like logic was present in *Rodriguez* nearly 20 years later, as—although the Court majority provided no relief to plaintiffs—dissenting opinion aggressively applied an expansionist logic, noting “...all would agree that there is a correlation [to equal opportunity] up to the point of providing the recognized essentials in facilities and academic opportunities”⁷⁸ and continuing, “...it is an inescapable fact that if one district has more funds available per pupil than another district, the former will have

⁷⁴ A LexisNexus search in mid-2008 returned 11 hits at the U.S. Supreme Court level using the descriptor “public school facilities.” Alternatively, 52 hits were returned using the descriptor “school facilities.” A separate search of all U.S. District court cases using the descriptor “public school facilities” returned 87 hits, while 915 hits were returned using the descriptor “school facilities.” Analysis determined that the categories of relevance were unchanged regardless of the descriptor used. Additional searches using “public school facility equity,” “public school facility adequacy,” “public school facility equal access,” “public school facility condition,” “public school facility costs,” and “public school facility funding” yielded no results.

⁷⁵ 347 U.S. 483 (1954).

⁷⁶ 411 U.S. 1 (1973).

⁷⁷ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁷⁸ *Rodriguez*, fn. 101 at 47.

greater choice in educational planning than will the latter...The question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive. That a child forced to attend an underfunded school with poorer physical facilities, less experienced teachers, larger classes, and a narrower range of courses than a school with substantially more funds -- and thus with greater choice in educational planning -- may nevertheless excel is to the credit of the child, not the State.”⁷⁹ Indeed, the dissent concluded, “[d]iscrimination in the opportunity to learn that is afforded a child must be our standard.”⁸⁰

Although the majority’s position on the logic of the dissenting opinion has not been directly retested on these specific claims, the Court’s interest in these matters broadly construed has continued across the intervening years. As described elsewhere,⁸¹ equality framed in interrelationship-based language has drawn further Court comment, including most directly in *Missouri v. Jenkins*⁸² as the Court held that the improvement of school facilities remains important to desegregation litigation. *Jenkins* stemmed from a 1985 ruling by a district court that the state was obliged to erase discrimination in school facilities and programs at a cost of more than \$540 million. The Court drew on its own past findings in *Board of Education of Oklahoma City Public Schools v. Dowell*⁸³ and *Green v. School Board of New Kent County*,⁸⁴ reiterating in *Jenkins* that it had identified “...student assignments, faculty, staff, transportation, extracurricular activities and facilities as the most important indicia of a racially segregated school system.”⁸⁵ Although the Court held for the defendant state in *Jenkins*, it demonstrated continued interest in school facility matters from the perspective that children cannot learn well in poor facilities and that some obligation exists to provide all schoolchildren with adequate physical facilities.

Although the very brief discussion seemingly indicates that the nation’s highest court has shown a meaningful interest in interrelationships between equal educational opportunity and school facilities, the Court has done so only cautiously, in emergent terms, and within selective parameters. But notwithstanding, progress toward expanded equality often takes precisely such a course, so that earlier discussion of nexus to other fundamental rights engendering new interpretations of basic equality continues to have relevance in a developing federal context. If a broader federal application of equal opportunity is predestined, it almost certainly will occur over a long period of

⁷⁹ *Id.*, at 83-84.

⁸⁰ *Id.*, at 84.

⁸¹ See “School Finance Litigation: One Strategy to Address Inequities in School Infrastructure Funding,” by David C. Thompson and Faith E. Crampton, in *Saving America’s School Infrastructure*, ed. Thompson and Crampton, 163-190.

⁸² *Missouri v. Jenkins* 515 U.S. 70 (1995).

⁸³ *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237 (1991).

⁸⁴ *Green v. School Board of New Kent County*, 391 U.S. 430 (1968).

⁸⁵ *Missouri v. Jenkins*, 515 U.S. 70 (1995), quoting *Green v. School Board of New Kent County*, 391 U.S. 430, 88 (1968).

time and will be triggered by some nearby connectedness, inasmuch as profoundly dramatic shifts in legal precept often follow such paths. In effect, a careful reading of all federal cases involving school facilities seems to only tangentially consider the broader equity claims of school funding reform, as the federal interest has not been centered on facility inequity *per se*, but rather focused on how unequal facilities frustrate equal educational opportunity, particularly—for now—in context of racial disparity. In similar context, there has been very little groundwork laid by plaintiffs which would be necessary for a major shift to embrace school facilities, inasmuch as all other facility-related cases at the federal level have only involved narrowly drawn or localized disputes over issues such as taxing authority, parochial/aid/equal access, or issues irrelevant to the larger question in which this study takes interest. But notwithstanding, the seeds in *Brown* and *Rodriguez* were planted long ago, and a significant amount of other time in federal courts has been devoted to unsafe physical conditions in schools and to broad constitutional rights to an equal physical learning environment in the context of educational need—i.e., lines of attack which, over time, may lead to melding of issues making it timely at some point to move on a federal claim. Until such time, pursuit of relief by plaintiffs better lies in efforts to increase the selective benevolent acts of Congress, in the variable political self-interests of state legislatures, and in state courts as the principal tool for plowing new ground and forcing compliance with—and expansion of—extant case law.

State-Level Litigation

A much larger and more directly applicable body of state-level case law involving school facility funding exists. Activity among the 50 states has produced literally hundreds of broad school finance lawsuits reaching the individual states' highest courts covering a wide range of issues,⁸⁶ with no sign of slackening either as a result of state legislative funding initiatives or as a result of diminishing plaintiff claims for relief. If anything, a resurgence of school funding litigation seems underway, with important evidence that complaints involving school facility funding are on the rise, as nearly two-thirds of all school finance cases recently reaching the states' highest courts have presented substantial facility claims⁸⁷—a number that since 2001 has gained proportionally when measured against the last report by these same authors.⁸⁸ While a sizable number of earlier-era facility related cases were narrowly

⁸⁶ A LexisNexis search in mid-2008 using the descriptor “school finance” returned 285 state supreme court hits across all years.

⁸⁷ A separate search using the descriptor “school finance” with a date range after January 1, 2001 returned 33 hits. A second separate search using the descriptor “school finance and facilities” with a date range after January 1, 2001 returned 21 hits (where the significance of the date range relates to the last instance when these authors reviewed litigation in context of this present research interest).

⁸⁸ See Thompson and Crampton, “School Finance Litigation: One Strategy to Address Inequities in School Infrastructure Funding,” 173, where the authors indicated that only 77 cases across all years had included facility-related claims for relief.

drawn,⁸⁹ the recent trend has more broadly charged that school facilities are part and parcel of equal educational opportunity, thereby representing a newly expanded frontier which state legislatures and state courts are increasingly being asked to redress.

Representative State-Level Litigation. If the landmark claims and findings in *Brown, Rodriguez, Serrano*, and many others provided the fundamental grounding for an onslaught of broader school finance litigation, the equivalent framework for state-level school facility litigation is aptly illustrated by two cases that have helped establish current adequacy/equity disputes about facilities. The West Virginia case of *Pauley v. Kelly*⁹⁰ in 1979 and the Arizona case of *Roosevelt v. Bishop*⁹¹ in 1994 have stood out as important early beacons—*Pauley* for its comprehensive approach and sweeping definition of school finance reform which extended to school facilities, and *Roosevelt* for its initially singular filing on facilities that subsequently led to wider judicial pronouncements about total educational systems. Together, these two cases provide a launch point undergirding this study’s analysis of school facility litigation impacts.

Apart from equal provision claims seen earlier in the federal litigation discussion, the broad public school facility equalization question did not really take root in state-level litigation until the 1970s when it first found visible traction in *Pauley* in 1979. In a sweeping and dramatically worded ruling on equal educational opportunity in the classic tradition, a West Virginia trial court held that equal opportunity under that state’s constitution demanded a thorough and efficient education for every child, held that education was a fundamental right in that state, and enumerated in depth the specific requirements for educational improvement in all schools. The subsequent court-ordered master plan included extensive school facility requirements and exhaustively defined adequate space and quality for each area of the curriculum. For example, the trial court ordered that each elementary school must have an art room for each 350-500 pupils with at least 50 square feet per child; that every secondary school of 500 students would need at least one art room with a minimum 65 square feet per pupil; and even detailed the requirements for storage areas. Extensive specifications by grade-level were detailed for each academic and activity function of schools. On appeal, the state supreme court upheld this conceptualization of facilities as a vital

⁸⁹ Id., 173. In 2003, Thompson and Crampton reported a history of innumerable small facility-related court cases involving disputes over largely parochial concerns such as school consolidation, annexation-related concerns implicating inadequate facilities in the receiving school district, school growth and developer fees, population sparsity or difficult terrain. They reported that 58 cases were on record in the years 1837-1997, again with very few substantially involving the issues in this present study.

⁹⁰ *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. 1979); later *Pauley v. Bailey*, 324 S.E.2d 128 (W.Va. 1982); *Pauley v. Gainer*, 353 S.E.2d 318 (W.Va. 1986).

⁹¹ *Roosevelt Elementary School District No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994).

component of equal educational opportunity, saying that a thorough and efficient system of schools is one which:

...[D]evelops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically. Legally recognized elements in this definition are development in every child to his or her capacity of: (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society. Implicit are supportive services: (1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency...We recognize that many facets of public education are being examined by...critics...However, there are undeniable legal bases for all our conclusions, including the elements specifically distilled from the debates and cases that are the specifications of what a thorough and efficient school system should have, and should do.⁹²

The ruling in *Pauley* was comprehensive and unprecedented, and led to massive changes in West Virginia's schools. The ruling applied not only to school facilities,⁹³ but also to reforming the wider educational system's equal opportunity assurances. Indeed, the original lawsuit had included facilities as only one of several areas of concern while attacking the larger state public school funding scheme. As a consequence, a strategy gained traction wherein plaintiffs alleged a series of deficiencies under a broad umbrella while (unlike earlier federal and state cases) succeeding in having school facilities elevated to co-equal status in the funding reform equation. The state supreme court's words left little doubt that it expected strict compliance, as it warned that the test would become whether subsequent enhanced state funding would produce the expected outcome—an outcome to be measurably evidenced in each individual district and school. Under these circumstances, *Pauley* set an unprecedented and aggressive tone for judicial "interference" in matters of state and local policy and pioneered a greatly increased definition of equitable

⁹² *Pauley* at 877.

⁹³ See, for example, *Preliminary Analysis and Recommendations Regarding the Closing of Select Rural Schools in West Virginia*, by David C. Thompson, Consultant's Report to Attorneys (Manhattan, KS: UCEA Center for Education Finance, 1990).

and adequate funding, including exhaustively defining facilities as part and parcel of equal educational opportunity.⁹⁴

In both compliment and contrast, the Arizona case of *Roosevelt* took facility funding to new levels of strategy and outcome. While *Pauley* had alleged system-wide infirmities, *Roosevelt* approached the facility equity/adequacy question from a perspective skeptical of folding a key facility claim into a larger set of issues. *Roosevelt* largely regarded a folding strategy as an opportunity to have other claims trump the key facility question, and consequently was the first challenge mounted solely on physical infrastructure deficiencies.

The chronology, facts, and outcome of *Roosevelt* were typical in some ways and pioneering in others. Originally dismissed by a trial court, plaintiffs' claims had contained massive evidence that the quality of school facilities were highly variable across districts and that plaintiff schools were unsafe, unhealthy, contained serious building and safety code violations, and often lacked libraries, laboratories, computer rooms, fine arts programs, gymnasiums, and auditoriums.⁹⁵ On appeal, the state supreme court drew sharp contrasts between wealthy and poor districts in the state, comparing plaintiff schools to other schools having indoor swimming pools, covered athletic stadiums, television studios, and modern technologies. The high court noted the root cause as disparity in taxable property wealth wherein assessed valuation ratios approached 8,000:1 and reached the conclusion that such differences were impermissible under the state constitution. In sharp contrast to the earlier failed case of *Shofstall* in 1973 wherein the Arizona court had held for the defendant state despite having established education as a fundamental right, the high court actually exceeded its original question in *Roosevelt* 21 years later by proceeding to examine the entirety of the state school funding scheme under the assumption that something so patently wrong in a funding scheme likely begged unacceptable variation in other parts of that same scheme. The resulting analysis under the state's "general and uniform" clause led the court to first hold that the requirement did not mean each school system had to exhibit identical programs or funding, but the clause did mean that state funding schemes which themselves create and exacerbate gross disparities cannot, by definition, be general and uniform in effect. The court further rejected the traditional defense in such cases that disparities are the result of local choice under a system of local control, holding that no local choice exists in poorer districts under such aid schemes. The entire school funding system was thereby implicated and invalid, as the court said that it is

⁹⁴ As with other school finance lawsuits, *Pauley* returned to court for compliance litigation—see *State ex rel. School Building Authority v. Marockie*, 481 S.E.2d 730 (W.Va. 1996). In 2003, a circuit court judge dismissed a single remaining claim in *Tomblin v. State Board of Education* Memorandum of Opinion and Final Order CIVIL ACTION NO. 75-1268 (2003).

⁹⁵ See, for example, *Analysis for Plaintiffs: Roosevelt Elementary School District et al v. C. Diane Bishop et al.*, by David C. Thompson and R. Craig Wood (Manhattan, KS: UCEA Center for Education Finance, 1992).

“...intuitive that there is a relationship between the adequacy of education and the adequacy of capital facilities...[so that]...even if every student in every district were getting an adequate education, gross facility disparities caused by the state’s chosen financing scheme would violate the uniformity clause.”⁹⁶

The Arizona decision represented a sweeping condemnation and established that state as the first to receive and act upon a singular facility claim. It also pioneered the opposite approach seen in *Pauley*, wherein the Arizona court overturned an entire school funding system due to the implicated effect of facilities on the comprehensive equal educational opportunity equation. Under these circumstances, *Roosevelt*—like *Pauley*—also set an unprecedented tone for judicial “interference” in matters of state and local policy, and stood as the next pioneering of an expanded definition of equitable and adequate funding.⁹⁷

Recent State-Level School Facility Litigation. By most apparent indicators, efforts to blaze a trail of successful state-level school facility litigation have increased, as there has been a noticeable spike since 2001 in state supreme court-level school finance lawsuits containing substantial facility claims. Results have ranged from slowly evolving language in facility equity/adequacy holdings such as New York’s gains above a basic constitutional requirement to provide enough light, space, heat, and air to permit children to learn,⁹⁸ to relatively aggressive requirements for equitable access to adequate facilities such as Arkansas’ constitutional requirement for substantially equal facilities,⁹⁹ New Jersey’s requirement of adequate facilities including 100% state financing in plaintiff districts,¹⁰⁰ Ohio’s requirement that the state’s educational system cannot result in indefensible facility deficiencies,¹⁰¹ Texas’ requirement that facilities cannot be judged apart from a system-wide context,¹⁰² and Wyoming’s requirement to measure adequate school facilities that must be provided at state expense.¹⁰³

In total context, then, substantial state-level gains appear to have been made over time, albeit sometimes in incremental and forceful ways. With a federal prospect likely very distant, the state case has progressed with diligence as *Pauley*-like and *Roosevelt*-like shifts have led to more regularized inclusion of facility equity/adequacy claims in school finance lawsuits, and as courts have

⁹⁶ *Roosevelt* at 814-815.

⁹⁷ As with other school finance litigation, *Roosevelt* has been subjected to compliance litigation, and other companion lawsuits have emerged: see *Hull v. Albrecht* 950 P.2d 1141 (1997); *Hull v. Albrecht*, 960 P.2d 634 (1998); *Roosevelt v. Bishop*, 74 P.3d 258 (2003); and other very recent related litigation involving at-risk and English language learner students.

⁹⁸ *Campaign for Fiscal Equity, Inc., et al., Appellants, v. State of New York et al.*, 801 N.E.2d 326 (2003).

⁹⁹ *Lake View School District No. 25 v. Huckabee*, 91 S.W.3d 472 (2002).

¹⁰⁰ *Abbott v. Burke*, 790 A.2d 842 (2002).

¹⁰¹ *DeRolph v. State*, 754 N.E.2d 1184 (2002).

¹⁰² *Neeley et. al. v. West Orange-Cove School District et. al.*, 176 S.W.3d 746 (2005).

¹⁰³ *State v. Campbell County School District*, 32 P.3d 325 (2001).

responded more comprehensively than in the past. While obviously nascent, facility equity/adequacy appears to be finally awakening to its potential power—a power that seems to have gained its greatest voice through efforts to link the physical infrastructure to its impact on learning.

CHAPTER 7 SELECTED CASE STUDIES

The recent state supreme court decisions in Arkansas, New Jersey, New York, and Ohio provide particular opportunity to consider at greater depth the justiciability of school facilities—both for the issues at hand and the outcome, and for the policy implications over time.

Arkansas

The Case

Like most states, Arkansas has experienced significant school finance litigation. In modern context, Arkansas' bouts with school funding disputes date back to 1983 when plaintiff school districts prevailed on appeal to the Arkansas supreme court in *Dupree v. Alma School District No. 30*¹⁰⁴ under the typical claims involving state constitution equal protection language. In *Dupree* the state's high court held that school district revenues improperly bore no relationship to changes in student population, educational needs, or property wealth and wrongly resulted in revenue ranging in 1978-79 from \$873 to \$2,378 per pupil. The court commented in strong terms about the effect of resultant disparities under the state aid plan and linked those same revenue disparities to differences in staffing, class size, curriculum, remedial services, facilities, materials, and equipment. Under these conditions, the court said, Arkansas' school finance scheme clearly failed to provide a general, suitable, efficient system of education and that the right to an equal education and equal protections under law were violated therein.

Subsequent Action

As in most similar cases, the Arkansas state legislature subsequently revised the funding scheme for public schools. Plaintiffs immediately challenged the new system and sought a ruling that the legislature had again failed in its duty to fund education for all children on equal terms. In 2001, a trial court again declared the system unconstitutional and the case was taken on appeal in *Lake View School District No. 25 v. Huckabee*.¹⁰⁵ The state supreme court affirmed the lower court's ruling, holding broadly that deference to local control is not an argument available to the state when inequality prevails and that such deference had not been an option since the *DuPree* decision. The court further held that the state's inaction toward developing a definition of what constitutes an adequate education in Arkansas was particularly troublesome and that the state had failed in its responsibility to know how school funds are spent and whether true equality of educational opportunity is being satisfied.

While the Arkansas high court declined to establish a definition of equality of educational opportunity, it was specific in holding that such

¹⁰⁴ 651 S.W.2d 90 (1983).

¹⁰⁵ 91 S.W.3d 472 (2002).

definition must include as basic components “...substantially equal curricula, substantially equal facilities, and substantially equal equipment for obtaining an adequate education”¹⁰⁶ and that the facts of the case indicated abject failure on the state’s part to comply. The unitary nature of these elements was clear in the court’s words as it variously stated in part:

Testing, rankings, and teacher salaries do not tell the whole story. According to the uncontested findings of the trial court, in the Lake View School District, which is undeniably a poor school district, ninety-four percent of the students are on free or reduced school lunches. That school district has one uncertified mathematics teacher who teaches all high school mathematics courses. He is paid \$ 10,000 a year as a substitute teacher and works a second job as a school bus driver where he earns \$ 5,000 a year. He has an insufficient number of calculators for his trigonometry class, too few electrical outlets, no compasses and one chalkboard, a computer lacking software and a printer that does not work, an inadequate supply of paper, and a duplicating machine that is overworked. Lake View's basketball team does not have a complete set of uniforms, while its band has no uniforms at all. The college remediation rate for Lake View students is 100 percent...The Holly Grove School District has only a basic curriculum and no advanced courses or programs. The starting salary for its teachers is \$ 21,000. Science lab equipment, computers, the bus fleet, and the heating and air conditioning systems need replacing. The buildings have leaking roofs and restrooms in need of repair. Because millage increases are difficult to win in the school district, Holly Grove must borrow against next year's revenues to repair a falling library roof and leaking gas line...The Barton Elementary School in Phillips County has two bathrooms with four stalls for over one hundred students...Lee County schools do not have advanced placement courses and suffer also from little or no science lab equipment, school buildings in need of repair, school buses that fail to meet state standards, and only thirty computers for six hundred students. Some buildings have asbestos problems and little or no heating or air conditioning. These are just a few examples of deficiencies in buildings, equipment, and supplies that plague the State's school districts. School districts experiencing fast-growing student populations such as Rogers and Bentonville in Northwest Arkansas need additional buildings. Buildings in disrepair are rampant in Eastern Arkansas. And qualification for debt-service-funding supplements from the State depends on how much debt can be incurred by the school districts. Poorer districts with deteriorating physical plants are unable to incur much debt.¹⁰⁷

¹⁰⁶ Id., at 500.

¹⁰⁷ Id., at 489-490.

The error of ignoring the interrelationship of all these elements of a school system, including interdependency of curriculum, student learning, and facilities, was clear in the court's words:

Looking then to the end result of expenditures actually spent on school children in different school districts, we quickly discern inequality in educational opportunities. The deficiencies in Lake View and Holly Grove have already been noted. In both those districts, the curriculum offered is barebones. Contrast the curriculum in those school districts with the rich curriculum offered in the Fort Smith School District, where advanced courses are offered and where specialty courses such as German, fashion merchandising, and marketing are available. The inequality in educational opportunity is self-evident...[t]he same holds true for buildings and equipment. Whether a school district has rainproof buildings, sufficient bathrooms, computers for its students, and laboratory equipment that functions is all a matter of money.¹⁰⁸

In deference to the legislative process and in recognition of the complex issues at hand, the court stayed its mandate until January 2004. Additionally, the strong language of the court was later explained to not demand identical equality, as the court reiterated in a supplemental opinion¹⁰⁹ its earlier careful phrasing about “substantial” equality. The court explained that the overarching principle of the state constitution demanded a substantially equal basis with regard to curricula, facilities, and equipment, but that the constitution allowed for variances that might result in “superior” after “adequate” had been achieved for all. The Arkansas test, then, would come in the legislature's administration of the court's order—a mandate that must include a cost study and a constitutional school finance scheme enacted by January 2004.

When the state legislature failed to meet the deadline, plaintiffs returned to court to force compliance.¹¹⁰ Under the eye of special masters appointed by the court, the legislature ultimately enacted a new funding scheme, which the masters examined in order to report back to the court. A ten-item review of legislative action followed, which in part reported that the legislature had appropriated nearly \$2.1 billion that was targeted to respond to an adequacy study with specific actions attaching thereto, including enacting a system to assess, evaluate, and monitor curricula in each individual public school; ensuring that steps were taken to guarantee a substantially equal curriculum was made available to all schoolchildren; ensuring that accountability measures were put in place by which the state would be able to determine per-pupil expenditures and how money was actually being spent in each local school district; enacting accountability and testing measures to evaluate the

¹⁰⁸ *Id.*, at 497-498.

¹⁰⁹ *Lake View School District No. 25 v. Huckabee*, 189 S.W.3d 1 (2004).

¹¹⁰ *Lake View School District No. 25 v. Huckabee*, 144 S.W.3d 741 (2004).

performance and rankings of Arkansas' students by grade-level, including comparisons in-state, regionally, and nationally; and ensuring that steps were taken to assess all public school buildings and equipment and that steps were implemented to provide substantially equal school buildings and equipment in all districts. To assist in the latter, special appropriations of more than \$8.1 million for general facilities funding and another \$27.5 million were approved for debt service funding supplement. These amounts were sufficient to satisfy the masters and the court, which had relied in part on a 2003 Arkansas Joint Committee on Educational Adequacy report¹¹¹ which estimated that annual funding would need to increase by some \$848 million in order for schools to meet the performance standards inherent to an adequate education. Based in part on updating in 2006 of the joint committee's work finding that most mandated needs were being met, the court released jurisdiction,¹¹² although not without warning regarding continued compliance.

The Future

In June 2004, the state of Arkansas increased school aid by \$400 million for Fiscal Year 2005 and added another \$82.5 million during the 2006 legislative session. During the 2007 session, another \$122 million was added. For construction and repair of school facilities, the legislature appropriated \$120 million in 2005, another \$50 million in 2006, and in 2007 passed Act 1237 appropriating \$456 million for facilities plus \$220 million from other funding sources and additionally passed other legislation adopting procedures for state oversight of school facilities construction and renovation. In sum, the words of the Arkansas supreme court were heard and acted upon, as the court said: "Accordingly, we release jurisdiction of this case and the mandate will issue. The resolve of this court is clear. We will not waver in our commitment to the goal of an adequate and substantially equal education for all Arkansas students; nor will we waver from the constitutional requirement that our State is to "ever maintain a general, suitable, and efficient system of free public schools. Make no mistake, this court will exercise the power and authority of the judiciary at any time to assure that the students of our State will not fall short of the goal set forth by this court. We will assure its attainment."¹¹³

New Jersey

The Case

As one of the lengthiest school finance litigation scenarios in the nation, New Jersey also stands as one of the most powerful instances in which a state supreme court has engaged in forceful definition and prescription, in which school facilities are regarded as part and parcel of equal educational opportunity, and in which the court has demonstrated sustained interest and control over very long periods of time.

¹¹¹ Lawrence O. Picus and Associates, *An Evidenced-Based Approach to School Finance Adequacy in Arkansas*, a report prepared for the Arkansas Joint Committee on Educational Adequacy (September 1, 2003).

¹¹² *Lake View School District No. 25 v. Huckabee*, 243 S.W.3d 919 (Ark. 2006).

¹¹³ *Lake View School District No. 25 v. Huckabee* 2004 Ark. LEXIS 425, at 40 (Ark. June 18, 2004).

Earlier discussion of *Robinson*¹¹⁴ clearly delineated the New Jersey high court's interest in the plight of poor school districts, as it held in 1973 that the state's general school funding scheme violated the thorough and efficient clause of that state's constitution. The court held that a thorough and efficient education requires equality for all children and that the state must guarantee and provide educational programs and school facilities that meet the letter and spirit of the mandate. The court was clear in saying that "...more money should make a difference in poor districts"¹¹⁵ and that "...input factors include school buildings, textbooks, and library facilities [and] there is ample evidence to show correlation between wealth and the quality of these facilities."¹¹⁶ In sum, the court found convincing evidence to demonstrate that the old school funding scheme created and perpetuated excessive financial disparities, thereby invalidating the school funding statute.

Subsequent Action

In a long series of both new and compliance-related issues, styled first as multiple iterations of *Robinson* and again later with new plaintiffs known as the *Abbott* cases beginning with *Abbott v. Burke*¹¹⁷ in 1985, the New Jersey state supreme court consistently monitored and refined progress toward the goal of high quality public education throughout the entire state, primarily by identifying those districts in greatest need as "Abbott" districts and specifying improvements that had to be made in order to bring educational and fiscal equality to all children. First brought as a sweeping and comprehensive lawsuit against the entire school funding scheme, *Abbott* took particular notice of the condition of school facilities and attendant implications for a full expression of equal educational opportunity, focusing at length on both the deplorable physical infrastructure conditions in the Abbott districts and the underlying causes of those conditions. Plaintiffs presented voluminous evidence contrasting plaintiff and non-plaintiff districts, so that the court's record held numerous accounts of tragic disparities and consequent predictable lack of educational opportunity. The court was highly critical of the fact that many poorer urban districts operated schools that, due to their age and lack of maintenance, were crumbling and in which the safety of children was threatened:

For example, in 1986 in Paterson a gymnasium floor collapsed in one school, and in another school the entire building was sinking. According to East Orange's long-range facility plan there are ten schools in immediate need of roof repair, fifteen schools with heating, ventilation or air conditioning problems; two schools that need total roof replacement; nine with electrical system problems; eight with plumbing system problems; thirteen needing structural repairs; seventeen needing patching, plastering or painting; and thirteen needing asbestos removal or containment.

¹¹⁴ *Robinson v. Cahill*, 287 A.2d 187 (1973).

¹¹⁵ *Id.*, at 205.

¹¹⁶ *Id.*, at 200-201.

¹¹⁷ 495 A.2d 376 (NJ. 1985).

In an elementary school in Paterson, the children eat lunch in a small area in the boiler room area of the basement; remedial classes are taught in a former bathroom. In one Irvington school, children attend music classes in a storage room and remedial classes in converted closets. At another school in Irvington a coal bin was converted into a classroom. In one elementary school in East Orange, there is no cafeteria, and the children eat lunch in shifts in the first floor corridor. In one school in Jersey City, built in 1900, the library is a converted cloakroom; the nurse's office has no bathroom or waiting room; the lighting is inadequate; the bathrooms have no hot water (only the custodial office and nurse's office have hot water); there is water damage inside the building because of cracks in the façade; and the heating system is inadequate.

In contrast, most schools in richer suburban districts are newer, cleaner, and safer. They provide an environment conducive to learning. They have sufficient space to accommodate the children's needs now and in the future. While it is possible that the richest of educations can be conferred in the rudest of surroundings, the record in this case demonstrates that deficient facilities are conducive to a deficient education.¹¹⁸

The graphic words of the court clearly indicated that remedy was expected. Reciting its own words from *Robinson* in 1973, the court underscored its conviction that "...the state's obligation includes as well the capital expenditures without which the required educational opportunity could not be provided."¹¹⁹ Yet, as the court noted in these proceedings nearly 20 years later, the physical deficit was so great that "...its correction is a massive undertaking, one that the Court could not consider until it knew precisely what the deficiencies are, how much their correction would cost, and how best to bring about such correction. All we have before us are, in addition to some specific figures concerning several districts, general agreement on the desperate condition of school facilities, gross estimates of the cost of correction, and concurrence on the urgent need."¹²⁰ But the court cautioned that, although redress was expensive and a jurisdictional matter best addressed by the legislature, the court would act decisively if presented with an adequate record of need and evidence of continued legislative failure.

The court's admonition was indeed predictive of a very long struggle, as judicial monitoring resulted in new legislative standards, appropriations for a wide array of improvements to schools including capital construction and repair in the Abbott districts, and—of course—nearly constant compliance

¹¹⁸ *Abbott v. Burke*, 575 A.2d 359 at 397.

¹¹⁹ *Id.*, at 411.

¹²⁰ *Id.*

litigation. As the longest running school finance lawsuit in the nation, *Abbott* has seen no less than 17 high court actions over the course of 22 continuous years.¹²¹ At the heart of compliance have been the state's attempts at satisfactory redress, beginning shortly after *Abbott II* in 1990 with adoption of a new definition of a "thorough and efficient" education, which led to implementation of Core Curriculum Content Standards (CCCS) in 1996 and enactment in that same year of a new school finance law known as the Comprehensive Educational Improvement and Financing Act (CEIFA). Wending through layers of state government and continuous legal challenges, these legislative acts represented positive movement as the court in *Abbott IV*¹²² accepted the CCCS but refused to validate the amount of money targeted for the Abbott districts under CEIFA. The dogged determination of the court to pursue the full measure of equity/ adequacy under constitutional provisions arose again in *Abbott V*¹²³ as the court noted that accounts of crumbling schools inundate the record and that "...these deplorable conditions have a direct and deleterious impact."¹²⁴ Such a failure, the court held, is of constitutional significance because disadvantaged children cannot achieve when relegated to unsafe and educationally incapable buildings.

The consequence of *Abbott V* was a court order that the state must create and fund a capital construction program that would eliminate all deficiencies in the Abbott districts and that the state must create a superhighway for school districts to challenge perceived future lack of progress. The state responded by enacting the Education Facilities Construction and Financing Act (EFCFA),¹²⁵ which was signed into law in July 2000 and initially provided \$6 billion for Abbott school districts and an additional \$2.5 billion for non-Abbott districts. In true form, however, compliance litigation continued, with issues arising over depleted funds, stalled construction projects, and quarrels over such matters as whether the court intended to provide an expedited appeals process for school districts.

The Future

The history of *Robinson v. Cahill* and later *Abbott v. Burke* has been a monument to the power of school finance litigation, and to facility

¹²¹ *Abbott v. Burke I*, 495 A.2d 376 (1985); *Abbott v. Burke II*, 575 A.2d 359 (1990); *Abbott v. Burke III*, 643 A.2d 575 (1994); *Abbott v. Burke IV*, 693 A.2d 417 (1997); *Abbott v. Burke V*, 710 A.2d 450 (1998); *Abbott v. Burke VI*, 748 A.2d 82 (2000); *Abbott v. Burke VII*, 751 A.2d 1032 (2000); *Abbott v. Burke VIII*, 790 A.2d 842 (2002); *Abbott v. Burke IX*, 798 A.2d 602 (2002); *Abbott v. Burke X* (Mediation Agreement Order), 832 A.2d 891 (June 2003); *Abbott v. Burke XI* (Maintenance Budget Order), 832 A.2d 906 (July 2003); *Abbott v. Burke XII*, 181 N.J. 311 (June 2004); *Abbott v. Burke XIII*, 182 N.J. 153 (November 2004); *Abbott v. Burke XIV*, 889 A. 2d 1063 (2005); *Abbott v. Burke XV*, 901 A. 2d 299 (2006); *Abbott v. Burke XVI*, 2006 WL 1388958 (N.J.) (May 22, 2006); *Abbott v. Burke XVII*, 2007 WL 1518909 (N.J.) (May 24, 2007).

¹²² *Abbott v. Burke*, 693 A.2d 417 (1997).

¹²³ *Abbott v. Burke*, 710 A.2d 450 (1998).

¹²⁴ *Id.*, at 470.

¹²⁵ State of New Jersey, *Education Facilities Construction and Financing Act (EFCFA)*, <http://www.fes-nj.com/EFCFA>.

equity/adequacy in particular—not because the facilities issue trumps the larger *Abbott* general school finance picture, but rather because of the definition, strength, endurance, and determination of a court to make facilities part and parcel of equal educational opportunity. Believed in some national press headlines to be the most significant education case since *Brown* more than a half-century earlier, *Abbott* has both typified and chronicled the failures and successes of school finance litigation in the search for equal educational opportunity in the face of adverse economics and contrarian politics. As described by the Education Law Center, *Abbott* represents:

...[A] set of education programs and reforms widely recognized to be the most fair and just in the nation [by establishing an]...”education adequacy” framework [that] includes: rigorous content standards-based education, supported by per-pupil funding equal to spending in successful suburban schools; universal, well-planned and high quality preschool education for all three- and four-year olds; supplemental (“at-risk”) programs to address student and school needs attributed to high-poverty, including intensive early literacy, small class size and social and health services; new and rehabilitated facilities to adequately house all programs, relieve overcrowding, and eliminate health and safety violations; school and district reforms to improve curriculum and instruction, for effective and efficient use of funds to enable students to achieve state standards; and state accountability for effective and timely implementation, and to ensure progress in improving student achievement.¹²⁶

At the same time, vigilance has continued to be the watchword. Available data indicate that while 71 school facility projects have been completed and 28 projects are under construction, a list of 59 other planned projects has been reduced to only 32 due to lack of funding with the remainder placed on hold, while another 91 projects are completely stalled due to lack of funds. Additionally, other problems exist, including issues affecting several *Abbott* districts.¹²⁷ And to complicate matters, in March 2008 the defendant state filed for dismissal of all *Abbott* proceedings, asking the high court to end the decades-long monitoring of school finance in New Jersey based on a new school finance formula¹²⁸ that was signed into law in January 2008, therein increasing state aid to schools by \$532 million in 2008-2009 and guaranteeing a minimum 2% increase for every school district, with many districts—including non-*Abbott* districts—receiving state aid increases up to 20%. In such a scenario, the future is highly predictable—the new law is certain to be challenged, and the resolve of the court will continue to be tested.

¹²⁶ Education Law Center, *About Abbott v. Burke*, <http://www.edlawcenter.org/ELCPublic/AbbottvBurke/AboutAbbott.htm>.

¹²⁷ *Ibid.*, *School Construction Program Status*, http://www.edlawcenter.org/ELCPublic/AbbottSchoolFacilities/FacilitiesPages/SchoolConstructionProgram_Status.htm.

¹²⁸ School Funding Reform Act of 2008, P.L. 2007, c. 260 (A500 and S4000).

New York

The Case

In similarly lengthy fashion, although with a considerable recumbent period and with very different supreme court-level definitions and behaviors leading to the eventual outcome, the state of New York has experienced intense litigation affecting the entirety of the school funding system, including dramatic impacts on school facility funding issues.

The well-chronicled litigation in New York traces its roots to *Board of Education Levittown v. Nyquist*¹²⁹ in 1978, when a group of poor school districts, including several large urban districts, sued the state over the school aid formula. The underlying issue was a local property tax dispute wherein the state had enacted an equalization aid formula that was virtually ignored via the intervening impact of a hold-harmless clause. In the usual whipsaw of appeals following initial trial, the case again arrived at the New York state supreme court¹³⁰ in 1982, whereupon the high court modified a lower court's holding favoring plaintiffs, now finding that the system of local funding was constitutional and did not violate equal protections because the promotion of local control was a legitimate state interest of the aid formula. The court held that the state constitution only required a minimum level of education, with no requirement that school facilities be equalized throughout the state.

Silent for years after, but in what would become no less than 47 court events between 1994-2006, the Campaign for Fiscal Equity (CFE)—a legally incorporated coalition of parent groups, school boards, citizens, and advocacy organizations—began to wage a new war on the state of New York for the purpose of completely reforming school funding laws. Spurred to action by the earlier *Levittown* rulings, plaintiffs' hopes were rejuvenated in 1995 in *Campaign for Fiscal Equity v. State*¹³¹ as the New York Court of Appeals (that state's highest court) indicated that it would consider the merits of a claim if the CFE plaintiffs could show that a sizable number of students were not receiving the constitutionally guaranteed "basic" education. In 2001, plaintiffs prevailed, securing a court order setting parameters for the legislature's use in revising the school funding system.¹³² In subsequent action, the defendant state was ordered to meet the approved standard no later than July 30, 2004.¹³³ Upon missing the deadline, the high court responded by appointing referees to submit a compliance plan and subsequently approved the referees' recommendation that the state must provide an additional \$5.6 billion in operating aid and a \$9.2 billion capital funding package. After a series of

¹²⁹ *Board of Education, Levittown v. Nyquist*, 408 N.Y.S.2d 606 (1978); *Board of Education, Levittown v. Nyquist*, 83 A.D.2d 217 (1981); *Board of Education, Levittown v. Nyquist*, 439 N.E.2d 359 (1982); *Board of Education v. Nyquist*, 459 U.S. 1138 (1983).

¹³⁰ *Board of Education, Levittown v. Nyquist*, 439 N.E.2d 359 (1982).

¹³¹ 655 N.E.2d 661 (1995).

¹³² 719 N.Y.S.2d 475 (2001).

¹³³ 801 N.E.2d 326 (2003).

appeals, the high court issued a final order,¹³⁴ rejecting an earlier ruling that a guaranteed “basic” education was equivalent to an eighth grade diploma and holding that a basic education should be defined as a meaningful high school education. While the court deferred determination of the final cost of a meaningful education to the state legislature, it did establish a minimum funding amount of \$1.93 billion that must be further adjusted over time for changes in costs.

The inclusion and expanded implication of school facilities was of great import. At trial, plaintiffs had presented evidence over a two-week period illustrating that buildings had not been properly maintained, posed environmental risks, were seriously overcrowded, and lacked the capacity to house the state’s mandated learning standards curriculum in terms of space, technology, laboratories, and so forth. A formidable task wherein New York City alone held over 1,500 aging school buildings serving over one million children, the evidence had graphically described leaky roofs, deficient heating, and other problems including in some cases having no science laboratories, music rooms or gymnasiums. In contrast to its earlier conservative statements indicating that students were only entitled to a basic requirement to provide enough light, space, heat, and air to permit children to learn, the court subsequently made the connection between physical facilities and enhanced student learning outcomes, as it noted that such relationship need not be more than self-evident in order to be constitutionally compelling:

Some facts that the trial court classified as purely “physical” facilities inputs are inseparable from overcrowding and excessive class size--conditions whose measurable effect on students plaintiffs have shown. One symptom of an overcrowded school system is the encroachment of ordinary classroom activities into what would otherwise be specialized spaces: libraries, laboratories, auditoriums and the like. There was considerable evidence of a shortage of such spaces. Particularly poignant is the fact that 31 New York City high schools serving more than 16,000 students have no science laboratory whatsoever. Whether this fact stems from overcrowding or from the design of some old school buildings, its direct impact on pedagogy is self-evident and it counts against the State in any assessment of the facilities input.¹³⁵

As the court subsequently noted, plaintiffs had established the causation element by showing that “...increased funding can provide better teachers, facilities and instrumentalities of learning, and that these improved inputs lead to better student performance.”¹³⁶

Subsequent Action

¹³⁴ 861 N.E.2d 50 (2006).

¹³⁵ 801 N.E.2d 326 at 334.

¹³⁶ *Id.*, at 340.

With issuance of a final order subject to no appeal unless the state failed at some point to fund the mandate, the New York case in CFE took another relatively atypical turn wherein the legislature almost immediately enacted a sweeping funding reform package.¹³⁷ More aggressive than actually required by the court, the new plan enacted a foundation state aid formula based on a formal cost study; eliminated numerous “traditional” entitlements; provided \$1.76 billion in up-front monies; and enacted a total package meant to provide \$7 billion in new annual funding by the year 2010. For Fiscal Year 2007, the plan called for the \$1.76 billion increase coupled with a foundation aid increase of \$1.1 billion; an increase of \$146 million for universal pre-kindergarten programs; an increase of \$148 million in school facilities funding in support of \$2.6 billion in state bonding plus other school construction supports; \$360 million in other aid programs including transportation; along with other accountability and transparency measures including Contracts for Excellence which required school leaders to implement “proven” strategies for improved student performance.¹³⁸ Pleasing to litigants, the new plan aimed to provide the greatest funding to the neediest school districts, so that the legislative package substantially exceeded the \$1.93 billion floor ordered by the court and ultimately would approximate the \$5.6 billion ordered by the CFE trial court.¹³⁹

The Future

Like many enthusiastically heralded success stories, passage of time has threatened to cloud the future. The New York school finance plan¹⁴⁰ that had “leveled up” education spending for children, thereby avoiding the bitter and protracted wars that so frequently emanate from attempts to redistribute or “level down” existing monies, showed signs of stumbling badly in mid-2008. In a newspaper opinion piece¹⁴¹ dated May 25, 2008 the lead attorney for the CFE plaintiffs charged that the promise of reform was in trouble as the mayor of New York City had announced plans to cut public schools by \$428 million. As with many lawsuits over the recent past decades, trying—or in this instance, *re*-trying—the case in the press seems to have worked relatively well, as slightly over a month later the city council restored \$129 million said to be intended to implement key recommendations from CFE.¹⁴² Still, the scenario has considerable uncertainty attached, as the same advocacy groups that expressed

¹³⁷ 2007-2008 Education Budget and Reform Act A. 4307—C. April 1, 2007.

¹³⁸ Campaign for Fiscal Equity, Inc., <http://www.cfequity.org>.

¹³⁹ *National Access Network*, Litigation into Law and Public Engagement into Policy: CFE Money Flowing to New York Districts This Year, www.schoolfunding.info/news/policy/4-10-07newyork.php3.

¹⁴⁰ 2008-09 Enacted Education Budget Bill 9807/S6807 (amending the 2007-08 Education Budget Bill) A09807 Summary.

¹⁴¹ Michael Rebell, “City Breaks Faith with Schools,” *Daily News*, May 25, 2008, http://www.nydailynews.com/opinions/2008/05/25/2008-05-25_city_breaks_faith_with_schools.html?page=1.

¹⁴² Alliance for Quality Education Campaign for Fiscal Equity, New York City Coalition For Educational Justice, and New York Immigration Coalition Campaign for Fiscal Equity, “Education Organizations Applaud City Council Budget for Restoring \$129 Million in Education Funding,” press release, June 29, 2008, <http://www.cfequity.org>.

relief at the partially restored funding also expressed disappointment at the notion of any cuts, particularly since the city at press time had a \$4.5 billion surplus. Indeed, according to advocates, the cuts were rescinded only in the face of a groundswell of public opposition,¹⁴³ so that the operation of politics as usual wherein immediate gains are almost immediately eroded¹⁴⁴ appears to have already crept into the “solution” to that state’s public school funding woes. And since a floor of adequacy underlies the high court’s mandate, it is entirely likely that politics will surround—rather than drown—the gains made. That vigilance on the part of plaintiffs will continue is the only certainty, accompanied by perhaps a near-equal certainty that the courts will continue to be the only hammer that can drive back the effects of politics and time. In New York, the recent expansive reversals in minimalist conceptual underpinnings are untested in terms of whether court resolve will stay with the gains so recently experienced in that state.

Ohio

The Case

A final illustrative school finance battleground, with current implications for school facility funding litigation, has played out in the state of Ohio. Long plagued by school finance difficulties, Ohio stands as a leading instance where real progress over time can be evidenced, albeit somewhat imperfectly.

Again in a well-chronicled history, Ohio’s entry into the relatively modern foray involving legal struggles over school funding and school facilities stems from *Board of Education of Cincinnati v. Walter*¹⁴⁵ in 1979. Plaintiff school districts had prevailed earlier at the trial court level, presenting evidence of inequitable and inadequate funding, including graphic description of school facilities that were obsolete, poorly lighted, suffering from inadequate maintenance, and consequently negatively impactful on teaching, learning, motivation, and morale. School superintendents had exhaustively testified at trial about how their districts historically had been plagued by school tax levy inadequacies and school bond failures, and how they had even been forced to turn to commercial lenders and had had to defer payment of bills into the next fiscal year in order to keep school doors open. On that basis, the trial court had upended the state’s school finance formula, holding that the Ohio system of funding public schools violated the state constitution’s thorough and efficient clause. On final appeal, however, the state’s high court determined that the legislature had not abused its broad discretion in enacting the statute in question; that the equal yield state school aid formula had sufficiently established a floor for complying with the state’s minimum educational standards; that the school districts claiming to be starved for funding actually offered programs and services exceeding state minimum standards; and that

¹⁴³ *Ibid.*, 2.

¹⁴⁴ Thompson and Crampton, “The Impact of School Finance Litigation, 783-816.

¹⁴⁵ 390 N.E.2d 813 (1979).

the assertion—or even fact—that a better school funding system could be established was immaterial to the constitutional test.

Subsequent Action

As in other states, the visibility, intensity, and outcome of Ohio school finance litigation has variously surged and waned. Fast-forwarding to 1997, plaintiffs in *DeRolph v. Ohio*¹⁴⁶ gained impressive new foothold as the state supreme court held that the state constitution required the legislature to fund a thorough and efficient system of public schools, now with strict requirement to implement the system fairly among all districts. Overturning the entire effect of the earlier ruling in *Cincinnati*, the fairness mandate was not satisfied in *DeRolph* because the court accepted as dispositive proof that some districts were starved for funds or lacked teachers, buildings and equipment, and—consequently—the court ordered the legislature to systematically revise the funding scheme.

The facts displayed to the court were compelling, particularly regarding the condition of school facilities and the related causes. In 1989 the state legislature had ordered a survey of all school buildings in the state¹⁴⁷ for the purpose of costing out compliance with building and health and safety issues, including asbestos removal, whereupon the associated price tag had amounted to \$10.2 billion for repair and reconstruction of existing schools. Underlying this total dollar amount were data showing that 50% of Ohio's schools were at least 50 years of age and that 15% were at least 70 years old. Additionally, only 17% of heating systems and 31% of roofs were in satisfactory condition, and only 25% of plumbing systems were in good working order. Only 30% of schools had adequate fire alarm systems. The effects of these shortcomings were dramatic, as witnesses testified that over 300 students had been poisoned by carbon monoxide in schools, that over 99% of schools were asbestos-laden, and that only 63 school systems (out of 240 applying) were funded in 1990 for asbestos removal. These data were supported by later studies from the United States General Accounting Office (GAO), showing a near-total failure to make progress, wherein GAO reported that 95% of Ohio's schools were in bad need of upgrades or repairs, and that Ohio ranked last on some measures of educational adequacy.¹⁴⁸

Responding to a long litany that depicted additional evidence of crumbling and bowing school walls, leaking sewage, tainted drinking water, and students freezing while being “...subjected to kerosene fumes from kerosene heaters that were used when the building became very cold”¹⁴⁹ and

¹⁴⁶ 677 N.E.2d 733 (1997).

¹⁴⁷ Section 8, Am.Sub.S.B. No. 140, 143 Ohio Laws, Part I, 837.

¹⁴⁸ United States General Accounting Office (GAO), *School Facilities: Profiles of School Condition by State* (Washington, DC: June 1996); see also GAO, *School Facilities: America's Schools Not Designed or Equipped for 21st Century* (Washington, DC: April 1995).

¹⁴⁹ 677 N.E.2d 733 at 744.

highly reminiscent of miserable conditions 150 years earlier,¹⁵⁰ the court in *DeRolph* held that state funding of schools must be judged inadequate if districts have insufficient monies to provide a safe and healthy learning environment. As the court averred:

All the facts documented in the record lead to one inescapable conclusion -- Ohio's elementary and secondary public schools are neither thorough nor efficient. The operation of the appellant school districts conflicts with the historical notion that the education of our youth is of utmost concern and that Ohio children should be educated adequately so that they are able to participate fully in society. Our state Constitution was drafted with the importance of education in mind. In contrast, education under the legislation being reviewed ranks miserably low in the state's priorities. In fact, the formula amount is established after the legislature determines the total dollars to be allocated to primary and secondary education in each biennial budget. Consequently, the present school financing system contravenes the clear wording of our Constitution and the framers' intent.¹⁵¹

While the court refused to fashion a remedy on behalf of the legislature, it was clear that meaningful action was expected. The court noted in strong terms that a thorough and efficient system would contain specific elements resulting in redress:

Although we have found the school financing system to be unconstitutional, we do not instruct the General Assembly as to the specifics of the legislation it should enact. However, we admonish the General Assembly that it must create an entirely new school financing system. In establishing such a system, the General Assembly shall recognize that there is but one system of public education in Ohio. It is a statewide system, expressly created by the state's highest governing document, the constitution...Because of its importance, education should be placed high in the state's budget priorities. A thorough and efficient system of common schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain these facilities in a safe manner, in compliance with all local, state, and federal mandates.¹⁵²

Not surprisingly, litigation followed to define the extent and limits of state responsibility and to test the speed at which progress might fall into place. In *DeRolph II*,¹⁵³ the court recognized the complexity of school funding, granting more time and further refining a "thorough" system of schools. More specifically, the court noted that "...a thorough system means that each and

¹⁵⁰ See Alcott, "Essay on the Construction of Schoolhouses," in Thompson, Wood, and Crampton, *Money and Schools*, 4th ed., 258.

¹⁵¹ 677 N.E.2d 733 at 745.

¹⁵² *Id.*, at 747.

¹⁵³ *DeRolph v. State*, 728 N.E.2d 993 (Ohio 2000).

every school district has enough funds to operate...[and is one]...in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state building and fire codes, and equipment sufficient for all students to be afforded an educational opportunity.”¹⁵⁴ By 2001, the court satisfied itself on these conditions as the case returned for yet another review,¹⁵⁵ with the court finally holding that, based on evidence regarding progress showing that the state’s recently formed Facilities Commission had provided funding to 34 school districts and that the Commission was administering projects for over 300 new buildings, there was no longer a need to retain jurisdiction, although it warned that remedies are readily available if compliance were to lag—i.e., a significant reversal in posture for a court that had earlier stated how substandard facilities are mostly irrelevant to an acceptable equal educational opportunity.¹⁵⁶

The Future

As a direct response to the *DeRolph* litigation, the Ohio School Facilities Commission¹⁵⁷ (OSFC) had been created in 1997 as a state agency dedicated to overseeing the facilities portion of Ohio public school finance reform. The Commission took as its principal responsibilities to engage in financial partnership with schools, to prepare design standards, to provide planning and project management services, and to oversee ongoing maintenance for schools. The Commission’s membership was to be comprised of three voting members in the form of the Director of the Office of Budget and Management, the Director of the Department of Administrative Services, and the State Superintendent of Public Instruction; additionally, four non-voting state legislative seats in the form of two Senate members and two House members would round out the membership slate. The Commission’s work was to begin with the poorest districts in the state, aided by a funding formula meant to provide aid in inverse relationship to local ability to pay for school physical improvements.

As presently operating in mid-2008, the Commission has at its disposal a variety of programs by which to approach facility repair, renovation, and replacement. Four programs provide funding through a combination of state and local funds—Urban Initiative, Classroom Facilities Assistance Program, Exceptional Needs Program, and the Vocational Facilities Assistance Program. Districts ineligible for these programs have access to other funding, namely the Expedited Local Partnership Program for local school districts, or the Vocational Facilities Expedited Local Partnership Program for joint vocational school districts. If a district later becomes eligible for a funded program, any qualified expenditures already incurred are credited to the project. Via these programs, \$4.8 billion has been dedicated to a combination of 141 buildings

¹⁵⁴ *Id.*, at 1001.

¹⁵⁵ *DeRolph v. State*, 754 N.E.2d 1184 (Ohio 2001).

¹⁵⁶ *DeRolph v. State*, 728 N.E.2d 993 (Ohio 2000).

¹⁵⁷ Title 33, Chapter 3318 of the Ohio Revised Code.

under construction, 481 newly renovated facilities, and 114 school district projects fully completed.¹⁵⁸

As in most states, however, by mid-2008 the Ohio economy and attendant legislative ripples had stirred questions about the future of school finance generally, and with potential implications for facilities reform. State budget cuts totaling \$733 million were announced in January 2008, with cuts aimed at the Department of Education, although basic subsidies to school districts seemed unaffected.¹⁵⁹ By July, only six months later, planned cuts had increased to \$742 million, with no economic recovery said to be in sight. With a governor promising to “fix” Ohio’s school finance problems but equally resistant to proposing the tax increase believed by many to be necessary to effective a fix, a question remains whether the resolve to hold public schools harmless from continuing cuts¹⁶⁰ will survive. Whether that will be possible in the face of continuing bad economic news in many states¹⁶¹ is unanswered. What is immediately answerable, however, is that if reductions to school funding follow—including reduction to the commitment for school facilities—the courts will be asked to help answer the question.

¹⁵⁸ Ohio School Facilities Commission, *Programs*,
<http://www.osfc.state.oh.us/programs/main.html>.

¹⁵⁹ Carla Edlefsen, “Ohio,” in *2008 State of the States and Provinces*, ed. Lawrence Getzler, Document Prepared in Conjunction with the 2008 Annual Conference of the American Education Finance Association (Denver, CO: April 2008),
http://www.aefa.cc/associations/5476/files/SoS_Total_2008__2_.pdf

¹⁶⁰ Mark Niquette and Catherine Candisky, “Strickland Looks First at School Reforms,” *The Columbus Dispatch*, July 22, 2008,
http://www.dispatch.com/live/content/local_news/stories/2008/07/22/gov_forum.ART_ART_07-22-08_A1_NBAQI05.html?sid=101.

¹⁶¹ See National Conference of State Legislatures, “What a Difference a Year Makes: More States are Facing Budget Woes,” *NCSL News*, July 23, 2008,
<http://ncsl.org/programs/press/pr0708StateBudgetfinal.htm>. Fiscal gaps tripled from \$13 billion in FY 2008 to more than \$40 billion for FY 2009. Ohio, however, was not among those headlined as most negatively impacted. For the full report on all 50 states, see *State Budget Update: June 2008* (Denver, CO: National Conference of State Legislatures, July 2008).

CHAPTER 8

POLICY IMPLICATIONS AND CONCLUSIONS

While scholars, attorneys, and litigants in school finance have long sought to strategically predestine the outcome of an actual lawsuit, all efforts at predetermination have proved more art than science. Notwithstanding, there are useful observations that can lead litigants to a better understanding of their prospects if the long road is chosen. In the case of school finance and facility equity/adequacy litigation in particular, the lessons are sparing but impactful.

Of particular importance is that constitutional litigation is an endurance event over long periods of time, with no certain prize upon winning. The players are nearly omnipotent, deliberately set in imperial opposition as a consequence of separation of powers, thereby creating a crush of forces that grind slowly in the high-stakes context of millions or billions of dollars. Such a collision rarely comes without endless entrenchment, so that the nearby prize of winning is a protracted series of appeals or—in the case of final appeal—an appearance (and reality) of “business as usual” while either a multi-year legislative calendar of progress is set in motion or a multi-year calendar of legislative avoidance takes form. In sum, winning often produces no immediate outcome other than a sense of vindication on the part of one set of litigants.

Of equal importance is that constitutional litigation follows a type of time-enslaved readiness, wherein issues are fated to be either premature or ripe. Plaintiffs often seem to believe that justice will suddenly prevail through the blinding clarity of its merits, but justice itself is ever imperfectly unfolding wherein the unthinkable today was the rule of law in the past. As such, school finance litigation has been inter-generational, as indeed the very foundations of social thought have been reshaped by judicial interpretation and as society itself has painstakingly inched toward the impatient truths of reformers. In sum, profound justice follows its own timetable, at times imperceptibly reshaping entire foundations so that today’s injustice becomes tomorrow’s unquestioned fairness.

Of similar importance is the rhythm of the justice system itself. Courts are not infallible, nor are they immune to influence from many quarters. While reformers like to believe that justice is plain, the reality is that courts first follow the requirements of law before overlaying any other interpretation. Additionally, courts are contemporary and are influenced at times by the larger context, so that the interplay between legislation and litigation may seem to raise the question of whether courts are leading or following. In the case of school finance litigation, it has long been “some of each,” as courts have tested legislative acts against constitutional requirements, first for a plain reading and later in some instances for a wider understanding. All these lessons have also been the case with school facilities, as total reliance on local funding has faded under various pressures—as courts have alternately led and followed social thought—and as a strict reading found no duty at one place and time, but

subsequently found great injustice despite no specific requirement, all in the context of egregiousness and new understandings. Time, then, is at once a patient friend and a sullen enemy because for plaintiffs there is no magic bullet assured to break the bonds of injustice or—in the case of defendants—to forestall a black-robed tyranny bent on eroding the separation of powers. In the end, there is only the skill and accident of assessing the high-stakes gamble of a constitutional claim’s ripeness.

Such has been the particular experience of school finance litigants at federal and state levels for more than half a century. The overriding lesson is plain: as litigants—particularly plaintiffs—approach a flashpoint, consideration of the timeliness of a claim should be joined with observable strategy that may enhance the prospects of favorable review. Enumerated, those observations are at a minimum:

- Plaintiffs always bear the burden of proof, and it is a heavy weight. In the typical absence of a federal claim, a careful analysis of state constitutional language needs to occur wherein a plain and unemotional reading should carry more merit than optimistic misinterpretations of vague provisions. In as much as parties to constitutional litigation must bear their own costs, litigation should be engaged only with full understanding of the total commitment—a commitment that may last decades, with enormous upfront costs to students and taxpayers while hoped-for rewards hang indefinitely in the balance.
- The prior history of litigation in a particular state should be exhaustively considered. In some states an issue may be foreclosed, while in others a door may have been left ajar or thrown wide wherein the language of the court in a prior action may offer useful strategy to subsequent litigants. Similarly, rulings from sister states need to be analyzed carefully, as courts may turn to other jurisdictions to understand the issues and possible outcomes.
- A strong claim, constitutionally grounded, must be at hand. Perceived injustice is not enough. Of greatest strength are specificity of state constitutional provisions or a federal claim involving established flashpoints such as desegregation. These scenarios provide the opportunity to graphically portray the violation and may offer heightened scrutiny, thereby shifting the burden of proof.
- Harm must be shown, and a dramatic case showing grievous plight is most effective. The underlying argument must be that education cannot occur as constitutionally envisioned without satisfying the full measure of the claim. The most impactful scenarios make strong causal linkages to student achievement deficits, so that any minimal provision standards are rejected in favor of graphic preconditions to effective learning. The headlong rush by the federal government and

individual states toward stringent school performance accountability standards increasingly offers such foothold, as these acts inadvertently may have demanded higher governmental responsibility for funding these outcomes.

These principles and strategies of general school finance litigation are equally applicable when contemplating a school facility complaint. More specifically:

- While a plain reading of constitutional requirements is unlikely to yield a specific duty favoring plaintiffs in a school facility claim, the small but growing number of instances of courts sweeping facilities into a comprehensive definition of equal educational opportunity stands as reason to seriously consider inclusion of such a claim. The burden of proof takes on critical proportion in such actions, so that even courts guided by vague constitutional language and themselves inclined to demand a tight causal link can be so struck by powerful prima facie evidence of physical deficiencies that they require little more than graphic self-evidence regarding educational impacts. The prior history of litigation in a state and results of rulings in sister states can be important to such strategy, as prior attitudes can be capitalized upon or potentially reversed through compelling data and evidence of broader progress.
- Whether a facilities claim stands alone or is mounted as part of a sweeping attack, the underlying argument again must be that schooling cannot occur without the full measure of equal educational opportunity, which includes facilities as a precondition to effective learning—i.e., the entire educational system is inadequate if any element is out of place. States themselves are increasingly volunteering a measure of harm, as they rush to enact academic performance standards while simultaneously conducting physical inventories and statewide facility assessments, estimating infrastructure deficits, and establishing inter-school performance profiles. Nearly every state has engaged in one of more of these activities, and many states have implicitly or explicitly written into statute a presumption of causality and level of obligation that cannot be easily dismissed.
- Beyond these strategies, the broadest of all lessons still applies. School facility legislation and litigation are endurance events, albeit a late start with miles to go to catch up with the full measure of equal educational opportunity. School facility legislation and litigation are mostly time-dependent, whereby facilities are an issue whose readiness is rising toward equality, with the courts and society leading

simultaneously and with some indication that the political will is following close behind and gaining in strength.¹⁶²

In final sum, the signs of progress are discernable, as courts and legislatures bring school facilities into a new millennium's definition of equal educational opportunity. What must be overcome is the extremely high barrier in terms of money and time, the eroding effects of economic ebb and flow, and attendant effects of reactionary legislation and attitudes. What must be remembered is that facilities are part and parcel of equal opportunity and that the courts have played an indispensable role in reaching that realization. In other words, children must be able to see the value of education through the benevolent acts—and the protective acts—of adults. As AASA said nearly two decades ago, “[T]he most exciting curriculum innovations in the world have trouble succeeding in cold, dank, deteriorating classrooms... Students know the difference too!...call[ing] their buildings ‘filthy and disgraceful.’”¹⁶³ It is thus clear that both legislation and litigation are required to reverse that reality.

¹⁶² See earlier reference in footnote House Resolution 3021, “21st Century Green High-Performing Public Schools Facilities Act” (2008) seeking \$6.4 billion for modernization, renovation, and repair of public schools and further seeking \$500 for hurricane-affected states.

¹⁶³ American Association of School Administrators, *Schoolhouse in the Red*, 11.

SECTION IV
SUMMARY, SYNTHESIS, AND POLICY RECOMMENDATIONS

CHAPTER 9

SUMMARY AND SYNTHESIS OF FINDINGS

The purpose of this study was to estimate the current level of states' school infrastructure funding need; compare the results to that of the original study published seven years earlier; and provide an overview and analysis of the impact of school infrastructure funding litigation, with an emphasis on more recent court cases. For the estimation of current levels of school infrastructure funding need, the study replicated the research methods used in 2001, using state-conducted school infrastructure needs assessments as a major data source. Other data sources included the U.S. Department of Education and the U.S. Census Bureau. The overview and analysis of school infrastructure funding litigation drew upon a wide range of respected legal sources and databases. The rationale for the study lay with evidence from an emerging body of research that indicates the quality of the physical environment of schools is a critical education capacity factor that impacts students' academic success and well-being.

Using a comprehensive definition of school infrastructure, the authors found that seven years after the initial study, the magnitude of school infrastructure funding need across the 50 states remains substantial at approximately \$254.6 billion. This total represents states' estimated funding need for the next five to 10 years and, by state, ranges from \$326 million in Vermont to \$25.4 billion in California, with average state funding need standing at \$5.1 billion. However, because \$254.6 billion represents a 4.3% decrease in funding need from 2001 (in unadjusted dollars), some readers may be tempted to conclude that states and localities are successfully chipping away at this mountain of funding need. To assist readers in drawing meaningful comparisons, the authors offer a number of cautions in this report, suggesting that year-to-year and even state-to-state comparisons must be nuanced and acknowledging that even with the most rigorously replicated research there are limitations to direct comparisons. However, even after taking such caveats into consideration, the fact remains that the level of school infrastructure funding need in almost every state in the country is staggering; and, by any measure, a funding gap of over \$250 billion in the nation's elementary and secondary public school system is a matter of grave concern.

The second part of the study provided an historical overview and analysis of public elementary and secondary school finance and infrastructure funding litigation, which served as policy advisory support for the larger data analysis in this study. The underlying rationale was twofold. First, it was predicted by the authors that the overall development of school finance lawsuits is importantly linked to recent targeted applications of litigation to school infrastructure adequacy and equity issues. Second, it was predicted that changes in federal and state policy affecting school infrastructure funding—and subsequently actual school facility conditions and governmental aid formula design—are at least phenomenologically simultaneous in time, and more likely

are interdependent given the likely interplay between governmental policymaking and litigative pressures for reform. To examine these assertions, the authors first reviewed the foundations of public school finance litigation at both federal and state levels; and then provided an exhaustive review of school infrastructure litigation, including analysis of similarities and dissimilarities of legal claims and subsequent judicial and legislative outcomes. Also included were case studies of recent school infrastructure litigation in Arkansas, New Jersey, New York, and Ohio, states chosen as representative examples. As a result, a series of conclusions was drawn about the efficacy of school infrastructure litigation.

At the federal level, although the failure of *San Antonio Independent School District v. Rodriguez* in 1973 had a chilling effect on federal school finance litigation, the authors argue that there is evidence that the U.S. Supreme Court has not fully closed the door on future claims. Nonetheless, those pursuing school finance reform through the courts after 1973 turned to state courts in search of relief from fiscal inequality. The next three decades of school finance litigation wins and losses, as chronicled in this report, provided critical lessons and helped lay the groundwork for those pursuing equitable and adequate funding of school infrastructure through state courts. Importantly, with the broadening of the scope of the of definition of equal opportunity over time, school infrastructure litigants have begun to find state courts more sympathetic to claims that involve inequities in school facilities and states' failure to provide adequate funding.

Yet the courts' interest in school facility-related issues is not new. At the federal level, court involvement has been predominantly in the areas of religion, such as access to public school facilities by religious groups, and racial equality, the latter including landmark cases like *Plessy v. Ferguson* and *Brown v. Board of Education*. However, this federal interest did not lead to an infusion of federal aid for the nation's school infrastructure. At the state level, school infrastructure-related court cases are much more numerous and longstanding, dating back to the early 1800s; but the legal questions involved in these early cases were quite narrow, and it was not until the late 20th century that school infrastructure litigation claims were based upon the foundation of equity and equality of educational opportunity that had become the cornerstone of school finance litigation.

The case studies of recent school infrastructure litigation in Arkansas, Ohio, New York, and New Jersey provide greater detail of the process and outcomes of such litigation. In all of these cases, state high courts mandated the investment of substantial new state funding in school infrastructure, often amounting to hundreds of millions and even billions of dollars. Yet the path to victory for plaintiffs and school children has often been long and difficult, in instances lasting decades, leaving generations of children to attend inadequate and unsafe school facilities.

The sum of physical infrastructure deficits in America's public schools strongly suggests a deep and growing need characterized by a widespread lack of concerted policy solutions. The magnitude of unsatisfied backlog and new growth in need, coupled with the economic challenges now facing the country, likewise strongly suggest that continuing to lay the entire burden for the funding of school infrastructure at the feet of states and local school districts will likely exacerbate funding need or result in a zero sum game whereby existing state and local tax dollars are redirected away from other critical needs. The capacity of states and local communities to fully redress public schools' infrastructure deficiencies, particularly under current economic conditions, is almost certainly insufficient in light of an estimated funding need of \$254.6 billion.

CHAPTER 10

POLICY RECOMMENDATIONS

A substantial body of research has established that investment in the physical environment in which children learn is a critical factor that supports their academic success. As such, the staggering level of public elementary and secondary school infrastructure funding need constitutes a national education crisis. In a global economy, America's students need a world-class education to be successful in an increasing competitive marketplace. As such, the ongoing deficit in school infrastructure funding need is alarming and must be addressed.

However, there are no simple solutions or silver bullets. Because the components and origins of school infrastructure funding need are multidimensional, policy solutions must, in turn, be multifaceted. Taking a comprehensive approach, these components encompass: deferred maintenance; new construction; renovation and retrofitting of existing facilities; addition to existing facilities; and major improvements to grounds. There are also multiple origins for school infrastructure funding need: health, safety, and accessibility; energy-efficiency and environmental concerns; technology readiness; accommodation of enrollment increases; federal, state, and local mandates; and implementation of education reforms that improve student success, such as class-size reduction. In addition, policymakers must give consideration to the urgency of some school infrastructure funding issues. While addressing all components of school infrastructure funding need is imperative, immediate threats to the health and safety of students and staff must be given a high priority. Finally, while the results of this study established substantial funding need across all states, there is ample research, such as works referenced in the third section of this report on school infrastructure litigation, to establish that school infrastructure funding need in low-income communities is so acute it denies students equality of educational opportunity. The above examples point to another dimension of crafting appropriate policy solutions for the vast range of school infrastructure funding needs—prioritization.

In keeping with the findings of this study and the above considerations, four policy recommendations are proffered:

- **The nature and scope of school infrastructure funding need calls for a new federal/state/local partnership with the federal government assuming a strong leadership role.**

Although constitutionally the funding of elementary and secondary public education is the responsibility of individual states, there is ample

precedent for a strong federal role in funding educational issues national in scope. This study has clearly established that the level of school infrastructure funding need has evolved over a number of years and now is so entrenched and systemic in nature that it constitutes a national crisis. Relatedly, there is precedent for a strong federal role in addressing educational issues that promote the general welfare of the populace, such as issues of equity, social justice, and equality of opportunity.

- **Immediate federal action through direct funding to address inequities and inadequacies in school facilities attended by low-income children as well as infrastructure-related health, safety, and accessibility issues should be a national priority.**

As noted above, there is precedent for a strong federal role in addressing educational issues national in scope which also disproportionately affect those in poverty. Historically, the responsibility for funding of school infrastructure has been delegated by states to local school districts whose major revenue source for infrastructure is often limited to the local property tax. As a consequence, low property wealth communities, which are usually also low income, have historically been disadvantaged in access to funding for school infrastructure. In areas of extreme poverty, there exist in this country school facilities in such unsafe and despicable conditions that they are comparable to those found in the most impoverished of developing nations. The most appropriate policy tool under such circumstances is immediate, direct federal aid. The children in these schools cannot wait any longer.

- **To encourage states to assume their constitutional responsibilities for funding education, the federal government should consider providing direct incentives to states, such as matching funds, to encourage them to develop and implement comprehensive school infrastructure planning and funding models.**

Too many states still do not assess or fund school infrastructure funding needs within their borders. Without such comprehensive and timely needs assessments, realistic planning and adequate, equitable state funding are impossibilities. Strikingly, this study found that fewer than half of all states have a recent, comprehensive school infrastructure assessment. That is virtually unchanged from the 2001 study results. To encourage states to develop and implement comprehensive school infrastructure planning and funding models, federal incentives should be considered. Here, an appropriate policy tool is a matching grant. Matching grants can be tailored in myriad ways, for example, with differing levels of matching to address the fiscal capacity of each state undertaking these activities.

- **At the same time, the AFT, alone or in partnership with other like-minded organizations, may want to consider providing greater support and assistance to state and local affiliates to pursue litigation in states where recalcitrant elected officials cling to inadequate, inequitable school infrastructure funding systems (or provide no funding at all) that harm children and demoralize staff.**

It is important to consider the possibility that sufficient federal aid to address the totality of school infrastructure funding needs may not be forthcoming in the short or long term. As this study attests, litigation targeted to school infrastructure and equality of educational opportunity can be a lever to force state governments to act. However, litigation is costly given its long-term nature, and this can prove to be an insurmountable obstacle for many potential plaintiffs in individual states and school districts. In the most recalcitrant of states, traditional education and lobbying activities geared toward legislative change may have proven ineffective, making litigation the only viable option left. In cases such as these, AFT cost-sharing and technical support may provide potential plaintiffs with the wherewithal to seek legal redress.

Appendix A

Resource Persons (alphabetical by state)

Perry Taylor, State Architect. School Facilities. Alabama Department of Education.

Sam S Kito III, Facilities Engineer. Division of School Finance/Facilities. Alaska Department of Education and Early Development.

Shannon Farrell-Hart. Facilities Program. Division of Learning Support. California Department of Education.

Jose Gomez, Executive Director. California Educational Facilities Authority.

John Marinucci, Director. School Finance and General Services. Delaware Department of Education.

David Wedge, Bureau Chief. Bureau of School Facilities Bureau. Division of Finance and Internal Operations. Connecticut State Department of Education.

Spessard Boatright, Director of the Office of Educational Facilities. Florida Department of Education.

Alan P. Krieger, Facilities Program Manager. Facilities Services Unit. Georgia Department of Education.

Randolph G. Moore, Assistant Superintendent. Office of School Facilities and Support Services. Hawaii Department of Education.

Melissa McGrath, Public Information Officer. Idaho State Department of Education.

Peggy E. Smith, School Financial Management Specialist. Office of School Financial Management. Indiana Department of Education.

Su McCurdy, Education Program Manager (Infrastructure). Finance, Facilities and Operations Services. Division of School Support and Information. Iowa Department of Education.

Gary D. Schwartz. Education Program Consultant (Infrastructure). Finance, Facilities and Operations Services. Division of School Support and Information. Iowa Department of Education.

Beth Scioneaux, Deputy Superintendent. Office of Management and Finance. Louisiana Department of Education.

Scott E. Brown, Director. School Facilities Programs. Maine Department of Education.

Mark Hobson, School Facilities Supervisor. Division of School Buildings. Mississippi Department of Education.

Shane McNeill, Director. Office of Healthy Schools. Mississippi Department of Education.

Tom Melcher, Program Finance Director. Minnesota Department of Education.

Gerri Ogle, Associate Commissioner. Missouri Department of Elementary and Secondary Education.

Michael Nicosia, Executive Director. Montana Quality Education Coalition.

Russ Inbody, Administrator. School Finance and Organization Services. Nebraska Department of Education.

James R. Wells, Deputy Superintendent. Administrative and Fiscal Services. State of Nevada Department of Education.

Edward R. Murdough, Administrator. Bureau of School Approval and Facility Management. New Hampshire Department of Education.

Joan Ponessa, Director of Research. Education Law Center. [New Jersey]

David Sciarra, Executive Director. Education Law Center. [New Jersey]

Antonio Ortíz, Director. Capital Outlay Bureau. New Mexico. Public Education Department.

Curt Miller, Associate Project Manager. Office of Facilities Planning. New York State Education Department.

Michael A. Rebell, Executive Director. The Campaign for Educational Equity. Teachers College, Columbia University, [New York]

Jerry A. Coleman, Director of School Finance and Organization. North Dakota Department of Public Instruction.

Sue MacGlashan, Assistant Superintendent. Office of Finance and Administration. Oregon Department of Education.

Joseph Paul da Silva, School Construction Coordinator. Office of Finance. Rhode Island Department of Elementary and Secondary Education.

Alex C. James, Director. Office of School Facilities. South Carolina Department of Education.

Susan Woodmansey, Administrator. Office of Finance and Management. South Dakota Department of Education.

Julie Barton. Local Government Assistance and Economic Development. Texas Comptroller of Public Accounts.

Lawrence Newton, Director of School Finance and Statistics. Utah State Office of Education.

Cathy Hilgendorf, Coordinator. School Construction Program. Vermont Department of Education.

Hunter L. Barnes, Architectural Consultant. Virginia Department of Education.

Carrie Hert, Assistant to the Director of School Facilities. Washington Department of Education.

Stella Gill, Executive Secretary. West Virginia School Building Authority.

Elizabeth Kane, Consultant. School Management Services. Wisconsin Department of Public Instruction.

Mark Manchin, Executive Director. West Virginia School Building Authority.

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Wisconsin

Wisconsin Section of the American Society of Civil Engineers (ASCE). *Report Card on Wisconsin's Infrastructure 2007*. February 2007.

APPENDIX C

Table C-1: Summary Table of States Sorted by Regional Typology with Matching Variables

State	Student Enrollment 2008	Enrollment Change 2000-2007	Percentage Change 2000-2007	Enrollment Change 2009-2016	Percentage Change 2009-2016	Student Poverty 2004 ¹⁶⁴
NORTHEAST						
Connecticut	569,345	10,320	1.84%	(2,092)	-0.37%	n.r. ¹⁶⁵
Maine	190,390	(14,641)	-7.07%	4,734	2.50%	22.983%
Massachusetts	960,466	(10,015)	-1.03%	(1,241)	-0.13%	22.252%
New Hampshire	202,158	(5,151)	-2.47%	9,522	4.73%	11.307%
Rhode Island	150,059	(5,179)	-3.29%	(2,610)	-1.76%	29.253%
Vermont	91,785	(8,421)	-8.25%	1,432	1.58%	19.963%
MIDATLANTIC						
Delaware	124,794	8,939	7.80%	10,307	8.21%	23.315%
Maryland	865,250	14,587	1.71%	55,289	6.41%	28.051%
New Jersey	1,415,987	97,640	7.43%	35,684	2.51%	20.626%
New York	2,789,587	(76,061)	-2.64%	(14,882)	-0.54%	n.r.
Pennsylvania	1,802,543	(2,033)	-0.11%	18,928	1.06%	22.332%
GREAT LAKES						
Illinois	2,125,835	76,387	3.73%	14,469	0.68%	42.329%
Indiana	1,042,507	52,108	5.27%	16,645	1.60%	41.241%
Michigan	1,721,276	17,589	1.02%	3,063	0.18%	38.153%
Ohio	1,822,972	(3,085)	-0.17%	13,224	0.73%	36.234%
Wisconsin	840,941	(33,563)	-3.82%	32,619	3.90%	43.293%
PLAINS						
Iowa	489,386	(7,274)	-1.47%	27,124	5.52%	27.734%
Kansas	470,153	(1,265)	-0.27%	25,628	5.43%	36.961%
Minnesota	844,541	(9,846)	-1.15%	67,541	7.97%	n.r.
Missouri	914,522	97	0.01%	46,747	5.11%	53.173%
Nebraska	292,494	4,719	1.65%	20,812	7.07%	23.964%
North Dakota	93,990	(14,067)	-12.88%	(1,828)	-1.97%	56.265%
South Dakota	119,526	(8,482)	-6.60%	5,051	4.23%	42.474%
SOUTHEAST						
Alabama	732,897	(5,320)	-0.72%	5,553	0.76%	n.r.
Arkansas	477,777	23,813	5.29%	31,490	6.54%	39.366%
Florida	2,792,515	318,863	13.10%	403,045	14.19%	38.756%
Georgia	1,681,352	207,590	14.37%	229,700	13.45%	31.486%
Kentucky	692,270	22,098	3.32%	24,130	3.47%	26.781%
Louisiana	726,405	(19,824)	-2.67%	26,761	3.67%	22.300%

¹⁶⁴ Note that the latest year for data by state on eligibility for free or reduced-price lunch at the time of this study was 2004.

¹⁶⁵ Note: n.r. = not reported. Alabama, Connecticut, Minnesota, New York, and West Virginia did not report data for the number of students eligible for free or reduced-price lunch in 2004.

Table C-1 (continued)						
State	Student Enrollment 2008	Enrollment Change 2000-2007	Percentage Change 2000-2007	Enrollment Change 2009-2016	Percentage Change 2009-2016	Student Poverty 2004
SOUTHEAST (continued)						
Mississippi	502,386	2,644	0.53%	8,272	1.64%	26.549%
North Carolina	1,464,943	153,853	11.89%	158,044	10.67%	21.040%
South Carolina	718,043	37,000	5.46%	32,484	4.51%	24.906%
Tennessee	971,447	55,381	6.09%	79,182	8.10%	20.411%
Virginia	1,246,549	93,303	8.15%	106,092	8.46%	22.844%
West Virginia	281,741	(5,201)	-1.82%	1,830	0.65%	n.r.
SOUTHWEST						
Arizona	1,129,186	230,752	26.29%	186,700	16.24%	37.282%
New Mexico	324,984	5,023	1.57%	18,828	5.79%	48.411%
Oklahoma	640,400	12,438	2.00%	36,991	5.74%	30.502%
Texas	4,755,869	598,917	14.75%	787,302	16.22%	24.050%
ROCKY MOUNTAINS						
Colorado	799,807	67,139	9.27%	75,828	9.39%	23.870%
Idaho	274,834	25,471	10.39%	42,008	15.03%	27.531%
Montana	143,932	(10,448)	-6.75%	10,773	7.48%	25.671%
Utah	573,340	77,497	16.10%	79,789	13.59%	23.122%
Wyoming	84,050	(5,907)	-6.57%	5,353	6.35%	21.821%
FAR WEST						
Alaska	130,634	(2,010)	-1.51%	15,600	11.94%	20.059%
California	6,462,725	327,553	5.33%	314,576	4.87%	39.588%
Hawaii	187,545	1,190	0.65%	24,081	12.67%	31.533%
Nevada	445,931	93,591	27.47%	89,300	19.53%	27.244%
Oregon	551,562	5,499	1.01%	40,379	7.32%	32.104%
Washington	1,006,472	6,927	0.69%	50,317	5.01%	26.759%

ABOUT THE AUTHORS

Dr. Faith E. Crampton began her career in education as a public school teacher. Her professional career has spanned public education, senior administrative positions in state government, senior research and policy positions in national education and legislative organizations, and graduate faculty positions in public and private research universities. Her current position is Associate Professor of education finance and policy at the University of Wisconsin-Milwaukee. She has written extensively on school infrastructure funding and education finance related issues in prominent journals, such as the *Journal of Education Finance*, *Journal of the Council for Educational Facilities Planners International*, *Journal of School Business Management*, *School Business Affairs*, and *Educational Considerations*, in addition to authoring a number of monographs, reports, book chapters, and policy briefs on this topic. The results of her research have been presented at the conferences of numerous major national and international research and policy associations, such as the American Education Finance Association, American Educational Research Association, Council for Educational Facilities Planners International, National Conference of State Legislatures, NAACP, Organizations Concerned About Rural Education, British Educational Management and Administration Society, and the University Council for Educational Administration.

She served as principal investigator of the first 50-state study of unmet funding needs for school infrastructure. The announcement of the results of this study, estimating over \$266 billion in unmet funding need and eclipsing the results of earlier less comprehensive studies, garnered national media attention and was followed by invited briefings for the United States Congress, the U.S. Department of Education, and the White House Council of Economic Advisors. Subsequently, she edited with Dr. David C. Thompson the Fall 2001 special issue of the *Journal of Education Finance* on the crisis in school infrastructure funding in the United States. In 2003, she published with Dr. David C. Thompson the landmark book, *Saving America's School Infrastructure*, with a foreword by The Honorable Senator Edward M. Kennedy. Most recently, as principal investigator she authored a monograph on the results of a major research study, "Investment in School Infrastructure as a Critical Educational Capacity Issue: A National Study," funded, in part, by the Council of Educational Facilities Planners International. Dr. Crampton holds a Ph.D. in Educational Policy and Leadership with an emphasis in public finance from The Ohio State University.

Dr. David C. Thompson's professional career has spanned classroom teacher, elementary principal, high school principal, superintendent of schools, and currently the professoriate. He is Professor and Chair of the Department of Educational Leadership at Kansas State University and Founding Codirector of the UCEA Center for Education Finance. A specialist in education finance litigation, his publication record contains twelve books and more than seventy book chapters, monographs, and refereed articles. A frequently invited author in highly respected circles, he has published chapters in four consecutive American Education Finance Association Yearbooks plus additional chapters and articles in other AEFA yearbooks, the *Journal of Education Finance*, the NOLPE *Handbook of School Law*, West's *Education Law Reporter*, books by the Association of School Business Officials International, and many others. He is coauthor of two editions of *Education Finance Law: Constitutional Challenges to State Aid Plans*. He has served on the scholarly review boards of West's *Education Law Reporter* and *Journal of Education Finance*; serves as Legislative Editor for the *Journal of Education Finance*; has written an annual invited review of education finance litigation for *EdLaw Reporter*; has written a regular column for the journal of the Council of Educational Facility Planners International; and has served as Editor of the scholarly journal *Educational Considerations*. His school finance textbook, *Fiscal Leadership For Schools: Concepts And Practices* is regarded as a classic. He is additionally coauthor of *Principles of School Business Management*, 3rd edition. His current school finance text, *Money and Schools*, 4th edition, coauthored with Dr. Faith Crampton, is used in over 150 universities. He is also coauthor, with Dr. Faith Crampton, of the text *Research Methods in School Finance: Theoretical and Conceptual Considerations in Assessing Equity, Efficiency, and Adequacy*. He served as lead editor and contributor to the U.S. Department of Education's major revision of *Financial Accounting for Local and State School Systems 2003 Edition*. Finally, he is coeditor, with Dr. Faith Crampton, of the text *Saving America's School Infrastructure*, with the foreword by The Honorable Senator Edward M. Kennedy.

Dr. Thompson's extended reputation has led to service as consultant in over 20 states. He has additionally served as consultant to school finance committees, legislatures, and governors' task forces. His research in school finance and litigation has been presented to most major national organizations including the American Education Finance Association (AEFA), Education Law Association (ELA), American Educational Research Association (AERA), National Center for Education Statistics (NCES), University Council for Educational Administration (UCEA), and other keynote addresses. He was footnoted in a decision of the United States Supreme Court; see *BOE of Oklahoma City Public Schools, Independent School District No. 89, Oklahoma County, v Dowell* 111 S.C. at 643. In 2000, he received the University Council for Educational Administration's *Award of Appreciation for Sustained and Meritorious Service* for his contributions to the profession through the UCEA Center for the Study of School Finance. In 2003, he received the outstanding research award at Kansas State University.