From Mcinnis to Adequacy: The Relationship Between School Funding Litigation and Illinois K-12 Public Education Funding Policy

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ABSTRACT

FROM *McINNIS* TO ADEQUACY: THE RELATIONSHIP BETWEEN
SCHOOL FUNDING LITIGATION AND ILLINOIS K-12
PUBLIC EDUCATION FUNDING POLICY

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Illinois K-12 public school funding has long been characterized by large inter-district disparities in per-pupil expenditures. A primary reason for this characterization was the Illinois legislature’s heavy reliance on local property tax within the various school funding formulas historically used to determine school revenues. The heavy reliance on local property taxes as the primary source of funding for Illinois schools has contributed to one of the largest funding gaps between the state’s highest and lowest property wealth school districts in the United States. A heavy reliance on local property taxes has led to low property wealth school districts receiving a less than adequate share of education funding.

The Illinois General Assembly’s historical inability to adequately and equitably fund K-12 public education has prompted a number of lawsuits challenging the constitutionality of the State’s methods for funding its public schools. While public school funding reform advocates have achieved victory under twenty-two state constitutions, courts have typically rejected plaintiffs’ challenges to Illinois’ methods for funding public schools and have directed plaintiffs to seek reform through the legislative process.
As a result, reforming public school funding policy in Illinois is primarily a political process. While efforts to secure court-ordered school funding reform have been unsuccessful in Illinois, a nexus exists between legal challenges to the Illinois public school funding system and legislative reforms to Illinois public school funding policy after failed litigation. Since the 1970 Illinois Constitutional Convention, the state’s public school funding policy has moved in apparent tandem with the various legal challenges to the methods used for funding public education. A review of nearly five decades of public school funding litigation and legislative transcripts reveals how plaintiffs may have directly influenced the discussion, formation, and enactment of subsequent school funding policy. Therefore, despite failing in the courts of law, evidence shows a strong connection in which plaintiffs have been tremendously successful in the court of public opinion, as their efforts have helped move Illinois legislators to modify the state’s public school funding formula towards a more equitable and adequate financing system for all Illinois students through passage of the Evidence-Based Funding for Student Success Act of 2017.
FROM McINNIS TO ADEQUACY: THE RELATIONSHIP BETWEEN SCHOOL FUNDING LITIGATION AND ILLINOIS K-12 PUBLIC EDUCATION FUNDING POLICY

BY

JOEL FILAS
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A DISSERTATION SUBMITTED TO THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE DOCTOR OF EDUCATION

DEPARTMENT OF LEADERSHIP, EDUCATIONAL PSYCHOLOGY AND FOUNDATIONS

Doctoral Director:
Dr. Kelly H. Summers
DEDICATION

This paper is dedicated to my family, and to those who have kept me sane throughout the years.
ACKNOWLEDGEMENTS

Thank you to Dr. Kiracoffe for keeping me in the race and to Dr. Summers, Dr. Creed, and Dr. Falkoff for pushing me past the finish line. Dr. Fitzgerald, thank you for keeping my eye on the medal stand. I could not have completed this marathon without you all.
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CHAPTER 1

INTRODUCTION

PROBLEM STATEMENT

On August 31, 2017, the Illinois General Assembly fundamentally changed the structure for funding Illinois PK-12 public education through passage of the Evidence-Based Funding for School Success Act.¹ The bipartisan legislation, incorporating an evidence-based funding model of public school funding, replaced the State’s prior foundation formula approach, a system identified as one of the most inequitable systems in the United States.²

A primary reason for this characterization was the Illinois legislature’s heavy reliance on local property tax wealth within the various school funding formulas historically used to determine school revenues. A heavy reliance on local property taxes within these formulas created two primary problems for school districts educating students in low property wealth areas. First, the State’s public school funding formula contributed to an inequitable distribution of educational funding. Because the amount of total revenue local school districts receive is primarily determined by local property taxes, Illinois students who reside in low property wealth school districts have less money spent on their education, per-pupil, than Illinois students who reside in higher property wealth school districts. Second, the State’s public school funding formulas have left low property wealth school districts with inadequate shares of state funding necessary to provide a sufficient education to all students. The Illinois General Assembly’s

¹ Public Act 100-0465, 105 ILCS 5/18-8.15.
² Center for Tax and Budget Accountability, Analysis of SB 1947 (Public Act 100-0465): The Evidence-Based Funding for Student Success Act, October 10, 2017.
historical inability to adequately and equitably fund K-12 public education for students in low property wealth areas prompted a number of lawsuits challenging the State’s methods for funding its public schools. While school funding reform advocates have achieved victory under many state constitutions, constitutional challenges filed by Illinois plaintiffs have been dismissed by a federal or state high court each time. Since the earliest school funding case filed over fifty years ago, courts in Illinois have uniformly found the issues of equity and adequacy in K-12 public schools were fundamentally political – not legal – and have continually referred plaintiffs to the General Assembly for remedy. The following study focuses on plaintiffs’ attempts to reform Illinois’ inadequate and inequitable school funding formula and research legislative reforms and analyze whether litigation, although unsuccessful, has resulted in any positive changes to the methods Illinois has used to finance K-12 public education.

While the Illinois General Assembly has attempted to strengthen the equity and adequacy of its school funding system by increasing revenues to low property wealth school districts, these attempts have adversely impacted low property wealth school districts in Illinois. The methods historically used to fund Illinois public education have actually resulted in an inequitable distribution of educational dollars statewide, and failed to provide an adequate level of funding for schools to provide a sufficient education to students attending residing in low property wealth areas.

**Illinois Public School Funding Inequity**

Although low property wealth school districts receive a greater share of general state aid, the historical state funding formulas used to distribute educational revenues to local school districts have created vast disparity in per pupil expenditures between school districts educating
students in low property wealth areas and those educating students in high property wealth areas. While these former formula attempted to address disparity in per pupil spending by providing a greater share of General State Aid to those with greater need, the formula capped spending for local school districts by directly relating the per pupil foundation level of spending (the amount of money a school should spend per child through a combination of local property taxes and state aid) to the school district’s local property wealth.

The foundation level, utilized as part of the public school funding formula for fiscal years 1997-2017, represented a yearly minimum per pupil spending sufficient to finance the basic costs of an adequate K-12 Illinois education. Unfortunately for a majority of Illinois school districts, local property taxes are insufficient to reach the per pupil foundation level. As a result, these school districts must rely on General State Aid to maintain this level of per pupil spending. At the same time, school districts having the ability to fund education through local sources at a level far above the foundation level were not limited to any level of spending.

In FY 2017 (the final year of the State’s foundation formula) for example, the Illinois General Assembly set the foundation level of adequate spending at $6,119 per pupil for each public school district. School districts who were unable to generate at least 92.9% of the $6,119 foundation level (less than $5,691), received the difference in General State Aid. For example, consider a school district with local property wealth per pupil of $4,000. This level results in a General State Aid claim amount of $2,119, or the amount required to allow the district to spend,

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3 The former Illinois funding formula identified an adequate education as one resulting in at least 67% of “non-at-risk” students achieving a passing score on state mandated standardized tests, in education policy a child is considered “at risk” of academic failure if that child has special needs, is low income, or is an English Language Learner.
at a minimum, the Foundation Level of $6,119 per student.\textsuperscript{4} That year, a total of 614 Illinois public school districts were unable to raise 93% of the foundation level of adequacy, and received General State Aid through the program’s “foundation formula.”\textsuperscript{5} Therefore, 614 lower property wealth school districts were capped at a level of spending equal to $6,119 per pupil through a combination of state and local sources.

At the same time, Illinois’ 58 most wealthy school districts, those who could generate 175\% ($10,709) or more of the foundation level through local property taxes alone, also received a $218 per pupil share of General State Aid under the former Illinois K-12 public school funding formula. Furthermore, wealthy school districts were not capped at a per pupil level of spending like lower property wealth school districts were, since the former Illinois public school funding formula did not limit local property tax revenues by any specific percentage of the foundation level.

Therefore, in FY17, a low property wealth school districts could only spend $6,119 through a combination of local and state sources per pupil on the education of their students, wealthy school districts could fund their students’ education at a level at least $4,000 more per pupil. In fact, the most recent Illinois School Report Card Data reveals while the lowest property wealth school district utilized a total per pupil operating budget of $6,502 per pupil (Brownstown School District 201), students in the highest property wealth school district (Ohio High School District 505 were educated within a $36,208 operating budget; a disparity of nearly $30,000 per

\begin{footnotes}
\item[5]\textit{Id} at 7.
\end{footnotes}
pupil between the lowest property wealth school districts and the highest property wealth school district.6

Illinois Public School Funding Inadequacy

The effects of an inequitable school funding formula under the State’s former public school funding formula were exasperated by the public school funding structure’s failure to provide an adequate level of funding for all Illinois school children. While an equitable public school funding system compares the spending on one group of students with another, an adequate school funding system can be defined as one providing the funding needed for all students to achieve a specific level of achievement.7 Unlike equity, the concept of school funding adequacy does not rest on measures of equal treatment of student. Instead, adequacy rests upon the theory that all students are entitled to at least a “high-minimum” of school funding.8

Funding an adequate high-minimum system takes into account the varying needs of different types of pupils, also recognizes individual school districts face differing costs. The adequacy approach also recognizes some communities may have to pay more to attract equally good teachers to teach those in need of more supports, recognizes the benefit some students gain from having their education enriched through technology, the arts and extra-curricular activities, and would somehow compensate for the lack of those advantages in other schools.9 Thus, maintaining an adequate school funding system involves determining the per pupil cost of

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6 The most recent Illinois School Report Card data available at: https://www.illinoisreportcard.com
9 Id.
achieving the specific level of achievement, accounting for the various differences in the student population, and then providing school districts with at least this level of per student funding through a combination of state and local funding.

The failure to provide all Illinois students with an adequate level of funding to meet the “high-minimum” also stemmed from the former Illinois public school funding formula’s yearly foundation level. The foundation level represented the per pupil revenue an individual school district would receive through a combination of local property taxes and General State Aid, as calculated by the former public school funding formula. The foundation level was established yearly, based on recommendations made to the Illinois General Assembly by the State Education Funding Advisory Board (EFAB).

First, the EFAB’s determination of the recommended foundation level did not estimate the actual cost of an adequate Illinois education. Instead, the recommendation established only a baseline level of funding needed for each school to provide an adequate education resulting in just 67% of its non at-risk students meeting standardized testing benchmarks. Therefore, the foundation level did not provide the funding necessary for all students to receive an adequate education.

Second, the General Assembly has only once adopted the EFAB’s yearly-recommended foundation level, since the first recommendation was made in Fiscal-Year 2002. That year the State adopted the EFAB’s recommended foundation level of $4,560 per pupil. The following year, the State adopted a foundation level of $120 per-pupil less than the recommended adequate level of spending. By FY17; however, the gap between the recommended level of adequate
spending and the actual foundation level grew to nearly $3,000 per-pupil.\(^{10}\) The differential in funding left Illinois students with nearly $5 billion less than what was recommended to finance the needs of an adequate education in FY17 alone.\(^{11}\)

Third, not only did the General Assembly fail to fully fund the EFAB’s recommended foundation level, beginning in FY12 through FY17, the State failed to fully appropriate even the lesser statutorily adopted foundation level. During this time, the Illinois State Board of Education began “prorating” General State Aid payments, and instead gave only a percentage of each school district General State Aid entitlement. In FY15 for example, the height of proration in Illinois, school districts only received 87% of their general state education funding, costing Illinois’ neediest districts over $1,000 per student.\(^{12}\) The implementation of the State’s proration program disproportionally affected low property wealth school districts. Instead of reducing General State Aid for high property wealth school districts in order to provide low property wealth school districts their full share of state funding, the Illinois State Board of Education instead cut each school district the same percentage. For example, a wealthy school district with the ability to raise $10,000 per pupil locally still received $250 per student in state aid, while a school district only able to raise $3,000 locally would receive $3,000 per pupil in state aid. A 10% proration would cost the wealthier school district just $25 per pupil, while the lower school district in this example would lose $300 per student. Therefore, the practice of proration impacted lower property wealth school districts the hardest.

\(^{10}\) See *Illinois Education Funding Recommendations* at 8. In FY17, the EFAB recommended the foundation level be set at $8,899 per student; however, the Illinois General Assembly set the foundation level at $6,119, a level that had not increased since FY2010.  
\(^{11}\) Id.  
Inadequate Funding Contributes to Inadequate Educational Opportunities

The former Illinois public school funding formula created inequitable and inadequate educational funding for low property wealth school districts. While a heavy reliance on property wealth within the funding formula contributed to great disparity in per pupil expenditures between low and high property wealth school districts, the proration of General State Aid by the Illinois General Assembly also left low property wealth school districts with inadequate shares of school funding. Therefore, not only did students attending low property wealth school districts receive far less per pupil funding than students attending schools in high property wealth areas, they failed to receive even the minimum statutory level of educational funding.

According to Illinois School Report Card data, the differential in resources among property-poor school districts and property wealthy school districts were significant. In regard to instructional quality, high property wealth school districts employ a more highly trained staff. The most recent Illinois School Report Card data reveals the percentage of teachers holding master’s degrees or higher in the twenty highest property wealth school districts was 75%, while only 41% of teachers educating students in the twenty lowest property wealth school districts held advanced degrees.\textsuperscript{13} Additionally, the higher property wealth school districts may be able to attract and hire a higher quality instructor, as teachers in these districts earned an average of $27,000 more than teachers educating students in the lower property wealth school districts.\textsuperscript{14}

\textsuperscript{14} Id.
Students attending schools in low property wealth school districts are also less likely to attend schools outfitted with the tools necessary to provide a twenty-first century education due to an inability to update outdated technological infrastructure. Recent reports estimate the cost of unmet capital needs among low school districts at over $6 billion. Additionally, many extracurricular activities shown to boost student achievement, such as sports, arts and music programs have been reduced or completely cut from school budgets.

Illinois School Report Card data also shows a disparity in educational dollars spent on students residing in varying socioeconomic areas may contribute to an achievement gap between students attending schools in property wealthy areas and those students educated in property poor areas. According to the most recent Illinois School Report Card, students in the twenty lowest property wealth areas were 44% less proficient on literacy assessments designed to measure student achievement and 47% less proficient on math standardized assessments than students attending schools in the twenty highest property wealth areas.

Attempts to Reform Illinois Public School Funding Through the Courts

The Illinois General Assembly’s inability to adequately and equitably fund K-12 public education has prompted a number of lawsuits challenging the constitutionality of the State’s methods for funding its public schools. In fact, since the late 1960s, individuals and groups in Illinois have utilized the judicial system in an attempt to reform the State’s funding formula and claim increased funding for their local school districts.

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16 Freeman, Robert, "The Relationship Between Extracurricular Activities And Academic Achievement" (2017). Dissertations. 245.
Constitutional challenges to the Illinois public school funding formulas progressed through two distinct legal theories: equity lawsuits and adequacy lawsuits. In Illinois public school funding equity lawsuits, plaintiffs argued either all children were entitled to have an equitable amount of money spent on their education or all students were entitled to equal educational opportunities. Equity lawsuits challenged the inequitable distribution of school funding as violations of Illinois State and Federal rights to Equal Protection.

Under adequacy litigation, Illinois plaintiffs argued public school funding formulas did not provide sufficient resources for school districts to provide all students with a state-defined quality education. Adequacy-based litigation asserts more money is needed to raise academically low performing school districts to the minimum level of educational quality mandated by the Illinois Constitution’s Education Article.

**Equity-Based Litigation**

Litigation challenging the equity of Illinois’ public school funding system reached the U.S. Supreme Court in the 1968 *McInnis v. Shapiro* and the Illinois Supreme Court in 1996 under *Committee for Educational Rights v. Edgar*.

**Federal Court: McInnis v. Shapiro (1968)**

In 1968, the constitutionality of Illinois’ education funding system was first challenged in *McInnis v. Shapiro*. *McInnis* was filed in the U.S. District Court for the Northern District as a violation of the U.S. Constitution. In *McInnis*, plaintiffs claimed a public school funding system

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19 A third legal theory advanced under the Illinois Civil Rights Act in *Chicago Urban League v. State* reached the Illinois Supreme Court, but was settled out of court. See infra pg. 103.
20 Ill. Const. art. X, § 1
based on local property tax wealth violated their students’ Fourteenth Amendment rights to Equal Protection. They maintained wide variations in per-pupil spending allowed some students in Illinois to be provided with a good education while depriving others who had equal or greater educational need. Plaintiffs asserted only a school funding system distributing state funding based on student need could be considered constitutional. The District Court rejected plaintiffs’ claims and found the Fourteenth Amendment did not require public school expenditures to be made based on student need nor did it require equity in per-pupil expenditures across school districts. More importantly, the court ruled a “lack of judicially manageable standards” to determine the correct amount of educational resources necessary to fund a student’s need made the controversy nonjusticiable. The court concluded by stating that any changes to the method for funding Illinois public schools should be sought in the legislature, and not in the courts.


The equity of Illinois’ public school funding system would not be challenged again until 1990, as plaintiffs challenged the constitutionality of Illinois public school funding system under provisions of the Illinois Constitution in The Committee for Educational Rights v. Edgar. In Edgar, the plaintiffs argued the vast disparity in per-pupil revenues across the state violated their rights to equal protection under the Illinois Constitution and further claimed the method for funding public schools violated the Education Article’s provisions for an “efficient system” of high quality education. The plaintiffs argued that Illinois had failed to provide an “efficient system” of education because property-wealthy districts could raise significantly higher per-pupil

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23 Complaint of Petitioner, Committee for Educational Rights v. Edgar, No. 90 CH- 11097 (Cir. Ct. of Cook County, filed Nov. 13, 1990).
24 While the challenge primarily argued Equal Protection violations, there were adequacy elements included by plaintiffs in Edgar.
revenues, even with significantly lower tax effort, than property-poor districts. Plaintiffs additionally claimed school districts with little property wealth could not provide a high quality education to its students because the school funding system did not provide them with sufficient resources. The Illinois Supreme Court rejected both claims. First, after finding students did not have a fundamental right to an education in Illinois, the Court ruled unequal school expenditures did not violate equal protection rights. The Court further ruled the statutes permitting wide disparity in per-pupil funding reflected a rational state goal of promoting local control over education. Next, the court dismissed the plaintiffs’ claims under the Education Clause by ruling an “efficient system” of education does not guarantee “parity in funding.”\footnote{Committee for Educational Rights \textit{v. Edgar}, 672 N.E.2d 1178 (Ill. 1996), at 1184.} The Illinois Supreme Court then echoed the U.S. Supreme Court’s ruling in \textit{McInnis} by stating, “questions relating to the quality of education are solely for the legislative branch to answer,” and not one to be resolved in the courts.”\footnote{\textit{Id.} at 1196.}

\textbf{State Adequacy-Based Litigation: Lewis E. \textit{v. Spagnolo} (1999)}

Litigation challenging the adequacy of Illinois’ public school funding system reached the Illinois Supreme Court in 1999’s \textit{Lewis E. Spagnolo}.\footnote{\textit{Lewis E. v. Spagnolo}, 186 Ill. 2d 198 (IL 1999).} In 1999, three years after the decision in \textit{Edgar}, the Illinois Supreme Court heard its first challenge to the adequacy of Illinois’ public school funding system in \textit{Lewis E. v. Spagnolo}. Citing dilapidated school buildings and a lack of qualified staff and educational materials, the plaintiffs argued the State’s method for funding public schools prevented its school district from providing a “minimally adequate education.” The adequacy suit was based on a string of successful lawsuits challenging state funding systems
under the language of state constitutions in Kentucky,\textsuperscript{28} Montana,\textsuperscript{29} and Texas.\textsuperscript{30} The Illinois Supreme Court; however, found plaintiffs’ attempt to distinguish its holding in \textit{Edgar v. Committee for Educational Rights} regarding high quality from “minimally adequate” nothing more than “semantics.”\textsuperscript{31} As a result, the Court affirmed its decision in \textit{Edgar} and once again ruled the issue of school finance to be a nonjusticiable political question by restating, “questions relating to the quality of education were solely for the legislative branch to answer.”\textsuperscript{32}


In August 2008, the Chicago Urban League (CUL) filed a complaint in the Circuit Court of Cook County against the State of Illinois and Illinois State Board of Education, arguing the Illinois public school funding scheme violated the Illinois Civil Rights Act of 2003.\textsuperscript{33} Citing data highlighting the academic achievement gap between minority and majority students, plaintiffs maintained Illinois’ method for funding K-12 public education discriminated on the basis of race and deprived minority students, particularly African-American and Latino children, of a high quality education.\textsuperscript{34}

The district court ruled plaintiffs had pled sufficient facts necessary to support their claim and allowed the Illinois Civil Rights Act challenge to proceed to trial.\textsuperscript{35} In February 2017, the Chicago Urban League’s lawsuit was settled out of court before going to trial. Although the settlement failed to render a decision regarding Illinois’ method for funding K-12 public

\textsuperscript{28} \textit{Rose v. Council for Better Educ., Inc.}, 790 S.W.2d 186 (Ky. 1989).
\textsuperscript{31} \textit{Lewis E. v. Spagnolo}, 186 Ill. 2d 198 (IL 1999) at 208.
\textsuperscript{32} Id. at 201.
\textsuperscript{33} 740 ILCS 23/5.
education under the Illinois Civil Rights Act, plaintiffs achieved a victory for Illinois public school districts servicing low property wealth areas. As a result of the *Chicago Urban League* settlement, the state legislature was no longer allowed to utilize “proration” in determining how to distribute General State Aid.\textsuperscript{36} Instead, the Illinois State Board of Education is required to distribute state aid based on “student and district need,” and must now determine which districts can least afford pro-rated funding and distribute GSA claims using a methodology bearing the least impact on low property wealth school districts whenever lawmakers fail to fully fund public education.\textsuperscript{37}

**Legislative Reforms of the Illinois School Funding Formula**

Despite a per-pupil funding gap that has risen from only $600 in 1968\textsuperscript{38} to over $20,000 today, the United States Supreme Court and Illinois Supreme Courts have repeatedly rejected plaintiffs’ challenges to the state’s method for funding public schools. Since the earliest school funding case filed over fifty years ago, courts in Illinois have uniformly found the issues of equity and adequacy in K-12 public schools were fundamentally political, not legal, and have continually referred plaintiffs to the General Assembly for remedy. The General Assembly in turn attempted to address the issues of fiscal equity and adequacy identified by plaintiffs through the legislative process.

**Legislative Attempts to Solve Inequity**

After the U.S. Supreme Court deferred school funding reform to the Illinois General Assembly in 1968’s *McInnis*, a number of blue ribbon education funding committees were

\textsuperscript{36} See infra pgs.6-7.
\textsuperscript{38} *McInnis* v. *Shapiro*, 293 F.Supp. 327 (N.D. II. 1968) at 330, In 1966-67, per-pupil expenditures varied between $480 and $1,000.
formed in Springfield to inform legislators about the flaws of its then current funding formula and to begin searching for solutions to fix the inequitable distribution of funding to property poor school districts. Soon thereafter, the General Assembly passed a comprehensive set of school funding reforms in 1973 that provided increased state funding to school districts with high percentages of low-income students and a resource equalizer that gave more state aid to school districts with low property wealth. The school funding reforms of 1973 boosted the state’s share of funding from 20% during the McInnis lawsuit in 1969 to 48% by the mid-1970s.

However, a declining national and state economic climate and increasingly conservative fiscal politics in Springfield resulted in a decrease of general state aid to school districts throughout the 1980s. While wealthier school districts were able to increase local tax rates and property valuation to adjust for decreasing state aid, property poor school districts were forced to cut their expenditures, and per-pupil disparity in school expenditures among school districts increased to the highest level since the 1973 school funding reforms were enacted.

The Illinois General Assembly would once again attempt to cure the inequities found in public school funding after plaintiffs filed an unsuccessful challenge in Edgar. During Edgar, the Illinois Supreme Court followed the reasoning of the U.S. Supreme Court, dismissed the lawsuit, and directed the plaintiffs to seek reform through the legislative process. The Illinois General Assembly, not bound by a legal holding, responded by adopting a new general state aid formula in an attempt to increase school funding equity among Illinois school districts through the passage of the School Funding and Reform Bill of 1997. The new formula increased state aid to schools in low property wealth districts by raising the foundation level by $1,000 per pupil. The new formula also included a supplementary poverty grant providing an additional
$800 per low-income pupil in districts with a 20 to 35 percent low-income concentration to $1,900 per low-income pupil in districts with 60 percent or more low-income concentration. In its first year, the total amount of general and supplemental state aid allocated from the new school funding formula to Illinois school districts increased by $235 million. The allocation increased an additional $337 million the year after. However, fiscal data measures from Education Week showed the school funding reforms of 1997 failed to show any marked improvement in equity. While increased state aid helped low property wealth school districts, the high property wealth districts had the ability to continue spending far and above the foundation level on their students’ educational programs.

**Legislative Attempts to Solve Inadequacy**

A major claim advanced by the plaintiffs in *Edgar* was the inequitable share of state funding prevented low property wealth school districts from providing an “efficient and high quality” education stipulated by the Illinois Education Article. One of the major causes for this problem was due to prior school funding formulas foundation levels The School Funding and Reform Bill of 1997 identified in the previous section attempted to solve this problem by associating the State’s foundation level to the actual costs of an adequate education. According to the new legislation, the General Assembly would adopt yearly foundation level recommendations made by an Education Funding Advisory Board, a nonpartisan board made up of representatives from education, business, and the public (EFAB) created under the School Funding and Reform Bill of 1997. The EFAB would base its recommendations on the funding necessary for 67% of the State’s non at-risk students to meet state standardized testing benchmarks.
Unfortunately for many Illinois school children, the School Funding and Reform Bill of 1997 also failed to increase the adequacy of the State’s public school funding system. In regard to the foundation level, the Illinois General Assembly only adopted the recommended adequacy level one time since the EFAB’s first recommendation in 2001. The failure to fully fund the recommended foundation level left Illinois school districts with over 2 billion dollars less than what was necessary to provide an adequate education. Additionally, the definition of an adequate education within the School Funding and Reform Bill of 1997 did not include the costs of educating Illinois’ at-risk students, including the funding needed to finance the extra costs associated with educating students who have special needs, limited English proficiency or are affected by issues related to low socio-economic background. Considering a majority of at-risk students are educated in low property wealth areas, inequitable and inadequate shares of school funding have a profound impact on the education of students residing within the 600 Illinois school districts having the greatest need.

As the foundation level approach to funding PK-12 education continued to grow inequitable and inadequate through much of the 2000s, continued pressure by civic groups like the Chicago Urban League and legislators like Andy Manar kept public discourse regarding school funding fairness alive in Springfield. The Chicago Urban League’s school funding lawsuit in 2008 and Manar’s sponsorship of school funding reform litigation placed equity and adequacy in school funding back into the political spotlight. After a number of school-funding reform bills failed to pass, the latest legislative attempt to provide a more equitable and adequate education was signed into law in August 2017 through the passage of the Evidence-Based Funding for Student Success Act hereafter “EBFM”.
Illinois’ new evidence-based public school funding model bases public school funding on the cost of implementing research-based educational best practices associated with enhancing student achievement. Compared to the State’s prior funding approach that set the same per student dollar level of school funding for all districts in Illinois no matter the unique needs of the students a district served, the new approach to funding public education in Illinois is projected to provide all school children with an equitable and adequate education once it is fully funded.\(^{39}\)

First, the EBFM identifies a unique adequacy target each individual Illinois school district will need to implement the evidence-based practices for each type of learner. Second, the EBFM ensures state funding will be distributed equitably by basing funding levels on the actual student population each district serves rather than an equal per-pupil dollar level. Additionally, the lowest property wealth school districts will receive 99% of all new educational funding under the EBFM formula, thereby creating a public school funding formula that gives students the best chance for school districts to meet the Illinois Constitution’s goal of providing an efficient system of high quality education to all students.\(^{40}\)

**Significance of the Study**

An important political and economic legislative policy debate involving public education in Illinois centers on the method by which the Illinois Legislature funds K-12 public education. The following study is designed to provide a contribution to the field of education, specifically to those interested in public school funding policy. The study will provide information pertaining to state and federal constitutional law regarding K-12 public school funding and then explore the various legal strategies plaintiffs have used to challenge the methods Illinois has used to fund its

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\(^{39}\) Full funding of the EBFM will be phased in over a 10-year period.

\(^{40}\) Article X § 1 of the Illinois Constitution states in relative part: *The State shall provide for an efficient system of high quality public educational institutions and services.*
public schools. Since the earliest constitutional challenge to Illinois’ public school funding system filed over fifty years ago, courts in Illinois have continually referred plaintiffs to the General Assembly for recourse. After reviewing judicial opinions regarding plaintiffs’ constitutional challenges, the study analyzes whether plaintiffs help generate positive changes to school funding policy in Illinois schools.

Although Illinois has once again passed new legislation designed to increase the adequacy of K-12 public education funding in August 2017, inequity in educational opportunity for students in Illinois may still perpetuate because local property wealth will continue to define total school district revenues. For this reason, school-funding issues will continue to be identified as a barrier to academic achievement. Therefore, it is important for public school administrators to understand the legal issues and political influences surrounding public school funding when discussing a more adequate and equitable appropriation of public funds with their legislators, school boards, teaching staff, and constituents and when examining the most appropriate vehicle for funding Illinois’ public schools.

Research Questions

While efforts to secure court ordered school funding reform have been unsuccessful in Illinois, a nexus exists between constitutional challenges to the Illinois’ methods for funding K-12 public education and positive changes to the school funding formula post litigation. The Illinois General Assembly’s latest effort to reform the State’s public school funding system through The Evidence-Based Funding for Student Success Act is a culmination of over fifty years of attempted reforms to fix a historically inequitable and inadequate school funding formula. Thus, the key question guiding my dissertation is:
Although plaintiffs have been unsuccessful in attempts to secure court-ordered public school funding reform, what factors influenced Illinois legislators to enact changes to Illinois’ methods for financing K-12 public education following failed litigation?

The Chapter Two Literature Review will be guided by the following research questions:

1. What legal issues stemming from Illinois’ methods for funding K-12 public education have plaintiffs identified as having a negative impact on Illinois schoolchildren?
2. What are the United States Supreme Court and Illinois Supreme Court’s opinions regarding K-12 public education funding policy?
3. Has public school finance litigation filed nationally influenced plaintiffs arguments or relating court opinion?
4. Has school finance litigation prompted any reforms to K-12 public education funding policy in Illinois?

**Procedures**

Standard legal research methodology was used in this study. The research included extensive research on topics related to K-12 public school funding, including federal and state legislation; federal case law; Illinois case law; case law from other state courts, the U.S and Illinois Constitutions, relevant law review articles, and other related scholarly publications and documents. The sources were reviewed, analyzed, and synthesized to construct a historical timeline and perspective on the litigation of Illinois public school funding and to provide a hypothesis of its future direction. The literature review of cases is arranged in chronologically to provide a historical perspective of how specific legal arguments progressed over the past fifty years and to demonstrate how federal and state courts have interpreted public school finance legislation.

**Delimitations**

This study was designed to analyze court decisions regarding K-12 public school funding as they relate to Illinois K-12 public school funding policy. A delimitation of
this study is that it only considered the judicial decisions of the state’s highest court, or a non-appealed lower-court decision, regarding the enforceable rights to an equitable or adequate share of public school funding.

**Limitations**

Lawsuits challenging state methods for funding public education have been filed in 49 states and have spanned over 50 years. School funding litigation is commonly viewed as progressing through three waves of reform, categorized by distinct arguments raised by plaintiffs. Due to the large volume of cases filed during each wave, the study focused on the landmark decisions within each wave.
CHAPTER 2

LITERATURE REVIEW

Introduction

This review of literature examines the impact of litigation on Illinois public school funding reform. This chapter first provides background information on the relationship between K-12 public school funding and the Federal and Illinois Constitutions. The second part of the chapter discusses different approaches plaintiffs have used to overturn Illinois’ methods for funding public education against the backdrop of a series of important federal and state court decisions defining public school funding reform. After examination of Illinois K-12 public school funding litigation, the chapter concludes with a review of the Illinois General Assembly’s response to issues of equity and adequacy in public school funding.

Background: Public School Funding

The absence of any mention of public education in the U.S. Constitution provides a starting point for understanding K-12 public school funding.\(^{41}\) The Tenth Amendment of the U.S. Constitution states that issues not expressly consigned to the federal government are within the purview of individual states.\(^{42}\) As a result, the primary responsibility for establishing and funding public K-12 education rests with state governments.

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Each state government has provisions in its constitution addressing the establishment of a public school system. With the exception of Hawaii, state legislatures have chosen to establish a group of local school districts to fulfill the constitutional duty to provide students with a public education. Local school districts are a fundamental characteristic of the American public school system and are largely based on the idea of local control. The theory of local control holds that those who are closest to the site should make decisions regarding education. As such, the local school district is delegated the authority to implement the educational policies established by the state legislature within the district’s geographical boundaries.

For a majority of states, local public school districts are funded through a combination of local property taxes and state aid. The share of state and local contributions to public education are determined according to the funding formula adopted by each state legislature. The shares of revenues appropriated for local school districts within the school funding formula are related to the school funding concepts of equity and adequacy.

**Public School Funding Policy: Equity and Adequacy**

The methods used to fund PK-12 public education stems from a combination of political, social and economic policies. State legislatures must operate within these spheres to help a large

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44 Hawaii operates and maintains a single statewide school district.
49 Lukemeyer, A., *Courts as Policymakers: School Finance Reform Litigation*, New York: LFB Scholarly Pub, (2003). Because Hawaii only has one school district, the state provides 100 percent of public school funding revenues.
and heterogeneous group of local school districts meet the unique educational needs of their students. Considering the ability to raise local property taxes for funding education vastly differs among school districts statewide, so do the shares of state revenue needed to meet the varied characteristics and needs of their learners. As such, ensuring equitable and adequate shares of public school funding are two of the most complex problems facing state legislatures.\textsuperscript{51}

\textit{Public School Funding Equity}

Public school funding equity focuses on disparity in funding between school districts and is measured in terms of variations in per-pupil expenditures among school districts in the state. Under this metric, an equitable school funding system provides for comparable per-pupil expenditures between school districts educating students in low property wealth areas and those educating students in high property wealth areas.

An equitable public school funding policy seeks to ensure all school districts’ resources correspond to their students’ needs. An equitable school funding system, however, does not mean equal funding for all school districts. Berne and Stiefel proposed three principles to determine whether a school funding formula has equity: horizontal equity, vertical equity and equal opportunity.\textsuperscript{52}

The concept of horizontal equity relates to the traditional meaning of equality. Horizontal equity presumes similarly situated students; with similar needs, should receive similar allocations of educational dollars.\textsuperscript{53} While some variation would occur, students with the same educational


\textsuperscript{53} \textit{Id} at 18.
needs (non-at-risk general education students for example), no matter what school district attended, would receive similar levels of per pupil expenditures toward their education.

Students are not, however, alike within an educational context. Students enter school with a diverse range of skills and needs, and a one-size-fits-all funding formula will not help all students toward achieving college and career readiness. Thus, vertical equity holds differently situated students should receive different allocations of educational dollars. Vertical equity considers costs that are unique to children who require additional support to overcome barriers to educational opportunity. For example, students with limited English proficiency, special education needs, or impoverished backgrounds receive higher per student dollar allocations than students who do not face similar challenges. A school funding system operating under the vertical equity theory then distributes educational dollars unequally.

Therefore, a public school funding structure is both vertically and horizontally equitable when the state determines a per-pupil educational expenditure amount based on a variety of costs, such as student-teacher ratios and student grade level, and then distribute educational dollars based upon needs; (1) students are defensibly categorized based on their needs, (2) additional funding is allocated to groups with higher educational costs, and (3) all students within each subgroup receive a similar share of educational resources.

Equal educational opportunity within the theory of equity involves the belief a public education funding policy can be designed to overcome barriers to student achievement. Under this theory, a chance at educational success and a future of economic success should not depend on circumstances outside the control of the student. Thus, a public school funding system

54 Id at 19.
55 Id at 14.
should provide all students with access to a fair starting line, especially for those who are poor, minority, limited English proficient, or disabled.

Public School Funding Adequacy

After the Kentucky Supreme Court declared its entire system of elementary and secondary education unconstitutional for failing to provide all children an adequate education in 1989, the focus on public school funding policy has shifted from equity to adequacy.\textsuperscript{56}

Whereas equity litigation compared per pupil spending rates between students in low property wealth school districts and high property wealth school districts, adequacy litigation argued all students are entitled to at least a “high-minimum” of school funding.\textsuperscript{57} While equity in school funding policies focus on inputs to limit disparity in per-pupil expenditures, an adequate public school funding system focuses on outputs to ensure school districts have a sufficient amount of resources to provide all students with a certain quality of education. As a result, the measure of student achievement becomes more important than the measure of spending disparity statewide.

As outlined in the previous chapter, funding an adequate high-minimum system takes into account the varying needs of different types of pupils, and recognizes individual school districts face differing costs requiring different levels of funding.\textsuperscript{58} The adequacy approach also recognizes some communities may have to pay more to attract equally good teachers to teach those in need of more supports, recognizes the benefit some students gain from having their education enriched through technology, the arts and extra-curricular activities and would compensate for the lack of those advantages in other schools. Thus, maintaining an adequate

\textsuperscript{56} Rose v. Council for Better Education, 790 S.W.2d 186 (Ky. 1989), see infra pg 70.
\textsuperscript{57} See: Minorini and Sugarman, The Promise and Problems of Moving to a New Paradigm, at 188.
\textsuperscript{58} See infra pgs. 5-6.
school funding system involves determining the per pupil cost of achieving the specific level of achievement, accounting for the various differences in the student population, and then providing school districts with at least this level of per student funding through a combination of state and local funding.

Thus, an adequate public school funding formula would first define a minimum level of funding each school district needs to provide all students with a state-defined quality education. The formula then uses a measurement for a sufficient education (e.g., standardized assessments of state learning standards), determines the educational staffing and resources needed to meet the standards for a sufficient education, and then computes the dollar amount each school district needs to provide the components of an adequate education.

Public School Funding Models

State legislatures typically use one, or a combination of, four traditional funding formulas to finance PK-12 public education with an equitable and adequate share of state revenue: full state funding, flat grants, district power equalization programs, and foundation programs.59 Additionally, some states, including Illinois, have recently modified traditional funding models toward public school funding systems weighted for individual student characteristics.60

One model, used only by the State of Hawaii, is the “full state funding” model.61 Because Hawaii does not have multiple local school districts, the state provides 100 percent of public school funding revenues. In Hawaii, a uniform statewide property tax is levied and distributed to schools on an equal per-pupil basis.

61 See Deborah A. Verstegen, Policy Brief., 2.
A second model, used only by the State of North Carolina, is the “flat grant” model. In the flat grant model, the state legislature distributes aid for public education to local school districts at a fixed per-student funding amount. North Carolina citizens have the option to raise additional funds for their local public school districts by supplementing the state’s flat grant through the assessment of a local public education tax.

The third public school funding model, “district power equalization,” allocates a larger proportion of state funds to lower property wealth school districts in an effort to equalize school funding. Under this model, local educational property tax rates are set at a uniform rate for all school districts. State legislatures then allocate state aid to lower property wealth school districts to compensate for the difference between what the uniform tax rate generates in lower property wealth school districts and what the uniform tax rate generates for higher property value school districts.

A majority of states fund their K-12 public schools using the “foundation support” model. Under this model, state legislatures establish a minimum level of per pupil spending for local school districts based on the costs necessary to educate a child in the state. This desired spending level is called the foundation level. The state legislature then uses an education finance distribution formula to determine how much of the foundation level will be raised locally by school districts and what portion will be funded by the state. In school districts in which the

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62 Id.
63 Id. Only Vermont and Wisconsin use this method.
64 Id. at 21.
65 Id. Thirty-Seven (37) states use this model.
local property tax rate does not generate the desired foundation level expenditure, the state allocates the deficit per-pupil spending amount through state aid.66

**Illinois PK-12 Public School Funding**

Illinois K-12 public education is funded through a combination of local, state, and federal revenue sources. The federal government provides financial assistance to Illinois public schools through funds appropriated by the Elementary and Secondary Education Act (ESEA)67 and the Individuals with Disabilities Education Act (IDEA), among others.68 The ESSA Act authorizes funds for elementary and secondary school programs servicing children of low-income families (Title I Grant), professional development for teachers (Title II Grant) and English language learners (Title III Grant). The IDEA Act provides funding to assist local schools in educating children with disabilities. While the federal government provides some financial assistance to Illinois public schools,69 local property taxes and state aid combine to form the largest portion of Illinois public school revenues.70

Local property taxes represent the largest source of total education funding for a majority of Illinois public school districts. According to the most recent Illinois School Report Card, 63% of Illinois public school district revenues came from local property taxes,71 ranking highest in the

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67 Every Student Succeeds Act of 2015, Pub. L. No. 114-95 § 114 Stat. 1177 (2015-2016). *The ESSA Act, formerly known as the NCLB Act, authorizes funds for elementary and secondary school programs servicing children of low-income families (Title I Grant), professional development for teachers (Title II Grant) and English language learners (Title III Grant).*
69 The federal share of public education funding accounts for approximately 8% of Illinois public school budgets. 
70 According to the Illinois State Report Card, Illinois school received an average of 66% of their revenues from local sources, 26% of their revenues from state sources, and 8% of their revenues from federal sources for FY ’17. [https://www.illinoisreportcard.com/State.aspx?source=Environment&source2=RevenuePercentages&Stateid=IL](https://www.illinoisreportcard.com/State.aspx?source=Environment&source2=RevenuePercentages&Stateid=IL)
71 Id.
nation in regard to the portion of education funded by local sources. The amount of revenue a school district can raise through local property taxes is determined by the tax rate applied to the equalized assessed value (EAV) of residential and commercial property located within the school district’s boundaries.

State revenue for Illinois public schools is primarily acquired through the State’s General State Aid (GSA) program. The methods for distributing GSA in Illinois have evolved over the past century. During this time, the Illinois General Assembly utilized varied foundation support models until adopting an evidence-based school-funding model in August 2017.

**Illinois Public School Funding: 1927-1997**

Prior to passage of the state’s current evidence-based school funding model, Illinois K-12 public schools were funded through a foundation formula approach. The foundation formula approach is based on a mathematical formula, devised by George D. Strayer and Robert M. Haig in 1923, to embody a state government’s policy determination regarding the distribution of state aid to public school districts. The theoretical purpose of a foundation formula approach is to enable distribution of state funds in a manner that ensures every school district achieves a statutory foundation level of school funding through a combination of state aid and local revenue

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73 In all Illinois counties except Cook, residential and commercial properties are assessed at a rate of 33.3%. In Cook County, different classes of property are assessed at different levels. For example, residential property is assessed at a 10% rate, and commercial property is assessed at a rate of 25%.

74 105 ILCS 5/18-8.15. The current GSA program replaced the former Illinois GSA program (105 ILCS 5/18-8.05) beginning in FY18 (2017-2018 school year).

Under this approach, school districts receive state aid based on the percentage of the foundation level they are able to generate through local property tax revenues.\textsuperscript{77} 

Illinois first adopted the Strayer-Haig state aid formula in 1927.\textsuperscript{78} State support for public schools continued under the Strayer-Haig foundation formula approach through 1973, when an increased focus on school finance reform created by the California Supreme Court’s \textit{Serrano} decision\textsuperscript{79} led to Illinois legislature’s adoption of an alternative state aid formula called the “resource equalizer.”\textsuperscript{80} Through this formula, the state attempted to equalize public school expenditures by ensuring school districts with equal tax rates would receive equal per pupil funds and by providing additional support for low-income students.\textsuperscript{81} Concerns over property tax relief and increased disparity between high-spending and low-spending districts, however, led the Illinois legislature to abandon its 1973 school funding reforms and return to the Strayer-Haig foundation formula in 1984.\textsuperscript{82}

\textbf{Illinois Public School Funding Formula: 1998-2018}

In December 1997, the Illinois General Assembly adopted a modified foundation level approach to determine how much general state aid would be given to fund K-12 public education.\textsuperscript{83} Under this model, the Illinois General Assembly established a desired per-pupil

\begin{itemize}
\item \textsuperscript{76} Id.
\item \textsuperscript{78} See Schwartz, \textit{Illinois School Finance} at 835. The foundation level in 1927 was $34 per pupil.
\item \textsuperscript{79} See Infra pg. 46: In \textit{Serrano}, the California Supreme Court found California’s property-tax-based school funding system unconstitutional because it made the quality of a child’s education a function of community wealth, and ordered the California Legislature to equalize funding among its school district.
\item \textsuperscript{80} ILL. REV. STAT. ch. 122, § 18-8(8) (Supp. 1978).
\item \textsuperscript{82} Hickrod G. A. \textit{Common sense: Plain Talk to Legislators About School Finance}, Illinois State University, Normal, IL: Center for the Study of Educational Finance (1993).
spending level for local school districts. This desired spending level was called the foundation level.\textsuperscript{84} The foundation level was determined through an annual recommendation made by the Illinois Education Funding Advisory Board (EFAB) based on best spending practices gleaned from low-income high-performing school districts.\textsuperscript{85} Specifically, the EFAB based the recommended foundation level on a determined cost of providing Illinois students an adequate education resulting in at least 67\% of non-at-risk students achieving a passing score on state mandated standardized tests.\textsuperscript{86} Once the foundation level was established for the school year, the Illinois State Board of Education (ISBE) applied a multi-step formula to identify how much of the foundation level would be raised locally by school districts through property taxes and what portion would be funded through the State’s General State Aid (GSA) program.\textsuperscript{87}

First, the funding formula determined how much of the foundation level should be covered by local revenues generated from property taxes. A school district’s share of the foundation level was determined by computing its Available Local Resources (ALR). ALR was computed by multiplying the EAV\textsuperscript{88} of residential and commercial property located within the school district’s boundaries by 2.3\% for elementary districts (districts educating elementary and

\begin{footnotes}
\item Significant Educational Inequities That Impact Most Students in the State (Chicago: Center for Tax and Budget Accountability (2008).
\item[84] 105 ILCS 5/18-8.05 (B).
\item[85] 1997 Ill. Legis. Serv., 1st Spec. Sess., Pub. Act No. 90-548, (codified as amended at 105 ILCS 5/18-8.05(M)). See also: Illinois Education Funding Recommendations: A Report Submitted to the Illinois General Assembly, January 2017. The original foundation level recommended by the EFAB for fiscal year 2001 was $4,560 per pupil. However, 2002 is the only year the General Assembly actually followed the recommendation of EFAB. The final foundation level (FY17) was $ 6,119, a level that has remained unchanged since FY10.
\item[86] Matthew Locke Illinois Gets an “F” in Public School Financing, 48 J. Marshall L. Rev. 141 (2014). At-risk children who come from concentrated poverty, broken homes or have special needs are far more expensive to educate and therefore the state provides additional funding for them. As such, they are excluded from this particular metric.
\item[87] 105 ILCS 5/18-8.05.
\item[88] See infra note 73: For example, residential property is assessed at a 10\% rate, and commercial property is assessed at a rate of 25\%. For example, a $100,000 home in Will County, Illinois, would be taxed at a value of $33,333. If the local school district’s tax rate is 6.81\%, the property would generate $6.81 per $100 of assessed value, or $2,270 for the school district.
\end{footnotes}
middle school students), 1.05% for high school districts, and 3.0% for unit districts (districts educating students in grades K-12).\(^89\) Added to this number was any revenue generated through the assessment of Corporate Personal Property Replacement Tax (CPPRT).\(^90\) The total was then divided by the school district’s average daily attendance (ADA)\(^91\) figure to determine the per pupil local share.\(^92\)

Once this calculation was made, Illinois school districts were classified into three different funding tiers based on the percentage of the foundation amount a school district was able to raise locally: Flat grant districts, alternative formula districts, or foundation formula districts.\(^93\)

*Foundation Formula-Funded School Districts*

A majority of Illinois school districts were classified as foundation formula districts.\(^94\) School districts funded primarily through the foundation formula had available local resources less than 93% of the GSA foundation level.\(^95\) Ideally, the foundation formula then funds the difference between the district’s local property tax revenue and the statutory foundation level. General State Aid to these districts was determined by applying the following formula: General State Aid = (foundation level – Available Local Resources) x Average Daily Attendance.\(^96\)

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\(^89\) 105 ILCS 5/18-8.05

\(^90\) CPPRT are revenues collected by the state of Illinois and paid to local governments to replace money that was lost by local governments when their powers to impose personal property taxes on business entities were taken away by the 1970 Illinois Constitution.

\(^91\) ADA is the monthly average of the actual number of pupils in attendance of each school district, as further averaged for the best 3 months of pupil attendance for each school district. 105 ILCS 5/18-8.05 (C).

\(^92\) For an example unit school district with $100,000,000 in EAV, $119,000 in CPPRT and 1,000 students: Local Property Wealth would equal $3,000,000 ($100,000,000 EAV x 3.00% multiplier). The district’s ALR would equal $3,119,000 ($3,000,000 + $119,000 (CPPRT)). The ALR per Pupil would equal $3,119. ($3,119,000 / 1,000 (student enrollment)).

\(^93\) See; Fritz, *Essentials* at 33.

\(^94\) Foundation formula computations constitute 75 percent of entities in Fiscal Year 16 GSA claims -ISBE General State Aid Overview found at http://www.isbe.net/funding/pdf/gsa_overview.pdf

\(^95\) Foundation formula districts can only raise $5,691 per pupil through local tax revenue.

\(^96\) 105 ILCS 5/18-8.05(E)(2).
**Alternative Formula-Funded School Districts**

School districts able to generate between 93% and 175% of the foundation level locally received state funding through the GSA Alternative Formula. Alternative formula districts received on average approximately 5 to 7% of the overall foundation level per pupil from the state. Districts in this category received on average $306 to $428 per pupil. General State Aid to these districts was determined by applying the following formula: General State Aid = (foundation level x ADA) x (.07 – ((Local Percentage – .93)/.82) x .02)

**Flat-Grant Funded School Districts**

School districts with the highest property wealth, (i.e., school districts able to raise more than 175 percent of the then-current foundation level through available local resources) received state funding through the GSA Flat Grant. Flat Grant school districts received $218 per pupil from the state. General State Aid to these school districts was determined by applying the following formula: General State Aid = Average Daily Attendance x $218.

**Illinois’ Foundation Levels: Inequitable and Inadequate**

The Illinois foundation formula’s heavy reliance on a school district’s ability to raise local property tax revenues raised concerns regarding the equity and adequacy of Illinois’ method for funding public education.

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97 105 ILCS 5/18-8.05(E)(3). Alternative formula districts can raise between $5,692 and $10,709 per pupil through local tax revenue. Alternative formula computations constitute 19 percent of entities in Fiscal Year 16 GSA claims - ISBE General State Aid Overview found at: http://www.isbe.net/funding/pdf/gsa_overview.pdf
98 105 ILCS 5/18-8.05(E)(3).
99 105 ILCS 5/18-8.05(E)(4).
100 105 ILCS 5/18-8.05(E)(4). Flat Grant districts can raise over $10,709 per pupil through local tax revenue. Flat Grant computations constitute 6 percent of entities in Fiscal Year 16 GSA claims -ISBE General State Aid Overview found at: http://www.isbe.net/funding/pdf/gsa_overview.pdf
101 105 ILCS 5/18-8.05(E)(4).
102 105 ILCS 5/18-8.05(E)(4).
Inequitable Shares of Funding

Since property wealth varies significantly across the state, Illinois’ foundation formulas produced great disparities in the amount of money Illinois school districts were able to spend on students. During the final year of its existence (FY 2017), the lowest 25% of foundation formula funded Illinois school districts (213 public school districts) were unable to raise more than $2,000 per pupil through local tax efforts, while the 58 alternate formula funded public school districts could raise over $10,709 per pupil through local tax revenue. In addition, taxpayers whose children received the lowest levels of per-pupil funding under the former Illinois school funding formula were often assessed at significantly higher property tax rates than those in wealthier school districts. As a result, students in property poor school districts experienced wide disparity in teaching quality, school infrastructure, and academic achievement.

Inadequate Shares of Funding

Low property wealth school districts were unable to adequately support education because they were limited by revenue received through an out-of-date and underfunded foundation formula. Each year between FY 2002 and FY 2017, the Illinois General Assembly set the statutory foundation level below, sometimes thousands of dollars below, the

106 Nicholas Infusino, Breaking Through the Courtroom Door: Reexamining the Illinois Supreme Court’s Public Education Finance Cases, 34 CHILD. LEGAL RTS. J. 86 (2013). Noting, Wealthy districts are able to spend approximately $18,000 more per teacher than less affluent districts, and Students in wealthier school districts routinely score higher on the Illinois Standards Achievement Test (“ISAT”) and Prairie State Achievement Exam (“PSAE”), Illinois’ primary measure of student achievement for elementary and high school students, respectively.
During that time, the difference between the EFAB-recommended foundation level and the statutory foundation level set by the Illinois General Assembly grew from $120 per pupil in 2003 to almost $3,000 per pupil in 2017.\(^{109}\)

Furthermore, the Illinois General Assembly failed to fully fund its statutory foundation level from FY 2013 through FY 2017, providing $518 million less than what was needed to fully fund K-12 public education under the already inadequate GSA funding formula.\(^{110}\)

Consequently, Illinois public school districts received only a portion of what they were statutorily entitled to receive between fiscal years 2010 through 2016.\(^{111}\) During this time, the Illinois General Assembly prorated education funding for schools and allocated partial payments to school districts through across-the-board percentage cuts because the legislature failed to appropriate funding sufficient to meet the statutory requirements of the General State Aid formula.\(^{112}\)

The across-the-board proration of General State Aid payments by the Illinois General Assembly disproportionately affected low property wealth school districts. Using FY 2015 as an example, when proration was at its highest rate, Illinois school districts received only 87% of their general state education funding. That year the highest property wealth school districts funded through the flat grant formula were entitled to $218 per pupil from the state, while the


\(^{109}\) See *Illinois Education Funding Recommendations: A Report Submitted to the Illinois General Assembly*, January 2017, at 8. In 2017, the EFAB recommended the foundation level be set at $8,899 per student; however, the Illinois General Assembly set the foundation level at $6,119, a level that had not increased since FY2010.

\(^{110}\) See: Cauhorn, *The Search for the Magic Formula*, at 213.


lowest property wealth school districts funded through the foundation formula were statutorily scheduled to receive on average, $1,996 per pupil from the state.\textsuperscript{113} Therefore, when general state aid was cut by 13% during FY 2015, wealthy school districts lost only $28 per student, while Illinois’ neediest districts lost $600 per student.\textsuperscript{114}

\textbf{Evidence-Based School Funding Formula}

Beginning in FY 2018 (2017-2018 school year), the Illinois General Assembly adopted an evidence-based school-funding model (EBFM) to determine the amount of general state aid given to fund K-12 public education. The current evidence-based funding model (EBFM) replaced the former three-tiered property tax-based GSA funding formula after passage of the Evidence-Based Funding for Student Success Act.\textsuperscript{115} The Illinois General Assembly passed this legislation in an effort to overcome inequity and inadequacy stemming from the state’s prior foundation formulas. Under Illinois’ EBFM formula, the calculation of state funding is determined via three stages.

\textit{Stage One: Determining an Individual School District’s Adequacy Target}

Under Illinois’ evidence-based funding formula, the Illinois General Assembly first establishes a unique funding level needed for each local school district to implement research-based practices correlated with enhancing student achievement. This desired funding level is called the district’s adequacy target.\textsuperscript{116} Specifically, a school district’s adequacy target is based

\textsuperscript{114} Advance Illinois, \textit{Analysis of the Governor’s FY17 Budget Proposal to End Proration: Not a solution for inequity in Illinois’ Education Funding System}, (2016).
\textsuperscript{115} Public Act 100-0465: The goal of the Evidence-Based Funding Act is to provide a kindergarten through grade 12 public education system with the resources necessary to ensure the educational development of all persons to the limits of their capacities in accordance with Section 1 of Article X of the Constitution of the State of Illinois.
\textsuperscript{116} 105 ILCS 5/18-8.15 (b).
on the cost factors of funding 24 different educational elements or investments. These elements include educational inputs ranging from classroom teachers to computer technology and specialized teachers and individual school district needs to enhance the student achievement of special populations. The 24 educational elements are classified as core investments, per student investments, and additional investments.

Each school district’s initial adequacy target is then adjusted by a comparable wage index regionalization factor to offset large variances in statewide labor costs and ensure school districts in low property wealth areas are able to remain competitive for attracting highly qualified staff. Multiplying a school district’s “initial adequacy target” by the regionalization factor produces the school district’s final adequacy target.

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118 Center for Tax and Budget Accountability, Analysis of SB 1947 (Public Act 100-0465): The Evidence-Based Funding for Student Success Act, (2017).
119 105 ILCS 5/18-8.15 (b)(2). Core Investments include the salaries of 12 “Core Cost Factors:” (1) Core Teachers: (K–3rd funded at a ratio of 15:1 low-income students, 20:1 for non low-income students; 4th –12th funded at a ratio of 20:1 low-income students, and 25:1 for non low-income students; (2) Nurse: One elementary school (E), middle school (M) and high school (HS) nurse for every 750 students; (3) Specialist Teachers % of Core = E 20%, M 20%, HS 33%; (4) Instructional Facilitators E/M/HS = 200:1; (5) Core Intervention Teachers E/M = 450:1, HS = 600:1; (6) Guidance Counselor E = 450:1, M/HS = 250:1; (7) Supervisory Aide E/M = 225:1, HS = 200:1; (8) Librarian E/M = 450:1, HS = 600:1; (9) Librarian Aide/Media Tech E/M/HS = 300:1; (10) Principal & (11) Assistant Principal E/M = 450:1, HS = 600:1 (12) Substitute Teachers Average Daily Salary x 5.7% of 176 School Days.
120 105 ILCS 5/18-8.15 (b)(2). Per Student Investments include 9 “Additional Costs Factors” needed to adequately educate students: (1) Gifted E/M/HS = $40/student Student Activities E = $100, M = $200, HS = $675/student; (2) Professional Development E/M/HS = $125/student; (3) Operations & Maintenance (O&M) E/M/HS = $1038/student; (4) Instructional Material E/M/HS = $190/student; (5) Central Office (CO) E/M/HS = $742/student; (6) Assessments E/M/HS = $25/student (7) Employee Benefits (% of Salary) E/M/HS = 30% (8) Computer/Tech Equipment E/M/HS = $285.5/student; (9) Employee Benefits CO =$368.48, O&M = $352.92/student.
121 105 ILCS 5/18-8.15 (b)(2). Additional Investments include costs related to adequately educating (3) special populations: Low-Income (LI), English Language Learners (ELL), and Special Education. Low-Income student costs: Intervention Teacher (125 students:1); Teacher Assistant (125 students: 1); Extended Day Teacher (120 students:1); Summer School Teacher (120 students:1); ELL Costs: English Learner Core Teacher (100:1); Intervention Teacher (125:1); Teacher Assistant (125:1) Extended Day Teacher (120:1); Summer School Teacher (120:1). Special Education Costs: Special Education Core Teacher (141:1); Instructional Assistant (141:1); Psychologist (1000:1).
122 105 ILCS 5/18-8.15. (3)(b).
124 105 ILCS 5/18-8.15. (3)(b).
**Stage Two: Determining the Local Share of Funding the Adequacy Target**

Once each school district’s final adequacy target is computed, the EBFM formula identifies how much a school district should be funded through its local resources and what portion will be funded through the State’s General State Aid program. The local share of funding is determined by identifying a school district’s local resources. A school district’s local resources are determined by the sum of three funding factors: local capacity target; corporate personal property replacement taxes; and base funding minimum.\(^{125}\)

A school district’s local capacity target identifies how much a school district should be contributing from property taxes towards covering its adequacy target.\(^{126}\) Added to this number is any revenue generated through the assessment of corporate personal property replacement tax (CPPRT),\(^{127}\) and the school district’s base funding minimum.\(^{128}\) The school district’s base funding minimum is comprised of all grant funding for education a school district received from the state in the prior fiscal year.\(^{129}\) The base funding minimum will be recalculated each year to include additional funds received through General State Aid to ensure each school district will never receive less funding than the year before.\(^{130}\)

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\(^{126}\) See Center for Tax and Budget Accountability, *Analysis of SB 1947 (2017)* at 5. Under the EBFM, low property wealth districts, which often have high property tax rates, are not expected to contribute as much towards the cost of covering their respective Adequacy Targets as are higher wealth districts.

\(^{127}\) Revenues collected by the state of Illinois and paid to local governments to replace money that was lost by local governments when their powers to impose personal property taxes on business entities were taken away by the 1970 Illinois Constitution.

\(^{128}\) The school district’s “Base Funding Minimum” is a “hold harmless” provision, which provides that all grant funding a school district received from the state in the prior year, becomes its Base Funding Minimum in the next succeeding year. The “Base Funding Minimum” is recalculated each year to include additional funds received through General State Aid to ensure each school district will never receive less funding than the year before.


\(^{130}\) See Center for Tax and Budget Accountability, *Analysis of SB 1947 (2017)* at 3.
Stage Three: Determining the State Share of Funding

Dividing a school district’s total local resources by its adequacy target determines the district’s percent of adequacy. Once this calculation is made, Illinois school districts are placed into one of four different funding tiers based on the percentage of the adequacy target a school district is able to raise locally. School districts receive their share of any new educational funding appropriated by the Illinois General Assembly based on the tier in which they are placed.\footnote{Id., at 10.} Tiers are adjusted yearly based upon money available. Calculations for FY18 and FY19 are included below.

Tier I-funded school districts. School districts furthest away from their respective adequacy targets receive state funding through the GSA Tier I formula. Tier I school districts, in FY18 will have had local resources sufficient to cover only 64% or less of their adequacy targets. This percentage was raised to 67.4% for FY19’s Tier Distribution. Tier I school districts receive 50% of all new state funding appropriated for K-12 public education each year.\footnote{For example, the State’s General Fund budget for FY2018 K-12 education is slated to receive $350 million more in state funding than in FY2017. 50 percent of that amount, or $175 million, will be distributed to Tier I districts through the EBM in FY2018.} Tier I funded school districts also receive a share of additional Tier II funding. Thus, school districts with local resources sufficient to fund only 64% or less of their adequacy targets will receive a share of 99% of all new state funding appropriated for K-12 public education each year.\footnote{See Illinois State Board of Education, Understanding Evidence-Based Funding, PA 100 – 0465, A Guide to the Distribution System. https://www.isbe.net/Documents/EBF_Presentation_Overview.pdf}

Tier II-funded school districts. School districts able to generate between 64% and 90% in FY18 (67.41% through 90% during FY19) of their respective adequacy target receive state funding through the GSA Tier II formula. Tier II school districts share 49% of all new state funding appropriated for K-12 public education each year with Tier I funded school districts.
Tier III-funded school districts. School districts able to generate between 90% and 100% of their respective adequacy target receive state funding through the GSA Tier III formula. Tier III school districts receive only 0.9% of all new state funding appropriated for K-12 public education each year.\textsuperscript{134}

Tier IV-funded school districts. School districts with the highest levels of local resources, all of which have the local capacity to cover at least 100% of their adequacy targets, receive state funding through the GSA Tier IV formula. Tier IV school districts share just 0.1% of all new state funding appropriated for K-12 public education each year.\textsuperscript{135}

Background: Public School Funding Litigation

The problem associated with inadequate and inequitable shares of public education dollars stemming from state funding formulas is not unique to Illinois. In fact, the funding disparity between school districts has prompted numerous attempts to reform public school funding nationwide. School finance reform advocates have argued over-reliance on local property taxes to finance public education significantly underfunds school districts located in property-poor areas and results in an unequal and inadequate education for children residing in these communities.\textsuperscript{136}  To correct this problem, school finance reform advocates generally have one of two paths to follow: appeal to the state legislature for school funding reform or file suit against state governments in court.\textsuperscript{137}  Since most state legislatures have been ineffective in their

\textsuperscript{134} In FY2018 for example, Tier III districts will share just $2.15 million of the $350 million in new funding distributed through the State’s GSA program.
\textsuperscript{135} FY2018 for example, Tier IV school districts share only $350,000 of the $350 million in new funding distributed through the State’s GSA program.
\textsuperscript{136} Ladd, Helen F. and Hansen, Janet S., Making Money Matter: Financing America's Schools Committee on Education Finance, (1999)
attempts to provide an equitable and adequate school funding, individuals and groups have turned to the judicial system in an attempt to secure increased funding for their local school districts.\textsuperscript{138}

Disparities in per-pupil school expenditures first came into the national spotlight during the late 1960s, as education reformers began to realize that the “promise of equal educational opportunity” awarded by the Supreme Court’s \textit{Brown v. Board of Education of Topeka}\textsuperscript{139} decision was being hindered by inequities in school funding.\textsuperscript{140} In \textit{Brown},\textsuperscript{141} writing for a unanimous U.S. Supreme Court, Chief Justice Earl Warren declared, “Today, education is perhaps the most important function of state and local governments.”\textsuperscript{142} Chief Justice Warren further declared the opportunity of an education “where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”\textsuperscript{143} While \textit{Brown} overturned the constitutionality of racially segregated schools, school reform advocates soon realized the Supreme Court’s hope for equal educational opportunity for all children was being curbed by inequities in public school funding.\textsuperscript{144}

Judicial challenges to school finance systems have generally been classified into two distinct litigation categories: equity lawsuits and adequacy lawsuits.\textsuperscript{145} In equity lawsuits, plaintiffs argue either all children are entitled to have an equitable amount of money spent on

\textsuperscript{139} \textit{Brown v. Board of Education}, 347 U.S. 483 (1954).
\textsuperscript{140} Ladd, Helen F. and Hansen, Janet S., \textit{Making Money Matter: Financing America's Schools Committee on Education Finance} (1999).
\textsuperscript{142} \textit{Id.} at 493.
\textsuperscript{143} \textit{Id.}.
\textsuperscript{144} See Ladd, Helen F. and Hansen, Janet S. at 70.
\textsuperscript{145} See Thro, WE, Russo, \textit{School Finance, Debating Issue} (1999), at 144.
their education or all students are entitled to equal educational opportunities. Equity lawsuits challenge the inequitable distribution of school funding as violations of state and federal rights to equal protection. In contrast, in adequacy lawsuits plaintiffs argue state funding formulas do not provide sufficient resources for school districts to provide all students with a state-defined quality education. Adequacy-based litigation asserts more money is needed to raise academically low performing school districts to the minimum level of educational quality mandated by the state constitution’s education article.

Legal scholars have classified school funding litigation as progressing through three categorical waves: federal equity-based litigation; state equity-based litigation; and state adequacy-based litigation. The following section examines public school funding reform litigation from a national perspective within the context of wave analysis to provide an understanding of the approaches plaintiffs have used to challenge the Illinois school funding formula.

First Wave: Equity-Based Challenges Under the Federal Constitution

The first wave of school finance litigation is classified as federal equity-based litigation. The initial wave of school finance litigation began in the late 1960s and ended with the United States Supreme Court’s 1973 San Antonio Independent School District v.
Rodriguez\textsuperscript{151} decision.\textsuperscript{152} With the Court’s Brown v. Board of Education\textsuperscript{153} decision serving as the backdrop for first-wave court cases, plaintiffs in these cases argued all students were entitled to an equal share of educational dollars.\textsuperscript{154} First-wave litigants believed that if a state’s school funding system allocated fewer dollars to less wealthy school districts, then the students attending schools in less affluent districts were denied their rights to equal protection under the law. Therefore, first-wave litigation generally appeared as challenges in federal court to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.\textsuperscript{155}

The Fourteenth Amendment’s Equal Protection Clause requires state laws to treat all similarly situated individuals in the same manner.\textsuperscript{156} While the Equal Protection Clause does not require everyone to be treated exactly the same, it does require any differential treatment to be justified by a compelling reason. In school funding litigation involving an equal protection challenge, courts apply one of two levels of scrutiny in assessing whether the state may treat individuals differently without violating the Equal Protection Clause: \textsuperscript{157} strict scrutiny or the less critical rational basis standard.\textsuperscript{158} A third level of review, known as “intermediate scrutiny”, is applied to cases dealing with gender discrimination. Intermediate scrutiny review and has not entered into school funding jurisprudence. The level of scrutiny depends on the characteristics of the individual or group receiving disparate treatment.

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\textsuperscript{152} William E. Thro, Judicial Analysis During the Third-wave of School Finance Litigation: The Massachusetts Decision as a Model, 35 B.C.L. Rev. 597 (1994).
\textsuperscript{154} See William E. Thro, Judicial Analysis (1994).
\textsuperscript{155} U.S. Constitution Amendment XIV
\textsuperscript{156} Jospeh Tussman and Jacobus tenBrook, The Equal Protection of the Laws, 37 Cal. L. Rev. 341 (1949).
\textsuperscript{158} See: Anna Lukemeyer, Courts As Policymakers: School Finance Reform Litigation, at 3.
\end{flushleft}
The highest level of judicial review under the Equal Protection Clause is strict scrutiny.\textsuperscript{159} Two conditions trigger a court to apply the strict scrutiny test. Government actions that treat individuals differently on the basis of a suspect classification (e.g., race, national origin, or ethnicity) are subject to strict scrutiny.\textsuperscript{160} Government actions that restrict fundamental constitutional interests, such as the right to vote or the freedom of speech, are also subject to strict scrutiny.\textsuperscript{161} Under strict scrutiny, a challenged statute or practice is found constitutional only if it is “narrowly tailored” to serve a compelling state interest.\textsuperscript{162} To satisfy this narrowly tailored criteria, the statute or practice must be designed to accomplish only its specified goals. The government must also demonstrate that the law’s identified objectives cannot be accomplished by using less restrictive procedures. To satisfy the “compelling state interest” prong of strict scrutiny, the state must prove its action to be sufficiently important to outweigh an infringement on an individual’s rights.\textsuperscript{163} If neither a suspect class nor a fundamental right is involved, courts apply the rational basis test.\textsuperscript{164} Under a rational basis analysis, government officials need only show a reasonable connection exists between the challenged policy or practice and a legitimate state objective.

The key issue in equal protection litigation is whether a court believes a challenged statute or governmental practice invokes a suspect classification or infringes on a fundamental right.\textsuperscript{165} When courts review a governmental action using strict scrutiny, the statute or practice is

\textsuperscript{160} See Galloway, Russell W, \textit{Basic Equal Protection Analysis} (1998) at 122: A suspect class is defined as individuals who have been historically subjected to discrimination. Race, national origin or religion, are examples of suspect classifications.
\textsuperscript{161} See Lukemeyer, \textit{Courts As Policymakers}, at 3.
\textsuperscript{162} Id.
\textsuperscript{164} See Thro, WE, Russo, \textit{School finance, Debating Issues}, at 179.
\textsuperscript{165} See Lukemeyer, \textit{Courts As Policymakers}, at 4.
generally found unconstitutional. Conversely, when courts apply the less demanding rational basis analysis, the governmental practice is generally presumed constitutional and upheld as long as there is a logical reason for the challenged practice.

To induce strict judicial scrutiny of state school finance systems, first-wave plaintiffs generally advanced two primary claims. First, plaintiffs asserted education was a fundamental right, and under the Fourteenth Amendment states were obligated to provide education on an equal basis. Second, plaintiffs argued public school funding systems impacted a suspect classification, namely children living in low property-wealth school districts, because school-funding systems made the quality of a child’s education a function of the wealth of his parents and neighbors. Petitioners argued disparate levels of school funding discriminated against children on the basis of wealth because students from low-income households received an unequal and underfunded education. The first lawsuit successfully advancing these claims began in California in 1968. Although Serrano was filed in state court, plaintiffs centered their equity-based claim on the federal Equal Protection Clause.

Serrano v. Priest (1971)

In Serrano, plaintiffs brought a class action suit against the State of California, challenging the constitutionality of California’s public school funding formula. Plaintiffs, who

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166 Id. at 3. See also, Owings, William A, and Kaplan, Leslie S. (2006), American Public School Finance (2006), Burson v. Freeman, 504 U.S. 191 (1992): Justice Blackmun in giving the opinion of the court “In conclusion, we reaffirm that it is the rare case in which we have held that a law survives strict scrutiny.”

167 See Owings, American Public School Finance, at 78.

168 See Thro, School finance, Debating Issues at xxi.

169 See Serrano v. Priest, 5 Cal.3d 584 (1971) at 596, “Having disposed of these preliminary matters, we take up the chief contention underlying plaintiffs’ complaint, namely that the California public school financing scheme violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.”

170 Serrano v. Priest, 5 Cal.3d 584 (1971). Although Serrano was filed in state court, it was the first case to declare that inequites in school funding violated the Federal Equal Protection Clause.
are parents and school children from a number of Los Angeles school districts, claimed the state’s method for funding public schools discriminated against poor children. They argued the state’s use of local property taxes to generate school revenues produced vast differences in per-pupil spending in wealthy school districts as compared to poorer school districts. They further alleged California’s public school funding system provided greater educational opportunities to students who resided in wealthy school districts.

Plaintiffs petitioned the Civil Division of the Superior Court of Los Angeles County to declare California’s public school funding system unconstitutional under the Equal Protection Clauses of both the California and United States Constitutions. Petitioners presented two main arguments in an attempt to persuade the court to apply strict scrutiny to analyze California’s method for funding public schools. First, plaintiffs argued the funding system created a suspect classification on the basis of wealth because the amount of money a school district could spend on education was a function of the district’s property tax base. Second, the plaintiffs asserted a child’s right to a public education should be considered a fundamental right that cannot be conditioned on the basis of wealth.

In January 1969, the trial court dismissed the case under a general demurrer for failure

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171 Cal. Const. art. IX, § 6, par. 4 Cal. Educ. Code §§17751, 17801. The California public finance school system guaranteed a minimum amount of money per pupil to its school districts through a combination of funds received primarily through local property taxes, and funds received from state contributions. See 5 Cal.3d at 591.

172 Serrano v. Priest, 5 Cal.3d 584 (1971) at 594. In Los Angeles County, where plaintiff children attend school, the Baldwin Park Unified School District expended only $577.49 to educate each of its pupils in 1968-1969; during the same year the Pasadena Unified School District spent $840.19 on every student; and the Beverly Hills Unified School District paid out $1,231.72 per child.

173 Id. at 590.


175 Serrano v. Priest, 5 Cal.3d 584 (1971) at 589.

176 Id. at 589.

177 A defense asserting that even if all the factual allegations in a complaint are true, they are insufficient to establish a valid cause of action. Retrieved from: https://www.law.cornell.edu/wex/demurrer
to state a cause of action, and in September 1970, the California Court of Appeal for the Second District Appellate Division of the Superior Court of Los Angeles County affirmed. In August 1971, the California Supreme Court granted certiorari and reversed the appellate court’s decision.

In overturning the appellate court’s decision, the California Supreme Court first considered whether California’s method for funding public schools created a suspect classification on the basis of wealth. The court noted a school district’s wealth, as measured by the assessed value of local property and the rate school district residents were willing to tax themselves, was a major factor in determining a public school district’s educational expenditures. The court found school districts with smaller tax bases could not levy taxes at a rate high enough to match the revenue wealthier school districts could generate with lower tax effort. As a result, the court held California’s public school funding system made the “quality of a child’s education the function of the wealth of his parents and neighbors.” This led the court to conclude the California system was based on an inherently suspect classification and, therefore, discriminated on the basis of wealth.

After concluding wealth constituted a suspect class, the court next considered whether education was a fundamental right in the state. In its analysis, the court pointed out the indispensable role education plays in society. Further, the court declared education as a “major determinant of a person’s chances for economic and social success,” and a “unique influence on

181 Id. at 591.
182 Id. at 589.
183 Id. at 617.
a child’s development as a citizen and his participation in political and community life." 184

Justice Sullivan, writing for the California Supreme Court majority, observed, “the United States Supreme Court has repeatedly recognized the role of public education as a unifying social force and the basic tool for shaping democratic values…we are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a ‘fundamental interest.’” 185

The court cited five primary reasons for reaching its conclusion regarding education as a fundamental state right. First, the court held education is essential in “preserving an individual’s opportunity to compete successfully in the economic marketplace, despite a disadvantaged background.” 186 Second, the court noted education “is universally relevant” in contrast to other services such as police and fire protection. 187 Third, the court observed that education “continues over a lengthy period of life – between 10 and 13 years…few other government services have such sustained, intensive contact with the recipient.” 188 Fourth, the court determined that education “is unmatched in the extent to which it molds the personality of the youth of society.” 189 Finally, the court opined that education “is so important that the state has made it compulsory, not only in the requirement of attendance but also by assignment to a particular district and school.” 190

After designating wealth as a suspect classification and education a fundamental state right, the court applied strict equal protection scrutiny to California’s public school finance system. To be constitutionally permissible under strict scrutiny, the state was required to

184 Id. at 605.
185 Id. at 608.
186 Id. at 609.
187 Id.
188 Id.
189 Id.
190 Id. at 610.
demonstrate its method for funding public schools was necessary to meet a compelling state interest. The state argued its fiscal scheme was necessary to further a compelling governmental interest to “strengthen and encourage local responsibility for control of public education.”

However, the California Supreme Court rejected the state’s argument. First, the court refused to accept the necessity of maintaining a funding system based largely on local property tax wealth to strengthen local control. The court reasoned, “No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts.” The court asserted that although local school officials were in the best position to make educational decisions, the state’s public school funding system could not be considered necessary for local administrative control.

After determining California’s current financing system was not necessary to further local control of education, the court did not consider whether providing local control over educational decisions served a compelling state interest. The court noted that under the state’s public school funding system, local fiscal control was “a cruel illusion for the poor school districts.” The court reasoned as long as local property taxes are the major determinant of educational expenditures, “only a district with a large tax base will be truly able to decide how much it really cares about education.” As a result, the California Supreme Court concluded the state’s public school financing system did not withstand strict scrutiny analysis.

Having failed strict scrutiny analysis and been found to be discriminatory against the poor because it made the quality of a child’s education “a function of the wealth of his parents

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191 Id. at 620.
192 Id. at 611.
193 Id.
194 Id.
195 Id.
and neighbors,” the court ruled the California public school funding system denied plaintiffs equal protection of the laws under both the California and U.S. Constitutions.

The California Supreme Court’s 1971 decision in *Serrano* was a major victory for school finance reformers. *Serrano* provided hope for like-minded advocates across the country, as it set precedent for plaintiffs to argue both that education was a fundamental right and the poor were a suspect classification for equal protection analysis. Although challenging inequitable funding schemes on a state-by-state basis would have been an effective strategy, plaintiffs thought a more efficient and decisive remedy for inequitable funding schemes would come from the U.S. Supreme Court. Just as the Court’s *Brown* decision overturned the constitutionality of racially segregated schools, school reform advocates hoped the Supreme Court would dismantle inequitable school funding systems across the nation in “one fell swoop.”

Two years after *Serrano*, school funding reform advocates appeared to have a definitive remedy for nationwide school funding inequity within sight when the United States District Court for the Western District of Texas federal trial court interpreted the U.S. Constitution to reach a similar conclusion, as had the California Supreme Court. Petitioners were hopeful the U.S. Constitution could play a central role in shaping the country’s school funding system when the litigation reached the United States Supreme Court in 1973.

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196 *Id.* at 589.
197 *Id.* at 611.
San Antonio Independent School District v. Rodriguez (1973) 204

In San Antonio Independent School District v. Rodriguez, Mexican-American parents whose children attended schools in the Edgewood Independent School District in San Antonio, Texas, brought a class action suit against state school authorities in the United States District Court for the Western District of Texas, challenging the constitutionality of the state’s system for financing public education. 205 The complaint, filed in June 1968 on behalf of school children who were members of minority groups or who resided in school districts with low property tax bases throughout the state, alleged per-pupil spending disparities between school districts across Texas violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

The Texas public finance system guaranteed a minimum per pupil allocation to Texas public school districts through a combination of funds received from local property taxes and state appropriations. 206 Differences in the amount of revenue received through local property taxes (due to the value of taxable property within each school district) resulted in substantial inter-district disparities in per-pupil expenditures. 207 Plaintiffs in Rodriguez alleged the Texas public school funding system’s reliance on property taxes resulted in children living in affluent

205 Id. at 4.
207 Id.at 11. “For example the plaintiffs’ Edgewood Independent School District, under a tax rate of $1.05 per $100 of assessed property value, the highest in the metropolitan area, was only able to generate $26 in per-pupil local funding. Additional state and federal revenues raised their per-pupil expenditures to $356 per student. The comparison school district, Alamo Heights Independent School District, was able to generate $333 per student from local property taxes, at a tax rate of only .85 per $100 of assessed property value. Additional federal and state revenues allowed Alamo Heights to expend $594 on each of their students’ education.”
school districts receiving a better education than children residing in property-poor school districts.  

Petitioners made two main claims in an attempt to persuade the court to apply the strict scrutiny test to Texas’ method for funding public schools. First, they asserted low-income households, clustered in low property wealth areas, constituted a suspect class. Second, they argued education was a fundamental right, and under the Fourteenth Amendment Texas was obligated to provide it to all students on an equal basis. In January 1972, the district court held that the substantial inter-district disparities in school expenditures violated the U.S. Constitution’s Equal Protection Clause. The court also concluded the state’s method for financing public education was discriminatory on the basis of wealth because the funding scheme permitted citizens in high property wealth areas to provide a higher quality education for their children at lower tax rates. In a significant holding, the district court also concluded “the grave significance of education both to the individual and to our society” made education a fundamental interest. These conclusions led the court to apply strict scrutiny in reviewing the Texas public school finance system. Applying strict scrutiny, the court found the state did not have a compelling governmental interest to support the use of a property tax-based school-financing scheme that generated uneven per pupil sending among school districts across the

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208 Id. at 12.  
209 See Serrano v. Priest, [HN11]: Courts apply a two-level test for measuring legislative classifications against the Equal Protection Clause. In the area of economic regulation, the Supreme Court grants legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. On the other hand, in cases involving “suspect classifications” or touching on “fundamental interests,” the court has adopted an attitude of critical analysis, subjecting the classification to strict scrutiny. Under the strict standard applied in such cases, the state bears the burden of establishing a compelling interest that justifies the law, and the distinctions drawn by the law are necessary to further its purpose.  
212 Id. at 282.
state.\textsuperscript{213} This led the lower court to conclude the Texas school finance system was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.\textsuperscript{214}

The state of Texas appealed the decision directly to the U.S. Supreme Court. On appeal, a divided 5-4 United States Supreme Court reversed the district court’s decision on March 21, 1973. In overturning the decision, the High Court concluded the district court’s application of strict scrutiny was inappropriate, holding that education was not a fundamental right and wealth did not constitute a suspect classification.\textsuperscript{215}

In reaching its conclusion, the Supreme Court first considered whether the Texas school finance system discriminated against students on the basis of wealth. Discrimination against wealth-based classifications, like other non-suspect classifications,\textsuperscript{216} has traditionally only been subject to a rational basis review.\textsuperscript{217} Under a rational basis analysis, laws treating people differently are constitutional if government officials can show that a reasonable connection exists between the challenged policy and a legitimate state objective. The Court has, however, applied strict scrutiny in cases when the poor must overcome financial obstacles to exercise a fundamental right.\textsuperscript{218} In these cases, the laws were declared unconstitutional due to the complete

\textsuperscript{213}Id. at 284. “Not only are defendants unable to demonstrate compelling state interests for their classifications based on wealth, they fail even to establish a reasonable basis for these classifications”.

\textsuperscript{214}Id. at 285.


\textsuperscript{216}The Supreme Court only recognizes race, national origin, religion and alienage as suspect classes.


See: 411 U.S. 1, 18-21 (1973). In Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966), the Court struck down a poll tax used as a prerequisite to voting in Virginia elections. The poll tax interfered with a right to vote. In Griffin v. Illinois, 351 U.S. (1956), United States Supreme Court held that a criminal defendant might not be denied the right to appeal by inability to pay for a trial transcript. Similarly, in Douglas v. California, 372 U.S. 353 (1963), the right of appeal itself was not absolutely denied to those too poor to pay; but because of the cost of a transcript and of counsel, the appeal was a substantially less meaningful right for the poor than for the rich.
denial of a government benefit on the basis of wealth.\textsuperscript{219} Thus, it was not wealth that triggered strict scrutiny but the possible deprivation of a fundamental right based on an individual’s wealth that evoked the heightened level of review.

Justice Powell, writing for the majority, distinguished the low-income children in \textit{Rodriguez} from the prior Supreme Court wealth-based decisions plaintiffs based their arguments on.\textsuperscript{220} Powell explained in those wealth classification cases, strict scrutiny was applied because the individuals discriminated against were unable to pay for a desired benefit and, as a consequence, sustained a deprivation of a meaningful opportunity to enjoy a fundamental benefit.\textsuperscript{221}

According to the Court, the \textit{Rodriguez} facts were distinguishable from the previous cases because Texas had not completely denied any of its residents a public education and the state’s finance system assured all school districts received at least some minimal level of school funding.\textsuperscript{222} Powell also noted, “Where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.”\textsuperscript{223} The Court further observed that although the Texas public school finance system did not provide equal funding, it did assure “every child in every school district an adequate education.”\textsuperscript{224}

\textsuperscript{220} \textit{Id.} at 1969.
\textsuperscript{221} San Antonio Independent School District v. Rodriguez, 411 U.S. 1,(1973, 18-21. See Equal Protection and Fundamental Rights, (n.d.). Retrieved from: http://law2.umkc.edu/faculty/projects/ftrials/conlaw/fundrights.html. The Court has been reluctant to add to a relatively short list of fundamental rights explicitly mentioned in the Constitution, but heightened scrutiny has been applied to cases involving substantial burdens placed on the right to vote (Harper v. Virginia Bd. of Elections, 1966), the right to be a candidate (Bullock v. Carter, 1972), and to fees that prevent indigents from obtaining equal access to justice (Griffin v. Illinois, 1956).
\textsuperscript{222} Ladd, Helen F. and Hansen, Janet S, \textit{Making Money Matter: Financing America’s Schools Committee on Education Finance}, (1999)
\textsuperscript{224} \textit{Id.} at 25.
After describing the classification of “poor” as being “amorphous and diverse” and without the traditional indicia of being a suspect class, the Court rejected the lower court’s decision and concluded Texas’ public school finance system did not operate to the disadvantage of any suspect class.

The Court also rejected the lower court’s finding that education was a fundamental right. Though acknowledging, “the grave significance of education could not be doubted,” Justice Powell stated, “the importance of a service does not determine whether it must be regarded as fundamental for purposes of examination under the Fourteenth Amendment.” The Court’s majority reasoned the determination of education as a fundamental right rested within an assessment of whether education was explicitly or implicitly guaranteed under the U.S. Constitution. This reasoning was in direct contrast with the district court’s ruling. While recognizing the right to an education was not explicitly guaranteed in the Constitution, the district court held the close relationship education had to other recognized fundamental interests implied it was also protected under the U.S. Constitution. Disagreeing with the lower court’s holding, the High Court reasoned:

Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditure in Texas provide an education that falls short… [N]o charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full

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225 Id. at 28.
226 Id.: “the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.”
227 Id.
228 Id. at 30.
229 Id. at 31, The Supreme Court does not pick out particular human activities, characterize them as "fundamental," and give them added protection. To the contrary, the Court simply recognizes an established constitutional right, and gives to that right no less protection than the Constitution itself demands.”
230 Id. at 37.
participation in the political process.\textsuperscript{231}

Based on this criterion, the Court determined education was not a fundamental right because it was not explicitly guaranteed nor implicitly so protected under the U.S. Constitution.\textsuperscript{232}

Having concluded wealth did not qualify for status as a suspect class and education was not a fundamental right under the U.S. Constitution, the Court reasoned strict scrutiny review was not appropriate and applied the less stringent rational basis test.\textsuperscript{233} Under the rational basis review, the state only needed only to show its public school financing system bore a rational relationship to a legitimate governmental purpose.\textsuperscript{234} The Court reasoned that although Texas’ public school funding system was imperfect, a rational relationship existed between the funding scheme and the state’s goal of allowing local public school districts autonomy.\textsuperscript{235} Therefore, the state’s goal of providing local control over educational decisions was deemed to be a legitimate state interest. The Court further reasoned the use of local property taxes to fund public education was a rational means for realizing the goal of local control.\textsuperscript{236} As a result, the Court concluded the Texas public school finance system satisfied the rational basis test, and therefore, the scheme did not violate the Equal Protection Clause of the U.S. Constitution and held the initiation of school funding reform are matters reserved for the legislative processes of the states.\textsuperscript{237}

\textsuperscript{231} Id. at 36-37.
\textsuperscript{232} Id. at 31: The Supreme Court does not pick out particular human activities, characterize them as "fundamental," and give them added protection. To the contrary, the Court simply recognizes an established constitutional right, and gives to that right no less protection than the Constitution itself demands.”
\textsuperscript{233} Id. at 40.
\textsuperscript{234} See: Galloway, Russell, \textit{Basic Equal Protection Analysis} at 1.
\textsuperscript{235} 411 U.S. 1, 55 (1973).
\textsuperscript{237} 411 U.S. 1, 58 (1973).
As a result of *Rodriguez*, the forum for challenging public school funding systems shifted from federal to state courts. While *Rodriguez* closed the federal court doors to school funding litigation, the California Supreme Court’s *Serrano* decision created a viable option for challenging school funding inequities in the state courts.

**Second Wave: Equity-Based Challenges to State Constitutions**

The second wave of school finance litigation, spanning the years 1973-1989, is classified as state equity-based litigation. During the second wave, school finance reform advocates shifted the focus in litigation from the federal Equal Protection Clause and began to challenge the inequitable distribution of school resources under state constitutional language.

Generally, there were two causes of action raised under the typical second-wave claim. First, plaintiffs would claim public school funding disparities violated the Equal Protection Clause of state constitutions. Whereas the federal Constitution contains no explicit reference to education, all 50 state constitutions contain language specifically addressing the powers of the state to create and operate public school systems. Plaintiffs argued the explicit inclusion of education in state constitutions created a fundamental right to an education for state equal protection purposes. Asserting education constituted a fundamental state right, or alternatively,

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See: Appendix A for a list of Second-Wave cases.
that school-district poverty constituted a suspect classification, plaintiffs reasoned that an unequal distribution of educational resources should be reviewed under strict scrutiny.\textsuperscript{244} In the second component of the typical second-wave claim, plaintiffs argued the language of state education clauses required equity in school funding.\textsuperscript{245} In many cases, constitutional language mandating state legislatures provide “thorough and efficient,”\textsuperscript{246} “uniform,”\textsuperscript{247} or “thorough and general”\textsuperscript{248} systems of education were essential to these arguments.\textsuperscript{249}

\textit{Robinson v. Cahill},\textsuperscript{250} decided just thirteen days after the U.S. Supreme Court’s \textit{Rodriguez} decision, marked the beginning of the second wave of school funding decisions.\textsuperscript{251}

Although the \textit{Robinson} litigation originated during the first wave of school funding litigation, the New Jersey Supreme Court’s decision prompted second-wave plaintiffs to file equity-based litigation under state constitutional provisions.\textsuperscript{252}

\textsuperscript{244} \textit{Id.} at 1652: This approach was bolstered by the fact that state courts were not required to follow federal constitutional jurisprudence in interpreting their own state constitutional provisions; See also William F. Dietz, Note, \textit{Manageable Adequacy Standards in Education Reform Litigation}, 74 Wash. U. L.Q. 1193, 1198 (1996).


\textsuperscript{246} For a listing of the specific language found in the education clauses of all states, see Molly A. Hunter, \textit{State Constitution Education Clause Language}, (Newark, NJ: Education Law Center, 2011) available at http://pabarcrc.org/pdf/Molly%20Hunter%20Article.pdf


\textsuperscript{250} \textit{William E. Thro, Judicial Analysis During the Third-wave of School Finance Litigation: The Massachusetts Decision as a Model}, 35 B.C.L. Rev. 597 (1994).

In February 1970, plaintiffs brought suit in the Law Division of the Superior Court of New Jersey challenging the constitutionality of New Jersey’s system of financing public education. At the time the case was filed, New Jersey public schools were funded primarily by local property taxes and supplemented by various forms of state aid. Under this plan, every public school district was guaranteed $100 per pupil, plus the difference, if any, between the foundation level ($325) and the amount of revenue that could be raised locally. While statewide educational expenditures averaged $1,009 per pupil, the disparities in local school district educational expenditures ranged from $561 per pupil to $1,746 per pupil.

Plaintiffs challenged the New Jersey public school funding system under the Equal Protection Clause of the United States and New Jersey Constitutions, arguing the state constitution created a fundamental right to an education. Additionally, plaintiffs argued the state funding system violated the state constitution’s education clause, arguing the guarantee of a “thorough and efficient” education could not be met in low property wealth school districts due to an insufficient share of public education funding.

In January 1972, the trial court ruled in favor of the plaintiffs and declared the New Jersey public school funding scheme unconstitutional under both the state and federal Equal Protection Clauses and the education clause of the New Jersey Constitution. The trial court determined the state’s method for funding public schools was unconstitutional under the

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257 N.J. Const. art. VIII, § 4 states: The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.
education clause, stating that disparities in per-pupil expenditures prevented students residing in property-poor school districts from receiving a “thorough and efficient” education.\textsuperscript{260}

The trial court then considered the state education clause language to determine disparities in per pupil spending stemming from New Jersey’s public school funding scheme violated the plaintiffs’ rights to equal protection. The court concluded the language of the state’s education clause made education a fundamental right.\textsuperscript{261} This conclusion led the court to apply strict scrutiny in reviewing the state’s public school finance system. Under a strict scrutiny examination, differential treatment is unconstitutional if it cannot be justified by a compelling governmental interest. The trial court rejected the state’s argument that its finance system served a “compelling interest” in providing for local control over education, noting, “It is doubtful that this system even meets the less stringent ‘rational basis’ test.”\textsuperscript{262}

The New Jersey Supreme Court directly certified the state’s appeal before argument in the Appellate Division\textsuperscript{263}. On appeal, the New Jersey Supreme Court reversed the trial court’s ruling regarding equal protection violations but unanimously affirmed the trial court’s finding of unconstitutionality under the state’s education clause.\textsuperscript{264} In overturning the trial court’s equal protection ruling, the New Jersey Supreme Court determined the trial court had erred in applying strict scrutiny analysis to the New Jersey public school finance system.\textsuperscript{265} Using the rationale applied by the Supreme Court in \textit{Rodriguez},\textsuperscript{266} the court promptly dismissed the trial court’s ruling on the alleged federal equal protection violation. In \textit{Rodriguez}, the U.S. Supreme Court

\textsuperscript{261} \textit{Id.} at 274.
\textsuperscript{262} \textit{Id.}
\textsuperscript{263} In \textit{Robinson}, the New Jersey Supreme Court bypassed the Appellate Division as a matter of extraordinary public significance. See http://appellatelaw-nj.com/direct-certification-of-cases-by-the-supreme-court-bypassing-the-appellate-division/ accessed April 24, 2018.
\textsuperscript{264} 62 N.J. 473 (1973).
\textsuperscript{265} \textit{Id.} at 486-502.
\textsuperscript{266} 411 U.S. 1
concluded the Texas public school funding system had not discriminated on the basis of wealth\textsuperscript{267} and declared that education was not a fundamental federal right.\textsuperscript{268} Therefore, the \textit{Rodriguez} majority did not apply strict scrutiny, but instead measured the Texas public school finance system using the less stringent rational basis equal protection standard.\textsuperscript{269} In upholding the Texas public school finance system under the federal Equal Protection Clause, the \textit{Rodriguez} Court had determined the state’s public school finance system was rationally related to the state’s interest in providing for local control of schools.\textsuperscript{270} Although the U.S. Supreme Court’s \textit{Rodriguez} decision came after the \textit{Robinson} opinion was prepared, the New Jersey Supreme Court concluded, there was no reason to “believe the [United States Supreme Court] majority would [have found] a federal constitutional flaw in the case before us.”\textsuperscript{271}

After dismissing plaintiffs’ federal equal protection claims, the New Jersey Supreme Court next rejected the trial court’s ruling regarding a state Equal Protection Clause violation. Consistent with the Supreme Court’s \textit{Rodriguez} decision, the New Jersey Supreme Court found neither a suspect classification based on wealth\textsuperscript{272} nor a fundamental right to an education under the New Jersey Constitution.\textsuperscript{273} The New Jersey Supreme Court determined education, despite an explicit constitutional mandate to furnish, was not a fundamental state right in New Jersey. Although the court recognized education is a vital function of local and state governments, it could not find an objective basis for finding the state Equal Protection Clause required statewide

\textsuperscript{267} Id. at 28: The Court found the system of alleged discrimination and the class it defines have none of the traditional indicia of suspectedness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.
\textsuperscript{268} Id. at 35: The majority also noted that the Federal Constitution did not explicitly or implicitly guarantee a right to education.
\textsuperscript{269} Id. at 55.
\textsuperscript{270} Id.
\textsuperscript{271} 62 N.J. 473 (1973) at 489.
\textsuperscript{272} Id. at 491.
\textsuperscript{273} Id. at 494.
uniformity in educational expenditures. The court was concerned a decision based on the Equal Protection Clause would call into question the constitutionality of unequal expenditures for other state mandated municipal services. If variations in local expenditures for education would deny equal protection, then variations in local expenditures for other essential services, like police or fire protection, might also deny equal protection to those living in property-poor areas.

After finding neither a fundamental state right to an education nor a suspect classification based on property wealth, the New Jersey Supreme Court applied the rational basis standard to reach its decision. The court concluded New Jersey’s public school finance system was rationally related to the state’s interest in local control of schools and overturned the trial court’s finding of unconstitutionality under the state Equal Protection Clause.

Having rejected the trial court’s ruling on the state and federal equal protection claims, the court next addressed the trial court’s conclusion that the state’s public school finance system violated the New Jersey constitution’s education clause. The trial court had found the mandate for a thorough and efficient education had not been satisfied due to large disparity in per-pupil funding. After reviewing the education article’s legislative history, the court determined the education clause’s language providing for a “thorough and efficient” system of public schools was intended to ensure equal educational opportunity for children. The New Jersey Supreme

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274 Id. at 494.
276 62 N.J. 473 (1973) at 498.
See also: McMillan, Kevin Randall. The Turning Tide: The Fourth Wave of School Finance Reform Litigation and the Courts’ Lingering Institutional Concerns, 58 Ohio St. L.J. 1867 (1997-1998). The Robinson court applied an equal protection analysis quite distinct from the traditional three-tiered analysis (i.e., rational basis review, intermediate scrutiny, or strict scrutiny) that the Supreme Court utilized in Rodriguez. The New Jersey Supreme Court stated that “[ultimately, a court must weigh the nature of the restraint or the denial against the apparent public justification, and decide whether the State action is arbitrary.”
277 62 N.J. 473 (1973) at 514.
Court affirmed the trial court’s finding and concluded a school finance system with large inter-
district per-pupil spending disparities did not meet the state constitution’s thorough and efficient
requirement. As such, the court invalidated the current public school finance system under the
New Jersey constitution’s education clause and ordered the state to create a constitutionally
acceptable program for financing its public schools. The legislature was instructed to fulfill its
obligation for providing a thorough and efficient education by raising the money necessary to
provide that opportunity.  

The Robinson decision was fundamental in the transition from first-wave to second-wave
school funding litigation strategies. First, it recognized the federal court’s closure on the issue
of equity-based school funding challenges at the federal level. Second, it strengthened the
viability of Serrano-type challenges to school funding inequity filed under state constitutional
provisions despite the New Jersey Supreme Court’s refusal to declare education a fundamental
state right.

Although the Robinson plaintiffs were successful even absent this declaration, most
second-wave equity-based decisions were dependent on a state court’s determination regarding
education as a fundamental state right. In general, second-wave plaintiffs were more likely to be
successful when state courts applied strict scrutiny to state educational funding systems after
declaring education a fundamental right. When plaintiffs lost their case, courts typically
applied the rational basis test to ultimately determine school finance schemes did not violate state

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278 Id.
279 See McMillan, The Turning Tide, at.1867.
280 See infra pg. 48: Serrano struck down California’s public-school financing structure as a violation of equal
protection, because the system generated wide variances in per-pupil expenditures based on a school district’s
wealth.
281 Buszin, J. S., Beyond School Finance: Refocusing Education Reform Litigation to Realize the Deferred Dream of
Education Equality and Adequacy, Emory Law Journal, 62.6, 1613-1657. 2013. See also: Appendix B for a list of
cases decided on strict scrutiny analysis equal protection adjudication.
equal protection rights. While plaintiffs were able to prevail in Arkansas, California, Connecticut, New Jersey, Washington, West Virginia and Wyoming, the majority of second wave cases resulted in state victories. Given the limited success of school finance plaintiffs during the second wave, litigants eventually turned to a new approach that ushered in the third wave of education finance litigation.

Third Wave: Adequacy-Based Challenges to State Constitutions

The third wave of school-finance litigation redirected attention away from per-pupil spending disparities toward a focus on the adequacy of revenues allocated to public schools. Under this approach, plaintiffs contended low academic performance is the result of inadequate school funding. While equity-based litigation argued the inequitable distribution of state educational funding violated equal protection of the laws, all children were entitled to have the same amount of money spent on their education, adequacy-based claims contend school districts lack the resources necessary to meet a constitutionally defined minimum standard of educational

282 Id. See also: Appendix C
290 See Appendix A for list of second-wave defendant (state) victories.
291 See Buszin, Beyond School Finance at 1620.
Adequacy-based challenges focus challenges on the language used in a state constitution’s education clause to define the state’s obligation to provide educational services. Legal scholar William Thro categorized education clauses based on the strength of the constitutional language. Category I clauses, found in sixteen state constitutions, impose a minimal educational obligation on the state. Category I clauses require only the establishment of a free system of public education and impose no specific degree of quality on the public school funding system. For example, Vermont’s education clause requires “a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth”.

Category II clauses, found in eighteen state constitutions, place a higher educational duty on the state. Category II clauses require the state to provide a minimum level of educational

297 Ala. Const. art. XIV, § 256; Alaska Const. art. VII, § 1; Ariz. Const. art. XI, § 1; Conn. Const. art. VIII, § 1; Haw. Const. art. X, § 1; Kan. Const. art. VI, § 1; La. Const. art. VIII, § 1; Miss. Const. Art. 8, § 201; Neb. Const. art. VII, § 1; N.M. Const. art. XII, § 1; N.Y. Const. art. XI, § 1; N.C. Const. art. IX, § 2; Okla. Const. art. XIII, § 1; S.C. Const. art. XI, § 3; Utah Const. art. X, § 1; and Vt. Const. ch. 2, § 68.
299 Id. at 2387.
300 Vt. Const. ch. 2, § 68.
301 Ark. Const. art. XIV, § 1; Colo. Const. art. IX, § 2; Del. Const. art. X, § 1; Idaho Const. art. IX, § 1; Ky. Const. § 183; Md. Const. art. VIII, § 1; Minn. Const. art. XIII, § 1; Mont. Const. art. X, § 1; N.J. Const. art. VIII, § 4; N.D. Const. art. VIII, § 1; Ohio Const. art. VI, § 3; Or. Const. art. VIII, § 3; Pa. Const. art. III, § 14; Tenn. Const. art. XI, § 12; Tex. Const. art. VII, § 1; Va. Const. art. VIII, § 1; W.Va. Const. art. XII, § 1; and Wis. Const. art. X, § 3.
quality,\textsuperscript{302} often describing this minimal level as “thorough and/or efficient.”\textsuperscript{303} However, Category II clauses do not require the state’s funding system to produce a minimum level of quality.\textsuperscript{304} For example, the education clause contained in Virginia’s constitution provides, “the General Assembly shall provide for a system of free public elementary and secondary schools …and shall seek to ensure that an educational program of high quality is established and continually maintained.”\textsuperscript{305}

The eight state constitutions with Category III education clauses\textsuperscript{306} strengthen the language regarding a minimal educational quality level by adding language addressing the purpose of education.\textsuperscript{307} For example, Indiana’s education clause states, “Knowledge and learning, … being essential to the preservation of a free government; it should be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual scientific, and agricultural improvement.”\textsuperscript{308}

Category IV education clauses impose the highest educational obligation on a state. The eight states with Category IV education clauses\textsuperscript{309} explicitly describe education as an important or as the most important of each state’s duties.\textsuperscript{310} Illinois’ education clause is considered a Category IV constitutional mandate because it declares education to be “a fundamental goal of


\textsuperscript{305} Va. Const. art. VIII, § 1

\textsuperscript{306} Cal. Const. art. IX, § 1; Ind. Const. art. VIII, § 1; Iowa Const. art. XI, 2d, §3 ; Mass. Const. pt. 2, ch. 5, § 2; Nev. Const. art. XI, § 2; R.I. Const. art. XII, § 1; S.D. Const. art. VIII, § 1; and Wyo. Const. art. VII, § 1.

\textsuperscript{307} The Indiana Constitution, for example, lists education as “essential to the preservation of free government”.

\textsuperscript{308} Ind. Const. art. VIII, § 1

\textsuperscript{309} Fla. Const. art. IX, § 1; Ga. Const. art. VIII, § 1; Ill. Const. art. X, § 1; Me. Const. art. VIII, pt. 1, § 1; Mich. Const. art. VIII, § 2; Mo. Const. art. IX, § 1(a); N.H. Const. pt. 2, art. LXXXIII; Wash. Const. art. IX, § 1

the People of the State.” The Illinois education clause states:

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has the primary responsibility for financing the system of public education.

Adjudication of Education Clause Challenges

State courts follow a three-step process to resolve education clause challenges. First, the court interprets the meaning of the education article. Next, the court determines the state’s constitutional obligation to support education. Finally, the court determines whether the state has met the education article’s constitutional obligation to support education.

The constitutional language of education clauses is interpreted through one of three methods. The first method, the historical approach, involves an analysis of constitutional debates during the drafting of the education article and early legislative understanding of its meaning. Most state courts have used to historical approached to interprete the meaning of the education article by analyzing its legislative history. A second method of constitutional interpretation involves a review of how other state courts have interpreted similar education

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311 Ill. Const. art. X, § 1
313 Id.
314 Id.
315 Id.
316 Id.
In a third method of constitutional interpretation, a state court will consider the “plain meaning” of the education article. Courts using a “plain meaning approach” will interpret the literal meaning of the statute’s language.

After the court determines the meaning of the education article, it next determines the magnitude of the state’s constitutional duty to support education, which is often determinative of the outcome. Courts finding education articles impose a high obligation to support education, e.g. Category IV education clauses, are more likely to find the constitution prohibits significant funding disparities. Courts finding education articles impose a low obligation to support education, e.g. Category I education clauses requiring only a minimally adequate education, will generally hold the state constitution allows legislative discretion in funding public schools.

The Kentucky Supreme Court’s *Rose v. Council for Better Education* decision was a seminal adequacy-based victory for school funding plaintiffs and is generally regarded as the beginning of third-wave school finance litigation. In *Rose*, the Kentucky Supreme Court interpreted Kentucky’s Category II education clause to determine the state had an obligation to provide an equal educational system in regard to both financial resources and educational

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320 See: https://definitions.uslegal.com/p/plain-meaning-rule/


323 *Id.* supra 62.


325 See Infra pgs. 47-49.
opportunity for all students.\(^{327}\)

*Rose v. Council for Better Education (1989)*\(^{328}\)

In April 1985, plaintiffs representing 66 Kentucky public school districts brought suit in the Franklin County Circuit Court\(^{329}\) against the State of Kentucky. The lawsuit sought a declaratory judgment stating Kentucky’s public school financing system was unconstitutional under both the equal protection\(^{330}\) and education clauses\(^{331}\) of the Kentucky constitution. At that time, Kentucky public schools were funded through a combination of local tax revenues and both the state’s Minimum Foundation Program (MFP) and Power Equalization Program (PEP). Because the combination of these programs did not provide sufficient funding, most school districts elected to supplement state aid with additional local property tax revenues. Because wealthier school districts could generate more local property tax revenues, wide funding disparities resulted.

The trial court ruled in the plaintiffs’ favor, determining inequitable school funding violated both the education and Equal Protection Clauses of the Kentucky Constitution.\(^{332}\) The trial court determined the education clause’s language elevated education to a fundamental right in Kentucky\(^{333}\) and concluded the disparity in educational opportunities offered to students in property poor school districts resulted in invidious discrimination based on property wealth.\(^{334}\) Based on this conclusion, the trial court ruled the state’s school finance system violated the equal

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\(^{327}\) *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989), 191.

\(^{328}\) *Id.*

\(^{329}\) *Civil Action No 85-CI-1759*, Complaint, filed May 28, 1985.

\(^{330}\) KY Const, §2 and §3.

\(^{331}\) KY Const, §183.


\(^{333}\) *Id.*

\(^{334}\) *Id.* at 192.
protection guarantees contained in the Kentucky Constitution. Additionally, the court held the Kentucky public school funding scheme violated the state’s education clause because it failed to contribute the adequate funds necessary for property-poor school districts to provide an “efficient system of common schools throughout the state.” The trial court determined an efficient education required “substantial uniformity and substantial equality” of both financial resources and educational opportunity for all students. After noting students in property poor districts received inferior educational opportunities as compared to students in the more affluent districts as a result of disparity in per-pupil expenditures, the court concluded the state’s public school funding system failed to meet the standard of efficient mandated by the education clause.

On direct appeal, the Supreme Court of Kentucky granted certiorari and affirmed in part and reversed in part the trial court’s ruling. The Kentucky Supreme Court chose not to issue a ruling on petitioners’ equal protection claim, but instead based its ruling solely on the state constitution’s education clause. In affirming the trial court’s decision, the Supreme Court of Kentucky first determined the meaning of an efficient system of education. In forming its definition, the court examined the education clause’s legislative history, legal precedents in Kentucky, the West Virginia Supreme Court’s interpretation of similar constitutional language in Pauley v. Kelly, and the opinions of education experts who had provided testimony during the trial. Based on this examination, the court defined an efficient system of education as one that, at minimum, provides each and every child in Kentucky with the following seven capacities:

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335 Id.
336 §183 of the Kentucky Constitution states in relevant part: The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.
338 Id. at 191.
339 Id. at 215.
341 Rose v. Council for Better Education, 790 S.W.2d 186 (Ky. 1989), 206-211.
(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. 342

The court determined the constitutional mandate to provide an “efficient system of common schools throughout the state” required a system of public schools that “provides an equal opportunity for all children to have an adequate education.”343 Based on testimony showing a large disparity in both educational opportunities and financial support offered throughout the state, the court concurred with the trial court’s decision and concluded the overall inefficiency of the state’s system of education violated the education article’s constitutional mandate to provide an efficient education. 344

After concluding the state had failed to meet its constitutional obligation to adequately support education, the court’s majority declared Kentucky’s entire system of education unconstitutional and directed the Kentucky General Assembly to recreate and redesign a new system that would comply with the criteria set forth in the court’s definition of a constitutionally efficient system of education.345

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342 Rose v. Council for Better Education, 790 S.W.2d 186 (Ky. 1989) at 212.
343 Id. at 211..
344 Id. at 197: Testimony showed the Kentucky system of common schools nationally ranked in the lower 20-25% in virtually every category that is used to evaluate educational performance,” in that every one of Kentucky's school districts was below the national average in taxable property and even the more “affluent school districts provided an inadequate education as judged by national standards.
345 Id. at 215. Lest there be any doubt, the result of our decision is that Kentucky's entire system of common schools is unconstitutional. There is no allegation that only part of the common school system is invalid, and we find no such circumstance. This decision applies to the entire sweep of the system -- all its parts and parcels.
The Kentucky Supreme Court’s decision in Rose served as a catalyst for a number of subsequent successful adequacy-based challenges. In many of the subsequent cases, courts either fully or substantially adopted Rose’s definition of an adequate education as being the right granted to every child under a state’s education clause. These post-Rose decisions represent the dramatic change in the outcome of constitutional challenges to state education finance systems during third-wave adequacy-based litigation. Plaintiffs, who had lost over two-thirds of school finance cases during second-wave equity-based litigation, prevailed in almost two-thirds of state Supreme Court decisions between 1989 and 2007.

From 2009 through June 2017, however, plaintiffs prevailed in less than 50% of rulings by state supreme courts or unappealed lower court decisions in cases involving adequacy-based constitutional challenges to state education-funding systems. Thus, a considerable change

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348 Id. See also: Appendix B for a list of third wave cases listing plaintiffs filing successful adequacy-based challenges, and plaintiffs filing unsuccessful challenges.

occurred from more than two-thirds of the initial adequacy-based decisions favoring plaintiffs between 1989 and 2008 to a pattern in which only 57% of adequacy-based decisions favored defendants 2009 and June 2017.\textsuperscript{350}

School Funding Litigation and the Political Question Doctrine

When considering decisions favoring defendants, most third-wave litigation failed when a court declared the adequacy of school funding systems presented before them a “Non-Justiciable Political Question.”\textsuperscript{351} In fact, of the fourteen state high courts ruling against plaintiffs’ adequacy-based claims during the third wave, only three courts decided them on the merits.\textsuperscript{352}

The political question doctrine is based on the premise that some constitutional questions are beyond the scope of judicial review.\textsuperscript{353} The doctrine originates from the \textit{Marbury v. Madison}\textsuperscript{354} decision, which established the Supreme Court’s power of judicial review and reinforced the doctrine of the separation of powers.\textsuperscript{355} Under the political question doctrine, a court will withhold judgment on issues it believes have been constitutionally committed to another branch


\textsuperscript{351} The political question doctrine is based on the premise that some constitutional questions are beyond the scope of judicial review, and the court will dismiss the case. See Appendix B for a list state courts dismissing 3\textsuperscript{rd} Wave cases as non-justiciable political questions.

\textsuperscript{352} See: \textit{Lobato v. State}, 304 P.3d 1132 (Col. 2013); \textit{Davis v. State}, 804 N.W.2d 618 (S.D. 2011) and \textit{Morath v. The Texas Taxpayer and Student Fairness Coalition et al.}, 490 S.W.3d 826 (Tex. 2016). In \textit{Lobato}, the Colorado Supreme Court reversed a lower court ruling, and upheld the public school finance system as “rationally related” to the constitutional mandate of the education clause to provide a “thorough and uniform” education. Affording local school districts control over locally raised funds also allowed school districts over ‘instruction in public schools’, and was therefore in accord with the local control clause of the state constitution. In \textit{Davis, the South Dakota Supreme Court} held that “plaintiffs’ evidence raises “serious questions” about the state's education finance system, but failed to prove South Dakota students were denied an “adequate and quality” education. In \textit{Morath}, the trial court found the Texas education finance system unconstitutional. The State appealed, and the Texas Supreme Court, in 2016, gave “extreme” deference to the Legislature and found no constitutional violation.


\textsuperscript{354} \textit{Marbury v. Madison}, 5 U.S. 137 (1803).

of government or if it believes they lack the institutional capacity to fully understand the
issues involved in a case.

In *Baker vs. Carr*, Justice Brennan identified six tests courts use to gauge whether a case
involves a political question:

1. a textually demonstrable commitment of the issue to a coordinate political department;
2. a lack of judicially discoverable and manageable standards for resolving it;
3. the impossibility of deciding without an initial policy determination of a kind clearly for
nonjudicial discretion;
4. the impossibility of a court’s undertaking independent resolution without expressing lack of
the respect due coordinate branches of government;
5. an unusual need for unquestioning adherence to a political decision already made;
6. the potentiality of embarrassment from multifarious pronouncements by various departments
on one question.

Of these factors, several were relevant to the dismissal of adequacy-based claims. Since
constitutional language explicitly delegates the task of designing school finance systems to the
legislature, some courts have refused to interfere with legislative decisions concerning the
funding of public schools. A lack of “judicially discoverable and manageable standards” has also
lead to the dismissal of adequacy-based litigation. Citing *Baker*, some courts have dismissed
adequacy-based claims because the language of education clauses does not provide enough
guidance for the court to decide what qualifies as an adequate education.

The political question doctrine has presented a substantial barrier for plaintiffs filing not
only adequacy-based school funding litigation but equity-based litigation as well. Especially in

Illinois, as the political question doctrine has created an unfavorable environment for plaintiffs

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359 Id. at 217.
360 See Buszin, *Beyond School Finance*: (2013), at 1625.
362 See Appendix C for a list of cases dismissed under the political question doctrine. See also: Buszin, *Beyond School Finance*: (2013), at 1625.
filing school funding claims challenging the Illinois public school funding system. Since the late 1960s, federal and state high courts have dismissed both equity-based and adequacy-based challenges to the Illinois public school funding formula under the political question doctrine and have directed the issue of educational funding in Illinois to the Illinois legislature.

Illinois Public School Funding: Attempted Reform Through the Courts

Constitutional challenges to Illinois’ method for funding K-12 public education have been filed in both federal and state courts since 1968. During this time, plaintiffs filing challenges to Illinois’ method for funding public education have done so within the conceptual three waves of school funding litigation framework described earlier in this chapter.\textsuperscript{363} Federal equity-based litigation challenging funding inequalities as a violation of the Equal Protection Clause of the Fourteenth Amendment (wave one), state equity-based litigation challenging funding inequalities based on equal protection and education provisions in state constitutions (wave two), and state adequacy-based litigation asserting a right to a certain level of school funding under provisions in state constitutions (wave three).\textsuperscript{364}

The first two waves together comprise the equity theory of school funding litigation. During the first two waves of public school funding litigation, plaintiffs argued an inequitable distribution of school resources violated equal protection of the laws. For Illinois plaintiffs, equity-based litigation challenged disparities in educational funding between Illinois public school districts in both federal and state courts. Equity-based litigation was filed during the first wave under the Fourteenth Amendment of the United States Constitution in \textit{McInnis v. Shapiro}

\textsuperscript{363} See Infra: pgs 41-75.

The third, and most current, wave of school-finance litigation is adequacy-based. Third-wave plaintiffs have redirected attention away from per-pupil spending disparities toward a focus on the adequacy of revenues allocated to public schools and focused their attacks on language used in state constitutions to define their state’s obligation to provide educational services at a certain level. Illinois plaintiffs filed their adequacy-based claim under the Illinois Education Article in Lewis E. v. Spagnolo (1999).

While efforts to secure court-ordered school funding reform have been unsuccessful in Illinois, a nexus exists between constitutional challenges to the Illinois’ methods for funding PK-12 public education and positive changes to the school funding formula post litigation. It is important to note that the constitutional challenges to Illinois’ method for funding public schools have centered on Illinois’ foundation formulas presented in the following section and not under the Illinois General Assembly’s latest effort to reform the State’s public school funding system through the Evidence-Based Funding for Student Success Act.

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365 U.S. Const. amend. XIV.
366 Ill. Const. art. I, § 2: No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.
367 Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (1996). Although the primary challenge can be classified as a second-wave challenge, elements in Edgar arguments challenge the adequacy of Illinois’ funding formula.
368 Ill. Const. art. X, § 1 states: A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has the primary responsibility for financing the system of public education.
369 Lewis E. v. Spagnolo, 186 Ill. 2d 198 (IL 1999).
Illinois Public School Funding Litigation: Federal Equity-Based Litigation

The first challenge to Illinois’ public school funding system came in *McInnis v. Shapiro*.370 *McInnis*, an equity-based lawsuit, predated the seminal first-wave decisions in *Serrano*371 and *Rodriguez*372 and challenged per-pupil funding disparities under the Fourteenth Amendment to the U.S. Constitution.

*McInnis v. Shapiro (1968)*373

In November 1968, the federal district court for the Northern District of Illinois, addressed the first constitutional challenge to Illinois’ public school funding system in *McInnis v. Shapiro*.374 Here a group of high school and elementary school students who attended schools within four different school districts in Cook County, Illino is, argued Illinois’ method for funding public schools violated their Fourteenth Amendment rights to Equal Protection.

At the time the case was filed, the Illinois public school funding system guaranteed a foundation level of $400 in per student school funding through a combination of local property taxes and state aid. State aid was distributed to school districts through two main components: first, a per pupil flat grant of $47 for each elementary school student and $54.05 for each high school student was given to each school district.375 Second, if the sum of the school district’s per student local tax revenue and the State’s per student flat grant was less than the $400 foundation level, the difference was made up through an additional equalization grant from the common

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374 Id.
school fund.\textsuperscript{376} The school funding scheme also allowed school districts to supplement their state aid allocation through additional local taxation.\textsuperscript{377}

Since the system was reliant on property taxes generated by a school district’s local property wealth, the financial ability of individual districts to generate revenue for education varied substantially between low property wealth districts and those with high property wealth.\textsuperscript{378} As a result, considerable differences in per pupil expenditures occurred between Illinois school districts, ranging from $480 for the lowest property wealth school district to $1,000 in per pupil expenditures for the highest property wealth district.\textsuperscript{379}

Plaintiffs claimed disparities in funding invidiously discriminated against students attending schools in low property wealth areas, arguing the State’s public school funding scheme permitted students who lived in lower property wealth areas to receive less funding than students who resided in school districts with higher tax bases.\textsuperscript{380} Plaintiffs alleged variances in school funding prevented students with greater educational needs from receiving a good education\textsuperscript{381} and maintained that only a public school financing system that apportioned public funds according to the educational needs of students would satisfy the Fourteenth Amendment.\textsuperscript{382}

In March 1969, the district court upheld the constitutionality of the Illinois public school funding system and dismissed the plaintiffs’ complaint for failure to state a claim. The court held the Fourteenth Amendment did not require public school expenditures be made only on the

\textsuperscript{376} Id.
\textsuperscript{377} Id.
\textsuperscript{378} Id.
\textsuperscript{379} Id.
\textsuperscript{380} Invidious discrimination refers to the government arbitrarily treating a class of people differently without rational or reasonable justification, and is unconstitutional under the Fourteenth Amendment. See: Paul Finkelman and Victor C. Romero. “The Encyclopedia of American Civil Liberties” (2006) Available at: http://works.bepress.com/victor_romero/27/
\textsuperscript{381} McInnis v. Shapiro, 293 F. Supp. 327 (1968) at 329.
\textsuperscript{382} Id. at 331.
basis of pupils’ educational needs\textsuperscript{383} and determined a lack of “judicially manageable standards” made the controversy nonjusticiable.\textsuperscript{384}

In dismissing the plaintiffs’ claims, the district court first considered whether disparities in per-pupil expenditures resulted in unconstitutional invidious discrimination under the Fourteenth Amendment’s Equal Protection Clause. The phrase “invidious discrimination” refers to the government arbitrarily treating a class of people differently without rational or reasonable justification.\textsuperscript{385} A two-level test is used to determine whether differential treatment is unconstitutional under Federal Equal Protection adjudication. Laws operating to the disadvantage of a suspect classification\textsuperscript{386} or laws impinging on a fundamental right explicitly or implicitly protected by the Constitution are reviewed under strict judicial scrutiny.\textsuperscript{387} Since plaintiffs did not make such a claim in \textit{McInnis}, the court applied the less stringent rational basis review.\textsuperscript{388} Under rational basis review, differential treatment is constitutional as long as the legislature has a reasonable basis for enacting a particular statute and rests on a rational relationship to the objective of the legislation.\textsuperscript{389}

After determining unequal per pupil educational expenditures did not result in invidious discrimination, the court reviewed the Illinois public school funding system under rational scrutiny. The court ruled the legislature’s desire to allow local districts to determine their own tax rate according to the importance they placed on education reflected a rational policy.

\textsuperscript{383} \textit{Id.} at 329.
\textsuperscript{384} \textit{Id.}
\textsuperscript{386} See infra pages 44-45, classes subjected to a history of purposeful unequal treatment, or those relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.
\textsuperscript{387} See infra pages 44-45: Usually, strict scrutiny will result in invalidation of the challenged classification; To pass strict scrutiny, the legislature must have passed the law to further a "compelling governmental interest," and must have narrowly tailored the law to achieve that interest.
\textsuperscript{388} \textit{McInnis v. Shapiro}, 293 F. Supp. 327 (1968) at 335 supranote 28.
\textsuperscript{389} See infra pgs. 44-46: a law is typically upheld by a court when rational scrutiny is applied.
consistent with the mandate of the Illinois Constitution\textsuperscript{390} and ruled the Illinois public school funding system was also reasonable because the state guaranteed a minimum per-pupil level of funding to each school district.\textsuperscript{391}

After determining the Illinois public school funding system did not invidiously discriminate against students in low property wealth areas, the court next reviewed plaintiffs’ contention that only a public school financing system distributing public funds according to the educational needs of students could satisfy the Fourteenth Amendment. Here, the court determined the only possible standard to determine educational need would be the rigid presumption each student should receive equal dollar expenditures. Justice Decker, writing for the court, stated:

\begin{quote}
Expenses are not, however, the exclusive yardstick of a child’s educational needs. Deprived pupils need more aid than fortunate ones. Moreover, a dollar spent in a small district may provide less education than one used in a large district. The desirability of a certain degree of local experimentation and local autonomy in education also indicates the impracticability of a single, simple formula.\textsuperscript{392}
\end{quote}

Applying this reasoning, the court ruled the Fourteenth Amendment did not require equal educational expenditures for each student.\textsuperscript{393}

Having determined the plaintiffs’ presumption that expenditures should be made on the basis of pupils’ educational needs to be invalid, the court concluded a lack of “discoverable and judicially manageable standards” by which the court could determine “educational need” made the controversy non-justiciable.\textsuperscript{394} According to the U.S. Supreme Court’s ruling in \textit{Baker}, a case should be dismissed as non-justiciable only if any one of the six characteristics of a political

\textsuperscript{390} \textit{McInnis v. Shapiro}, 293 F. Supp. 327 (1968) at 336.
\textsuperscript{391} \textit{Id.} at 333.
\textsuperscript{392} \textit{McInnis v. Shapiro}, 293 F. Supp. 327 (1968) at 335-336.
\textsuperscript{393} \textit{Id.} at 335.
\textsuperscript{394} \textit{Id.}
question is found. ³⁹⁵ Under the second Baker exception, a question is non-justiciable if there is a “lack of judicially discoverable or manageable standards” for resolving the issue.³⁹⁶ Although the court noted the complaint did not present a political question in the “traditional sense of the term,” the district court upheld the constitutionality of the state’s public school funding system under the second Baker test and directed plaintiffs to pursue recourse through the Illinois legislature. Plaintiffs appealed directly to the United States Supreme Court, and the Court affirmed the district court’s ruling without opinion.³⁹⁷

Illinois Public School Funding Litigation: The Illinois Constitution

Two years after McInnis was decided, the current Illinois state constitution was ratified. Among the important changes in the 1970 Illinois Constitution was a new education clause.³⁹⁸ The new education clause strengthened the language regarding the Illinois General Assembly’s obligation to provide and fund educational services.³⁹⁹ According to Jane Buresh, an administrative assistant to the Education Committee of the 1970 Illinois Constitutional Convention, the framers of the new constitution felt the previous State constitution did not sufficiently emphasize the modern importance of education.⁴⁰⁰ Therefore, a new education article

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³⁹⁵ See Baker v. Carr, 369 U.S. 186 (1962). The six criteria courts should consider for dismissing a political question are: (1) a textually demonstrable commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.


³⁹⁸ ILL. CONST. of 1970. Under the previous constitution, ratified one hundred years prior, the State’s first education article provided for a “thorough and efficient system of free schools, whereby all children of this State may receive a good common school education.” See: ILL. CONST. of 1870, art. VIII, § 1


⁴⁰⁰ Buresh, Jane G., Studies in Illinois Constitution Making, A Fundamental Goal: Education for the People of Illinois. (1975) at 37. In addition to stressing the modern importance of education, the delegates to the 1970 Constitutional Convention recognized the inequities in the State’s system for funding public education. Debates over
was among the important revisions made at the 1970 Constitutional Convention. The revised language stipulated a high quality education for students in Illinois and assigned the State primary responsibility for financing public education.\(^{401}\)

\begin{quote}
A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has the primary responsibility for financing the system of public education.\(^ {402}\)
\end{quote}

The following year, plaintiffs challenged the Illinois School funding system under the newly ratified Education Article in *Blase v. State of Illinois*.\(^{403}\) Although *Blase* is not classified as an equity- or adequacy-based lawsuit, the challenge provided the Illinois Supreme Court its first opportunity to interpret the state’s obligation to fund public education under the language of the Illinois Constitution’s education clause.

*Blase v. State of Illinois (1973)*\(^ {404}\)

\(\text{\textsuperscript{401}}\) See infra pg. 69: Legal scholar William Thro has categorized education clauses into one of four tiers, from weakest (Category I) to strongest (Category IV), based on the fiduciary duty imposed on the state to provide public education through the strength of its constitutional language. Thro categorizes Illinois as a Category IV education clause, because the Illinois Constitution explicitly describes education as “A fundamental goal of the People of the State.”

\(\text{\textsuperscript{402}}\) Ill. Const. art. X, §1.


\(\text{\textsuperscript{404}}\) *Id.*
In November 1971, plaintiffs brought suit in the Circuit Court of Cook County against the State of Illinois, challenging the constitutionality of the state’s system for financing public education. Plaintiffs sought a declaratory judgment that the state’s public school funding system was invalid based on their interpretation of the Education Article of the Illinois Constitution. At the time the case was filed, the State provided approximately forty percent of school district budgets. Plaintiffs, however, claimed the last sentence of the Education Clause defining the State’s responsibility for financing public education required the State to “provide not less than 50 percent of the funds needed to operate public elementary and secondary schools.” The circuit court dismissed plaintiffs’ claims as non-justiciable, and the decision was appealed directly to the Illinois Supreme Court.

In September 1973, the Illinois Supreme Court determined plaintiffs’ claims regarding the operation and maintenance of public schools were “practical and financial” rather than a non-justiciable “political question,” and asserted jurisdiction over the case. Upon review, the Illinois Supreme Court determined the case presented practical and financial issues rather than political and reviewed the case on its merits.

In ruling for the state, the high court found the records of debates during the 1970 Illinois Constitutional Convention revealed the intent of the framers was not to impose a specific obligation on the legislature to fund education at a particular level but to articulate a goal for the

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405 Ill. Const. art. X, §1.
407 Ill. Const. art. X, §1 which reads: “The State has the primary responsibility for financing the system of public education.”
408 Blase v. State of Illinois, 302 N.E.2d 46 (Ill. 1973) at 47.
409 Id. at 48. See infra pgs. 74-75, a court will withhold judgment on issues the constitution makes the responsibility for resolution of a question to another branch of government.
410 Id.
State of Illinois to assume greater responsibility for funding public education.\footnote{411} In forming its opinion, the court turned to comments made during the proceedings of the convention by Delegate Dawn Clark Netsch, the principal sponsor of the contended language:

> I concede that the language I have put down is, in the Convention’s usual fashion, hortatory. I do not believe that it states a legally enforceable duty on the part of the State through the General Assembly or otherwise. I do not intend that it states a legally enforceable duty.\footnote{412}

After reviewing Delegate Netsch’s admission that the language of the education clause was merely hortatory, the court held the education clause’s language did not impose a legally enforceable on the Illinois General Assembly to fund education at a particular level.\footnote{413} The court ruled the constitutional language, which reads: “The State has the primary responsibility for financing the system of public education;” was only intended to express a goal or objective and did not impose a legally enforceable on the Illinois General Assembly to fund education at a particular level.\footnote{414}

Although petitioners in \textit{Blase} did not directly challenge the equity or adequacy of Illinois’ public school funding formula, the Illinois Supreme Court’s decision was significant because it established precedent regarding the relationship between public school funding and the Illinois Constitution’s new Education Clause.\footnote{415} The Illinois Supreme Court’s interpretation of the Education Clause’s language regarding the “primary responsibility for financing public education” as merely hortatory would be pointed to every time a question regarding Illinois

\footnote{411} \textit{Id.} at 49. Citing 5 Record of Proceedings, Sixth Illinois Constitutional Convention Proceedings 4502: “\textit{I think our motivations for that are varied and sometimes coalesce. Many of us feel that the property tax has carried too heavy a burden of financing schools and that the only way in which any relief will be obtained is by shifting a larger share to the state level.}”


\footnote{413} \textit{Blase v. State} of Illinois, 302 N.E.2d 46 (Ill. 1973). at 49.

\footnote{414} \textit{Id}.

public school funding under the Illinois Constitution was at issue.\textsuperscript{416} In addition, when the court ruled the language stipulating “primary responsibility” did not impose an obligation on the General Assembly regarding the appropriation of funds for public education, plaintiffs would need to focus on the remaining language of the Education Article to challenge the equity or adequacy of Illinois’ mechanism for funding public education.\textsuperscript{417} This test came twenty years later in \textit{Committee for Educational Rights v. Edgar}.\textsuperscript{418}

\textbf{Committee for Educational Rights v. Edgar (1996)}

In November 1990, plaintiffs filed suit in the Circuit Court of Cook County, challenging the constitutionality of the state’s system for financing public education. The equity-based complaint sought a declaratory judgment finding the Illinois public school funding formula violated the Equal Protection Clause and the Education Article of the Illinois Constitution.\textsuperscript{419} To support their claims, plaintiffs presented evidence from the 1989-1990 school year reporting that “the average tax base in the wealthiest 10\% of elementary schools was over thirteen times the average tax base in the poorest 10\%,”\textsuperscript{420} and for high school and unit school districts, “the average tax bases were 8.1 to 1 and 7 to 1, respectively.”\textsuperscript{421} Because the amount of revenue local school districts received was determined by local property taxes, students who resided in low property wealth school districts had less money spent on their education per-pupil than students who resided in higher property wealth districts. At the time the case was filed, per-pupil expenditures ranged from $3,000 per pupil in the lowest property wealth school district to almost

\begin{itemize}
\item \textsuperscript{416} \textit{Id.}
\item \textsuperscript{417} Fitzgerald, Robert J., \textit{Inequitable Injustice: A Critical Analysis of the Litigation Concerning Illinois School Funding}, 2013.
\item \textsuperscript{418} \textit{Committee for Educational Rights v. Edgar}, 672 N.E.2d 1178 (1996).
\item \textsuperscript{419} Complaint of Petitioner, \textit{Committee for Educational Rights v. Edgar}, No. 90 CH- 11097 (Cir. Ct. of Cook County, filed Nov. 13, 1990).
\item \textsuperscript{420} \textit{Committee for Educational Rights v. Edgar}, 672 N.E.2d 1178 (1996) at 1183.
\item \textsuperscript{421} \textit{Id.}
\end{itemize}
$15,000 per pupil in the wealthiest Illinois school district.

Plaintiffs alleged differences in per pupil educational spending violated their rights to equal protection under the Illinois Constitution. They claimed the explicit coverage of education by the Illinois Constitution created a fundamental right to an education in Illinois. As a result, plaintiffs argued the state was obligated to provide education on an equal basis under the Equal Protection Clause of the Illinois Constitution.

Plaintiffs also alleged the Illinois public school funding formula violated the Illinois Constitution’s Education Article, because disparities in per-pupil funding prevented school districts in economically disadvantaged areas from providing an “efficient system of high quality education” as mandated by the constitution. The Education Article of the Illinois Constitution states in relative part: “The State shall provide for an efficient system of high quality public educational institutions and services.” Focusing on the education article’s use of the terms efficient and high quality, plaintiffs argued that “an educational funding system is not an ‘efficient system’ when some children have vast educational resources and others minimal. According to plaintiffs, an education funding system is not a ‘system of high quality schools’ where only some children can go to them.”

In June 1992, the Cook County Circuit Court dismissed plaintiffs’ complaint for failure to state a claim. The trial court concluded the State Equal Protection Clause did not require equal school expenditures and the State Education Article did not mandate equal educational opportunities between the State’s school districts as a means for establishing an efficient system.

426 Complaint of Petitioner, Committee for Educational Rights v. Edgar, No. 90 CH-11097 (Cir. Ct. of Cook County, filed Nov. 13, 1990).
of public education. The trial court emphasized that the framers of the Education Article had considered and rejected proposals for a constitutional provision designed to reduce funding disparities between districts by limiting the amount of funds that could be raised by local property taxes. The court dismissed the case as a nonjusticiable political question and deferred matters regarding the efficiency and quality of Illinois public education to the Illinois legislature. On September 29, 1994, Illinois’ First District Court affirmed the lower court’s decision but issued a “certificate of importance” to prompt an expedited review by the Illinois Supreme Court.

The Illinois Supreme Court, citing *Baker v. Carr*, determined the issue of defining a high quality education presented a “non-justiciable political question.” Under the political question doctrine, a court can withhold judgment on issues if the constitution places the responsibility for resolution to another branch of government. In *Baker*, the United States Supreme Court identified six characteristics of nonjusticiable political questions, “including ‘a lack of judicially discoverable and manageable standards for resolving the question,’” or the impossibility of deciding a case “without an initial policy determination of a kind clearly for non-judicial discretion.”

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429 See Infra note 358: In *Baker*, the United States Supreme Court provided a six-factor test to determine when an issue was “political” and thus outside the jurisdiction of the courts.
431 Id.
435 369 U.S. 186, 217(1962). In *Baker*, the United States Supreme Court provided a six-factor test to determine when an issue was “political” and thus outside the jurisdiction of the courts. If the issue involved any of the following six factors, it could not be reviewed by the court: [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [(2)] a lack of judicially discoverable and manageable standards for resolving it; [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; [(4)] or the impossibility of a court's undertaking independent resolution without expressing lack of
The Illinois Supreme Court reasoned the definition of a high quality education and how it may best be provided could not be ascertained by any judicially discoverable or manageable standards.\textsuperscript{436} The court determined the Illinois Constitution provided no basis for a judicial definition of high quality and concluded the question of whether the state’s educational institutions were high quality was outside the sphere of judicial oversight.\textsuperscript{437}

After affirming the dismissal of plaintiffs’ Education Article claims, the court next reviewed whether the Illinois public school funding system violated the Illinois Constitution’s Equal Protection Clause. The Illinois Supreme Court began its Equal Protection analysis by noting the framework for measuring equal protection violations is the same under both the Illinois Constitution and U.S. Constitution.\textsuperscript{438}

As previously mentioned, courts are likely to apply one of two tests: “strict scrutiny” or the less critical “rational basis” standard, when deciding whether a policy violates either the federal or Illinois State Equal Protection Clause.\textsuperscript{439} The highest level of judicial review under the Equal Protection Clause is strict scrutiny. When courts review differential treatment using a strict scrutiny analysis, the statute or practice is likely to be found unconstitutional. Two conditions typically trigger a court to apply strict scrutiny: government actions that categorize individuals on the basis of a “suspect” classification; or government actions that restrict fundamental rights. If neither a suspect class nor a fundamental right is involved, the courts apply the less stringent rational basis analysis. When courts apply the less demanding rational basis analysis, differential

\textsuperscript{437} Id.
\textsuperscript{438} Id. at 1193.
\textsuperscript{439} See infra pgs. 44-45.
treatment is generally presumed to be constitutional as long as there is a logical reason for the challenged practice.

Since the Committee for Educational Rights did not allege the State’s public school funding scheme involved a suspect classification, the level of equal protection scrutiny the Edgar court would use depended on whether they considered education a fundamental right.\footnote{Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (1996) at 1193.} Applying the same reasoning the U.S. Supreme Court used in \textit{San Antonio v. Rodriguez}, the Illinois Supreme Court determined there was no fundamental right to an education under the Illinois Constitution.\footnote{See infra pg. 53: the Rodriguez court ruled education was not a fundamental right implicitly or explicitly guaranteed by the U.S. Constitution for equal protection purposes.} In \textit{Rodriguez}, the U.S. Supreme Court rejected a challenge to Texas’ system of financing public schools under the Equal Protection Clause of the U.S. Constitution.\footnote{Similar to \textit{Edgar}, the challenge in \textit{Rodriguez} was based on funding disparities due to variations in local wealth.} The \textit{Rodriguez} Court held that education was not a fundamental right for Equal Protection purposes under the United States Constitution, and therefore, Texas’ school funding scheme was not subject to strict scrutiny. Although the Texas school funding system permitted wide variations in educational expenditures, the Court concluded the use of local property taxes to fund public education was a rational means for realizing the state’s goal of local control of education.\footnote{Timothy E. Gammon, \textit{Equal Protection of the Laws and San Antonio Independent School District v. Rodriguez}, 11 Val. U. L. Rev. 435 (1977).}

In \textit{Edgar}, the Illinois Supreme Court noted the framers of the 1970 Illinois Constitution stopped short of declaring educational development to be a “right,” but instead chose to identify it as a “fundamental goal.”\footnote{Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (1996) at 1195.} While the court recognized education to be a vital governmental function, it was not a deemed fundamental individual right for equal protection purposes.\footnote{Id.} To
survive analysis under the rational basis test, the Illinois public school funding system needed only to bear a rational relationship to a legitimate state goal. The court reasoned the Illinois school funding formula’s use of local property tax wealth to determine public school revenues was rationally related to the Illinois General Assembly’s goal of promoting local control over education. As a result, the court concluded the Illinois public school funding scheme was constitutional under the Illinois Equal Protection Clause. In closing, the court stated:

Our decision in no way represents an endorsement of the present system of financing public schools in Illinois, nor do we mean to discourage plaintiffs’ efforts to reform the system. However, for the reasons explained above, the process of reform must be undertaken in a legislative forum rather than in the courts.

Justice Freeman, who concurred with the court’s dismissal of the plaintiffs’ Equal Protection challenge, disagreed with the majority’s decision to dismiss petitioners’ Education Article claim. According to Freeman’s dissent, by refusing to adjudicate the issue of school funding under the Education Article,

The majority today abandons its responsibility to interpret the Illinois Constitution. The judiciary joins the legislative and executive departments in failing to fulfill our state government’s constitutional responsibility of providing for an efficient system of high quality public education.

While the majority reasoned that the issue presented a non-justiciable political question, Freeman argued the plain language of the Education Article and the transcripts of the 1970 Illinois Constitution Convention made the determination of a high-quality education

\[446\text{ Id. at 1196.} \]
\[447\text{ Id.} \]
\[448\text{ Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (1996) at 1205. (Freeman, J., concurring in part and dissenting in part).} \]
\[449\text{ Id. at 1206. (Freeman, J., concurring in part and dissenting in part).} \]
\[450\text{ Id. at 1191.} \]
justiciable. According to Freeman, both the plain language of the Education Article and the convention record indicated the provision for establishing an education system was addressed to the entire state government and not solely to the legislature. Noting it was the duty of the Illinois judiciary only to determine what the Illinois Constitution required and the duty of the legislative and executive departments to carry out that requirement, he believed the courts had the power to determine whether the education system provision had been violated.

Freeman also believed the lower courts had misinterpreted the plaintiffs’ claims as an allegation the Education Article mandated equal funding among all school districts. However, he believed plaintiffs’ complaint alleged disparities in school funding caused children in poor school districts to receive an inadequate education. Noting a correlation between educational funding and educational quality, he reasoned the Illinois Constitution Education Article’s provision for a high quality education should establish a constitutional floor regarding educational adequacy.

Freeman’s dissent provided hope for future school funding reform litigants in Illinois. According to Freeman, challenging the adequacy of Illinois’ public school finance system presented a justiciable issue within the duties of the court. Freeman’s theory would be tested

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451 *Id.* at 1202. Freeman reasoned, “Why would the framers of the 1970 Illinois Constitution use the words "The State" if they intended to refer solely to the General Assembly? If "the State" were read as referring solely to the legislature, those plain words would be rendered superfluous.

452 *Id.*

453 *Id.* at 1206. (Freeman, J., concurring in part and dissenting in part).


455 *Id.*

456 *Id.*


three years later in *Lewis E. vs. Spagnolo*, as plaintiffs filed Illinois’ first adequacy-based lawsuit.\(^{459}\)

**Lewis E. v. Spagnolo (1999)**

In April 1995, plaintiffs representing students attending East St. Louis School District #189 brought suit in the Circuit Court of St. Clair County against the state and local boards of education, challenging the State’s failure to provide funding necessary for an adequate education under the Education Article of the Illinois Constitution.\(^{460}\)

Plaintiffs maintained the Education Article granted them the right to a “minimally adequate education.”\(^{461}\) Citing the existence of numerous deficiencies in their local schools, including: fire hazards, chronic flooding, cracked walls and roofs, falling plaster, malfunctioning heating systems, and the presence of cockroaches and rats, plaintiffs argued the State and local school board denied local children their right to a “minimally adequate education.”\(^{462}\) Plaintiffs maintained the school district, for decades, failed to maintain safe facilities, failed to provide basic instructional materials, and failed to provide students with qualified teachers.\(^{463}\) They argued defendants’ failure to provide for an adequate instructional program resulted in high dropout rates and low-test scores among the district’s students.\(^{464}\)

Defendants maintained plaintiffs’ suit should be dismissed, arguing the Illinois Supreme Court’s decision in *Edgar*\(^{465}\) prevented a claim under the Education Article.\(^{466}\) In *Edgar*, the Illinois Supreme Court ruled it did not have any “judicially discoverable or manageable

\(^{459}\) *Lewis E. vs. Spagnolo*, 186 Ill. 2d 198 (IL 1999).


\(^{463}\) *Id.*

\(^{464}\) *Id.*


\(^{466}\) *Lewis E. v. Spagnolo*, 186 Ill. 2d 198 (IL 1999) at 208.
standards” to determine a high quality education and held questions regarding educational quality were solely for the legislature to determine. Therefore, defendants argued it was the legislature’s duty rather than the court’s to determine whether an education was adequate under the Illinois Constitution.

The plaintiffs argued the court was not bound by the *Edgar* decision because that suit addressed the quality of education, as opposed to the adequacy of education. They maintained their suit did not argue a constitutional right to a certain quality of education but rather the “virtual absence” of education in their district violated the Education Article. The trial court was not persuaded by this argument and dismissed with prejudice the plaintiffs’ complaint for failure to state a claim. In May 1997, the Fifth District affirmed, but without prejudice. The appellate court affirmed, holding the Illinois Constitution does not provide for a minimally safe and adequate education under the Illinois Constitution. The appellate court did; however, reverse the trial court’s dismissal with prejudice, and remanded the case back to the trial court to allow plaintiffs an opportunity to amend their complaint and better articulate their claim. Defendants appealed the decision to the Illinois Supreme Court.

On April 15, 1999, the Illinois Supreme Court reversed the appellate court’s ruling and upheld the trial court’s dismissal of plaintiffs’ adequacy-based claim. Calling plaintiffs’

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468 Lewis E. v. Spagnolo, 186 Ill. 2d 198 (IL 1999) at 208.
469 Lewis E. v. Spagnolo, 186 Ill. 2d 198 (IL 1999) at 208.
471 Lewis E. v. Spagnolo, 679 N.E.2d 831 (Ill. App. Ct. 1997) at 840. Within legal civil procedure, there are two kinds of dismissal: without prejudice and with prejudice. A dismissal “without prejudice” is a dismissal that allows for re-filing of the case in the future. The present action is dismissed, but the possibility remains open that the plaintiff may refile another suit based on the same claim. A case dismissed “with prejudice” means that it is dismissed permanently. A case dismissed with prejudice can still be appealed to a higher judge, but must be tried under the same claim.
474 Lewis E. v. Spagnolo, 186 Ill. 2d 198 (IL 1999) at 235.
attempts to distinguish high quality from minimally adequate nothing more than semantics, the
court determined plaintiffs had not differentiated their claims from those argued in Edgar.475
The court reaffirmed its Edgar decision and held “questions relating to the quality of education
are solely for the legislative branch to answer.”476 Delivering the majority’s opinion, Justice
Bilandic stated,

No matter how the question is framed, recognition of the plaintiffs’ cause of action under the
education article would require the judiciary to ascertain from the constitution alone the content of
an “adequate” education. The courts would be called on to define what minimal standards of
education are required by the constitution, under what conditions a classroom, school, or district
falls below these minimums so as to constitute a “virtual absence of education,” and what remedy
should be imposed. Our decision in Committee for Educational Rights made clear that these
determinations are for the legislature, not the courts, to decide.477

As a result, the Illinois Supreme Court found in favor of the local and state boards of
education and ruled the trial court had properly dismissed the plaintiffs’ Education Article
claim.478

Chief Justice Freeman, joined by Justice Harrison, dissented from the majority’s
conclusion regarding the justiciability of plaintiffs’ Education Article claims.479 Noting the
“squalid” conditions of District 189 schools,480 Freeman denounced the majority’s refusal
to interpret the Illinois Constitution’s Education Article:

The physical condition of some District 189 schools, or portions thereof, are so dangerously
abysmal that they are actually closed. Thus, schoolchildren are physically being denied access to
an education... [I] am troubled by the majority’s view that District 189 schools are better than a
vacant building marked with the word “School.” I am at a loss as to what additional allegations the
majority needs...Curiously, the majority doubts “that the legislature would ever set standards for
education so as to allow for such a situation.” However, the facts alleged here plainly show that
“such a situation” exists.481

475 Id. at 208.
476 Id. at 201.
477 Lewis E. v. Spagnolo, 186 Ill. 2d 198 (IL 1999) at 208.
478 Id. at 235.
479 Id. at 804.
480 Id. at 816.
481 Id. at 236
Justice Freeman believed the *Edgar* and *Lewis E.* decisions closed the door to school funding challenges under the state constitution. In his dissenting opinion, Freeman lamented, “In *Committee for Educational Rights v. Edgar*, this court shut the courthouse door to claims alleging violations of Section 1 of the Education Article of the Illinois Constitution. In this case, the majority nails that door shut.”

*Chicago Urban League v. Illinois (2008)*

Freeman’s prediction appeared unfortunately true for plaintiffs seeking school funding reform. School funding litigation failed to reach the Illinois Supreme Court for another ten years, until a 2008 lawsuit challenging the constitutionality of Illinois’ former system of funding public education was filed by the Chicago Urban League as a violation of civil rights. While the Chicago Urban League incorporated elements of state equity and state adequacy-based litigation, the case was the first challenge to Illinois public school funding disparities under the Illinois Civil Rights Act (ICRA). The ICRA prohibits units of government from “utilizing criteria or methods of administration that subject individuals to discrimination because of their race, color, national origin or gender.”

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482 *Id.*
483 *Chicago Urban League v. State of Illinois, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009).*
484 Illinois Civil Rights Act of 2003, 740 ILCS 23/5. The Illinois Civil Rights Act prohibits the State from administrating governmental policies having a disparate impact against a racial group, and allows aggrieved parties to challenge in state or federal court. In a 2001 federal case, *Alexander v. Sandoval*, 532 U.S. 275 (2001), a bare majority of the Supreme Court held that there is no implied private light of action to enforce disparate impact regulations adapted by federal agencies under Title VI of the Civil Rights Act of 1964. The Illinois’ Civil Rights Act, however, is not subject to the limitations that the U.S. Supreme Court has applied.
485 ILCS 23/5(a)(2).
In August 2008, the Chicago Urban League (CUL) filed a complaint in the Circuit Court of Cook County against the State of Illinois and Illinois State Board of Education. The suit challenged the constitutionality of the former Illinois public school funding formula on five counts. In Count I, plaintiffs argued the Illinois public school funding scheme violated the Illinois Civil Rights Act of 2003 because it discriminated on the basis of race and deprived minority students, particularly African-American and Latino children, of a high quality education. Citing data highlighting the academic achievement gap between minority and majority students, plaintiffs maintained Illinois’ method for funding K-12 public education had a disparate and adverse impact on African-American and Latino students.

Count II alleged variances in local property tax rates violated the Uniform Taxation Clause of the Illinois Constitution. Under the uniformity of taxation provision, “Taxes on real property shall be levied uniformly.” Plaintiffs maintained disparities in tax rates levied on property between individual school districts violated the uniformity of taxation provision of the Illinois Constitution because providing an education was a statewide function and, therefore, taxes should be levied at a uniform statewide rate.

In Count III, petitioners argued the State’s public school funding formula violated the Education Article of the Illinois Constitution because it did not provide for an “efficient system of high quality educational institutions and services.” Plaintiffs maintained the Illinois Learning Standards (ILS), established in 1996, provided a mechanism for the court to define a high-quality

487 740 ILCS 23/5.
488 Chicago Urban League v. State of Illinois, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009) at 5.
education. Citing low academic performance on state standard assessments by students in “Majority-Minority School Districts,” plaintiffs asserted the State’s school funding scheme did not provide adequate resources for all school districts to provide all students with a high quality education.491

Counts IV and V of the plaintiffs’ complaint asserted disparities in funding between students in Majority-Minority School Districts and their white peers violated the Equal Protection Clause of the Illinois Constitution.492 In Count IV, plaintiffs argued inadequate funds provided to students in Majority-Minority School Districts denied African-American and Hispanic students an equal opportunity to obtain a high quality education. Plaintiffs maintained the Illinois public school funding system invidiously discriminated on the basis of race, because it provided minority students with an inadequate level of funding without a compelling reason. In Count V, the plaintiffs argued inadequate funds unlawfully discriminated against students residing in low property wealth areas.

Defendants filed a motion to dismiss all claims. On April 15, 2009, Circuit Court Judge Martin Agran dismissed Counts II-V but allowed plaintiffs’ claim under the Illinois Civil Rights Act of 2003 to proceed to trial.493

In dismissing Count II under the Uniform Taxation Clause of the Illinois Constitution, the court determined plaintiffs had not stated a valid claim under the Uniform Taxation Clause of the Illinois Constitution. In Count II, plaintiffs had relied on the New Hampshire Supreme Court’s decision in Claremont School District v. Governor494 to argue their claim. In Claremont, the court determined the purpose of the school tax was overwhelmingly a state purpose and held the

taxing district was the state of New Hampshire as a whole.\textsuperscript{495} Therefore, the New Hampshire high court ruled varying property tax rates used to finance public education across the state violated the state constitution’s prohibition on disproportionate taxation. The Cook County Circuit Court rejected the analysis used in \textit{Claremont}, ruling the plaintiffs had failed to argue the State of Illinois was the relevant taxing district. If plaintiffs had argued the taxing district in question was the state as a whole, the court reasoned, then disparities in the rate of taxation of property from one school district to another would correctly state a claim for relief under the Uniform Taxation Clause of the Illinois Constitution. Since plaintiffs alleged only a disparity in the rate of taxation of property from one school district to another, the court granted the defendants’ motion to dismiss.\textsuperscript{496}

In dismissing Count III under the Illinois Education Article, the circuit court applied the Illinois Supreme Court’s decision in \textit{Committee for Educational Rights v. Edgar}\textsuperscript{497} to rule the Illinois public school funding scheme did not violate the education article of the Illinois Constitution. In \textit{Edgar}, the Illinois Supreme Court ruled it did not have any judicially discoverable or manageable standards to determine what constituted a high quality education and held that questions regarding educational quality were solely for the legislature to determine.\textsuperscript{498} Defendants argued Count III should be dismissed under the doctrine of \textit{stare decisis}. The doctrine of \textit{stare decisis} requires the lower courts to follow the decision of higher court. Defendants asserted the Illinois Supreme Court’s decision in \textit{Committee for Educational Rights v. Edgar}\textsuperscript{499} prevented plaintiffs from filing a claim based on Illinois’ constitutional requirement.

\textsuperscript{495} \textit{Claremont School Dist. V. Governor}, 703 A.2d 1353 (N.H. 1997) at 471.
\textsuperscript{496} \textit{Chicago Urban League v. State of Illinois}, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009) Slip op. at 9.
\textsuperscript{497} \textit{Committee for Educational Right v. Edgar}, 174 Ill.2d 1 (Ill. 1996) at 28-29.
\textsuperscript{498} \textit{Id.}
\textsuperscript{499} \textit{Id.}
to provide a high quality education. Plaintiffs argued the court was not bound by the doctrine of *stare decisis* because the circumstances underlying the Illinois Supreme Court’s *Edgar* decision had changed substantially since 1996. The plaintiffs asserted that since that time, statewide learning standards and performance assessments had been adopted and implemented, as had a process for determining the baseline cost of a high quality education. Additionally, the General Assembly’s creation of the Education Funding Advisory Board after the *Edgar* decision provided the court with the financial standards necessary to evaluate the constitutionality of the Illinois public school funding formula. Although the court agreed the tools necessary to evaluate whether Illinois provides its students with a high quality education now existed, the court did not deviate from the principle of legislative control laid forth in *Edgar*. The court dismissed the plaintiffs’ claims with prejudice, ruling if the goals of a high quality education had not been met, “it was the role of the legislature, and not the courts, to address the failings of the Illinois public education system.”

In dismissing Count IV and V under the Equal Protection Clause, the circuit court ruled plaintiffs improperly pled and, therefore, failed to state a cause of action. Under count IV, plaintiffs maintained the Illinois public school funding system invidiously discriminated on the basis of race, because it provided minority students with an inadequate level of funding dissimilarly without a compelling reason. In Count V, the plaintiffs argued inadequate funds unlawfully discriminated against students residing in low property wealth areas. After finding

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500 The 1996 Illinois Learning Standards (ILS) were created to determine “what students must know and be able to do” in Illinois. The Illinois State Achievement Test and Prairie State Achievement Exam were developed to determine whether students in public schools were meeting the benchmarks defined in the ILS.

501 In 1997, the General Assembly established an Education Funding Advisory Board in 1997, to determine the actual costs of an education sufficient to ensure at least 67% of Illinois’ non-at-risk children will pass one of the state’s standardized tests.

inadequate levels of funding stemming from the State’s school funding system was due to its heavy reliance on local property wealth and not caused by race. Therefore, the court ruled the school funding plan was facially-neutral. A facially neutral law violates equal protection only if it has a discriminatory purpose. Since plaintiffs did not allege the school funding plan had a racially discriminatory purpose, the court dismissed Count IV for failure to state a claim. The Illinois Supreme Court’s decision in Committee for Educational Rights v. Edgar, was also used as basis for dismissing Count V, to rule the Illinois public school funding scheme did not violate the Equal Protection Clause of the Illinois Constitution. In Edgar, the Illinois Supreme Court affirmed the dismissal of a similar claim by adopting the U.S. Supreme Court’s Equal Protection analysis in Rodriguez. In Rodriguez, the Supreme Court ruled wealth was not a suspect classification and education was not a fundamental federal right. As a result, the Court applied a rational basis review to the Texas state public school funding system and determined the use of local property taxes to fund public schools was rationally related to the purpose of retaining local control over schools.

Citing the Illinois Supreme Court’s Edgar decision under Rodriguez, the district court ruled that for the state’s public school funding system to be found unconstitutional under the Equal Protection Clause, plaintiffs would need to argue that the system fails rational basis review. The court determined plaintiffs had failed to establish a connection between state

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504 Id. at 12.
507 See Infra pgs. 44-45: Courts apply a two-tiered test to a challenged law under equal protection adjudication. If the law impinges on a fundamental right, or operates to the disadvantage of a suspect classification (race or religious class), the court applies strict scrutiny. Laws rarely pass strict scrutiny. If the law does not impinge on a fundamental right, or operate to the disadvantage of a suspect class, the court applies the more deferential rational basis test. Laws generally are upheld under rational basis, as the government must only prove the law is rationally related to legitimate state goal.
achievement tests with a decrease in local control and dismissed Count V for failure to state a cause of action.

In allowing plaintiffs’ case to proceed to trial, Judge Agran rejected the State’s motion to dismiss Count I, and ruled plaintiffs had pled sufficient facts necessary to state a claim under the Illinois Civil Rights Act of 2003 (ICRA). To state a valid disparate impact claim under the ICRA, plaintiffs must plead sufficient facts alleging: first, membership in a protected class and second, a link between the use of criteria and methods of administration by units of government and plaintiff’s injuries.\textsuperscript{508} Therefore, plaintiffs would have to successfully argue that as a member of a protected class, they had suffered discrimination as a result of the Illinois public school funding scheme.\textsuperscript{509}

According to the plaintiffs, the state’s public school funding scheme had a discriminatory disparate impact on African American and Latino students who attended schools in low property wealth school districts.\textsuperscript{510} To support their claim, plaintiffs provided data showing school districts located in low property wealth areas served a disproportionate number of African American and Latino students.\textsuperscript{511} Plaintiffs then argued the receipt of less school funding by school districts serving a substantial majority of African American and Latino students severely impacted those schools’ ability to provide a high quality education to its students.\textsuperscript{512} To support this claim, plaintiffs provided data to show that minority students who attended schools in low property wealth districts failed to perform as well as their white counterparts on assessments

\textsuperscript{508} \textit{Chicago Urban League v. State of Illinois}, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009) Slip op. at 12, citing \textit{Powell v. Ridge}, 189 F. 3d 387 (3\textsuperscript{rd} Cir. 1999).

\textsuperscript{509} \textit{Id.} at 4.

\textsuperscript{510} \textit{Pl.’s Compl.} ¶¶ 98-99.

\textsuperscript{511} \textit{Id.} ¶¶ 46-60.

\textsuperscript{512} \textit{Id.} ¶¶ 101.
designed to measure achievement of the Illinois Learning Standards. Based on these data, the district court ruled plaintiffs had pled sufficient facts necessary to support their claim and allowed the Illinois Civil Rights Act challenge to proceed to trial.

In February 2017, the Chicago Urban League’s lawsuit was settled out of court before going to trial. Although the settlement failed to render a decision regarding Illinois’ method for funding K-12 public education under the Illinois Civil Rights Act, plaintiffs still achieved a victory for Illinois public school districts servicing low property wealth areas by ending the practice of “proration” within the Illinois General State Aid program. Due to the State of Illinois’ budget crisis, general state aid was prorated at between 87 to 95% of the foundation level in every year from FY 2012 to FY2016. Under the then-current proration system, general state aid payments to school districts were decreased by the same across-the-board percentage. Thus, school districts more heavily reliant on state aid (districts with a lower property tax base and/or higher poverty) experienced the majority of cuts. As a result of the Chicago Urban League settlement, the state legislature is no longer allowed to utilize “proration” in determining how to distribute General State Aid. Instead, the Illinois State Board of Education is required to distribute state aid based on “student and district need,” and distribute GSA claims using a methodology bearing the least impact on low property wealth school districts whenever lawmakers fail to fully fund public education.

513 Id. ¶¶ 81-93. Specifically, data was presented showing only one out of twelve MMDs made AYP as required under the No Child Behind Act. In all but one of the 12 MMDs, the school was given school improvement status.
516 See: General State Aid (GSA) Historical located at https://www.isbe.net/Documents/gsa-historical.pdf
517 Retrieved from IASB Website located at https://www.iasd.com/govrel/alr9921.cfm
518 See infra pg.7.
Illinois Public School Funding Reform: From Litigation to Legislation

The era of Illinois public school funding reform began just nine months after *McInnis* during the Sixth Illinois Constitutional Convention of 1970. Among the important changes included in the 1970 Illinois Constitution was the drafting of a new education clause. The new education clause stressed the importance of education and included revised constitutional language, stipulating a high quality education for students in Illinois. In addition to stressing the modern importance of education, the delegates strengthened the language regarding funding public education by assigning the state primary responsibility for financing public education:

Fully aware of the inequities caused by the state’s school funding structure highlighted in the *McInnis* lawsuit, legislators debated three different proposals to reform public school funding in Illinois. One proposal, made by Delegate Malcolm Kamin on behalf of the convention’s Education Committee, would make the state responsible for funding at least 90% of K-12 expenditures. This proposal was voted down, not because the delegates opposed funding equity; they “simply did not agree on the proposal that had been put before them.” The second proposal, made by Delegate Louis F. Bottino, would create a funding model where the school district and the state would each fund 50% of school expenditures. The Bottino amendment was

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521 See infra pages 66-68: Legal scholar William Thro has categorized education clauses into one of four tiers, from weakest (Category I) to strongest (Category IV), based on the fiduciary duty imposed on the state to provide public education through the strength of its constitutional language. Thro categorizes Illinois as a Category IV education clause, because the Illinois Constitution explicitly describes education as “A fundamental goal of the People of the state.”


created in an attempt to secure a judicially enforceable “parity of educational opportunity” and represented a compromise between delegates who favored a strong state commitment to education and those who favored a no state obligation to fund education at any level.\footnote{\textit{Id.} at 22.}

After Delegate Bottino failed to secure enough votes for his amendment, Delegate Dawn Clark Netsch provided the final proposal – a simple statement meant to leave the matter open to the future: “The state has the primary responsibility for financing the system of public educational institutions and services.”\footnote{\textit{Id.}} Netsch’s proposal appealed to the pro-state commitment camp because they believed it placed an obligation for funding education fully on the state, as members of the anti-state commitment camp liked the proposal because Delegate Netsch admitted her amendment would not create a legally enforceable duty. As such, judges could not use the language to compel action by the state.\footnote{\textit{Id.}} In the end, the split convention adopted the simple statement that left the matter with hope the legislature would be moved by it to take action in the future.\footnote{\textit{Id.}}

\textbf{Legislation to Increase Equity: Illinois Public School Funding Reforms of 1973}

After failing to secure a definitive solution to inequitable school funding during the 1970 Constitutional Convention, public school funding litigation relating to the question of financial equity in the early 1970s prompted the Illinois General Assembly to explore reforms to the Illinois public school funding system.\footnote{G. A. Hickrod, B. C. Hubbard and T. Wei-Chi Yang, \textit{The 1973 Reform of Illinois General Purpose Grant-in-Aid: A Description and Evaluation}, \textit{Selected Papers In School Finance}, (1974).} With Illinois’ 1968 \textit{McInnis v. Shapiro}\footnote{293 F. Supp. 327 (1968).} lawsuit serving as a precursor, the California Supreme Court declared the California school funding
system unconstitutional in 1971’s *Serrano v. Priest*.\textsuperscript{531} With the threat of a possible *Serrano*-type state constitutional challenge in the future, Illinois legislators realized the implications of such a decision in the Illinois Supreme Court and formed a number of blue ribbon committees to explore the flaws within the then current Strayer-Haig\textsuperscript{532} funding formula and begin searching for solutions for funding property poor school districts.\textsuperscript{533} 

After debate, the General Assembly passed a comprehensive set of school funding reforms in 1973 designed to increase the equity of the Illinois school funding system. The new formula allocated increased state funding to school districts with high percentages of low-income students and utilized a resource equalizer to provide increased shares of state aid to school districts with a high property tax rates and low property wealth. The legislation, which fundamentally changed the method for funding Illinois schools, replaced the Strayer-Haig foundation formula with a more complex set of multiple formulas for general state aid. These formulas were designed to decrease the local property tax burden on poor school districts and increase per pupil funding equity among Illinois school districts. The 1973 reforms allowed school districts to choose from one of three formulas that would provide the greatest resources: a guaranteed tax base formula, an alternative formula, or a flat grant for wealthier school districts.\textsuperscript{534} 

The school funding reforms of 1973, when coupled with the adoption of a 3% increase to the state income tax on individuals and corporations, boosted the state’s share of funding from 20% during the *McInnis* lawsuit in 1969 to 48% by the mid-1970s. As per pupil expenditure

\textsuperscript{531} Cal.3d 584 (1971).  
\textsuperscript{532} See infra pg 30.  
\textsuperscript{534} PA 78-215, 1973.
disparity among school districts decreased to their lowest points between 1976-1979, the legislature had appeared to cure many of the deficiencies stemming from their prior methods for funding public schools.535

However, a change to the state funding formula in 1980, a declining national and state economic climate and increasingly conservative fiscal politics in Springfield caused a decrease in general state aid to school districts throughout the decade. By the 1982-1983 school year, many of the gains in equity for property poor school districts had vanished, as the disparity in school expenditures among school districts increased to the highest level since the 1973 school funding reforms were enacted. As the increased school funding budget allocations stemming from the 1973 school funding reforms began to dissipate, property poor school districts could not maintain the same expenditure levels as their property wealthy neighbors. While wealthier school districts were able to increase local tax rates and property valuation to adjust for decreasing state aid, property poor school districts were forced to cut their expenditures.536 As a result, the General Assembly put the 1970 reforms to pasture, and returned back to the McInnis era foundation formula in 1984.

Legislation to Increase Adequacy

Beginning in 1989, school funding reform advocates began challenging the adequacy of state school funding formulas in state courts nationally. This new wave of school funding litigation, which began with plaintiff victories in Montana, Kentucky, and Texas537 shifted the attack on state funding structures away from per-pupil spending disparities toward a focus on the

536 Id. supra notes 270-276.
adequacy of revenues allocated to public schools. Under this approach, plaintiffs contended that low academic performance was the result of an inadequate share of public school funding and the language of state education clauses mandated a fundamental right to an adequate education.\textsuperscript{538}

In Illinois, the concept of school funding adequacy began to gain traction in 1991. That year, an attempt to add language making a “fundamental right to an adequate education” to the Illinois Constitution narrowly failed.\textsuperscript{539} The proposed amendment was approved by over 57 percent of the votes cast in the election, but needed 60 percent for adoption. The adoption of such language into the Illinois Constitution would have had a profound impact on school funding reform in Illinois. Since plaintiffs won nearly all school funding lawsuits when courts found a fundamental right to an education either implicitly or explicitly in their state constitutions, an affirmative view by the Illinois Supreme Court would most likely force the Illinois General Assembly to pass legislation ensuring an adequate education for all Illinois students.

\textit{School Funding and Reform Bill of 1997}

In September 1996, the Illinois Supreme Court issued its decision in \textit{Edgar}, upholding the constitutionality of the Illinois public school funding system. Although unsuccessful, the litigation had a profound impact on Illinois public school funding policy, as plaintiffs’ arguments successfully pushed members of both political parties to include school funding reform as part of their platforms for the November 1996 elections.

\textsuperscript{538} See infra pg.68-69.  
\textsuperscript{539} The entire wording of the proposed amendment is as follows: \textit{A fundamental right of the People of the state is the educational development of all persons to the limits of their capacities. It is the paramount duty of the state to provide for a thorough and efficient system of high quality public education institutions and services and to guarantee equality of educational opportunities.}
As the state share of educational revenues for school districts had fallen to just 32% by the time *Edgar* was decided,\(^{540}\) Republican Governor James Edgar created the “Commission on Education Funding for the state of Illinois,” and used its findings to call for sweeping reforms of the state’s school funding system.\(^{541}\) Democrats applauded his goals for school funding reform, which would increase in the state’s portion of funding from 32% to a 50% share,\(^{542}\) increase the equity and adequacy of school funding by increasing the foundation level for property poor school districts from $3,056 per pupil to $4,110 per pupil, and ultimately provide property tax relief by reducing the reliance on local tax revenues for school districts.\(^{543}\)

The topic of school funding continued into the spring legislative session. According to the Illinois Association of School Boards, the amount of attention, effort and press coverage given to the issue was unprecedented,\(^{544}\) and by the end of the year, the General Assembly adopted the School Funding and Reform Bill of 1997 (HB 452).\(^{545}\) The legislation made significant changes to Illinois K-12 public school funding and was referred to by sponsors as “the most significant education funding bill of the past 30 years.”\(^{546}\)

First, the bill created a school construction grant program, providing $1.4 billion in new funding to help school districts finance the construction and renovation of school buildings.

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\(^{543}\) Id.


\(^{545}\) School Funding and Reform Bill of 1997 PA 90-0548 (HB 452).

\(^{546}\) Id.
Legislators who wanted to help fast-growing school districts and those with aging buildings pushed the new construction initiative.\footnote{547}  

Second, HB 452 created a new general state aid formula\footnote{548} with the goal of increasing the adequacy and equity of the Illinois school funding system. Beginning with the 1998-1999 school year (Fiscal Year 1999), a supplementary poverty grant was included in the new formula to supplement revenues for school districts educating a high percentage of low-income students. The poverty grants ranged from $800 per low-income pupil in districts with a 20 to 35 percent low-income concentration to $1,900 per low-income pupil in districts with 60 percent or more low-income concentration.\footnote{549} The new funding formula then attempted to improve the adequacy of state funding by raising the state’s foundation level, the minimum amount that all school districts are supposed to have the ability to expend per pupil through a combination of local and state sources, from $3,056\footnote{550} to $4,425 by 2001.

A third major component of the School Funding and Reform Bill of 1997 was the creation of the Education Funding Advisory Board, a nonpartisan board made up of representatives from education, business and the public who would recommend new foundation levels for the 2001-2002 school year and beyond.\footnote{551} One of the major issues with the prior school funding formula’s foundation level was it was historically tied to the available General Revenue of the state budget rather than the actual costs of an adequate education. To address this problem, the School Funding and Reform Bill of 1997 required the General Assembly to use


\footnote{548} See infra pages 67-72.


\footnote{551} Pub. Act No. 90-548, (codified as amended at 105 ILCS 5/18-8.05(M)). See infra pg. 30.
recommendations made by the EFAB to establish a minimally adequate per-pupil funding level each year. Specifically, the EFAB based the recommended foundation level on a determined cost of providing Illinois students an adequate education resulting in at least 67% of non-at-risk students achieving a passing score on state mandated standardized tests.\footnote{552}

**Unintended Consequences of the 1997 Reform Bill**

In reality, the School Funding and Reform Bill of 1997 achieved only a modest level of legislative goals for increasing the adequacy and equity of the Illinois school funding system.\footnote{553} The increase in the foundation level and changes to the poverty grant helped many low property wealth school districts across Illinois. In its first year, the total amount of general and supplemental state aid allocated from the new school funding formula to Illinois school districts increased by $235 million. The allocation increased an additional $337 million the year after. However, fiscal data measures from *Education Week* showed the school funding reforms of 1997 failed to show marked improvement in funding equity and adequacy in Illinois. While increased state aid helped low property wealth school districts, the disparity in per pupil expenditures among school districts in low property wealth areas and high property wealth areas grew from $12,000 per-pupil in 1996 to over $20,000 per pupil in 2016.\footnote{554}

One of the major reasons for the monumental increase in per-pupil funding disparity among school districts was due in large part to the school funding reform bill’s failure to address an over reliance of local property wealth within the school funding formula. By maintaining the

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\footnote{552}{Since at-risk children who come from concentrated poverty, broken homes or have special needs are far more expensive to educate and therefore the state provides additional funding for them, they were excluded from this particular metric.}


\footnote{554}{See infra pg. 111.}
local property tax as the primary variable in the general state aid calculation without limiting the taxing ability of wealthy school districts, huge gaps in the ability to fund education are created between school who have large tax bases and those who do not.

A second major flaw of the school funding reforms of 1997 resulted from the economic conditions of the state and its inability to fund education at an adequate level. Although the EFAB was created to develop a foundation level based on the actual cost of efficiently educating students, the General Assembly was not statutorily obligated to follow its recommendations when setting the state’s education budget. In fact, after adopting the first recommended foundation level of $4,560 for the 2001-2002 school year, the General Assembly never again followed the EFAB’s recommendations. While the legislature adopted a statutory foundation level only $120 per pupil less than the recommended level ($4,680: $4,560) the following year (FY 03), the growing divergence between what EFAB recommended and what was approved in statute reached nearly $3,000 per pupil ($9,032: $6,110) by the 2016-2017 school year.

According to their FY 18 report to the General Assembly, the failure to fully appropriate the recommended foundation level to school districts due to a the state’s fiscal crisis resulted in the following general state aid shortfalls between Fiscal Years 2012-2016: 555

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 12:</td>
<td>$231 million less than the EFAB’s recommended level</td>
</tr>
<tr>
<td>FY 13:</td>
<td>$518 million less than the EFAB’s recommended level</td>
</tr>
<tr>
<td>FY 14:</td>
<td>$562 million less than the EFAB’s recommended level</td>
</tr>
<tr>
<td>FY 15:</td>
<td>$551 million less than the EFAB’s recommended level</td>
</tr>
<tr>
<td>FY 16:</td>
<td>$397 million less than the EFAB’s recommended level</td>
</tr>
</tbody>
</table>

Beyond this disparity, the state’s fiscal crisis also caused Illinois public school districts to receive only a portion of what they were statutorily entitled to receive between fiscal years 2010

During this time, the Illinois General Assembly prorated education funding for schools and allocated partial payments to school districts through across-the-board percentage cuts because the legislature could not appropriate funding to meet the statutory requirements of the general state aid formula due to lack of general revenue funds.\textsuperscript{557}

The across-the-board proration of general state aid payments by the Illinois General Assembly disproportionately affected low property wealth school districts. Using FY 2015 as an example of when proration was at its highest rate, Illinois school districts received only 87\% of their general state education funding. That year, the highest property wealth school districts funded through the flat grant formula were entitled to $218 per pupil from the state, while the lowest property wealth school districts funded through the foundation formula were statutorily scheduled to receive on average $1,996 per pupil from the state.\textsuperscript{558} Therefore, when general state aid was cut by 13\% during FY 2015, wealthy school districts lost only $28 per student, while Illinois’ neediest school districts lost over $600 per student.\textsuperscript{559} Since the general state aid shortfalls seemed to disproportionately impact minority students attending school in low property wealth areas, plaintiffs returned to court in 2008, claiming the Illinois school funding formula’s “disparate and adverse” impact on minority students violated their civil rights in \textit{Chicago Urban League v. Illinois}.\textsuperscript{560}

Although the \textit{Chicago Urban League} plaintiffs failed to secure court-ordered reform, the litigation pushed the concerns of inadequate and inequitable public school funding into


\textsuperscript{557} Id. at 1.


\textsuperscript{559} See: \textit{Analysis of the Governor’s FY17 Budget Proposal to End Proration}; at 1.

\textsuperscript{560} \textit{Chicago Urban League} v. state of Illinois, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009).
legislative discourse. Just as the *Edgar* and *McInnis* cases had influenced the Illinois Legislature to review the methods for funding public schools post litigation, the increased interest in solving the problem of inequity and inadequacy during the Chicago Urban League lawsuit spawned a series of school funding bills that ultimately led to adoption of the Evidence-Based School Funding Model in 2018.

**A Legislative Timeline: The Evidence-Based Funding for Student Success Act**

In 2013, with the CUL lawsuit hanging over the General Assembly, several legislators, led by Senator Andy Manar (D-48), sought to address concerns about inequity and inadequacy in the state’s methods for funding PK-12 education. Manar, citing the needs to reform an outdated school funding formula, proposed legislation creating a Senate Education Funding Advisory Committee (EFAC) that would review the Illinois PK-12 public school funding system to ensure the State’s distribution methods were both adequate and equitable. The proposal, Senate Joint Resolution 32, received strong support within both houses of the legislature as well as both sides of the political aisle. The resolution passed with a 53-0 vote in the Illinois Senate and 109-8 in the Illinois House. The establishment of the EFAC was also designed to ensure that any new Illinois school funding system would be adequate and equitable, prepare students for success after high school, and support teachers and school leaders.

With this goal in mind, the EFAC then held public education funding hearings across the state and met with a number of separate interest groups, including teachers’ unions, parent and student advocacy organizations and state education policy departments to discuss potential ways

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561 Senate Joint Resolution 32, 98th General Assembly, 49th Legislative Day, May 14, 2013 at 103.
to reform school funding. Based on this input, the EFAC issued ten recommendations on January 31, 2014, designed to ensure an adequate and equitable state funding system:

1. Make use of a single funding formula.
2. Provide additional funding to at-risk, special education, and English-language learner students through the single formula.
3. Hold districts and students to higher standards.
4. Require districts to provide greater clarity on how funds are expended.
5. Guarantee that all districts receive a fair amount of minimum funding from the state.
6. Ensure that districts retain the same level of funding as under the current funding system for a period of time once a new funding system is adopted.
7. Include an accurate reflection of a district’s ability to fund education programs within the district.
8. Equalize taxing ability between dual districts and unit districts.
9. Review the financial burden placed on school districts through instructional and non-instructional mandates.
10. Provide additional transparency regarding the distribution of education funding.

Additionally, the EFAC recognized the need for an increase in educational funding to institute the recommendations but acknowledged a fiscal crisis in Illinois would be a major barrier to enacting school finance reform goals. While the recommendations focused on changing the method for distributing educational resources, the EFAC notably deferred making recommendations about the overall adequacy of education funding in Illinois to the Education Funding Advisory Board’s per-pupil recommendations.

*Illinois School Funding Reform Act: Senate Bill 16 (2014)*

The findings and recommendations of the Education Funding Advisory Committee helped craft School Funding Reform Act Senate Bill 16. Introduced by Senator Manar, SB16 would attempt to restructure the Illinois school funding formula into a more equitable and adequate mechanism to deliver state aid to school districts. According to Manar, SB16 would fix the Illinois School Funding Formula, not by pumping billions of extra dollars into schools but by

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566 *Id.*
567 *Illinois SB16 2014.*
fundamentally changing the way the state would distribute educational dollars. The new formula would redirect or redistribute resources to school districts who had greater concentrations of at-risk populations through increased student weighting values for English Language Learners, special education students, and gifted students.

While proponents of SB 16 argued the legislation increased funding to high poverty school districts and extra support to children with disabilities and students who are English language learners, legislators representing high property wealth school districts argued the bill would force their school districts to make huge budget cuts due to the redistribution of state tax wealth. Senate Bill 16 passed the Illinois Senate in May 2014 with a vote of 33-22 but failed to come to vote in the House, largely due to efforts by the legislators representing property wealthy suburban districts and the Chicago Public School District. Legislators representing high property wealth school districts argued the bill would force their school districts to make huge budget cuts due to the redistribution of state tax wealth. In fact, an analysis by the Center for Tax and Budget Accountability revealed the restructuring of the general state aid program under SB16 would result in a collective loss of $216 million dollars for school districts in Chicago Public Schools, Cook and its collar counties.

After failing to earn a vote on Senate Bill 16 in the Illinois House, Senator Manar joined Senator Jason Barickman (R-Bloomington) in February 2015 to reintroduce a version of Senate Bill 16 under “The Education Funding Reform Act of 2015: Senate Bill 1.” Senate Bill 1 addressed the concerns raised by legislators representing the school districts who would have lost

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568 See Center for Tax and Budget Accountability, Fact Sheet: SB16, November 2014 at 4.
569 Illinois SB1 2015.
state funding under Senate Bill 16 with protection from potential revenue losses. Senate Bill 1 would seek $500 million in new state educational funds to ensure no school district lost state funding and additional “adequacy grants” designed to provide an additional $92 million to school districts that have above average property tax rates but are unable to spend at the Education Funding Advisory Board’s recommended foundation level.

One of the most significant changes included within the initial drafting of Senate Bill 1 legislation was the introduction of an evidence-based public school funding formula. The evidence-based funding model developed by the Illinois School Management Alliance – a group including the Illinois Association of School Boards, Illinois Association of School Administrators, Illinois Association of School Business Officials and Illinois Principal’s Association – would provide a more equitable and adequate school funding formula by tying educational funding to research based educational practices related to enhancing student achievement.

The new school funding formula would use an “adequacy study” to determine a base level of funding needed for statewide adequate student growth. The base level of funding would then factor in student characteristics to determine a unique adequacy target for each individual school district. The adequacy target would represent the amount of money needed to thoroughly educate each student within the district. The formula would then compute each district’s local funding capacity or ability to fund the adequacy level to determine the supplemental state aid needed to raise each school district to individual per pupil adequacy targets. Additionally, any new state education appropriations would be given to districts furthest

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from their adequacy targets.

While the new adequacy-based school funding formula did provide a solution for redistribution through increased state dollars, it did not yet address the state’s vast disparity in per-student expenditures. Legislators acknowledged the need for further debate, communication and amendment before Senate Bill 1 could reach its completed version, prompting a surge in legislative activity spanning from the Illinois legislature into the governor’s office over the next two years.

**Bicameral Efforts: Illinois School Funding Reform Commission (2016)**

Legislative efforts to reform Illinois’ methods for funding public education were joined by the executive branch the following year. Citing Illinois’ disparity in school funding and student outcomes, Governor Bruce Rauner created the Illinois School Funding Reform Commission (ISFRC), a bipartisan and bicameral group consisting of both gubernatorial and legislative appointees. The ISFRC’s main goal was to provide a recommendation to the General Assembly for reforming the Illinois public school funding with a new formula that would increase state support of education, better define adequate funding for education, and distribute funds in a more equitable manner. According to the ISFRC, the recommendation would pave a clear path for General Assembly members to create legislation ensuring all communities are supported in an effort to achieve adequate and equitable school funding.

Over the next six months, the ISFRC would hold 18 large group meetings and 13 small group meetings with a number of educational experts and school funding reform advocates to

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574 Id.
develop a framework for a more equitable and adequate PK-12 school funding formula. For the Illinois school funding formula to adequately meet the needs of all Illinois public school students, regardless of geographic location or community wealth, the ISFRC recommended a clearly defined individualized adequacy target for each school district based on the unique needs of its student population. The adequacy targets were based on 27 adequacy elements, or educational components, that have the largest evidence-based impact on increasing student achievement.\(^{576}\)

On May 31, 2017, Senate Bill 1 passed both chambers of the General Assembly. Rauner, nonetheless, vetoed the bill on August 1, 2017 over the Chicago Public School pension bailout included in the bill. According to Rauner:

Senate Bill 1 in its current form took a significant increase in funding that I have advocated for and diverted hundreds of millions of dollars of it away from classrooms around the state, and diverted it to Chicago, unfairly hurting children across the state and unfairly advantaging one school district, a school district that has mismanaged its pension systems for decades.\(^{577}\)

SB1947: Evidence-Based Funding for Student Success Act (2017): From McInnis to Adequacy

Governor Rauner’s amendatory veto of Senate Bill 1 came in the midst of a two-year education budget impasse. During this time, a contingency was placed on the legislature stipulating that no general state aid payments could be disbursed without an evidence-based funding model in place. As a result of the Governor’s veto, the State failed to make general state aid payments to school districts for the first time in its history.\(^{578}\)

On August 13, 2017, the Illinois Senate voted to override the Republican Governor’s amendatory veto of Senate Bill 1, 38-19, with the entire Democratic caucus voting in favor of the override. The vote in the Illinois House; however, was canceled after the four legislative leaders

\(^{576}\) \textit{id}. at 16.
of the General Assembly made progress toward bipartisan compromise on school funding reform.\footnote{Republican leaders Jim Durkin, (R-Western Springs) and Bill Brady (R-Bloomington), Democratic House Speaker Michael Madigan (D – Chicago) and Senate President John Cullerton (D – Chicago).} These efforts led to the drafting of Senate Bill 1947, which retained the language of Senate Bill 1 regarding the evidence-based funding model and minimum levels of adequate funding. Senate Bill 1947 also included property tax relief for high property tax-rate, low-property wealth school districts.\footnote{Illinois. House. 100th General Assembly. 15th Special Session, 1st Legislative Day (2017) at 7.} Additionally, Senate Bill 1947 would allow residents to vote for a reduction in property taxes if their school districts local resources are above 110 percent of the adequacy level.

Two weeks later, on August 31, 2017, Governor Rauner signed Senate Bill 1947, the Evidence-Based Funding for Student Success Act, into law. Although the Evidence-Based Funding Formula (EBFM) will not be fully funded to meet all statewide adequacy targets for 10 years, the reforms immediately attacked Illinois’ historical inability to adequately and equitably fund K-12 public education. The Evidence-Based Funding for Student Success Act was a monumental victory for school funding reform advocates in Illinois. According to the Center for Tax and Budget Accountability, the Evidence-Based Funding for Student Success Act puts in place a PK-12 public school funding structure with the potential to ensure every school district throughout the State has the fiscal capacity to meet the educational and social-emotional needs of all children it educates.\footnote{Center for Tax and Budget Accountability, \textit{Moving Forward: How Illinois’ Evidence Based School Funding Formula Can Reverse Decades of Inequity Created by the Foundation Formula It Replaced}, October 2018, 2.}
The purpose of this study was to examine the relationship between school funding litigation and public school funding policy in Illinois. While a number of state courts have declared inequitable and inadequate shares of state education dollars unconstitutional, and have mandated their state legislature correct the deficiencies, Illinois courts have refused to render a decision regarding public school funding policy. Instead, courts have ruled the question regarding equity and adequacy within the Illinois K-12 public education funding system belong solely to the Illinois Legislature. Despite failing to secure court-ordered public school funding reform; however, comprehensive reforms to the methods Illinois has used to fund public education have still occurred despite in the immediate aftermath of failed litigation. In this chapter, I will review three major legislative reforms made to the Illinois public school funding formula, and analyze the factors influencing legislative changes to Illinois’ methods for financing K-12 public education following plaintiffs' unsuccessful attempts to secure court-ordered reform in order to answer the study’s main research question: Although plaintiffs have been unsuccessful in attempts to secure court-ordered public school funding reform, what factors influenced Illinois legislators to enact changes to Illinois’ methods for financing K-12 public education following failed litigation?
Figure 3.1 shows the relationship between arguments made by plaintiffs in three seminal public school funding lawsuits and three major Illinois School funding reforms that followed:

![Diagram](image)

While the preceding chart reveals a link between litigation and the enactment of public school-funding reform, the question to the degree of influence litigation had on legislation remains. Using court opinion, legislative debates within the Illinois General Assembly, law reviews and other relevant source documents, I will analyze how legislative reform proceeded after failed litigation.

**McInnis v. Shapiro (1968) and the 1973 Reform of Illinois General Purpose Grant-in-Aid**

In November 1968, the first constitutional challenge to Illinois’ public school funding system was filed in federal district court for the Northern District of Illinois in *McInnis v.*
This case was not only the first challenge to Illinois’ public school funding system, but was also the first in the nation, and the first to reach the United States Supreme Court. Here, plaintiffs file a Federal First-Wave Fourteenth Amendment Equal Protection claim arguing inequitable shares of state funding from the Illinois school funding formula prevented students attending schools in lower property wealth areas from receiving a good education.

Plaintiff Arguments

The McInnis plaintiffs applied a traditional equity-based challenge to Illinois’ methods for funding public education. The traditional equity-based argument maintains disparity in per-pupil expenditures between schools in low property wealth areas and high property wealth areas violate the Equal Protection Clause of the U.S. Constitution. Therefore, if the state’s school funding system allocates fewer dollars to less wealthy school districts, plaintiffs maintained the students attending schools in those less affluent districts were denied their rights to equal protection under the law.

Plaintiffs claimed disparities in funding invidiously discriminated against students attending schools in low property wealth areas, arguing the State’s public school funding scheme permitted students who lived in lower property wealth areas to receive less funding than students who resided in school districts with higher tax bases. Plaintiffs alleged variances in school funding prevented students with greater educational needs from receiving a good education and maintained only a public school financing system that apportioned public funds according to the educational needs of students would satisfy the Fourteenth Amendment.

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582 See infra pg 78.
583 See infra pg. 43, equity-based arguments challenged disparity in per-pupil expenditures as Federal Equal Protection violations.
584 Invidious discrimination refers to the government arbitrarily treating a class of people differently without rational reason.
The claims made by McInnis plaintiffs advanced two public school funding theories. First, plaintiffs argued the Illinois school funding formula should be equitable. An equitable school funding system provides all students with the resources needed to succeed in school, and should not allocate more resources to students attending schools in higher property wealth school districts than lower property wealth school districts. Second, plaintiffs maintained the problem of inequity could be solved if the Illinois public school funding system based appropriations on “educational need” rather than the property wealth of the school district.

Court Opinion

Although the district court acknowledged a clear disparity in the amount of money available to school districts in low property wealth areas and additionally recognized students receiving a greater share of educational resources were presumably receiving a better education than those who did not, the constitutionality of the Illinois public school funding system was upheld. The court found no constitutional requirement that public school expenditures be made solely on the basis of pupils’ educational needs nor did it find a requirement for equality in per-pupil expenditures across school districts. The lawsuit ultimately failed due to the court’s determination that a lack of discoverable and judicially manageable standards by which they could determine the appropriate level of funding to determine educational need made the case nonjusticiable. The Court’s decision in McInnis; however, was not an endorsement of the Illinois public school funding system. Instead the U.S. Supreme Court directed plaintiffs to seek remedy through legislation rather than litigation:

Without a doubt, the educational potential of each child should be cultivated to the utmost, and the poorer school districts should have more funds with which to improve their schools. But the
allocation of public revenues is a basic policy decision more appropriately handled by a legislature than a court.\footnote{125}

**Public School Funding Policy Reforms Enacted After Failed *McInnis* Litigation**

In just two fiscal years after the Illinois Supreme Court’s dismissal of *McInnis*, the Illinois Legislature enacted the State’s first comprehensive reforms to the Illinois public school funding formula. The 1973 public school funding reforms provided increased state funding to school districts with high percentages of low-income students and a resource equalizer that gave more state aid to school districts with a high property tax rate, but also had low property wealth. The legislation replaced the Strayer-Haig foundation formula with a more complex set of multiple formulas for general state aid designed to decrease the local property tax burden on poor school districts and to increase student equity among Illinois school districts.

The school funding reforms of 1973, when coupled with the adoption of a 3% increase to the state income tax on individuals and corporations, boosted the state’s share of funding from 20% during the *McInnis* lawsuit in 1969 to 48% by the mid-1970s. As per pupil expenditure disparity among school districts decreased to their lowest points between 1976 and 1979, the Illinois General Assembly appeared to provide meaningful reform toward fixing inequity stemming from prior methods for funding public schools.\footnote{126}

**1973 Public School Funding Reform: Public Policy Connected to Legal Theory**

The 1973 Public School funding reforms ultimately addressed the two primary issues identified by *McInnis* plaintiffs. In *McInnis*, public school funding reform advocates argued the Illinois public school funding formula was inequitable for students residing in low property wealth areas. Plaintiffs also attacked the use of property wealth as the primary determination of

\footnote{585 Id. at 332.}  
\footnote{586 See Calhoun at 267-271.}
educational expenditures, and maintained the formula should instead be based upon students’ educational need.

Regarding fiscal equity, the 1973 reforms passed by the General Assembly were designed to increase the equity of the Illinois school funding system by decreasing disparity in per pupil expenditures between poor school districts and affluent school districts. The 1973 formula allocated a greater share of state funding to school districts with high percentages of low-income students and utilized a resource equalizer to provide increased shares of state aid to school districts with a high property tax rates and low property wealth. The legislation, which fundamentally changed the method for funding Illinois schools, replaced the Strayer-Haig foundation formula with a more complex set of multiple formulas for general state aid. These formulas were designed to decrease the local property tax burden on poor school districts and increase per pupil funding equity among Illinois school districts.

The 1973 reforms also included the measurement of “educational need” into the school funding formula. For the first time in Illinois’ history, the 1973 school funding formula would include a weighting for students from lower socio-economic families, based on a composite of several cost estimates discussed in the 13th Illinois School Problems Commission Report. 587

From Litigation to Legislation: Factors Contributing to Illinois’ Public School Funding Reform in 1973

While the changes included in the 1973 reforms indicate positive alignment to the issues brought by plaintiffs in the McInnis complaint - equity and student need, the records of debate during the legislation do not reveal any meaningful mention of the lawsuit. The McInnis lawsuit, therefore, cannot be viewed in isolation as the primary factor driving the 1973 reforms. Instead,

the changes in public school funding policy enacted in 1973 appear to be guided by the political environment in Illinois, as well as a rising public awareness of the inequity in public school expenditures brought through the shifting tides in national school funding reform litigation during the early 1970s.

Political Environment

The legislative discussion regarding issues related to inequitable distributions of public school revenue stemming from the Illinois public school funding formula began soon after the Supreme Court’s decision in McInnis. Republican Governor Richard Ogilvie, who had been named in the McInnis lawsuit after winning the governorship amid trial, expressed considerable dissatisfaction with the state funding system.\(^{588}\) To solve the problem of disparity in statewide per pupil expenditures, Ogilvie directed the Illinois School Problems Commission of 1969 to study grant-in-aid systems and experiment with new ways of increasing equity in the Illinois school funding formula.

The same year, just nine months after McInnis, delegates to the 1970 Illinois Constitutional Convention drafted a new education clause into the Illinois Constitution. The new education clause stressed both the modern importance of education and expressed a desire to achieve greater equity and adequacy in education funding.\(^{589}\) While the Framers of the 1970 Illinois Constitution hoped to achieve greater equity and adequacy in Illinois’ public school funding system, transcripts reveal there was little agreement about how.\(^{590}\) According to Wilson, many delegates formed opinions as to what school funding reforms should take place, yet no plan

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\(^{588}\) Hickrod, G. Alan, A Brief history of K-12 finance in Illinois, or, 162 years in search of the perfect formula. Normal, Ill.: Center for the Study of Educational Finance, Illinois State University, [1987] at 3.


\(^{590}\) Id.
had any specificity to operationalize school funding equity.\textsuperscript{591} However, most delegates felt the Illinois General Assembly now recognized the problems with the Illinois public school funding formula and had faith the legislature would “significantly increase and equalize school funding.” Delegate David Davis stated, “you had better leave it to the legislature to gradually evolve, as it has been doing over the years.”\textsuperscript{592}

While discussion regarding the need to increase the equity within the Illinois public school funding system was evident within the literature, neither the recommendations made by the School Problems Commission, nor were the ideals presented by delegates during the debate toward adoption of the 1970 Illinois Education Article, were able gain much traction within legislative circles.\textsuperscript{593} This would soon change, as the California Supreme Court’s 1971 decision to invalidate the California school funding system in \textit{Serrano v. Priest} prompted the Illinois General Assembly to move from inaction to passing legislation fundamentally changing the methods for funding Illinois public schools.\textsuperscript{594}

\textit{National Legal Environment}

According to G. Allan Hickrod, co-author of the 1973 reforms, without the pressure of court cases and other national equity movements, there would not have been much interest in studying and solving the problem of school funding inequity. While \textit{McInnis} may have elevated discourse within the Illinois Legislature regarding equity, the pressure to resolve issues related to school funding increased in Illinois once the California Supreme Court issued its decision in \textit{Serrano v. Priest}, declaring education a fundamental right in California and overturning the

\begin{footnotesize}
\begin{itemize}
\item[592] \textit{Id.} At 23.
\item[593] \textit{Id.}
\end{itemize}
\end{footnotesize}
California school funding system. Serrano, decided just two years after McInnis, built on the unsuccessful arguments made by the McInnis plaintiffs, and further argued inequitable school expenditures violated equal protection, under the Federal and California Constitutions. The Serrano plaintiffs maintained the California state public education funding system, nearly identical to the structure used in Illinois, discriminated on the basis of wealth and impinged on the fundamental right to an education. The Supreme Court of California accepted this argument, and held a state educational financing systems requiring local school districts of varying wealth to raise portions of their own educational funds form local property taxes violates equal protection, and discriminates against poor school districts. The California Supreme Court ruled the state’s methods for funding its public schools unconstitutional, because it prevented equal educational opportunity as a result of an inequitable school finance system.

With California’s decision in Serrano and a pending Supreme Court decision in Rodriguez, Illinois politicians were now pressured to review equity in Illinois public school finance. Since plaintiffs could make identical arguments regarding the Illinois public school funding system, potential litigation would place the state in jeopardy of losing a future court battle. With the threat of a possible Serrano-type state constitutional challenge in the future, a dedicated group of legislators convinced their fellow legislators to fall in line with reform, and to begin searching for solutions to the inequitable distribution of funding to property poor school districts. According to Hickrod, the 1971 Serrano ruling brought a flurry of activity at the state level, and prompted the Illinois General Assembly to explore reforms to the Illinois public school

595 Serrano v. Priest, 5 Cal.3d 584 (1971).
596 See Infra pgs. 45-57 for discussion of Serrano and Rodriguez cases.
598 See Calhoun at 232.
599 See Hickrod, George Alan Karnes, The Decline and Fall, pp. 17–38, supra note 34.
funding system. By 1972, no less than three “blue ribbon” committees had begun working on reforms to the Illinois K-12 public education funding formula:

The Governor appointed a committee, the state superintendent appointed a second committee, and the legislature, not to be outdone, set up its own third committee. Fortunately, there was overlapping membership on all three of these committees, and that overlap helped considerably in finally bringing a package.

Committee for Educational Rights v. Edgar (1996) and the School Funding Reform Bill of 1997

Illinois plaintiffs returned to court in November 1990 after a decrease in general state aid to school districts throughout the 1980s caused many of the gains in equity for property poor school districts realized from the 1973 reforms to vanish due to a declining national and state

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601 ID.
economic climate. In fact, by the 1982-1983 school year, disparity in school expenditures among school districts increased to the highest level since the 1973 school funding reforms were enacted. As the increased school funding budget allocations stemming from the 1973 school funding reforms began to dissipate, property poor school districts could not maintain the same expenditure levels as their property wealthy neighbors. While wealthier school districts were able to increase local tax rates and property valuation to adjust for decreasing state aid, property poor school districts were forced to cut their expenditures. The negative impact on low property wealth school districts prompted a group of school districts, parents and students to file suit in Cook County against the State, claiming disparity in per pupil expenditures among Illinois school districts violated the Illinois Constitution in *The Committee for Educational Rights v. Edgar*.603

**Plaintiff Arguments**

In *Edgar*, plaintiffs utilized a combination of second-wave equity-based and third-wave adequacy-based arguments to allege the Illinois public school funding formula allocated an inequitable and inadequate share of educational revenue to Illinois school districts in low property wealth areas. In applying second-wave reasoning, plaintiffs argued statewide disparity in per-pupil expenditures violated the Equal Protection Clause of the Illinois Constitution. Plaintiffs’ third-wave argument maintained an inadequate share of public school funding prevented all students from receiving a high quality education mandated by the Illinois Constitution’s Education Article.

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602 See Calhoun at 270-276.
604 See *infra* pg. 43 for information regarding the 1st Wave of public school funding litigation, and *infra* pg. 58 for information regarding the 2nd Wave of public school funding litigation.
Under these arguments, plaintiffs advanced two primary claims against the Illinois school funding formula. First, plaintiffs claimed the Illinois school funding formula was inequitable. Plaintiffs asserted disparity in per pupil spending, ranging from $3,000 to $15,000 per pupil between high and low property wealth school districts, violated the Illinois constitutional mandate to provide an “efficient system of high quality public educational institutions and services under the Education Article and Equal Protection Clause of the Illinois Constitution. Plaintiffs maintained a public school funding system must be fiscally neutral, maintaining that while spending disparities from district to district may be permitted for an educationally appropriate reason, differences based on local property wealth were not educationally appropriate.

Second, plaintiffs claimed the Illinois school funding formula was inadequate, maintaining the finance structure deprives some districts of enough money to provide an adequate education. Plaintiffs asserted many low-spending districts could not provide an “adequate or minimal education for some or all of their students,” let alone a high quality education mandated by the Illinois Education Article.

Court Opinion

In September 1996 The Illinois Supreme Court affirmed the lower courts’ dismissal of Edgar, and upheld the constitutionality of the Illinois public school funding system. First, after finding students did not have a fundamental right to an education in Illinois, the Court ruled unequal school expenditures did not violate equal protection rights. The Court further ruled the statutes permitting wide disparity in per-pupil funding reflected a rational state goal of promoting local control over education. Next, the court dismissed the plaintiffs’ claims under the Education Article.
Clause by ruling an “efficient system” of education does not guarantee “parity in funding.”

The Illinois Supreme Court then echoed the U.S. Supreme Court’s ruling in *McInnis* by stating, “questions relating to the quality of education are solely for the legislative branch to answer,” and not one to be resolved in the courts,

> Our decision in no way represents an endorsement of the present system of financing public schools in Illinois, nor do we mean to discourage plaintiffs’ efforts to reform the system. However, for the reasons explained above, the process of reform must be undertaken in a legislative forum rather than in the courts.

**Public School Funding Policy Reforms Enacted After Failed *Edgar* Litigation**

Within a year of the *Edgar* decision, the General Assembly adopted the School Funding and Reform Bill of 1997 (HB 452). The legislation made significant changes to Illinois K-12 public school funding and was referred to by sponsors as “the most significant education-funding bill of the past 30 years.” Among the important changes included in the legislation was the creation of a new general state aid formula. The new funding formula would raise the state’s foundation level, the minimum amount that all school districts are supposed to have the ability to expend per pupil through a combination of local and state sources, from $3,056 to $4,425 over the first four years. A supplementary poverty grant was also included in the new formula to supplement revenues for school districts educating a high percentage of low-income students. The poverty grants ranged from $800 per low-income pupil in districts with a 20 to 35 percent low-income concentration to $1,900 per low-income pupil in districts with 60 percent or more

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606 Id. at 1196.
607 Id.
608 School Funding and Reform Bill of 1997 PA 90-0548 (HB 452).
609 Id.
610 See infra page 31.
low-income concentration. The increase in the foundation level and changes to the poverty grant helped many low property wealth school districts across Illinois. In its first year, the total amount of general and supplemental state aid allocated from the new school funding formula to Illinois school districts increased by $235 million.

1997 Public School Funding Reform: Public Policy Connected to Legal Theory

Akin to the 1973 public school funding reforms enacted after the failed McInnis lawsuit, changes implemented in 1997 mirrored the arguments made by plaintiffs during Edgar litigation. In Edgar, public school funding reform advocates argued the Illinois public school funding formula was inequitable for students residing in low property wealth areas, because they had substantially less spent per-pupil on their education than students attending schools in high property wealth areas. Plaintiffs also argued the Illinois public school funding formula was left school districts with an inadequate level of funding to deliver a high quality education to all students.

In similarity to the legislative reforms implemented after the failed McInnis litigation, the 1997 school finance reforms addressed both the “equity” and “adequacy” issues identified by Edgar plaintiffs. In regards to adequacy, the new general state aid formula would raised the state’s foundation level, the minimum amount all school districts are supposed to have the ability to expend per pupil through a combination of local and state sources from $3,056 to $4,425. This would ensure each school would have at least $1,369 per pupil more to deliver a high quality education. The School Funding and Reform Bill of 1997 was also designed to maintain adequacy

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613 See infra pg. 108.
through the creation of the Education Funding Advisory Board (EFAB), a nonpartisan board made up of representatives from education, business and the public, who would recommend new foundation levels for the 2001-2002 school year and beyond.\textsuperscript{614} Prior to the School Funding and Reform Bill of 1997, the school funding formula’s foundation level was historically tied to the available General Revenue within the state budget, instead of the actual costs of an adequate education. In order to address this problem, the School Funding and Reform Bill of 1997, required the General Assembly to use recommendations made by the EFAB to establish a minimally adequate per-pupil funding level each year. Specifically, the EFAB, would base the recommended foundation level on a determined cost of providing Illinois students an adequate education resulting in at least 67% of non-at-risk students achieving a passing score on state mandated standardized tests.\textsuperscript{615}

Regarding fiscal equity, the new funding formula was designed to decrease disparity in per pupil expenditures by increasing the total amount of aid given to school districts serving areas of low property wealth. The new formula would provide funding necessary for low property wealth school districts (school districts unable to raise 93% of the foundation level) to reach the foundation level of per pupil spending, while allocating just $218 per pupil grant for school districts serving student in high property. This calculation would give schools in low property wealth areas at least $618 per pupil more in state aid than high property wealth school based on the formula’s initial $4,425 per student foundation level. Second, a supplemental poverty grant included in the new formula would provide even more additional resources to school districts serving higher concentrations of low-income pupils. Since the poverty grants ranged from $800

\textsuperscript{614} Pub. Act No. 90-548, (codified as amended at 105 ILCS 5/18-8.05(M)). See infra pages 31-32.
\textsuperscript{615} Since at-risk children who come from concentrated poverty, broken homes or have special needs are far more expensive to educate and therefore the state provides additional funding for them, they were excluded from this particular metric.
per low-income pupil in districts with a 20 to 35 percent low-income concentration to $1,900 per low-income pupil in districts with 60 percent or more low-income concentration, low property wealth school districts would receive at least $1,400 to $2,500 per pupil more in state aid than high property wealth school districts when both foundation formula and poverty grants were combined.

From Litigation to Legislation: Factors Contributing to Illinois Public School Funding Reform in 1997

When the Illinois legislature passed changes in 1997 to increase equity and adequacy within the Illinois school finance system, the Edgar litigation would have appeared to drive the legislative discourse towards public education funding reform. While the changes included in the 1997 reforms indicate positive alignment to the issues brought by plaintiffs in the Edgar, the threat of the lawsuit was never a major factor in the minds of Illinois legislators. According to James Gordon Ward, an Illinois State University professor who helped advise the Edgar plaintiffs during litigation, there was a widespread belief within the Illinois legislature Edgar would not be successful. 616 While Ward argues the Edgar lawsuit was not a major factor toward reform, the litigation, when combined with the national adequacy movement and political environment of Illinois at the time was a contributing factor in raising public awareness and increasing legislative discourse toward the need for Illinois public education funding reform. Thus, in similarity to the 1973 reforms, the 1997 School Funding Reform Bill of 1997 would be a culmination of the factors related to national legal movements, Illinois politics and a public awareness of school funding disparities brought from litigation.

616 See Ward, Lawsuit at 37.
National Legal Environment:

Prior to the filing of Committee for Educational Rights v. Edgar in 1990, a third wave of public school funding litigation had commenced during the late 1980s.\textsuperscript{617} The new wave of school funding litigation, which began with plaintiff victories in Montana, Kentucky, and Texas\textsuperscript{618} shifted the attack on state funding structures away from per-pupil spending disparities toward a focus on the adequacy of revenues allocated to public schools. Under this approach, plaintiffs contended that low academic performance was the result of an inadequate share of public school funding in violation of state education clauses.

Political Environment

In Illinois, the adequacy movement began in 1992, when a group of school funding reform activists both within and outside the Illinois Legislature wrote a proposed amendment designed to give Illinois one of the strongest education articles in the nation by making an adequate education a fundamental right under the Illinois Constitution.\textsuperscript{619} The “Education Amendment” would also force the state to allocate 51 percent of educational funding.

Proponents argued the Education Amendment would make school funding fairer. With the state becoming the primary source of educational revenue, it would decrease the burden on local property owners to fund education. Proponents also claimed it would improve the quality of education in Illinois, where funding for education, they say, has lagged badly behind other states.\textsuperscript{620} According to Illinois State Senator Arthur Berman, the Education Amendment’s chief sponsor, "This is probably the most important issue in the last 20 years on a ballot, and will

\textsuperscript{617} See infra pg. 65 for an overview of the third wave of public school funding litigation.
\textsuperscript{619} See James Gordon Ward, What Happens When a Lawsuit Fails, at 25.
determine the future of most of the children in Illinois for the next generation.”

Berman’s beliefs were further quoted in a 1992 Chicago Reader piece:

This amendment does three things... It sets education as a, quote, fundamental right, unquote. It makes education the paramount responsibility of the state. And it requires the state to be the 'preponderant' financing source. When approved, this will help the 81 percent of Illinois schoolchildren that attend schools that do not have adequate resources because they do not have a high property tax base. This will shift school funding from the unfair property tax to the much fairer state income tax.

Opponents to the Education Amendment would refer to the proposed constitutional language as the "blank check amendment." The opponents argued the amendment would drastically raise state income taxes while providing for no property tax relief, and will throw matters that are properly in the purview of the General Assembly into the courts. Additionally arguing, there was mounting evidence showing no particular correlation between spending money on schools and educational achievement.

Judy Baar Topinka, Sate Senator and future 2006 Republican Governor nominee, equated the Education Amendment to a “scam in the same way the lottery was,” and was “just a way to raise taxes.” She further commented on what she believed the negative effects the Education Amendment would have on Illinois lawmaking:

There's no need for this amendment. The legislature has all the authority it needs to fund education right now. This is a misuse of the state constitution; it's just a terrible way of doing business. It's not what we design constitutions for. Constitutions are generic political plans--and legislatures fill in the blanks. If this goes through, we're going to have to start piling amendments on top of each other. If you want to make health care a priority, you're going to have to have another amendment. If you want to make something else a priority, you'll need an amendment for that. The effect is to turn the Constitution into the Revised Statutes. And that's not what it's for.

G. Alan Hickrod, the director of Illinois State University's Center for the Study of Educational Finance and author of law review articles cited within this dissertation, was the chief

621 Id.
622 Id.
623 Id.
624 Id.
625 Id.
academic proponent for the Education Amendment. Hickrod, who also advised the Committee for Educational Rights during Edgar litigation, stated there was overlap between the lawsuit and the Education Amendment, adding “They're both intended to put pressure on the legislature to move on reform legislation.” 626 If the amendment were defeated, said Hickrod, “the court case will continue, but we will not see another amendment on the ballot.” 627 He went on to further remark, “This is a one-time opportunity, and if it's defeated, it's defeated for all time.” 628

Unfortunately for public school funding reform advocates, the proposed Education Amendment would receive over 57 percent of the votes cast during the 1992 election. The Education Amendment; however, failed to gain the 60 percent necessary for adoption. After the attempt to make an adequate education a fundamental right under the Illinois Constitution narrowly failed, 629 legislative gridlock ensued – even as a number of state committees, groups, and task forces recommended major changes to the Illinois state school finance system. 630 Thus, the only reasonable mechanism left for meaningful reform seemed, in the eyes of many school funding reform advocates, the Committee v. Edgar lawsuit. 631 And once the Illinois Supreme Court dismissed the Edgar lawsuit, any threat of further litigation was gone, and there was not much optimism from public school funding advocates that change could be achieved through gubernatorial or legislative initiative. 632
Although public school funding advocates were unsuccessful in their attempts to both amend the Illinois constitution to include an adequate education a fundamental right in Illinois, and in their constitutional challenge to the Illinois public school funding formula in Edgar, their efforts were successful toward raising public awareness and pushing the topic of public school funding deeper into the political environment. During the lead up to the 1992 referendum on the Education Article, the topic turned from a constitutional issue into a purely partisan issue. Lawmakers were split along party lines, with all Democratic candidates for, and all Republican candidates against the amendment.

According to Hickrod, Republican Governor Edgar, who was originally silent on the issue, made a media event out of his vote against the proposed amendment. However, with 57% of Illinois voters in favor of the Education Amendment, Democrats would run on public school funding reform. In turn, the 1994 Democratic gubernatorial candidate Dawn Clark Netsch, the state Comptroller, Northwestern University law professor, and architect of the language regarding school funding included in the 1970 Illinois Education Article, made a public school finance reform package a central focus of her campaign. The platform included raising the state income tax, boosting state funding for local schools, and providing significant local property tax relief. She was defeated; however, by Governor Edgar, who derided her plan as "tax and spend liberalism."

With Netsch’s gubernatorial bid defeated, public school funding advocates would need to pin hopes on the Illinois Supreme Court’s decision in Edgar, and when the lawsuit was finally dismissed in October 1996, they would need to focus their efforts on the legislature once again. The Edgar decision made school funding in Illinois a political question. Fortunately for school

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633 Hickrod, Lawsuit at 25.
634 Id.
funding reform advocates the factors ripening the field for school funding reform were starting to take hold across the state. As such, the Education Reforms of 1997 ultimately came from the political process.

According to literature published by Voices for Illinois Children in 1996, education finance reform had been a hot topic for community discussion, newspaper headlines and political speeches during the early part of the year.\(^\text{635}\) Voices for Illinois Children was encouraged by two points in particular: The issue of reforming school finances has reached the top of the state's political agenda; and a growing agreement in the general public that Illinois' school funding system needs to be changed.\(^\text{636}\) The report cited a 1996 poll conducted by Leo J. Shapiro and Associates revealing the similar sentiment that Illinoisans across the state had begun to discuss the importance of addressing school finance.\(^\text{637}\) While the issues related to Illinois public school funding were complex, the poll gave insight as to voters education on the key problem and potential solutions. 60 percent of respondents strongly agreed a child's development is affected by the school attended, 77 percent of respondents felt that the state should increase the amount of financial support for public schools, and 87 percent supported plans for the state to provide a higher minimum level of education funding for all children.\(^\text{638}\)

Voter sentiment revealed through polling data would enter into legislative discourse soon thereafter, as the topic of school funding reform dominated the legislative scene, and pushed members of both political parties to include school funding reform as part of their platforms for the November 1996 elections. Transcripts from the 89\(^{\text{th}}\) and 90\(^{\text{th}}\) General Assemblies reveal


\(^{636}\) \textit{Id.}


\(^{638}\) \textit{Id.}
focused attention on increasing adequacy within the Illinois school funding formula, as politicians began to adopt education finance reform platforms. Senator Alice Palmer (D-Chicago), speaking to the 89th General Assembly Senate, framed the Illinois General Assembly’s desire to fix school funding: “I remind you that the most fundamental right in this country that we should be protecting is the right of all to have adequate and equitable funding for education.” Senator Vince Demuzio (D-Chicago) echoed these sentiments:

> When we began this year, this year was supposed to be the year of education. This was the year that we were finally going to come to grips and have the fortitude and the guts and the courage to do what was right to fund and reform the way in which we finance education in Illinois.\(^\text{640}\)

> While Senator Frank Watson (R-Greenville) had faith in his fellow assemblymen to succeed in their attempts at reform:

> Something’s got to be done for the funding of schools in this State…these people here have the empathy and the concern and the courage to give every single kid in this State, every child in this State, an opportunity for an adequate education.\(^\text{641}\)

Senator Arthur Berman (D-Chicago) spoke to the 90th General Assembly House of Representatives and quoted the Illinois Task Force on School Finance: “The schools and school children of Illinois have long been burdened by an inadequate and inequitable system of school finance. This inadequacy and inequity lessen the educational opportunities available to our children and diminish Illinois’ ability to meet the economic changes of the future.” Senator John Maitland (R-Bloomington), speaking to the 90th General Assembly House of Representatives, summarized the legislative session’s goal for school funding reform:

> When everyone ran for office last fall they promised to come to Springfield and bring about school funding reform. We must determine what an adequacy level is for funding all of our boys and girls. Until we fill [sic] know what adequacy is all about, everything else will fail. Once we determine

\(^{639}\) 2/19/1997 90th General Assembly Regular Session House Transcript, 24th Legislative Day, March 8, 1995.  
\(^{640}\) Id.  
\(^{641}\) Id.  
\(^{642}\) 2/19/1997 90th General Assembly Regular Session House Transcript, 18th Legislative Day, 1995.
that, then we move forward. Then we deal with the issue of equity. Funding of education, bringing about reform is not Republican/ Democratic issue it is more of a regional issue, and every one of us in this Chamber know that. Our Chamber stands ready to work, to deal with this issue this spring. The future of our boys and girls are at stake. The future of our State is at stake and I’m committed, this spring, to bringing this reform about. 643

Outside of the legislature, Republican Governor James Edgar moved his platform from a solid stance against the Democratic backed Education Amendment referendum toward, and used findings from his “Commission on Education Funding for the State of Illinois” to call for sweeping reforms of the state’s school funding system. 644 Democrats applauded his goals for school funding reform, which would increase in the state’s portion of funding from 32% to a 50% share, 645 increase the equity and adequacy of school funding by increasing the foundation level for property poor school districts from $3,056 per pupil to $4,110 per pupil, and ultimately provide property tax relief by reducing school districts’ reliance on local tax revenues. 646

The topic of school funding continued to dominate the 1997 spring legislative session. According to the Illinois Association of School Boards, the amount of attention, effort and press coverage given to the issue was unprecedented, 647 and by the end of the year, the General Assembly adopted the bipartisan School Funding Reform Bill of 1997, 648 legislation referred to by sponsors as “the most significant education funding bill of the past 30 years.” 649

643 2/19/1997 90TH General Assembly Regular Session House Transcript 18th Day at 7.
645 See Ward, What Happens When a Lawsuit Fails at 6.
646 Id.
648 School Funding and Reform Bill of 1997 PA 90-0548 (HB 452).
649 Id.
While the School Funding and Reform Bill of 1997 appeared to achieve a number of legislative goals for increasing the adequacy and equity, fiscal data measures from *Education Week* showed the changes made to the Illinois public school funding formula failed to attain the levels of improvement in equity and adequacy many Illinoisans had hoped for. While increased portions of state aid helped low property wealth school districts, disparities in per pupil

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650 Chicago Urban League v. state of Illinois, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009).

expenditures among school districts in low property wealth areas and high property wealth areas actually grew from $12,000 per pupil in 1996 to over $20,000 per pupil in 2016.652

One of the major reasons for the monumental increase in per-pupil funding disparity among school districts was due in large part to the school funding reform bill’s failure to address an over reliance of local property wealth within the school funding formula. By maintaining the local property tax as the primary variable in the general state aid calculation without limiting the taxing ability of wealthy school districts, huge gaps in the ability to fund education are created between school who have large tax bases and those who do not.

The economic condition of the state also prevented the General Assembly from meeting its goal to fund education at an adequate level. Budget deficits forced the legislature to fund the Illinois funding formula below the EFAB’s recommended adequate per pupil level. In fact, after adopting the first recommended foundation level of $4,560 for the 2001-2002 school year, the General Assembly never again followed the EFAB’s recommendations. While the legislature adopted a statutory foundation level only $120 per pupil less than the recommended level ($4,680: $4,560) the following year (FY 03), the growing divergence between what EFAB recommended and what was approved in statute reached nearly $3,000 per pupil ($9,032: $6,110) by the 2016-2017 school year.653

Beyond this disparity, the state’s fiscal crisis also caused Illinois public school districts to receive only a portion of what they were statutorily entitled to receive between fiscal years 2010 through 2016.”654 During this time, the Illinois General Assembly prorated education funding for

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653 See infra pages 6-7.
schools and allocated partial payments to school districts through across-the-board percentage
cuts because the legislature could not appropriate funding sufficient to meet the statutory
requirements of the General state Aid formula due to lack of General Revenue Funds.655

The across-the-board proration of general state aid payments by the Illinois General
Assembly disproportionately affected low property wealth school districts. Using FY 2015 as an
example, when proration was at its highest rate, Illinois school districts received only 87% of their
general state education funding. That year, the highest property wealth school districts funded
through the flat grant formula were entitled to $218 per pupil from the state, while the lowest
property wealth school districts funded through the foundation formula were statutorily scheduled
to receive on average $1,996 per pupil from the state.656 Therefore, when general state aid was
cut by 13% during FY 2015, wealthy school districts lost only $28 per student, while Illinois’
most needy school districts lost over $600 per student.657

The proration of General State Aid hampered the ability of low property wealth school
districts to provide a high quality education. In Illinois, a majority of minority students attend
low property wealth school districts. Therefore, the State’s inability to fully fund education
disproportionately impacted minority students attending school in low property wealth areas
causing plaintiffs to return to court in 2008, claiming the Illinois school funding formula’s
disparate and adverse impact on minority students in violation of civil rights.

Plaintiff Arguments

In August 2008, the Chicago Urban League filed suit in the Circuit Court of Cook County,

References

655 See Analysis of the Governor’s FY17 Budget Proposal at 1.
657 See Analysis of the Governor’s FY17 Budget Proposal at 1.
claiming disparities in funding results in documented achievement gaps between students attending schools in low property wealth areas and students educated in more affluent school districts. According to plaintiffs, since the school funding system relied heavily on local property taxes, students in majority-minority school districts received substantially lower shares of educational revenues. Plaintiffs maintained the inequitable distribution of general state aid within the Illinois public school funding formula, results in school districts in low property wealth areas receiving less than an adequate level of funding recommended by the Education Funding Advisory Board and discriminates on the basis of race.

To support their claim, plaintiffs provided data showing school districts located in low property wealth areas served a disproportionate number of African American and Latino students. Plaintiffs then argued the receipt of less school funding by school districts serving a substantial majority of African American and Latino students severely impacted those schools’ ability to provide a high quality education to its students. After provided data revealed that minority students who attended schools in low property wealth districts failed to perform as well as their white counterparts on assessments designed to measure achievement of the Illinois Learning Standards, the district court ruled plaintiffs pled sufficient facts to support their claim and allowed the Illinois Civil Rights Act challenge to proceed to trial.

**Court Opinion**

There was strong belief the Illinois Supreme Court’s decision in *Committee for Educational Rights v. Edgar* shut the courthouse door to challenging inequitable or inadequate funding.

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658 Pl.’s Compl. ¶¶ 46-60.
659 Pl.’s Compl. ¶ 101.
660 Pl.’s Compl. ¶¶ 81-93. Specifically, data was presented showing only one out of twelve MMDs made AYP as required under the No Child Behind Act. In all but one of the 12 MMDs, the school was given school improvement status.
661 *Chicago Urban League v. state of Illinois*, No. 08 CH 30490, (Cir. Ct. of Cook Cty. April 15, 2009) Slip op. at 6.
school funding as violations of the Illinois Constitution. The Illinois Supreme Court has been clear the interpretation of the Illinois Constitution, as it relates to school funding, is a political question properly belonging to the legislature. While the Chicago Urban League lawsuit incorporated elements of state equity and state adequacy-based litigation, the 2008 litigation was the first to challenge to Illinois public school funding disparities under the Illinois Civil Rights Act (ICRA).

Perhaps to the benefit of those seeking Illinois public education funding reform, the Illinois Supreme Court did not have the opportunity to issue a ruling on Chicago Urban League. Since the courts have continually relied on the political question doctrine to dismiss claims challenging public school funding policy, there was a great chance the Chicago Urban League lawsuit would have garnered similar fate. However, since the Illinois Civil Rights Act of 2004 prohibits units of government from “utilizing criteria or methods of administration that subject individuals to discrimination because of their race, color, national origin or gender”, the case appeared to pose a serious threat to the constitutionality of the Illinois school funding system based upon disparity in funding and achievement gaps between minority students attending schools in low property wealth areas and white students educated in more affluent school districts. Discovery and pre-trial motions in CUL v. State of Illinois proceeded for almost a decade until the case was settled out of court in February 2017.

**Public School Funding Policy Reform Enacted After Chicago Urban League Litigation**

Just 6 months after the Chicago Urban League’s settlement, Illinois would undergo its most comprehensive set of public school funding reforms in the State’s history. On August 31, 2017, the Illinois General Assembly replaced the State’s prior foundation formula approach with
an evidence-based funding model of public school funding through passage of the Evidence-Based Funding for School Success Act. The new formula shifted the funding of education away from a foundation level of spending toward the costs necessary to provide an adequate education to all students.

The Evidence-Based Funding for Student Success Act was a monumental victory for school funding reform advocates in Illinois, as the changes included within the new evidence-based funding formula (EBFM) immediately attacked Illinois’ historical inability to adequately and equitably fund K-12 public education. In regards to increasing equity in educational funding, the EBFM provides school districts with high concentrations of at-risk students with a greater share of state funding. The EBFM then allocates 99 percent of all new education appropriations to the districts with the lowest levels of local resources (property wealth). In regard to fiscal adequacy, the EBFM is fundamentally designed around giving school districts the resources necessary to educate all of its students. While the former foundation formula provided resources sufficient to educate just 67% of the state’s non-at-risk population, the EBFM also takes into account the unique needs of all special populations when identifying each school district’s adequacy target. By correlating state funding to the actual costs of implementing research-based practices for all students, the EBFM will provide low property wealth school districts with a sufficient level of resources for all students to show academic growth.

To more fully understand the relationship between litigation and the passage of the Evidence-Based Funding for Student Success Act in 2017, one must consider plaintiffs’ arguments made in Chicago Urban League v. State of Illinois. According to the plaintiffs, inadequate state funding under Illinois’ former foundation formula affected the state’s at-risk and

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662 Public Act 100-0465, 105 ILCS 5/18-8.15.
minority student populations the most. Since the State’s foundation level was consistently well short of the recommended adequate amount and often not fully funded, the total cost of public education came from local property taxes. In FY 2016, the final year schools received funding under the foundation formula, just 24 percent of PK-12 education costs came from General State Aid while 68 percent was funded through local sources. Most school districts in low property wealth areas, which serve a significant number of majority-minority schools, could not compensate for inadequate state funding by increasing local property taxes like affluent school districts could. Thus, low property wealth school districts were compelled to make cuts to educational programs lessening the quality of education provided to students, thereby magnifying the disparity in per pupil funding. Therefore, under Illinois’ prior foundation formula, the quality of the public education a student receives depended almost entirely on the property wealth of the community in which that child attended school.

The former formula’s foundation level also did not take into account any of the additional costs associated with providing a meaningful educational opportunity to at-risk students. In fact, the foundation level was based on a per pupil amount necessary to sufficiently educate just 67 percent of the state’s non at-risk students. Therefore, the aggregate amount of funding generated by the foundation level would be, by legislative definition, less than adequate to meet the actual educational needs of all Illinois students, without even accounting for the extra resources needed to educate at-risk students. Compounding this issue was the State’s long-standing budget crisis. Due to state budget deficits, the actual foundation level adopted each year by the General Assembly was not based on an adequate level of funding, but instead represented a per pupil political calculation based what the state could afford. Thus, in regard to fiscal equity, the

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Illinois’ evidence based funding formula is a significant improvement over the previous modified foundation formula approach. First, the EBFM identifies an unique amount of resources each individual school district needs to educate its unique student population compared to the foundation formula, which set a per student dollar level of school funding that was the same amount for all districts in Illinois regardless of the unique needs of the students a district served. Second, by tying funding to the actual student population each district serves, the EBFM ensures funding will be distributed equitably and provide those school districts with significant low-income, English language learners, and special needs populations with the capacity to educate the children they serve. The EBFM then allocates 99 percent of the new education appropriations to the districts furthest away from their adequacy targets, thereby creating a tremendously equitable method for distribution of state resources.

Regarding fiscal adequacy, the EBFM is fundamentally designed around giving school districts the resources necessary to educate all of its students, taking into account the unique needs of at-risk learners. By tying school funding to the costs of implementing research based practices instead of the former foundation level approach, which was not based on any actual costs of educating children, the EBFM will ensure each school has a sufficient level of resources for all students to show academic growth.

For FY 17, the first year school districts received funding under the new EBFM formula; a total of $336 million in newly appropriated K-12 public educational dollars was distributed under the EBFM to Illinois school districts. The Tier 1 School districts, those locales furthest away from adequacy targets, received 89% of the new money, bringing $326 million in additional funding to the schools who needed it most. Meanwhile, 76% of new funding under the EBFM,
totaling $278.5 million, was distributed to school districts educating 84% of all black students and 75% of all Latino students in Illinois.664

**From Litigation to Legislation: Factors Contributing to the Illinois Public School Funding Reforms of 2017**

Although the Chicago Urban League’s 2017 settlement failed to render a decision regarding Illinois’ method for funding K-12 public education under the Illinois Civil Rights Act, the CUL litigation appeared to increase the level of legislative discourse regarding the topic of school funding equity and adequacy to a level not observed since the events leading up to the School Funding Reform Bill of 1997. And while the State’s two prior public school funding reforms were only partly influenced by school finance litigation, the passage of the Evidence-Based Funding for Student Success Act of 2017, was directly influenced by Chicago Urban League’s lawsuit.

According to State Senator Andy Manar (D-48), the chief sponsor of the evidence-based funding legislation, the issues raised through Chicago Urban League’s litigation was among the primary influences on his mission to reform Illinois’ public school funding system.665 Manar became intricately aware of the hardships school districts with low property wealth were experiencing within the Illinois public school funding formula while working with Reverend James Meeks, the Democratic state senator representing Chicago, future chair of the Illinois State Board of Education and heavy proponent of the Chicago Urban League lawsuit on a tax-swap plan designed to shift public school funding from property taxes to state income tax.666 The 2005

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665 Personal communication between the author and Senator Manar.
bill failed in the Senate, but the experience helped drive his mission to reform Illinois’ public school funding formula. He soon realized his hometown of Bunker Hill, Illinois, where the median home price is half the state average, were having the same issues low property wealth urban school districts urban school districts serving students in poverty when the State began prorating its general state aid payments.667

Manar began his legislative mission to reform the Illinois PK-12 school-funding system into an evidence-based formula began as a freshman senator in 2013 when he and several legislators proposed legislation to create a Senate Education Funding Advisory Committee (EFAC) with the purpose of addressing concerns involving inequity and inadequacy within the State’s methods for funding PK-12 education.668 According to Senator Manar, the Illinois General Assembly needed to change the methods for funding education to reflect the changing dynamics of the State:

The current General State Aid formula was put in place when the economy in this State was much different. Local resources were different. Poverty rates were different. Unemployment was different. Student enrollment was different. But the formula has continued on the same path for an entire generation of students attending public schools in the State. So we would all be kidding ourselves if we don’t stand up and recognize that things have changed, and if we remain on the current course we’re on, the situation that we face is going to get much worse.669

The proposal, Senate Joint Resolution 32 (SJR 32), would direct the EFAC to examine the Illinois funding system and recommend changes to ensure it was adequate, equitable and fair to students and teachers.670 SJR 32 received strong support within both house of the legislature, as well as both sides of the political aisle. The resolution passed with a 53-0 vote in the Illinois Senate, and

667 Id.
The EFAC, also chaired by Senator Manar, studied the Illinois school funding formula’s impact on student learning and found the system was failing to provide equitable and adequate funding for schools. The EFAC was then directed to make recommendations for a new Illinois school funding system that would be adequate and equitable, prepare students for success after high school, and support teachers and school leaders.

With this goal in mind, the EFAC held a number of public education funding hearings across the state and met with a number of separate interest groups, including teachers’ unions, parent and student advocacy organizations as well as state education policy departments to discuss potential ways to reform school funding. At the same time, the Illinois State Board of Education also delivered a white paper to the EFAC, which identified weaknesses in the then-current formula and made recommendations on the development of a new formula guided by the following principles:

1. Adequacy: provides a level of funding sufficient for a high quality education.
2. Simplicity: provides districts a predictable, understandable revenue stream that is used to maximize student outcomes.
3. Transparency: is easily accessed and understood by all citizens.
4. Equity: begins with everyone contributing a minimum tax rate and adjusts for student need by weighting the formula to allow for additional resources to address impediments to student achievement.


Id. at 2.
Based on this input, the EFAC issued ten recommendations on January 31, 2014, designed to ensure an adequate and equitable state funding system.\footnote{Id.}

1. Make use of a single funding formula for ease and transparency.
2. Provide additional funding to at-risk, special education, and English-language learner students through the single formula to increase equity.
3. Hold districts and students to higher standards.
4. Require districts to provide greater clarity on how funds are expended.
5. Guarantee that all districts receive a fair amount of minimum funding from the state to ensure adequacy.
6. Ensure that districts retain the same level of funding as under the current funding system for a period of time once a new funding system is adopted.
7. Include an accurate reflection of a district’s ability to fund education programs within the district.
8. Equalize taxing ability between dual districts and unit districts.
9. Review the financial burden placed on school districts through instructional and non-instructional mandates.
10. Provide additional transparency regarding the distribution of education funding.

While these recommendations focused on changing the method for distributing educational resources to improve equity, the EFAC notably deferred making recommendations about the overall adequacy of education funding in Illinois to the Education Funding Advisory Board’s per-pupil recommendations. Additionally, the EFAC acknowledged the fiscal crisis in Illinois would be a major barrier to enacting school finance reform goals but identified the need for an increase in appropriations of educational funding in the state budget to institute the recommended reforms. Their efforts helped spawn a series of school funding bills that ultimately led to the adoption of the Evidence-Based Funding for Student Success Act in 2017.

\textbf{Senate Bill 16: Illinois School Funding Reform Act of 2014}\footnote{Illinois SB16 2014.}

The findings and recommendations of the committee helped craft the School Funding Reform Act Senate Bill 16, proposed legislation designed to restructure the distribution of funds to school districts. The bill, sponsored by Senator Manar, would create a single progressive
funding formula that would direct resources to school districts who had greater concentrations of at-risk populations. According to Manar, Senate Bill 16 would fix the Illinois School Funding Formula, not by pumping billions of extra dollars into schools but by fundamentally changing the way the state would distribute educational dollars. The new formula would redirect, or redistribute, resources to school districts who had greater concentrations of at-risk populations through increased student weighting values for English Language Learners, special education students, and gifted students. It is worth noting that SB16 did not explicitly address adequacy but directed the Illinois State Board of Education to conduct a study within two years to 1) identify a base funding level for students without special needs that will be sufficient for these children to satisfy state standards, 2) include per pupil weights for at-risk students, and 3) include an analysis of the effects of concentrations of poverty on the cost of providing an adequate education. Senator Michael Noland (D-Elgin), speaking in support of SB 16 to the 98th General Assembly Senate, stated:

This bill [sic] makes it so that kids, even in struggling school districts will have as much of an opportunity for success as kids residing in more affluent school districts...Under this bill, we have an opportunity to create an education funding system that is both equitable and sustainable for the long term and for the foreseeable future...under this bill, we have an opportunity to provide every child in Illinois that fighting chance at a quality education that is promised in our State’s Constitution and is the foundation of the American dream.

While proponents of SB 16 lauded the legislation’s attention to increasing equity for high poverty school districts and for providing extra support to special education, low-income English language learners, legislators representing high property wealth school districts argued the bill would force their school districts to make huge budget cuts due to the redistribution of state tax wealth. As such, Senate Bill 16 passed the Illinois Senate in May 2014 with a vote of 33-22 but

679 Id.
failed to come to vote in the House, largely due to efforts by the legislators representing property wealthy suburban districts and the Chicago Public School District. Legislators representing high property wealth school districts argued the bill would force their school districts to make huge budget cuts due to the redistribution of state tax wealth. In fact, an analysis by the Center for Tax and Budget Accountability revealed the restructuring of the general state aid under SB16 would result in a collective loss of $216 million dollars for school districts in Chicago Public Schools, Cook and its Collar Counties.\textsuperscript{680}

**Senate Bill 1: Illinois School Funding Reform Act (2015).\textsuperscript{681}**

After failing to earn a vote on Senate Bill 16 in the Illinois House, Senator Manar joined Senator Jason Barickman (R-Bloomington) in February 2015 to reintroduce a version of Senate Bill 16 under “The Education Funding Reform Act of 2015: Senate Bill 1.”\textsuperscript{682} Senate Bill 1 addressed the concerns raised by legislators representing the school districts who would have lost state funding under Senate Bill 16 with protection from potential revenue losses. Senate Bill 1 would seek $500 million in new state educational funds to ensure no school district lost state funding and additional adequacy grants designed to provide an additional $92 million to school districts that have above average property tax rates but were unable to spend at the Education Funding Advisory Board’s recommended foundation level.

One of the most significant changes included within the initial drafting of Senate Bill 1 legislation was the introduction of an evidence-based public school funding formula.\textsuperscript{683} The evidence-based funding model, developed by Allan Odden and Lawrence O. Picus, and strongly

\textsuperscript{681} Illinois SB1 2015
\textsuperscript{682} Illinois. Senate. *Senate Bill 1*, 99\textsuperscript{th} General Assembly. 2nd Day (2015).
favored by the Illinois School Management Alliance, a group encompassing the Illinois Association of School Boards, Illinois Association of School Administrators, Illinois Association of School Business Officials and Illinois Principal’s Association, would attempt to provide a more equitable and adequate school funding formula by tying educational funding to research based educational practices related to enhancing student achievement.

The new school funding formula would use an adequacy study to determine a base level of funding needed for statewide adequate student growth. The base level of funding would then factor in student characteristics to determine a unique adequacy target for each individual school district. The adequacy target would represent the amount of money needed to thoroughly educate each student within the district. The formula would then compute each district’s local funding capacity, or ability to fund the adequacy level, to determine the supplemental state aid needed to raise each school district to individual per pupil adequacy targets. Additionally, any new state education appropriations would be given to districts that are the furthest from their adequacy targets.

According to Barickman, Senate Bill 1 would provide new legislation to reform the broken system used to fund schools in Illinois. “If we’re ever going to end the funding disparity between school districts and replace the clearly broken funding mechanism that is in place now, we have to look to real, evidence-based solutions,” said Senator Barickman. Senator Manar added, “As Senate Bill 1 advances, I am more confident than ever that we can improve the bill with bipartisan solutions that address both the equity and adequacy of school funding in Illinois.”

While this version of a new adequacy-based school funding formula did provide a solution of redistribution through increased state dollars, it did not yet address the state’s vast disparity in

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685 See: Sen. Barickman Announces Evidence-Based Education Funding Reform.
per-student expenditures. Legislators acknowledged the need for further debate, communication and amendment before Senate Bill 1 could reach its completed version, prompting a surge in legislative activity spanning from the Illinois legislature into the governor’s office over the next two years.

**Illinois School Funding Reform Commission.**

While Senate Bill 1 progressed through the legislative calendar, efforts to reform Illinois’ methods for funding public education were joined by the executive branch. Citing vast disparity in school funding and student outcomes, Illinois Governor Bruce Rauner directed the creation of the Illinois School Funding Reform Commission (ISFRC) to study the problems associated with the current school funding formula. The ISFRC, a bipartisan and bicameral group consisting of both gubernatorial and legislative appointees, was directed to provide a recommendation to the Illinois General Assembly for reforming the Illinois public school funding with a new public school funding formula that would increase state support of education, better define adequate funding for education, and distribute funds in a more equitable manner. According to the ISFRC’s report, the recommendation would pave a clear path for General Assembly members to create legislation ensuring all communities are supported in an effort to achieve adequate and equitable school funding.

Over the next six months, the ISFRC would hold 18 large group meetings and 13 small group meetings with a number of educational experts and school funding reform advocates to develop a framework for a more equitable and adequate PK-12 school funding formula. For the

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687 Id.
688 Illinois School Funding Reform Commission Report to the General Assembly and Governor Rauner, February 1, 2017.
Illinois school funding formula to meet the needs of all Illinois public school students adequately, regardless of geographic location or community wealth, the ISFRC recommended a clearly defined individualized adequacy target for each school district based on the unique needs of its student population. The adequacy targets would be based on 27 adequacy elements or educational components that have the largest evidence-based impact on increasing student achievement.689

On May 31, 2017, Senate Bill 1 passed both chambers of the General Assembly. Governor Bruce Rauner, nonetheless, vetoed the bill on August 1, 2017 over the Chicago Public School pension bailout included in the bill. According to Rauner:

Senate Bill 1 in its current form took a significant increase in funding that I have advocated for and diverted hundreds of millions of dollars of it away from classrooms around the state, and diverted it to Chicago, unfairly hurting children across the state and unfairly advantaging one school district, a school district that has mismanaged its pension systems for decades.690

SB1947: Evidence-Based Funding for Student Success Act (2017)

Governor Rauner’s amendatory veto of Senate Bill 1 came in the midst of a two-year education budget impasse. During this time, a contingency was placed on the legislature stipulating no General State Aid payments could be disbursed without an evidence-based funding model in place. As a result of the Governor’s veto, the State failed to make general state aid payments to school districts for the first time in its history.691

On August 13, 2017, the Illinois Senate voted to override the Republican Governor’s amendatory veto of Senate Bill 1, 38-19, with the entire Democratic caucus voting in favor of the override. The vote in the Illinois House, however, was canceled after the four legislative leaders

689 Id. At 16, See also infra pages 64-65.
of the General Assembly made progress toward bipartisan compromise on school funding reform. These efforts led to the drafting of Senate Bill 1947, which retained the language of Senate Bill 1’s goal to providing minimum levels of adequate funding through an evidence-based funding model and also included property tax relief for high property tax-rate, low-property wealth school districts. Senator Manar, speaking to the Senate August 29, 2017, “This bill contains in regard to what can only be described as a historic achievement to reform how schools are funded in Illinois.” Senator Barickman followed:

(With this bill) we are now able to put forward a funding model that encourages behaviors in the classroom without mandating it, we give school districts flexibility to make decisions locally, we restore confidence in taxpayers that they no longer are being asked to contribute to an ineffective and inefficient school funding system…and ultimately the evidence model (creates) an adequate and equitable school funding program for our two million school children in our State who are relying on us to create a better learning environment for them.

Additional comments made by Senator Manar cast additional light on the historic achievement as well as optimism for the future:

The advocacy that you achieved over time, it’s here in this bill and you should be commended for those efforts. You did one thing that was, I think, almost impossible a few years ago…this achievement has resulted in this bill today, which undoubtedly is historic; we will fund schools fairly for the first time in decades, and there will not be another generation of students that are subjected to inequity, the worst in the country, after this bill becomes law.

Two weeks later, on August 31, 2017, Governor Rauner signed the Evidence-Based Funding for Student Success Act into law, replacing the nation’s least equitable K-12 public

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692 Republican leaders Jim Durkin, (R-Western Springs) and Bill Brady (R-Bloomington), Democratic House Speaker Michael Madigan (D-Chicago) and Senate President John Cullerton (D-Chicago).
693 Illinois. House. 100th General Assembly. 15th Special Session, 1st Legislative Day (2017) at 7. allows residents to vote for a reduction in property taxes if their school districts local resources are above 110 percent of the adequacy level.
694 Illinois Senate, 100th General Assembly, 15th Special Session, 2nd Legislative Day (8/29/17).
695 Id.
696 Id.
education funding formula with a mechanism with the potential to be the best. Although the Evidence-Based Funding Formula (EBFM) will not be fully funded to meet all statewide adequacy targets for 10 years, the reforms immediately began attacking Illinois’ historical inability to adequately and equitably fund K-12 public education by tying the dollar amount taxpayers invest in schools to research based practices shown to enhance student achievement over time.

![Figure 3.4: 2005-2017 Litigation to Legislation Timeline](image)

Chapter Summary

This chapter analyzed the factors leading to Illinois public school funding reform in the aftermath of failed public school funding litigation. Although the constitutionality of the Illinois public school funding formula has been upheld during each legal challenge, the Illinois General

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697 See Center for Tax and Budget Accountability, Analysis of SB 1947 (Public Act 100-0465): The Evidence-Based Funding for Student Success Act, October 10, 2017, at 6.
Assembly responded with legislation aligned to legal issues presented by plaintiffs during litigation. Therefore, school lawsuits filed in Illinois would appear to be useful tool toward increasing pressure on politicians to act on the issues presented by plaintiffs during litigation. Litigation filed by Illinois plaintiffs; however, was not the primary factor determining Illinois public school funding reform. Illinois public education reform legislation was a product of the litigation, national legal movements and Illinois’ political environment.

The first legislative reforms to Illinois’ K-12 public education funding system in 1973 were inspired by the first wave of national school funding reform calling for increased equity in nationwide public school funding equity. 1968’s *McInnis v. Shapiro* lawsuit helped raise the public awareness of citizens and legislators in Illinois. By the time *McInnis* was dismissed by the United States Supreme Court in 1969, the topic of school funding reform had reached the political arena. A new Illinois Constitution was ratified just one year after *McInnis*. The new Constitution included a new Education Article focusing on the importance of education and educational funding, while both the governor’s office and legislature began calling for reforms to the Illinois public school funding formula. These efforts failed to gain traction until the California Supreme Court’s ruling declaring its state funding system unconstitutional. The unconstitutional California state funding structure, being nearly identical to the method being used in Illinois, placed the State of Illinois in jeopardy of earning a similar fate in court. The threat of future litigation placed pressure on the Illinois Legislature to finally act. Thus, while *McInnis* helped fuel the legislative process by raising public awareness regarding the issues of inequity in school funding, the *Serrano* case provided the spark for ultimately passing legislation.

Illinois’ second set of comprehensive reforms to the Illinois K-12 public school funding formula in 1997, were also a result of the national legal and political environments of the era.
Beginning in 1989, a school funding adequacy movement helped plaintiffs successfully challenge the constitutionality of state funding systems in Kentucky, Texas and Montana. The litigation successfully argued inequitable shares of educational dollars prevented school districts from providing the level of education mandated by state constitutions. In Illinois, a referendum to amend the Illinois Constitution to make an adequate education a fundamental right narrowly failed a 1992 referendum. The Education Amendment received fifty-seven percent of the popular vote, but needed sixty percent for ratification. The topic of reforming the Illinois public education system towards adequacy would not die here, as the *Committee for Educational Rights v. Edgar (1996)* lawsuit helped maintain the conversation regarding reform within the public view. By the time *Edgar* was dismissed in October 1996, an overwhelming majority of Illinoians agreed with public school funding reform advocated calling for change. As a result, both political parties adopted school funding reform into their campaign platforms. The School Funding Reform Bill of 1997 was passed the following spring.

The *Chicago Urban League v. Illinois (2008)* lawsuit presents a unique perspective regarding the relationship between public school funding litigation and legislative reform. The arguments made by plaintiffs presented a novel argument, charging inequitable and inadequate shares of educational revenue provided to a majority of minority students in Illinois as a civil rights violation. Although plaintiffs settled out of court in February 2017, the lawsuit was an important catalyst towards the State’s latest public school funding reform legislation. Senator Andy Manar, chief sponsor and chief advocate of Illinois’ newly adopted evidence-based school funding formula, was influenced greatly by the civic leaders and public school reform advocates involved in the *Chicago Urban League* lawsuit while working with Senator John Meeks as Senate President John Cullerton’s Chief of Staff during a failed attempt to shift the primary burden of
funding publication from local property taxes to the State in 2005. These influences helped guide his work as he began efforts to reform the State’s public school funding formula immediately into his tenure as a freshman senator in 2013. His efforts helped spawn a series of proposed legislation over the next four years leading to the passage of the Evidence-Based Funding for Student Success Act of 2017.

CHAPTER 4
CONCLUSION

In Illinois, the primary controversy over public school funding has involved the State’s methods for distributing general state aid to low property wealth school districts. While the Illinois Constitution’s Education Article explicitly states, “The State has the primary responsibility for financing the system of public education,” local property taxes have historically been the primary source of revenue for Illinois school districts. The use of property taxes to determine general state aid has left Illinois school districts in low property wealth areas with an inequitable and inadequate share of educational funding.

Since the late 1960s, individuals and groups in Illinois have utilized the judicial system in an attempt to reform the State’s funding formula and claim increased funding for their local school districts. While a number of state courts have declared inequitable and inadequate shares of state education dollars unconstitutional, and have mandated their state legislature correct the

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698 Illinois Constitution, Article X, § 1
deficiencies, both the United States Supreme Court and Illinois Supreme Court have refused to issue a court ruling on Illinois public school funding policy. Instead, courts have determined the funding of public education presents a political question; an issue the United States Constitution and Illinois Constitution makes solely the responsibility of the Illinois Legislature.

Despite an unfavorable judicial environment, there have been three major legislative reforms to Illinois’ enacted since the earliest case filed by school funding reform advocates in 1968. Not coincidentally, these legislative reforms occurred in the immediate aftermath of major school funding litigation:

- In 1973, the Illinois Legislature passed reforms designed to increase equity in the first budget year after the dismissal of *McInnis v. Shapiro* by the United States Supreme Court in 1968.
- In 1997, the Illinois Legislature passed legislation designed to increase the equity and adequacy of the Illinois public school funding formula the following year after *Committee for Educational Rights v. Edgar* was dismissed by the Illinois Supreme Court.
- In 2017, just 6 months after *Chicago Urban League v. State* was settled out of court the Illinois Legislature fundamentally changed the Illinois public school funding formula from a modified foundation formula approach to an evidence-based funding model.

The dismissal of Illinois public school funding litigation under the political question doctrine has made any attempt to Illinois K-12 public school funding policy reform a political process. Bolman and Deal define the political process as a competition by individual and groups with varying differences in values, beliefs, information and interests for limited resources.\(^{699}\) They describe actions within the political frame as decisions emerging from bargaining and negotiation among competing stakeholders jockeying for their own interests.

To that end, major educational decisions in Illinois are affected by political maneuvering within the branches of government, as partisan politics maintain a close balance with the

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legislative and judicial processes regardless of the issue.\textsuperscript{700} Political realities within the judicial system show the social values of the state’s electorate may dictate the political orientation of the court in terms of its doctrine and activism.\textsuperscript{701} In Illinois, judges are chosen in partisan elections, and must run for reelection after serving their terms. Similarly, since decisions regarding public education in Illinois are made by the General Assembly, an expectation exists that politics will influence legislative decisions affecting the funding of education. Politicians will support their party platforms while degrading the opposition’s ideology. While one party calls for school funding reform, the other party may attack this platform as a “tax grab.” The reality within legislative decision-making regarding education is: politicians must obey constituents, and will support the majority to maintain political power.

In Illinois, a positive relationship appears to exist between public school funding litigation and reform legislation. Litigation has helped successfully push the issue of public school funding reform into the political frame of decision-making. As litigation moved through the court system, an increase in public and legislative discourse appears to have shifted public opinion toward reforming Illinois’ public school funding policy, and pushed legislators in the direction of increasing fiscal equity and adequacy within the methods used for funding K-12 public education.

- In 1973, the threat of school funding reform legislation and rising public awareness of issues brought through the rising national equity movement helped prompt reform. According to G. Allan Hickrod, co-author of the 1973 reforms; without the pressure of the Serrano court case and other national equity movements, there would not have been much interest in studying and solving the problem of school funding inequity
- In 1997, a rising public awareness of issues brought through the rising national adequacy movement appeared to have helped prompt reform. An increasingly favorable view toward school funding reform by a majority of the electorate is shown by a 57% vote on an amendment to include an adequate right to an education, and when a statewide poll

\textsuperscript{700} See Hickrod and Hubbard, \textit{The 1973 School Finance Reform In Illinois: Quo Jure? Quo Vadis?}
showing nearly 87% of Illinoians supported raising the level of adequate funding while the Edgar’ both political parties to include school funding reform as part of their platforms for the November 1996 elections. The topic of school funding reform also dominated the legislative scene over the next legislative session, and by the end of the year, the General Assembly adopted “The School Funding and Reform Bill of 1997.”

- In 2017, the Chicago Urban League lawsuit helped shaped the views of legislators fighting to reform the Illinois public school funding formula. According to personal communication with Senator Manar, the issues presented in the CUL lawsuit inspired his efforts to reform the Illinois public school funding system. Manar sponsored a series of school funding bills that ultimately led to the adoption of the Evidence-Based Funding for Student Success Act in 2017 and the creation of the Evidence-Based Funding Model (EBFM).

In Illinois, various interest groups have banded together to influence the connection of social values to financial resources. Over the past fifty years, public school funding litigation, even when unsuccessful, has provided a mechanism for Illinois school districts with less economic and political power to encourage public officials to improve the adequacy and equity of the state’s methods for funding public schools. The legislative history of Illinois public school funding reforms exemplifies how litigation, or the threat of litigation, can help shape public policy. While Illinois school funding lawsuits cannot be considered the primary catalyst for public school funding reform in Illinois, activity in the courts can still be viewed as having a significant positive influence over the formulation of public policy.

**Implications**

This study of Illinois public school funding litigation indicates public school funding policy reforms have moved in apparent tandem with legal challenges filed against the methods used by the Illinois legislature to fund K-12 public education. While the research suggests litigation can help shape public policy and advance reform, it also reveals public education policy making relies on a number of actors, and does not move in a linear process.
John Kingdon’s widely cited 1984 study of public policy formulation within the US political system offers an examination of how different variables interact to produce “windows of opportunity” for public policy agenda setting. Kingdon’s Multiple Streams Framework (MSF) approach theorizes, when a policy entrepreneur is able to bring multiple policy variables (problem, policy and political streams) together, a policy “window of opportunity” can open for at least a time, and may result in policy change. These streams are defined below.

The “problem stream” holds that issues seen as “public” require government to resolve them. These issues generally reach the policy agenda due to events such as crises, or through existing programs that attract public attention. The “policy stream” comprises of policy experts and analysts who examine problems and propose solutions. In this stream, policy action and inaction is identified, assessed, and narrowed down to a set of feasible solutions. Finally, the “political stream” is made up of factors influencing political platforms, such as swings in public sentiment, legislative turnover, and campaigns of various advocacy groups.

According to Kingdon, the problem stream, policy stream and political stream remain more or less independently of one another until at a specific point in time a “policy window” opens, and only then do the streams combine to elicit public policy change. During this time, solutions adhere to problems, and both become joined by favorable political forces. The issues become recognized as problems on the governmental agenda, and the public policy process begins to attempt solution.

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The relationship between Illinois public school funding litigation and Illinois public school funding reform provides an example of how the three streams coupled equity and adequacy issues with legislative actors to pass the Evidence-Based Funding for Student Success Act of 2017.

As Kingdon suggested, policy windows are sometimes triggered by external focusing events. In *Chicago Urban League v. State of Illinois*, specifically, plaintiffs filed litigation to force governmental action toward fixing the equity and adequacy of the Illinois public school funding formula. Here, litigation was used within the problem stream to help advance public education policy reform onto the legislative agenda. Over the course of CUL litigation, which occurred over ten years, the topic of school funding reform crossed into the “policy stream,” analyses of Illinois’ historical inability to adequately and equitably fund public education permeated numerous professional education journals and education policy websites. School funding policy reform advocates highlighted the issues of inequity and inadequacy stemming from the Illinois public school funding formula, and offered varying solutions for reform. At the same time, legislative turnover and the influence of the Chicago Urban League provided opportunity for the three streams to open up a “policy window,” as freshman senator Andy Manar lead efforts towards final passage of the Evidence-Based Funding for Student Success Act of 2017.

As this study shows, “policy entrepreneurs” serve an important function in linking policy problems and solutions to political opportunities for change. Policy entrepreneurs are responsible not only for prompting legislators and voters to pay attention to public issues, but also for coupling both solutions to problems, as well as problems and solutions to the political process. As such, education leaders have an obligation to actively move through the MSF streams as

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705 *Id.*
policy entrepreneurs in order to improve upon the educational program for all students. The MSF, when applied to the three major public school funding reform packages passed by the Illinois General Assembly, indicates that litigation can help place problems related to public education on the legislative agenda.

First, litigation can increase political influence. Illinois educational policy sets the structure for local school boards to formulate school enrollment, curriculum and budgets. The formulation of Illinois education policy is ultimately determined by the influence organizations, political parties and the electorate may have on Illinois legislators. Stronger public influences will have a greater impact on the formulation of educational policy. Since, most citizens do not have enough political standing to influence policy decisions on their own, litigation may be the only way to have their voices heard.

Litigation can also increase public awareness surrounding problems associated with current education policies. A lawsuit allows citizens outside of the educational organization an opportunity to have an informed debate regarding the policy issue being addressed by the lawsuit. A heightened profile, supported by an informed electorate, can generate community involvement, support and provide potential solutions to the legal issue. Since politicians rely on the public to maintain office, and increase in public awareness can pressure legislators adopt potential solutions into their political platform, or begin legislative discourse toward resolution.

Litigation can also force increased compliance within current education policy. The Corey H (1992) lawsuit provides an example outside of the realm of school finance litigation where litigation helped force compliance within the 1975 Individuals with Disabilities Education Act (IDEA). In Corey H, plaintiffs claimed Chicago Public Schools (CPS) failed to provide an

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adequate education for children with disabilities in violation of IDEA. Plaintiffs maintained CPS violated the IDEA’s “least restrictive environment” provision, by illegally segregating special education students from their neighborhood schools into self-contained classrooms with little or no consideration for how they would fare in mainstream settings. According to plaintiffs, just half of CPS students with disabilities spent a majority of their day in general education classrooms, well below the national percentage. Plaintiffs additionally claimed ISBE was nor monitoring or enforcing federal special education law in CPS schools. In January 1998, CPS settled the Corey H. lawsuit before going to trial. As part of the settlement, CPS would place more special education students back into their neighborhood schools and into general education classrooms. Additionally, CPS agreed to help their schools comply with IDEA law with ISBE serving as progress monitor.

Reviewing current litigation can also help school leaders understand and respond to potential issues within their own school districts. Just as school districts reviewed their special education practices during and after Corey H to ensure students were educated in the least restrictive environment, so too should school leaders review current education lawsuits and court filings to analyze current board policies to determine liability. As such, school board attorneys should actively engage with current litigation to help school boards maintain polices that ensure equitable and adequate educational opportunities exist for all students.

Recommendations for Further Study

This study explored the relationship between public school finance litigation and legislative reforms made to Illinois’ methods for funding K-12 public education. The study focused specifically on United Supreme Court and Illinois Supreme Court decisions in lawsuits
filed by Illinois plaintiffs challenging Illinois’ methods for funding K-12 public education. The study also identified national litigation that not only shaped Illinois plaintiffs’ legal strategy, but also legislative policy reform. Areas of future research may expand upon the study to address limitations of this investigation.

The legislative history of the Evidence-Based Funding for Student Success Act of 2017 shows a strong relationship between politics and public policy, and demonstrates how litigation and legislation interrelate to provide students with a more equitable and adequate education. Expanding the study to review whether a similar relationship exists in other states may elevate the argument regarding legislation as a productive long-term strategy to shape public education funding policies.

Additional research is also recommended to review whether a similar relationship exists between litigation and public education policy development outside of school funding policy. Major reforms to Illinois education policy regarding special education, school discipline, teacher evaluation and collective bargaining have occurred in recent years. Analyzing whether any litigation has lead to these reforms would benefit school leaders toward being responsive to the needs of its students. A similar relationship would show why arguments presented by plaintiffs in current or upcoming litigation, can help school leaders understand, and possibly predict the issues they will be engaged with in the future.

Finally, the study should ultimately be revisited to determine the longitudinal impact the Evidence-Based Funding for Student Success Act will have on the academic achievement of Illinois students. For over fifty years, plaintiffs have used the judicial system to secure an equitable and adequate share of educational funding for Illinois students. The latest school funding policy reform appears to be a solution to the issues plaintiffs have presented, but the
effectiveness of the legislation will ultimately be defined by the impact the evidence-based funding formula has on the academic achievement of all Illinois students.

**Epilogue**

During his evaluation of the Illinois School Funding Reforms of 1973, G. Alan Hickrod, the director of the Center for the Study of Educational Finance at Illinois State University and co-author of the 1973 school funding formula opined, “It is not possible to show cause and effect in any empirical way between court cases and the enactment of HB 1484 (1973 School Funding Reforms), but no person involved could be convinced there was not great influence exerted by the awakening which court cases caused in the entire field of school finance.”

According to Hickrod, without the pressure of school funding cases, there would not have been great interest created in studying and solving the problems associated with school funding disparity to bring about better equity and to abandon the minimum program concept in favor of a quality funding program. Hickrod argues state legislatures generally “will not respond to the moral call for funding fairness without force as a motivator.”

John Dayton, a leading education finance and policy scholar shares a similar opinion: “Despite the many disappointments documented by researchers following judicial involvement in funding reform, it appears (litigation) has served to further legitimate the position of funding reformers, have generated significant media attention, and have been reasonably successful at getting funding reform on the legislative agenda.”

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708 Id.
education reforms after *Council v. Rose* (1989), also believes “litigation may not be the best way to bring change, but it may be the only way in some states…. There’s a sense that some legislators need a fire under them, and litigation is the best way.”
APPENDIX A

CHRONOLOGICAL SECOND-WAVE STATE EQUITY-BASED LITIGATION CASES

Plaintiff Victory: Courts held the state’s school finance system as unconstitutional

California: Serrano v. Priest (Serrano II), 557 P.2d 929 (Cal. 1976)*
Connecticut: Horton v. Meskill, 376 A.2d 359 (Conn. 1977)*
West Virginia: Pauley v. Kelly, 255 S.E.2d 859 (W.Va. 1979)*

State Victory: Courts held the state’s school finance system as constitutional

Oregon: Olsen v. State, 554 1 4.2(1 139 (Or. 1976)
Ohio: Board of Educ. of the City of Cincinnati v. Walter, 390 N.E.2d 813 (Ohio 1979)
Pennsylvania: Danson v. Casey, 399 A.2d 360 (Pa. 1979);
Maryland: Hornbeck v. Somerset County Bd. of Ethic., 458 A.2d 758 (Md. 1983)
South Carolina: Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988);
Wisconsin: Kukor v. Grover, 436 N.W.2d 568 (Wis, 1989).

* Second-Wave Cases finding Education to be a State Fundamental Right
** Edgar plaintiffs argued both second-wave state equity claims, as well as third-wave adequacy claims.
APPENDIX B

THIRD-WAVE ADEQUACY-BASED LITIGATION CASES 1989-2017

**Plaintiff Victory:** Courts held the state’s school finance system as unconstitutional


**Arizona:** *Roosevelt Elem. Sch. Dist. v. Bishop*, 877 P.2d 806 (Ariz. 1994); *Cave Creek Unified Sch. Dist. v. Ducey*, 308 P.3d 1152 (Ariz. 2013);

**Arkansas:** *Idaho Schools for Equal Educational Opportunity v. State* (ISEEO V), 129 P.3d 1199 (Idaho 2005);


**Kentucky:** *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989).

**Massachusetts:** *McDuffy v. Sec’y of the Executive Office of Educ.*, 615 N.E.2d 516 (Mass. 1993); *Missouri:* Committee for Educational Equality v. State, 294 S.W.3d 477 (Mo. 2009);


**New Hampshire:** *Claremont v. Governor*, 703 A.2d 1353 (N.H. 1997) (Claremont II);


**New York:** Campaign for Fiscal Equity (CFE) v. State, 801 N.E.2d 326 (N.Y. 2003);

**North Carolina:** *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997); *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365 (N.C. 2004);

**Ohio:** *DeRolph v. State*, 677 N.E.2d 733 (Ohio 1997);

**Tennessee:** *Tennessee Small School Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993);

**Texas:** *Edgewood Independent Sch. Dist. v. Kirby*, 777 S.W.2d 391 (Tex. 1989);

**Wyoming:** *Campbell County v. State*, 907 P.2d 1238 (Wyo. 1995).

**State Victory:** Courts held the state’s school finance system as constitutional

**Alabama:** *Ex parte Governor Fob James et al v. Fob James, Jr.*, 836 So.2d 813 (Ala. 2002);


**Connecticut:** *Sheff v. O’Neill*, 678 A.2d 1267 (Conn. 1996), although the Connecticut Supreme Court ruled the state’s funding system deprived children of their rights to a substantially equal educational opportunity, but determined the claim regarding a minimally adequate education did not implicated a substantially equal educational opportunity, and found it unnecessary to reach the merits of this claim under the education clause of the Connecticut constitution.

**Florida:** Coalition for Adequacy and Fairness in School Funding v. Chiles, 680 So.2d 400 (Fla. 1996),
Illinois: Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (Ill. 1996); Lewis E. v. Spagnolo, 710 N.E.2d 798 (Ill. 1999);
Louisiana: Charlet v. Legislature of State of Louisiana, 97-0212, p. 6 (La.App. 1 Cir. 6/29/98);
North Dakota: Bismarck Public Sch. Dist. v. State, 511 N.W.2d 247 (N.D. 1994), the North Dakota Supreme Court concluded in a 3-2 decision that the State’s school funding system did not bear a sufficiently close correspondence to the asserted goals of providing equal educational opportunity and supporting education with State funds. However, because the State constitution requires agreement of four justices to declare a statute unconstitutional, the result upheld the funding system.
Nebraska: Gould v. Orr, 506 N.W.2d 349 (Neb. 1993); Nebraska Coalition for Educational Equity and Adequacy v. Heineman, 731 N.W.2d 164 (Neb. 2007),
Oklahoma: Oklahoma Education Association v. State, 158 P.3d 1058 (Okla. 2007),
Rhode Island: City of Pawtucket v. Sundlun, 662 A.2d 40 (R.I. 1995),
APPENDIX C

PUBLIC SCHOOL FUNDING LITIGATION DISMISSED UNDER THE POLITICAL QUESTION DURING THE THIRD WAVE

**Alabama:** Ex parte Governor Fob James et al, 836 So.2d 813 (Ala. 2002);  
**Arizona:** Crane Elementary Sch. District, et al. v. State of Arizona, Case NO. CV2001-016305 (Ct.App., Ariz., NOv. 22, 2006) Supreme Court denied review;  
**Florida:** Coalition for Adequacy and Fairness in School Funding v. Chiles, 680 So.2d 400 ( Fla. 1996),  
**Illinois:** Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (Ill. 1996); Lewis E. v. Spagnolo, 710 N.E.2d 798 (Ill. 1999);  
**Indiana:** Bonner v. Daniels, 907 N.E.2d 516 (Ind. 2009);  
**Missouri:** Committee for Educational Equality v. State, 294 S.W.3d 477 (Mo. 2009); North Dakota: Bismarck Public Sch. Dist. v. State, 511 N.W.2d 247 (N.D. 1994), the North Dakota Supreme Court concluded in a 3-2 decision that the State’s school funding system did not bear a sufficiently close correspondence to the asserted goals of providing equal educational opportunity and supporting education with State funds. However, because the State constitution requires agreement of four justices to declare a statute unconstitutional, the result upheld the funding system.  
APPENDIX D

TIMELINE OF ILLINOIS’ PUBLIC SCHOOL FUNDING LITIGATION AND REFORMS

McInnis v. Shapiro (1968)

1968: **Litigation:** Plaintiffs file a Federal First-Wave Fourteenth Amendment Equal Protection claim arguing inequitable shares of state funding from the Illinois school funding formula prevented students attending schools in lower property wealth areas from receiving a good education.

1969: **Court Decision:** United States Supreme Court rules the Fourteenth Amendment did not require parity in public school expenditures and determined a lack of “judicially manageable standards” made the controversy nonjusticiable. Supreme Court directs plaintiffs to seek a more equitable share of public school revenue in the Illinois Legislature.

1970: **Legislative Reforms during the 1970 Constitutional Convention:** Nine months after McInnis, delegates to the 1970 Illinois Constitutional Convention draft a new education clause into the Illinois Constitution. In addition to stressing the modern importance of education, the new education clause expressed a desire to achieve greater equity and adequacy in education funding.

1973 **Illinois Public School Funding Formula Reform:** Illinois General Assembly passes a comprehensive set of school funding reforms in 1973 designed to increase the equity of the Illinois school funding system. The new formula provides increased state funding to school districts with high percentages of low-income students and a resource equalizer giving more state aid to school districts with low property wealth. The legislation, which fundamentally changed the method for funding Illinois public schools, boosts the state’s share of funding from 20% to 48% by the mid-1970s, and decreases per pupil expenditure disparity among school districts to its historically lowest points between the years 1976-1979.


1990: **Litigation:** Plaintiffs file a Second-Wave State claim arguing inequitable shares of state funding violated the State Equal Protection Clause, and prevented school districts in economically disadvantaged areas from providing an “efficient system of high quality education” as mandated by the Illinois Constitution’s Education Article.
1996: **Court Decision:** Illinois Supreme Court rules inequity in per public school expenditures did not violate the Illinois Constitution. The Court finds disparity in funding was allowable under a rational policy of local control, determines the language of the Education Clause was merely “hortatory,” and therefore did not place an obligation upon the State to fund public education equally among school districts. Illinois Supreme Court directs plaintiffs to seek a more equitable share of public school revenue in the Illinois Legislature.


**Equity Reform:** The new formula attempts to increase equity by providing increase shares of state funding for low property wealth areas, and an additional poverty grant to school districts educating a high percentage of low-income students.

**Adequacy Reform:** One of the major issues with the prior school funding formula’s foundation level was it was historically tied to the available general revenue of the state budget instead of the actual costs of an adequate education. To address this problem, the School Funding and Reform Bill of 1997 creates the Education Funding Advisory Board, a nonpartisan board made up of representatives from education, business and the public who would recommend a foundation level tied to the costs of an adequate education for the 2001-2002 school year and beyond.

*Chicago Urban League (2008)*

2008: **Litigation:** Plaintiffs file suit claiming an inequitable and inadequate Illinois school funding formula discriminated on the basis of race in violation the Illinois Civil Rights Act of 2003. The case would mire in pre-trial litigation for nearly a decade before being settled out of court.

2017: **Court Decision:** Despite securing a definitive decision regarding school funding under the Illinois Civil Rights Act, plaintiffs stop the state board from utilizing across-the-board cuts in state aid. Instead, the board must determine which districts can least afford pro-rated funding, and allocate their full share.

2017: **Illinois Public School Funding Formula Reform:** Illinois General Assembly adopts the Evidence-Based Formula through passage of The Evidence Based Funding for Student Success Act.

**Equity Reform:** The EBFM increases equity by providing school districts with high concentrations of at-risk students with a greater share of state funding. The EBFM allocates 99 percent of new education appropriations to the districts with the greatest needs.

**Adequacy Reform:** In regard to fiscal adequacy, the EBFM is fundamentally designed around giving school districts the resources necessary to educate all of its
students. While the former foundation formula provided resources sufficient to educate just 67% of the state’s non at-risk population, the EBFM also takes into account the unique needs of all special populations when identifying each school district’s adequacy target. By correlating state funding to the actual costs of implementing research-based practices for all students, the EBFM will provide low property wealth school districts with a sufficient level of resources for all students to show academic growth.