COURTS & KIDS:
PURSUING EDUCATIONAL EQUITY THROUGH THE STATE COURTS
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2017 SUPPLEMENT

Chapter Two

In describing the state courts' active new role following the U.S. Supreme Court's decision in *Rodriguez v. San Antonio Independent School District*,[1] this chapter emphasized the dramatic change in the outcome of challenges to state education finance systems that occurred beginning in 1989. From that year through the time of the book's publication in 2009, plaintiffs, who had lost over two-thirds of the cases in the preceding decade, prevailed in more than two-thirds of the final liability or motion to dismiss decisions of the state's highest courts. This dramatic turnabout was attributed to the shift in plaintiffs' legal strategy from an emphasis on equal protection claims to a substantially increased reliance on adequacy claims; the text also stated that the burgeoning standards-based reform movement had a significant impact on the capacity of the courts to craft effective remedies in these cases.

From late 2009 through the end of June, 2017, there were seventeen rulings of state supreme courts or unappealed lower court decisions in cases involving constitutional challenges

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[1] 411 U.S. 1 (1973).

to state education funding systems. Plaintiffs prevailed in eight of these cases (California (Cal. Sch. Bds), Connecticut, Kansas (2) Louisiana, New Hampshire, South Carolina, and Washington), and defendants prevailed in nine (California (Coalition), Colorado (2), Indiana, Michigan, Missouri, Rhode Island, and South Dakota and Texas). Thus, plaintiffs prevailed in less than 50% of the major cases that were decided in these recent years. Summary descriptions of these cases are set forth in the following chart:

<table>
<tr><th>Highest Court or Final Rulings Favoring Plaintiffs</th><th>Highest Court or Final Rulings Favoring Defendants</th></tr>
<tr><td>1. Conn. Coal for Justice in Educ. Funding, Inc. v. Rell, 990 A.2d 206, 206 (Conn. 2010) (reversing trial court’s dismissal of adequacy claims, and holding that allegations of a lack of suitable educational opportunities raised constitutional cognizable claims; The trial court issued an order in 2016 that found the current school funding formula to be constitutionally invalid and ordered the state to undertake a series of reforms. That decision has been appealed to the Connecticut Supreme Court)

2. Cal. Sch. Bds. Ass’n v. State, 121 Cal. Rptr. 3d 696 (Cal. Ct. App. 2011) (upholding claim that the state constitution requires the legislature to reimburse school districts for the costs they incur in complying with new state mandates.)

3. McCleary v. State, 269 P.3d 227 (Wash. 2012) (affirming trial court’s finding that the state had failed to make adequate provision for the education of all children in the state in violation of the state constitution)</td><td>1. Bonner v. Daniels, 907 N.E.2d 516 (Ind. 2009) (affirming trial court’s dismissal of school funding action, before trial, on political question/ separation of powers grounds)

2. Comm. for Educ. Equal. v. the State of Missouri, 294 S.W.3d 477 (Mo., 2009) (en banc) (holding that because of Art. IX, § 3(b), which provides that “no less than [25] percent of the state revenue… shall be applied annually to the support of the free public schools” plaintiffs’ attempt to read an additional adequacy requirement into the general constitutional requirement that the state “establish and maintain free public schools” was rejected)

3. Davis. v. the State of South Dakota, 804 N.W.2d 618, 627 (S.D. 2011) (finding that the state constitution guaranteed children a right to an education, but that insufficient evidence had been presented at trial to warrant a finding that the state’s funding scheme violated the state’s constitution)</td></tr>
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4. *Louisiana Federation of Teachers v. the State of Louisiana*, 118 So.3d 1033 (La. 2013) (holding that state voucher system, which diverted funds earmarked for public education to private schools, violated constitutional requirement to allocate to the public schools all funds determined by the state education department to be necessary to provide a minimum foundation program to public school students)	4. *Lobato v. the State of Colorado*, 304 P.3d 1132 (Colo. 2013) (holding that evidence produced at the trial was insufficient to establish that there was no rational relationship between the state's education finance system and the constitutional mandate to provide for a uniform system of free public schools throughout the state)
5. *Abbeville Cnty. Sch. Dist. v. the State of South Carolina*, 767 S.E.2d 157 (S.C., 2014) (holding that state's educational funding scheme, as a whole, denied students in plaintiffs' school districts the constitutionally required opportunity to receive a minimally adequate education, and upholding in part and reversing in part trial court's ruling)	5. *Woonsocket Sch. Comm. v. Chafee*, 89 A.3d 778 (R.I. 2014) (affirming trial court's dismissal of plaintiff's action on political question/ separation of powers grounds).
6. *Gannon v. State of Kansas,* 319 P.3d 1196 (KN, 2014) (state established unconstitutional, wealth-based disparities by prorating and reducing supplemental general state aid payments to which certain school districts were otherwise entitled.)	6. *S.S. v. the State of Michigan* (Mich. Ct. App. 2014) (granting state defendants' motion to dismiss action alleging that education clause in state constitution and a "right to read" statute entitled students to education services geared to ensuring that they achieve minimum levels of literacy and holding that the issues were nonjusticiable and that education is not a fundamental interest under the state constitution)
7. City of Dover v. State of New Hampshire (Sup Ct. Sullivan Cty (2016) http://schoolfunding.info/wp-content/uploads/2017/01/New-HAMPSHIRE-Decision.pdf (holding that statutory cap on annual funding increases that precluded school district from receiving funds deemed necessary to provide an adequate education was unconstitutional; state has not appealed.)	7. *Dwyer v. State of Colorado,* 357 P.3d 185 (Colo. 2016). (holding that constitutional provision that called for an annual inflation increase in education funding did not preclude across the board cuts so long as the applicable "negative factor" did not apply to "base" funding but only to other factors such at-risk students, low enrollment and cost of living for staff.)
8. *Gannon v. State of Kansas*, 390 P.3d 461 (KN, 2017) (holding that state's education funding system did not meet "Rose standards" and did not meet adequacy requirements of state constitution's education article.)	

	8. *Morath v. The Texas Taxpayer and Student Fairness Coalition et al.*, 490 S.W.3d 826 (Tex. 2016) (rejecting plaintiffs' adequacy claims and holding that constitutional requirement to establish and make suitable provision for the support and maintenance of an efficient system of public free schools is satisfied if state achieves a "general diffusion of knowledge.") 9. *Coalition for Quality Education et al. v. State of California* and *Robles-Wong v. State of California,* 209 Cal.Rptr.3d 888 (with S.Ct. Attachment) (California Supreme Court declines to hear plaintiffs' appeal from Court of Appeals decision that denied adequacy claims because there was "no explicit textual basis from which a constitutional right to a public school education of a particular quality may be discerned.")

In a number of these cases, the state supreme courts were applying to current challenges constitutional precedents that had been established in earlier adequacy cases. Thus, in the *McCleary* case that it decided in 2012, the Washington Supreme Court reiterated the importance of the constitutional right it had established in 1978 in *Seattle School District No. 1 v. State*[2] and applied that precedent to current funding issues; in its 2014 *Abbeville* ruling, the South Carolina Supreme Court applied to evidence adduced at trial the definition of an adequate education that it had articulated 15 years earlier in response to a motion to dismiss in the same case; [3] and in the

[2] 585 P. 2d 1 (Wash. 1978).

[3] Abbeville County School District v. State, 515 S.E.2d 535 (S.C. 1999).

two *Gannon* decisions, the Kansas Supreme Court applied to current facts the constitutional precedent that had been established in *Montoy v. State*.[4] Similarly, in Rhode Island the court held in 2014 that changed facts, including the impact of the adoption of standards-based reforms, did not justify a reconsideration of the position it articulated in 1995 in *City of Pawtucket v. Sundlun;*[5] there, it held that challenges to the state education funding system were nonjusticiable political questions.[6]

Most of the state supreme court rulings were made either on motions to dismiss before any evidence had been presented to establish the extent to which students were being denied adequate services (California (Coalition), Colorado (*Dwyer*), Indiana, Michigan), or by rendering interpretations of the constitutional text that obviated the need to closely review the evidence that had been adduced after a lengthy trial (Colorado (*Lobato*) and Missouri).[7] Only in South Dakota

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[4] 120 P.3d 306 (Kan, 2005.)

[5] 662 A. 2d 40 (R.I. 1995).

[6] The recent California and Colorado cases were largely involved adequacy claims. California had decades earlier issued an equity decision in which plaintiffs had prevailed (Serrano v. Priest, 557 P.2d 929 (CA. 1977), and Colorado had issued an equity decision in which the defendants had prevailed (Lujan v. Board of Education, 649 P. 2d 1005 (Colo. 1982).

[7] The Colorado Supreme Court applied a rational basis test that "makes it possible to uphold a school finance system despite the realities of the education provided and without regard to the arbitrariness of the system's design. ……rational basis review is a conceptually inapposite tool for assessing the constitutional adequacy of education systems." Note, *Education Law – School Finance – Colorado Supreme Court Upholds State's School Finance System as Rationally Related to the "Thorough and Uniform" Mandate of the Colorado Constitution's Education Clause*, 127 HARV. L. REV. 803,806 (2013). The Missouri decision held that the constitutional provision that requires "no less than 25 percent of state revenue" to support the public schools defines the limit of the state's obligation, whatever the actual extent of student needs.

and Texas did the state supreme courts include detailed discussions of the trial evidence in its decision.[8]

In four states (California (Cal. Sch. Bds), Connecticut, Louisiana and New Hampshire), the new adequacy rulings favored the plaintiffs. In the California School Boards Association case, the Court interpreted a constitutional provision (different from the provisions at issue in the California Coalition case that was decided against the plaintiffs) to require the state to reimburse school boards for the cost of implementing new state statutory mandates; the ruling of the California Intermediate court was not appealed and this became final. The Connecticut Supreme Court held that there was a qualitative dimension to the constitution's education clause in upholding plaintiffs' right to proceed to trial;[9] the Louisiana court ruled in plaintiffs' favor on the specific adequacy issue presented by their challenge to the state's voucher legislation; and the New Hampshire court invalidated on constitutional grounds a statutory cap on funding increases that would have undercut adequate funding levels.

Two additional cases that involved attempts to establish new constitutional rights to a sound basic education were decided by lower courts in Florida and Pennsylvania during this period; these adequacy issues have not yet been reviewed by the state's highest court. The change in plaintiffs' fortunes that was evident in the rulings of state supreme courts is also

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[8] The South Dakota court applied a "beyond a reasonable doubt" standard in analyzing the evidence (*see*, 804 N.W. 2d at 841), a standard that also may be a "conceptually inapposite tool for assessing the constitutional adequacy of education systems." Note, Education Law, *supra* note 7 at 806. The Texas Supreme Court held that Texas students' achievement was adequate to satisfy the constitution's "general diffusion of knowledge" requirement. The constitutional standard the court applied in *Morath* was substantially narrower than the standard it had applied in Edgewood Indep Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) and other Texas supreme court decisions discussed in the main volume.

[9] The Connecticut Supreme court had earlier upheld plaintiff's position in an equity case, Horton v. Meskill, 376 A.2d 359 (1977).

reflected in these pending cases, as defendants prevailed in both of these decisions. Each of these cases constituted attempts to distinguish prior adequacy rulings that prior plaintiffs had lost. In Pennsylvania, plaintiffs' arguments were based on changes in state laws and educational standards since the time that the prior decisions had been rendered, while in Florida, the new case relied on arguably stronger language that had been added to the state constitution through a constitutional initiative that had been adopted in response to the earlier ruling. Summary descriptions of these cases are set forth in the following chart:

Pending Rulings in New Cases Favoring Plaintiffs	**Pending Rulings in New Cases Favoring Defendants**
	1. *Citizens for Strong Schools v. State of Florida.* Cir Ct, Leon Cty, http://schoolfunding.info/wp-content/uploads/2017/01/Florida-decision.pdf (trial court held that most of the constitutional terms like "efficient" and "high quality" did not provide judicially manageable standards and were "non-justiciable" "political questions" that should be determined by the legislative and executive branches, An appeal is pending before the District Court of Appeal, First District.) ***2.*** *William Penn School District v. Pennsylvania Department of Education*, 114 A.3d 456 (Pa. Cmwlth. Ct. 2015) (dismissing claims that the state's funding scheme violated the equal protection and education clauses of the Pennsylvania constitution; An appeal is pending before the Pennsylvania Supreme Court.)

Overall, then, there was a dramatic pendulum swing from more than two-thirds of the final adequacy decisions favoring plaintiffs in the period from 1989 through mid-2009 to a pattern in which 53% of the final decisions and both of the pending cases favored defendants over the past eight years. Combining the results of all highest state court adequacy decisions since indicates that plaintiffs' overall percentage of final judicial rulings dropped from 69% in the period 1989-2009 to 58% of all cases from 1989 through June, 2017.

The impact of the recession of 2008 was undoubtedly a major factor in this striking change in the outcomes of adequacy litigations. The federal American Recovery and Reinvestment Act[10] provided immediate financial relief to the states' education budgets and delayed for a year or two the recession's impacts on state budgets. By 2010, however, shortfalls in state revenues led to substantial spending reductions in most states, including shortfalls in educational expenditures, which generally constitute the largest item in the state budget. As New York's governor bluntly put it in, " To achieve necessary State savings …[and] with education funding representing over 34 percent of State Operating Funds spending and the State continuing to face massive budget gaps, reductions in overall School Aid support are required." [11]

These reductions in state funding caused schools throughout the country to shorten their hours, raise class sizes, cut back on curriculum offerings, forgo repair and maintenance of facilities, and curtail purchases of books and instructional supplies. Although the economy as a whole appears now to have largely recovered from the 2008 recession, most state budgets are still constrained and the post-recession political climate evidences a widespread reluctance to

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[10] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 181–84.

[11] Statement of Governor David Patterson, New York State Executive Briefing Book 2010-2011, Education and Arts, p.25, available at https://www.budget.ny.gov/pubs/archive/fy1011archive/eBudget1011/fy1011littlebook/Education.html.

raise taxes or otherwise expand state revenues. A study by the Center on Budget and Policy Priorities found that as of 2016, 25 states out of 46 for which data was available were still providing less formula funding for education per student than in 2008. In seven states, the cuts exceed 10 percent.[12]

These continuing reductions in state education funding have obviously led many parents, school districts, and teachers unions to seek relief from the courts, especially since the reductions appear to have heightened inequities in many state education finance systems and to have increased the detrimental impact on low income and high need students.[13] The turnabout in the outcomes of the major adequacy cases since 2009 would appear to indicate that the courts are less willing to proclaim substantial new rights to an adequate education in this climate, although the fact that almost half of the major cases decided by the highest state courts since the recession have succeeded indicates that plaintiffs in many places are still making major new inroads, even in this more constrained fiscal climate.

Furthermore, the major post-recession new decisions of the highest state courts do not tell the whole story of judicial attitudes in the post-recession environment. To understand fully judicial reactions to adequacy claims during the post-recession period, it is also necessary to

[12] Michael Leachman et al., Most States Have Cut School Funding, and Some Continue Cutting, (Center on Budget and Policy Priorities, 2016), retrieved from http://www.cbpp.org/research/state-budget-and-tax/most-states-have-cut-school-funding-and-some-continue-cutting. The study also documents that four of the five states with the biggest cuts in general school funding since 2008 – Arizona, Idaho, Oklahoma, and Wisconsin --- have also cut income tax rates in recent years. Kansas has also imposed large reductions in general school funding, while also implementing substantial income tax cuts.

[13] A study that reviewed school district data from 1933 to 2011 to determine the impact of recent changes in state aid to education on equity in school funding found that fair school funding regimes are on the decline in the majority of states. Bruce Baker, *Evaluating the Recession's Impact on State School Finance Systems*. EDUCATION POLICY ANALYSIS ARCHIVES, *22*(91) (2014), available at http://epaa.asu.edu/ojs/article/view/1721.

analyze the many compliance rulings to enforce pre-existing court rulings that have been brought in the wake of the 2008 recession.

These post-recession compliance cases had strikingly different results. There have been ten court decisions so far that have challenged post-recession reductions in state funding that plaintiffs alleged have violated the right to an adequate education established in previous court rulings, *and plaintiffs have won nine out of ten or 90% of these decisions*. Six of these cases (California (3), New Jersey, New York and North Carolina) are final decisions of the state's highest court or unappealed or settled lower court decisions. The other three (Arkansas, South Carolina, and Washington) are lower court decisions that are on appeal or involve preliminary motions and/or are cases in which final adjudications are still pending. The one compliance decision in which defendants have prevailed (N.Y. *Maisto*) is on appeal, and the stance of the trial court there seems to inconsistent with the Court of Appeals' very recent ruling in the other New York compliance case (*NYSER*.) Summary descriptions of these cases are set forth in the follow chart:

Compliance Rulings Favoring Plaintiffs	**Compliance Rulings Favoring Defendants**
1. *Reed v. the State of California*, Case No. BC 434420 (Cal. Super. Ct. 2010) (granting preliminary injunction barring the Los Angeles school district (LAUSD) from laying off more teachers at three affected middle schools in the district because the plaintiff-students had met their burden in showing a "likely denial of equal educational opportunity." In April 2014, the LAUSD had reached a settlement with the parties that provides for teacher and principal pay increases and increased services and staff development in 37 identified high need schools)	1. *Maisto v. State of New York,* 2016 WL 8650149 (N.Y. Sup. Ct. 2016). (dismissing claims that State failed to implement state-wide funding system adopted in response to Court of Appeal's holding in *CFE v. State of New York*, 801 N.E. 2d 326 (NY 2003); appeal pending, App. Div. 3rd Dep't.)

2. *Abbott v. Burke (XXI)*, 20 A.3d 1018 (N.J. 2011) (ordering the state to restore funding to amounts called for by formula in 31 high-need, urban school districts) 3. *Doe v. the State of California*, Case No. BC 44 5151 (Cal. Super. Ct. 2012) (denying state defendants' motion to dismiss class action alleging that school districts were charging illegal fees for educational programs because the responsibility to ensure that all schoolchildren in the state received a free education as required by the constitution ultimately rested with the state. Plaintiffs withdrew the lawsuit after the state legislature enacted AB1575 which establishes a statewide accountability system for preventing illegal school fees) 4. *Hoke Cnty. Bd. of Ed. v. the State of North Carolina*, No. 95-CVS-1158 (N.C. Ct. App. 2012) (affirming lower court's ruling that the state could not enforce portions of the 2011 budget bill that would have undermined universal pre-K program by limiting enrollments; subsequently, the North Carolina Supreme Court ruled that the issue was now moot since the legislature had substantially amended the statutes that the lower courts had found to be unconstitutional. 749 S.E.2d 451 (N.C., 2013) 5. *Deer/Mt. Judea School District v. Kimbrell*, 430 S.W.3d 29 (Ark. 2013) (reversing and remanding portion of lower court's decision that dismissed certain of plaintiffs' claims as barred by *res judicata* and holding that the state had an on-going obligation to ensure that students received a "substantially equal opportunity for an adequate education")	

6. *Cruz v. the State of California*, Case No. RG14727139 (Cal. Super. Ct. 2014) (issuing temporary restraining order to address deprivations of educational opportunity at a high school in the Los Angeles School District; case settled by agreement calling for enactment and implementation of new state law that limits course assignment and scheduling practices that reduce student learning time.) 7. *McCleary v. State of Washington*, S. Ct. No. 84362-7 (Wash. 2014) (finding the state in contempt for failing to submit a "complete plan for fully implementing its program of basic education for each school year between now and the 2017-2018 school year". Follow-up decisions in 2015 and 2016 imposed sanctions for continuing non-compliance.) 8. *Abbeville County School District v. the State of South Carolina*, 780 S.E.2d 609 (*S.C., 2015, 2016*). (interim orders monitoring parties' progress toward resolving issues raised in Courts' 2014 decision that found that state was denying students in the plaintiff districts an adequate education.) 9. *New Yorkers for Students' Educational Rights (NYSER) v. the State of New York*, ___N.Y.3d ___ (NY, 2017), 2017 WL 2742205 (June 27, 2017) (denying state's motion to dismiss plaintiffs' action challenging state's failure to adequately fund education for in accordance with constitutional sound basic education requirements.)	

To the extent that one can generalize about trends in court decisions, the striking difference between plaintiffs' 90% success rate in cases alleging noncompliance with past rulings and their 47% win rate in new constitutional cases may indicate that in times of fiscal constraint, courts will still adhere to the well-established doctrine that cost considerations cannot

affect the enforcement of established constitutional rights, although, at the same time, they may be exercising a degree of institutional caution about creating new rights that would have a substantial impact on the state's budget.

The U.S. Supreme Court has held that "[f]inancial constraints may not be used to justify the creation or perpetuation of constitutional violations."[14] State courts have also consistently upheld this doctrine generally,[15] and specifically in education adequacy litigations. As the Kentucky Supreme Court put it, "the financial burden entailed in meeting [educational funding requirements] in no way lessens the constitutional duty."[16]

Accordingly, when considering claims that students were being denied constitutionally required programs and services as a result of post-recession budget cuts, courts in states where the highest state court had previously established a constitutional right to the opportunity for a sound basic education tended to strongly enforce those rights, despite the fiscal constraints that the state was experiencing. However, where the state's highest court had not previously ruled that there was a constitutional right to a sound basic education, some state courts proved

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[14] Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 392 (1992) (addressing defendants' request to modify a consent decree remedying unconstitutional conditions of confinement for pretrial detainees). *See alos,* Watson v. City of Memphis, 373 U.S. 526, 537 (1963) ("[V]indication of conceded constitutional rights [to park desegregation] cannot be made dependent upon any theory that it is less expensive to deny than to afford them."); Shapiro v. Thompson, 394 U.S. 618, 633 (1969) ("The saving of welfare costs cannot justify an otherwise invidious classification").

[15] *See, e.g*., Klostermann v. Cuomo, 463 N.E.2d 588 (N.Y. 1984) (rejecting state's claim that they lacked funds to provide adequate services to mental health patients and stating that the state's position was "particularly unconvincing when uttered in response to a claim that existing conditions violate an individual's constitutional rights"*)*; Braam *ex rel.* Braam v. State, 81 P.3d 851, 862–63 (Wash. 2003) (upholding foster children's rights to basic services and reasonable safety, and stating "this court can order expenditures, if necessary, to enforce constitutional mandates") (quoting Hillis v. State of Wash., Dep't of Ecology, 932 P.2d 139 (Wash. 1997)); Blum v. Merrell Dow Pharm., Inc., 626 A.2d 537, 548 (Pa. 1993) ("[F]inancial burden is of no moment when it is weighed against a constitutional right.").

[16] Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 208 (Ky. 1989). The Wyoming Supreme Court articulated the applicable constitutional requirement in even stronger language. It held that "all other financial considerations must yield until education is funded." Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995).

reluctant to do so during this time of general state fiscal constraint. This judicial disinclination to create new constitutional rights may reflect a reluctance on the part of some state courts to directly confront the appropriations authority of the executive and legislative branches during difficult economic times.

"Institutional caution" also appears to have influenced the scope of the remedies issued by some of the courts that have enforced constitutional rights in compliance situations. In some of these cases, the courts have used procedural or technical devices to avoid reaching the merits of constitutional claims or to limit substantially the scope of the remedies they order if they do reach the merits on compliance claims. For example, in its 2011 *Abbott v. Burke* decision, the New Jersey Supreme Court, which had in the past issued a number of strong compliance rulings, ordered the governor and the legislature to rescind substantial budget cuts for 31 poor urban districts, but it refused, on technical grounds, to include the rest of the state's school districts in the funding restoration order. Similarly, in *Cal. Sch. Bds. Ass'n v. State*,[17] he court held that the state had violated a constitutional requirement to reimburse school districts for the costs they incur in complying with new state mandates, but it reversed the lower court's grant of injunctive relief and advised the plaintiffs to seek permission to refuse to implement future mandates through a separate judicial process.[18]

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[17]121 Cal. Rptr. 3d 696, 702–04 (Cal. Ct. App. 2011).

[18] The patterns of post-recession judicial decisions are discussed in more detail in Michael A. Rebell, *Safeguarding the Right to a Sound Basic Education in Times of Fiscal Constraint*, 75 ALB. L. REV. 1855 (2012).

Chapter Three

My updated analysis of the "money matters" debate in the state court cases (p. 34 of the main text) found that overall from 1973 through the end of 2016, the state courts throughout the United States considered the relationship between education expenditures and student outcomes in 40 cases. In 34 of them, the courts determined that there was a substantial correlation between expenditures and student outcomes. [19] In the other six cases, courts expressed uncertainty or some degree of skepticism about the proposition, but none of them definitively held that there is no such correlation.[20]

A major study by the National Bureau of Economic Research (NBER) published in January, 2015 discusses (1) whether court orders requiring states to reform their educational finance systems play a significant role in increasing school funding levels for low-income students and (2) whether these cases also increase these pupils' opportunities for high school graduation and adequate wages during adulthood. [21] The study considered the impact of state supreme court decisions in 28 states between 1971 and 2010. It concluded that school finance reforms stemming from court orders have tended both to increase state spending in lower-income districts and to decrease expenditure gaps between low- and high-income districts.

This study differentiated between equity and adequacy cases in its analysis of the impact of judicial decisions on education finance. It concluded that equity-based court-mandated

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[19] Michael A. Rebell, *The Courts' Consensus: Money Does Matter for Educational Opportunity* in ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (forthcoming, 2017.)

[20] *Ibid*.

[21] C. Kirabo Jackson, Rucker Johnson, and Claudia Persico, The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms, NBER Working Paper No. 20847 (2015), available at http://www.nber.org/papers/w20847.

reforms successfully reduced spending gaps between high- and low-income areas, but they accomplished this mostly by redistributing existing levels of funding. Adequacy-based litigations also effectively reduced spending gaps, but they tended to do so by increasing school spending over all and without reducing spending levels in higher spending districts.

In the second part of the paper, the authors discussed the positive effects of court-ordered funding reforms on students' long-term success. They found that a 20 percent increase in annual per-pupil spending for K-12 low income students leads to almost one more year of completed education. In adulthood, these students experienced 25 percent higher earnings, and a 20 percentage-point decrease in adult poverty. The authors posit that these results could reduce at least two-thirds of the achievement gap of adults who were raised in low- and high-income families.

The authors note, however, that the spending changes they analyzed occurred during a period in which average school funding levels were much lower than they are at present. It is possible, therefore, that increases in education spending could have diminishing marginal impacts, meaning that that to obtain learning gains of the same magnitude, even higher increases in spending might be required.

Similarly, a 2016 study of the impact of state aid increases on student achievement as measured by representative samples of scores on the National Assessment of Educational Progress (NAEP), Lafortune, Rothstein, and Schzenbach (2016) found that the "reforms cause increases in the achievement of students in these districts, phasing in gradually over the years

following the reform, and [22] other recent studies concluded that the implied effect of school resources on educational achievement is large."[23]

Chapters Four and Five

Two of the recent major state supreme court decisions, *Abbeville Cnty Sch. Dist. v. State of South Carolina* and *McCleary v. State of Washington,* illustrate important aspects of the comparative institutional approach for implementing successful remedies in education adequacy cases that is proposed in the text.

The South Carolina Supreme Court appeared to have a difficult time in deciding how to rule in the *Abbeville* case: it took six years after the initial oral argument on the appeal in 2008 to issue its final ruling in this case, which had originally been filed in 1993. A three-judge majority, held, over the dissent of two of their colleagues, that the current state aid system failed to provide students in the plaintiff districts with a minimally adequate education. Writing in a politically conservative state during a time of fiscal constraint, the majority obviously thought long and hard about the remedy, and about the proper roles of the court in the remedial process.

In their decision, the majority first declared that "The principle of separation of powers directs that the legislature, not the judiciary, is the proper institution to make major educational policy choices." [24] To ensure that the legislature would follow through on its policy-making

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[22] Julien Lafortune, Jesse Rothstein, and Diane W. Schzenbach. School finance reform and the distribution of student achievement. National Bureau of Economic Research Working Paper 22011 (2016.).

[23] Phuong Nguyen-Hoang and John Yinger, *Education finance reform, local behavior, and student performance*. 39 J. EDUC. FIN. 297(2013.)

[24] 767 S.E. 2d at 176.

responsibilities, however, the court pointed to remedial experiences in other states and cited as "particularly instructive"[25] the sound basic education decisions in New York[26] and Wyoming.[27] The court also directed the legislature to

> [T]take a broader look at the principal causes for the unfortunate performance of students in the Plaintiff Districts, beyond mere funding. Fixing the violation identified in this case will require lengthy and difficult discussions regarding the wisdom of continuing to enact multiple statutes which have no demonstrated effect on educational problems, or attempting to address deficiencies through underfunded and structurally impaired programming.[28]

While holding the defendants legally liable for constitutional violations, the court also stated that "fault in this case—and more importantly, the burden of remedying this constitutional deficiency—does not lie solely with the Defendants." [29] Justifying their unusual stance in assigning remedial responsibilities to the plaintiffs as well as the defendants, the court noted,

> Time and again in the Plaintiff Districts, priorities have been skewed toward popular programs. Athletic facilities and other auxiliary initiatives received increased attention and funding, while students suffered in crumbling schools and toxic academic environments. Additionally, the Plaintiff Districts' administrative costs divert funds from the classroom. The Defendants and the Plaintiff Districts must work together to set balanced priorities, and consider and apply the benefits of consolidation or cross-consolidation, which may abate those administrative costs that unnecessarily detract from resources desperately needed by students in their districts.[30]

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[25] *Id*. at 176-177.

[26] CFE v. State of New York, 801 N.E. 2d 326 (NY 2003).

[27] Campbell County School District v. State, 907 P.2d 1238 (Wyo.1995)

[28] 767 S.E. 2d at 178.

[29] *Id* at 179.

[30] *Id* at 178-179.

In short, then, the South Carolina Court went to great lengths to spell out what needed to be done, but it did so in a manner that both deferred to the legislature's prerogative to decide how the problems should be solved and also went beyond the usual adversary system parameters to indicate that the plaintiff districts needed to take some responsibility for ensuring constitutional compliance. To promote a positive dialogue among the parties that might accomplish these ends, the court ordered the plaintiffs and defendants to present a joint plan that will set forth specific, planned remedial actions.[31]

In response to the Court's order, the Speaker of the South Carolina House of Representatives established a bi-partisan task force composed of legislators, business representatives and educators including representatives from the plaintiff districts to devise a solution. On September 20, 2016, the Court issued an Order that praised the work and detailed recommendations of the House Task Force, noted that the legislature had enacted four bills in the last session that incorporated some of the Task Force's recommendations as well as other reforms, commended the legislature on their work to date, but rejected the defendants' call for the court to end its jurisdiction, and ordered the parties to submit further reports on progress toward resolving the issues the Court had identified in *Abbeville II* by June 30, 2017.[32]

The Washington Supreme Court in its 2012 *McCleary* decision also adopted a remedial approach that was consistent with the first two prongs of the *Castaneda* process discussed at pages 70-71 of the main text. That is, they deferred fully to the legislature's policy decisions on how to remedy the problem but insisted on an implementation approach that involved continuing

[31] *Id* at 661.

[32] South Carolina Supreme Court, Order of September 20, 2016, available at http://schoolfunding.info/wp-content/uploads/2017/01/Abbeville-Order-September-20-1.pdf.

judicial oversight to ensure that the reforms would be adequately funded and put into effect as soon as reasonably possible.

Specifically, after issuing an extensive decision that found that the state's funding formulas did not deliver the level of resources needed to provide all students with an opportunity to meet the state's education standards, the court accepted the "sweeping" reform plan the legislature had adopted in recent statutes, and the cost analysis and program reforms recommended by a legislative task force. It also accepted the legislature's commitment to phase in the programmatic reforms and associated substantial cost increases over a six-year period, despite the plaintiffs' request that the remedy be implemented more promptly.

To ensure that the plan would be fully implemented within this time frame, the court retained jurisdiction to monitor compliance and indicated that it would take a proactive stance to ensure that the state adhered to the six-year schedule. The legislature then formed a joint select committee that would communicate with the court on an on-going basis about the state's efforts to achieve constitutional compliance. The state pledged to submit an annual report at the conclusion of each legislative session through 2018 that would inform the court of actions taken in furtherance of constitutional compliance. The court then ordered the state to also provide plaintiffs with copies of the annual reports and allowed plaintiffs to serve written comments in response to them and to request further action by the court if they felt that the state's actions were insufficient.

In its monitoring of the state's progress in meeting its own goals over the past six years, the court has demonstrated both patience and determination. Although the state has annually increased funding for education since the court issued its order, it had not done so at a pace that is calibrated to reach full compliance by 2018. Accordingly, in January 2014, the court found the

legislature's annual report to be constitutionally unacceptable. It ordered the state to submit a complete plan for fully implementing its program of basic education for each school year between the current year and 2018 by April 30, 2014. On September 1, 2014 – in an extremely rare move for any court – the Washington Supreme Court ruled unanimously that the state was in "contempt of court." Although thereby demonstrating a resolve to ensure sufficient progress toward compliance, the court did not immediately impose any sanctions. Instead, it decreed: "If by adjournment of the 2015 legislative session, the State has not purged the contempt by complying with the court's order, the court will reconvene to impose sanctions and other remedial measures as necessary." [33]

In August 2015, the Court did impose sanctions. Finding that although some progress had been made, the State still had not adopted an acceptable "*plan* for achieving compliance by its own deadline of 2018," the Court imposed a "remedial assessment" of $100,000 per day on the State until such time as the State develops an acceptable compliance plan. In May, 2016, the legislature submitted its annual report to the Court. The report acknowledged that although funding for education has increased by $4.6 billion since 2010, substantial additional funding is needed to meet the constitutional requirement that the state pay the full costs of a "basic education." The main outstanding issue is the need for the state to fully fund salaries for teachers and other school employees and to eliminate inequities caused by the need for local school districts to pay much of these costs from local property tax levies. In a decision issued in October, 2016, the Court, deemed this action to be insufficient, but noting that its contempt finding and sanctions, "at least spurred the legislature to take action in the 2016 session,

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[33] McCleary v. State of Washington, Sup. Ct. No. 84362-7, p.5 (September 11, 2014), available at http://www.scribd.com/doc/239448673/Court-order-on-McCleay-9-11-14

committing itself to complete its task by the end of the 2017 session," the Court kept the monetary sanctions in place, established a briefing schedule for determining shortly after the end of the 2017 session whether compliance will have been achieved, and stated that upon reviewing the parties' submissions at that time, it will determine what, if any, additional actions to take.[34]

During the 2017 session, the legislature enacted a bill that will increase funding by $7.3 billion over four years. According to Governor Jay Inslee, this bill " at long last, meets our constitutional obligations to fully fund basic education, and addresses the responsibilities we have under the *McCleary* decision to equitably fund our schools." The attorney for the plaintiffs, however, has countered that the state's funding plan falls far short of what the Supreme Court has ruled is the need for ample funding of all the costs to provide basic education. The Court is expected to issue a final ruling on whether the state's latest effort does, indeed, satisfy the court orders during the fall of 2017.

A number of courts have recently considered adequacy claims that extend beyond basic school funding issues. One such litigation began with a June 2014 trial court ruling in *Vergara v. State of California*.[35] There, the trial judge preliminarily enjoined the operation of California's teacher tenure, dismissal, and seniority-order lay-off statutes on equal protection grounds. That decision was, however, overturned by the California Court of Appeals in April 2016; [36] the Court held that the plaintiffs did not demonstrate that the challenged statutes inevitably caused this group of students to receive a lower quality education because the statutes do not address teacher

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[34] For a more detailed discussion of these issues, copies of the courts' orders, and updated information on Further developments, see the Schoolfunding.info website, at http://schoolfunding.info/litigation-map/washington/#1485219774547-b5a4cfda-64c4.

[35] 2014 WL 2598719 (Cal.Super. 2014) (Trial Order)
[36] 209 Cal. Rptr.3d 532 (Cal. Ct. App, 2016)

assignment, and because the "grossly ineffective teachers" were not an identifiable class under equal protection analysis.[37] The California Supreme Court declined to hear the plaintiffs' appeal from this ruling.

Two groups of New York plaintiffs filed similar suits that challenged New York's teacher tenure, dismissal, and seniority lay-off statutes, The New York plaintiffs claimed that the teacher tenure and dismissal statutes allow ineffective teachers to remain in their classrooms and that these statutes have a "direct effect" on a student's right to receive a sound basic education. Those cases, now known as *Davids v. State of New York* were consolidated, and, in March 2015, the trial judge issued an order that denied the motions to dismiss the case filed by the state, the City of New York, and the teacher's unions. [38] Stating that under the Court of Appeals' ruling in *CFE v. State of New York,*[39] children are entitled to "minimally adequate teaching of reasonably up-to-date basic curricula…by sufficient personnel adequately trained to teach those subject areas," the judge in *Davids* held that the plaintiffs had stated a cause of action that would permit them to proceed to trial and to attempt to prove the facts that they had alleged.

In 2017, a Minnesota appeals court dismissed a claim that children in public schools throughout the State of Minnesota, including Minneapolis, Saint Paul, and their adjacent suburban communities, are largely segregated by race and socioeconomic status, and that a "segregated education is *per se* an inadequate education under the Education Clause of the

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[37] *Id.* at 646, 647.

[38] Davids v. State of New York, Index No. 10115/14 (S.Ct. Richmond County, March, 2015). This decision is also currently on appeal.

[39] 655 N.E. 2d 661 (N.Y. 2d, 1995).

Minnesota State Constitution." *Alejandro Cruz-Guzman v. State of Minnesota.*[40] The Court held that the issues raised "are so enmeshed with political elements that they present a nonjusticiable political question."[41] The New York Court of Appeals in 2003 had also dismissed a claim that racial segregation in the Rochester, New York area was denying students there the opportunity for a sound basic education because " if the State truly puts adequate resources into the classroom, it satisfies its constitutional promise under the Education Article, even though student performance remains substandard."[42]

A New York appeals court also refused in 2016 to extend the right to a sound basic education to students in public charter schools.[43] Plaintiffs there claimed that charter schools in Western New York were receiving almost 40% less funding than traditional public schools and, that they, therefore, lacked essential facilities such as "sufficient classrooms, gymnasiums, libraries, science labs, computer labs, cafeterias, common rooms, employee offices, and athletic fields." The appeals court, reversing the trial court's ruling, stated that the purpose of the constitution's sound basic education provision was "to constitutionalize the traditional public school system, not to alter its substance."[44] The Court held that if the traditional public school system offers students a sound basic education, "then the constitutional mandate is satisfied," indicating that students who

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[40] Alejandro Cruz-Guzman v. State of Minnesota , Index No. 27-CV-15-19117 (Minn Ct App,, March 13, 2013),,sl. Op at 3, available at http://schoolfunding.info/wp-content/uploads/2017/04/Minnesota-deseg-adequacy-case.pdf

[41] *Id* at12.

[42] Paynter v. State of New York, 797 N.E.2d 1225. 1229 (NY, 2003); *see also*, New York Civil Liberties Union v. State, 824 N.E.2d 947, 950 (N.Y. 2005) (valid cause of action may be based on a "failure of the State to provide "resources"—financial or otherwise…").

[43] Brown v. State of New York, 39 N.Y.S.3d 327 (4th Dep't, 2016)

[44] *Id*. at. 331.

choose to go outside that system by attending charter schools that are "governed by an independent, self-selecting board of trustees and are exempt from a multitude of rules and regulations that are applicable to traditional public schools," do so without constitutional protection.[45]

The Court further stated that, assuming *arguendo* that schools in the Buffalo and Rochester city school districts are not providing their students the opportunity for a sound basic education, providing more funding to charter schools cannot be considered a proper remedy for such a deficiency because" to divert public education funds away from the traditional public schools and towards charter schools would benefit a select few at the expense of the "common schools, wherein all the children of this State may be educated."[46]

In a book that is now in press,[47] I argue that the schools' responsibility to prepare students effectively to become capable citizens should be considered integral to the right to an adequate education. This argument is based, among other things, on the fact that at least 32 state highest courts have declared that preparing students for capable citizenship is the prime purpose or a prime purpose of public education. This forthcoming book also emphasizes the significance of the fact that the U.S. Supreme Court left open in *San Antonio Sch. Dist. v. Rodriguez*[48] the question of whether a right to an education that prepares students to be capable voters and to

[45] *Id* at 332.

[46] *Id* at 333

[47] MICHAEL A. REBELL, FLUNKING DEMOCRACY: SCHOOLS, COURTS AND CIVIC PARTICIPATION (FORTHCOMING, UNIV.OF CHICAGO PRESS, 2018.)

[48] 411 U.S. 1 (1973).

exercise their first amendment free speech rights constitutes a fundamental interest under the federal equal protection clause.

Chapter Six

Michael Paris, in FRAMING EQUAL OPPORTUNITY: LAW AND THE POLITICS OF SCHOOL FINANCE REFORM (2010) provides an informative case study of the public engagement process that facilitated implementation of court-ordered reforms in Kentucky. (*See*, main text at 95-96). Paris also discusses an important role that courts play in promoting social reform through “legal translation” that often sets the terms of political debate and parameters of action. *Id* at 25-26.

The “Institutional caution” displayed in many of the 30 sound basic education court decisions since the 2008 recession that are discussed above in relation to Chapter Two pose additional “Practical Realities” that must be confronted. The reluctance of some of the state courts since the recession of 2008 to declare that students have an enforceable right to a sound basic education in new cases and to limit the scope of the remedies they provide in the some of the cases in which they do enforce existing rights is troublesome.

Obviously, courts must take economic and political realities into account, and the severe economic downturn that occurred in 2008 as well as the changed political and economic climate that has resulted since then do justify reconsideration of prerecession spending levels. But this reconsideration should not, and need not, ignore or limit the constitutional rights of millions of school children. In fact, a firm judicial stance rather than “institutional caution” is precisely what is needed to protect these rights in difficult times, especially for high need students in poorly funded school districts.

The comparative institutional remedial approach advocated in this book provides a

framework that can allow courts to uphold students' sound basic rights while, at the same time, permitting the political branches to respond to fiscal constraints. An effective inter-branch dialogue can proceed during difficult economic times if all concerned keep in mind that constitutional compliance calls for the provision of constitutionally required resources, supports, and services --- but it does not sanctify any particular spending level. In other words, states may properly reduce educational appropriations during times of fiscal constraint by focusing on cost-efficient and cost-effective practices that can reduce costs without denying students the essential resources, services, and supports that they need to obtain a sound basic education.

Cost reduction must be undertaken carefully, with a scalpel not a meat ax. Often, policymakers tend to impose mandatory cost reductions—often through across-the-board percentage budget cuts—without sufficient regard for the impact that these cuts will have on students' core educational services. Constitutional requirements—at least those that apply to educational appropriations[49]—dictate a very different course. When vital educational services are at issue, the state should be required to demonstrate how necessary services will be maintained despite a reduction in appropriations.

The U.S. Supreme Court has specifically held that although a state cannot deny important constitutional benefits for reasons of cost, economic factors may be considered, "for example, in choosing the methods used to provide meaningful access" to services[50] and in tailoring modifications to consent decrees.[51] The Court has emphasized, however, that cost constraints

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[49]As discussed at pp. 24-25 of the main text, in most state constitutions, the affirmative constitutional obligations that apply to education do not generally apply to other social welfare areas such as housing, welfare, and health. Respecting students' rights to a sound basic education during difficult economic times will not, therefore, create a slippery slope, requiring similar treatment for all other social services.

[50] Bounds v. Smith, 430 U.S. 817, 825 (1977).

[51] Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 392–93 (1992). *See also* Wright v. Rushen, 642

cannot allow remedies to fall beneath the threshold that would be required to vindicate the constitutional right.[52] Applied to the current situation, this means that although states cannot reduce educational services below appropriate sound basic education levels, they can respond to immediate fiscal exigencies by taking specific actions to provide the constitutionally mandated level of services more efficiently.

The states cannot, however, satisfy this obligation by merely telling school districts to "do more with less." The states clearly have an on-going responsibility to ensure that local school districts maintain a constitutionally appropriate level of resources, services, and supports even during difficult economic times, and the state has a commensurate responsibility to ensure that they have sufficient resources to do so.[53]

The courts' principled approach to constitutional issues, their ability to marshal and assess evidence, and their institutional advantages in remaining committed to an issue until it is appropriately resolved can be critical in this endeavor. Consistent with the *Castaneda* approach

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F.2d 1129, 1134 (9th Cir. 1981) (advising trial court in a prison reform case that the remedy should not be "unnecessarily expensive").

[52] In Rufo, while finding that costs "are appropriately considered in tailoring a consent decree modification," the Court emphasized that the modification in question could "not create or perpetuate a constitutional violation" and "should not strive to rewrite a consent decree so that it conforms to the constitutional floor." 502 U.S. at 391–93. Similarly, the Court in Wright reaffirmed that "costs cannot be permitted to stand in the way of eliminating conditions below Eighth Amendment standards." *Wright*, *supra*, note 53, 642 F.2d at 1134.

[53] As the New York Court of Appeals put it in rejecting the state's allegations of financial mismanagement by the New York City Board of Education in the *CFE* litigation, "both the Board of Education and the City are 'creatures or agents of the State,' which delegated whatever authority over education they wield. . . . Thus, the State remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights." Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326, 343 (N.Y. 2003) [*CFE II*] (citations omitted). *See also* Lake View Sch. Dist. No. 25 v. Huckabee, 220 S.W.3d 645, 657 (Ark. 2005) ("[I]t is the *State* that must provide a general, suitable, and efficient system of public education to the children of this state under the Arkansas Constitution."); Campbell Cnty. Sch. Dist. v. State, 907 P.2d 1238, 1279 (Wyo. 1995) ("Supporting an opportunity for a complete, proper, quality education is the legislature's paramount priority . . . .").

discussed in chapter five, courts should allow executive agencies and legislatures broad discretion in determining how to reduce costs, so long as the political branches demonstrate that the methods that they have chosen do not reduce the availability of programs, services and supports below constitutionally-mandated levels.

An example of the type of procedures that states can adopt in order to ensure that adequate resources are actually provided to all students on a stable, permanent basis, is provided by the "Act 57" procedures enacted by the Arkansas legislature in response to the court's orders in *Lake View School District No. 25 v. Huckabee*.[54] This statute requires the House and Senate education committees on an on-going basis to

> (1) Assess, evaluate, and monitor the entire spectrum of public education across the State of Arkansas to determine whether equal educational opportunity for an adequate education is being substantially afforded to the school children of the State of Arkansas and recommend any necessary changes;
>
> (2) Review and continue to evaluate what constitutes an adequate education in the State of Arkansas and recommend any necessary changes ….
>
> (3) Evaluate the effectiveness of any program implemented by a school, a school district, an education service cooperative, the Department of Education, or the State Board of Education and recommend necessary changes…
>
> (7) Review and continue to evaluate the amount of per-student expenditure necessary to provide an equal educational opportunity and the amount of state funds to be provided to school districts, based upon the cost of an adequate education and monitor the expenditures and distribution of state funds and recommend any necessary changes….[55]

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[54] Lake View Sch. Dist. No. 25 of Phillips Cnty. v. Huckabee, 91 S.W.3d 472 (Ark. 2002).

[55] ARK. CODE ANN. § 10-3-2102(a) (2012). The Arkansas Supreme Court emphasized the importance of these procedures for meeting that state's constitutional obligations:

> Without a continual assessment of what constitutes an adequate education,

The Arkansas procedures constitute a clear, common sense prescription for the steps a state needs to take in order to make an informed decision each time budget allocations for public education are reconsidered or changed. Such procedures are especially vital when the state is considering substantially reducing previously established funding levels. Judicial monitoring of the state's adherence to these procedures, especially during times of fiscal constraint, is appropriate and necessary. In Arkansas, both the legislature[56] and the court[57] recognized such judicial review would be proper.

The National Commission on Equity and Excellence in Education has called upon all states to adopt procedures similar to those in the Arkansas statute in order to ensure continued

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> without accounting and accountability by the school districts, without an examination of school district expenditures by the House and Senate Interim Committees, and without reports to the Speaker of the House and the President of the Senate by September 1 before each regular session, the General Assembly is 'flying blind' with respect to determining what is an adequate foundation-funding level.

Lake View Sch. Dist. No. 25 of Phillips Cnty. v. Huckabee, 220 S.W.3d 645, 654–55 (Ark. 2005).

For discussions of the legislature's responses to the Act 57 requirements, *see*, Picus Odden & Associates, Desk Audit of the Arkansas School Funding Matrix and Developing an Understanding of the Potential Costs of Broadband Access for All Schools (2014), available at http://picusodden.com/wp-content/uploads/2014/09/9-5-2014-Picus-Odden-Asso.-AR-Desk-Audit-9-5-14a.pdf, Arkansas Bureau of Legislative Research, The Resource Allocation of Foundation Funding for Arkansas School Districts and Open-Enrollment Charter Schools. available at http://www.arkleg.state.ar.us/assembly/2013/Meeting%20Attachments/410/I12647/Resource%20Allocation%20Report%20BLR.pdf and Arkansas Association of Education Administrators, A Review of Adequacy in Financing Public Education in Arkansas (2016), available at http://c.ymcdn.com/sites/www.theaaea.org/resource/resmgr/Resources_Directory/A_Review_of_Adequacy_2016_.pdf.

[56] The statute specifies that "[a]s a guidepost in conducting deliberations and reviews, the committees shall use the opinion of the Supreme Court in the matter of Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 91 S.W.3d 472 (2002)." *Id.* § 10-3-2102(b).

[57] After finding that the legislature had not appropriately followed these statutory requirements for the previous two years, the court directed the state to follow these procedures in the future and emphasized that "[t]he amount of funding shall be based on need and not funds available." Lake View Sch. Dist, 220 S.W. 3rd at 654–55 n.4.

constitutional compliance with sound basic education requirements. Specifically, they recommended that the states:

> (1) Identify and publicly report the teaching staff, programs and services needed to provide a meaningful educational opportunity to all students of every race and income level, including English language learners and students with disabilities;
>
> (2) Develop systems to ensure that districts and schools effectively and efficiently use all education funding to enable students to achieve state content and performance standards and to meet state constitutional requirements;
>
> (3) Periodically review, develop performance evidence and update their finance systems to respond to changes in academic standards, students demographics, program research, costs and other factors relevant to maintaining meaningful educational opportunities;
>
> (4) Create fair funding formulas that ensure that funding is equitable and publicly reported for all public schools in the state and district;
>
> (5) Establish regular state-level data and information systems to provide guidance and feedback to ensure that all students in every school are in fact being provided the opportunity for a sound basic education.[58]

Adoption and adherence to the above procedures would establish permanent mechanisms for ensuring that all students are being provided the opportunity for a sound basic education on an on-going basis, whatever the current economic and political conditions in the state.

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[58] *See*, National Commission on Equity and Excellence in Education, For Each and Every Child-- A Strategy for Education Equity and Excellence 18-19 (U.S. Dep't of Education, 2013); *see also*, Rebell, *Safeguarding the Right to Sound Basic Education*, *supra*, note 18.