

The Campaign for Educational Equity  
Policy Paper No. 1

**LITIGATION AND EDUCATION REFORM:  
THE HISTORY AND THE PROMISE OF THE EDUCATION ADEQUACY MOVEMENT**

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## PREFACE

The Campaign for Educational Equity at Teachers College, Columbia University was launched in June 2005 and is dedicated to closing the gaps in educational access, expectations and outcomes that separate America's advantaged and disadvantaged students. To this end, The Campaign is committed to expanding and strengthening the national movement for quality public education and takes a *comprehensive* approach to educational equity, rooted in the belief that because educational inequity poses a multi-faceted challenge, any response must be equally comprehensive. This paper is the first in an ongoing series of policy papers that The Campaign will produce on a wide range of topics that will address a comprehensive approach to closing the gaps.

One critically important vehicle for attacking the inequities that plague our schools and that in turn produce or exacerbate the inequality in American society is education adequacy litigation. This paper traces the history of the education adequacy movement and details its hard-won successes in courts across the country.

The education adequacy movement began more than 30 years ago to ensure adequate funding for a quality education. The term "adequacy" is really a misnomer because the movement has in fact been about quality and high standards. Tying together and advancing a century of opportunity-oriented reforms, it has developed into the most vital present-day education rights movement. The courts' rulings, based on their states' constitutions, have revived and enhanced the principles of the American public school tradition and established education as a child's inviolable right. Education adequacy cases have also reinforced the standards movement. By strengthening and highlighting educational standards and ensuring that schools have the resources and instructional capacity to provide all of their students with the opportunity for a quality education, these cases are pressing states to fulfill the promise of standards-based reform.

The Equity Campaign seeks to apply more broadly the lessons of the adequacy movement—the importance of standards-based reform, accompanied by adequate resources, accountability and instructional capacity. The victories won by the advocates of education adequacy provide valuable lessons that should be applied to the formulation of state and federal law and policy.

## EXECUTIVE SUMMARY

Our nation has long aspired to provide educational opportunity to all of our children. Over the years, the capacity of the public schools to educate the country's students has grown enormously. But the work is not done. In spite of steady improvements in the overall caliber of our nation's public schools and the educational attainment of many high school graduates, wide achievement gaps persist between poor and minority students, on the one hand, and their peers in other groups. The reasons for these achievement gaps are clear: currently, the vast majority of poor and minority schoolchildren who have enormous extra learning needs attend schools that actually receive less funding and have fewer qualified teachers, larger classes, inferior facilities and poorer program offerings than schools attended by more affluent white students.

Over the last 15 years, states have invested in reforms to raise standards for all children and in assessment systems that attempt to measure school and student success. But inequitable state education finance systems continue to deprive many poor and minority children of the tools necessary to meet standards. These fiscal inequities, which have stymied education reform for decades, are finally on the verge of being dismantled. Lawsuits challenging state methods for funding public schools have been launched in almost all of the states, and in recent years these cases have been phenomenally successful. Since 1989, plaintiffs have prevailed in 21 of the 28 (75 percent) highest state court cases that have been based on "adequacy claims" that all students must be provided the resources they need for a meaningful education and in meeting the challenging new state standards.

This movement to ensure adequate funding for a quality education began more than 30 years ago. Tying together and advancing a century of opportunity-oriented reforms, it has developed into the most vital present-day education rights movement. The courts' rulings, based on their states' constitutions, have revived and enhanced the principles of the American public school tradition and established education as a child's inviolable right. Education adequacy cases have also reinforced the standards movement. By strengthening and highlighting the educational standards designed by state lawmakers, promoting dialogue with state legislatures and education departments, and, most importantly, ensuring that schools have the resources and instructional capacity to provide all of their students, even those with more extensive educational needs, with the opportunity for a quality education, these cases are pressing states to fulfill the promise of standards-based reform.

## DEFINING ADEQUACY

While the term "education adequacy" seems to connote a very minimal sense of what a basic education should be, courts have arrived at an understanding of "adequate" that, in essence, means a basic "quality" education that provides students with the essential skills they need to function productively in contemporary society. There is a virtual consensus among the many state courts that have dealt with this issue that

- The constitutional standard for a basic quality education is an education that prepares students to (1) function productively as capable voters, jurors and civic participants in a democratic society; and (2) compete effectively in the economy.
- The types of knowledge and skills that students need to be effective citizens and workers are (1) sufficient ability to read, write, and speak the English language and sufficient knowledge of fundamental mathematics and physical science to enable them to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable them to make

informed choices with regard to issues that affect them personally or affect their communities, states and nation; (3) sufficient intellectual tools to evaluate complex issues and sufficient social and communication skills to work well with others and communicate ideas to a group; and (4) sufficient academic and vocational skills to enable them to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

- The essential resources students need to acquire this knowledge and these skills are (1) qualified teachers, principals and other personnel; (2) appropriate class sizes; (3) high-quality early childhood and preschool services; (4) adequate school facilities; (5) supplemental programs and services for students from high-poverty backgrounds including summer and after school programs; (6) appropriate programs and services for English language learners and students with disabilities; (7) instrumentalities of learning including, but not limited to, textbooks, libraries, laboratories and computers; and (8) a safe, orderly learning environment.

### **ADEQUACY'S LESSONS FOR NATIONAL AND FEDERAL POLICY**

The adequacy movement has much to contribute to the national and federal policy conversations. The cases provide broad and balanced data on a wide range of educational policy issues; they test opposing views among experts in the crucible of trial; and they constitute a practical laboratory for implementing remedies in a sustained manner, with extensive oversight and evaluation. These pragmatic analyses have shown us that meeting higher proficiency goals requires states, localities and the federal government to sustain a comprehensive educational enterprise. This enterprise must include adequate systemic funding based on actual costs and an accountability system to ensure effective spending that includes rigorous standards, multiple measures of school quality and student achievement, accurate information, and building instructional capacity in low performing schools in order to achieve permanent school improvement. The role of state and federal education policy should be to support and “incentivize” this full agenda.



## I. INTRODUCTION

Americans can be proud that our nation has long aspired to provide educational opportunity to all of our children. This ideal is grounded in the beliefs of our founding fathers and articulated in their revolutionary vision of educational opportunity for a democratic America. Though not always realized—as evidenced during slavery—our endeavors to realize this goal stretch back to the common-school reforms in the 19<sup>th</sup> century that established a national system of public education based on the then-radical principle that all children, whether rich or poor, should attend the same schools and receive the same quality education. These efforts encompass the civil-rights reforms with the landmark U.S. Supreme Court decisions in *Brown v. Board of Education* that extended the concept of equal educational opportunity to students of all races and creeds. And they include the standards-based reforms adopted by virtually every state to ensure that all public education is based on challenging academic standards. Over the years, the persistence of reformers dedicated to fulfilling this democratic imperative has greatly expanded the franchise and the capacity of the public schools to educate the country's students.<sup>1</sup> But the work is not done.

Today, no national goal remains more important or more urgent than ensuring the opportunity for a quality education for all of our children. In spite of steady improvements in overall caliber of our nation's public schools and the educational attainment of members of our society, wide achievement gaps persist between poor and minority students and their peers in other groups. The reasons for these achievement gaps are clear: currently, the vast majority of poor and minority schoolchildren who have enormous extra learning needs attend schools that actually receive less funding and have fewer qualified teachers, larger classes, lesser facilities and poorer program offerings than schools attended by more affluent white students.<sup>2</sup>

Fifty years after the U.S. Supreme Court's decision in *Brown v. Board of Education*, states and localities around the country are still struggling to make education a right "available to all on equal terms." Over the last 15 years, states have invested in reforms to raise standards for all children and in assessment systems that attempt to measure school and student success. State education departments and local school districts employ a variety of programs and practices aimed at improving the achievement of low-performing schools and students. But inequitable state education finance systems continue to deprive many poor and minority children of the tools necessary to meet standards. Rooted in our country's tradition of local control of schools, most state systems rely on local property taxes for the majority of school funding. This method results in great disadvantages for students from low-property wealth districts.

These fiscal inequities, which have stymied education reform for decades, are on the verge of being dismantled. Lawsuits challenging state methods for funding public schools have been launched in almost all of the states and in recent years these cases have been phenomenally successful: since 1989, plaintiffs have prevailed in 21 of 28 cases that have sought to ensure that all students are provided the resources they need for a meaningful education and to meet the challenging new state standards. As noted education journalist and author Peter Schrag puts it, after

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<sup>1</sup> Michael A. Rebell, "Fiscal Equity Litigation and the Democratic Imperative," *Journal of Education Finance*, Vol. 24, No.1: 23-50. See also Michael A. Rebell, "Adequacy Litigations: A New Path to Equity?" in Janice Petrovitch and Amy Stuart Wells, eds., *Bringing Equity Back: Research for a New Era in American Educational Policy* (New York: Teachers College Press, 2005).

<sup>2</sup> A study by the Education Trust reveals that in more than half of the states, the highest poverty school districts received fewer resources than the lowest poverty districts. Across the country more than \$900 less is spent per student in the highest poverty districts than in the most affluent districts. *The Funding Gap 2005* (Education Trust, 2005), 2. See also *Beating the Odds IV: A City-By-City Analysis of Student Performance and Achievement Gap on State Assessments Results from 2002-2003 School Year* (Council of the Great City Schools, 2004).

*Brown*, “adequacy looms as the next, increasingly important milestone. In the effort to realize the great promise of education, this may be our ultimate test.”<sup>3</sup>

With the passage of the federal No Child Left Behind Act of 2001 (NCLB), the federal government has taken a more central role in education than ever before. Its mandates affect state, district, and school policies and practices. It reaches into nearly every public school classroom to affect teaching and learning nationwide.

At the same time, state court cases have begun to focus on the concrete questions of what resources are needed to provide the opportunity for an adequate education to all students; assess the shortfalls in these resources; and order states to bridge these resource and opportunity gaps. If federal and state actions operate at cross purposes, a unique historical moment to provide millions of poor and minority students a meaningful educational opportunity—and better prepare all of our students to function productively as citizens in a democratic society and compete in the global economy—will have been wasted. To guarantee against this, national policy makers must thoroughly understand the nature of the state-level reforms being engendered by the adequacy movement.

This paper is intended to build such an understanding. It describes how the school funding litigations have evolved and coalesced into a major national movement, winning student rights and opportunities with gathering momentum state by state. The paper concludes by stressing the importance of linking this growing state-based movement with federal education policy and reform efforts if we are to actually achieve the goal of providing all students “a fair, equal and substantial opportunity for a high-quality education.”<sup>4</sup>

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<sup>3</sup> Peter Schrag, *Final Test: The Battle for Adequacy in America's Schools* (New York: New Press, 2003).

<sup>4</sup> No Child Left Behind Act of 2001, 20 USC 6301 et seq.

## II. HISTORICAL PERSPECTIVES

### A. HOW FAR WE HAVE COME

The history of public education in this country has been one of slow but steady progress toward the provision of opportunity for a quality education for all of our children. In the country's early years, our founders expressed the urgent need to afford educational opportunity to the nation's citizens; they believed that, without an educated citizenry, the future of their fledgling democracy would be in jeopardy. Public education advocates like Thomas Jefferson and Benjamin Rush recognized that the rugged individualism of the new American character had to be tempered with republican civic virtues. Fashioning such virtues and ensuring their perpetuation from generation to generation was to be primarily the role of the schools. Jefferson and John Adams both stressed the need to alter radically America's education system in order to expand knowledge and "raise the lower ranks of society nearer to the higher."<sup>5</sup>

State constitutions of the 18<sup>th</sup> century reflected this radical democratic view of the importance of education. For example, the Constitution of the Commonwealth of Massachusetts proclaims:

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of the Legislators, and Magistrates, in all future periods of the Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the...public schools and grammar schools in the towns.<sup>6</sup>

In the 19<sup>th</sup> century, Horace Mann and other proponents of the common school movement took seriously this revolutionary vision of education opportunity that had been articulated by the founding fathers. They began to implement that vision by replacing the prior patchwork of private schools, religious schools and pauper schools with a single school system that was made available to the children of the rich and the children of the poor.<sup>7</sup> Regrettably, of course, not all children were always included in this vision. During the period of slavery in the United States, education was denied to slaves and the children of slaves.

The fierce political battle to implement these common school reforms culminated, in the latter half of the 19<sup>th</sup> century, in the incorporation in dozens of state constitutions of provisions that guaranteed the establishment of "a system of free common schools in which all the children in the state may be educated."<sup>8</sup> Some states further emphasized the importance of fully educating all citizens by calling for a "*thorough and efficient* system of common schools throughout the state."<sup>9</sup>

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<sup>5</sup> David McCullough, *John Adams* (New York: Simon and Schuster, 2001), 364. See also Thomas Jefferson, "Letter to John Adams, October 28, 1813" *The Founders' Constitution* (Chicago: The University of Chicago Press and the Liberty Fund, 2000), Volume 1, Chapter 15, Document 61. Retrieved from:

<http://press-pubs.uchicago.edu/founders/documents/v1ch15s61.html>. "This [bill] on education would [raise] the mass of the people to the high ground of moral respectability necessary to their own safety and to orderly government...I have great hope that some patriotic spirit will... call it up and make it the keystone of the arch of our government."

<sup>6</sup> Massachusetts Constitution, Chapter V, Section 2, originally enacted in 1780.

<sup>7</sup> Michael A. Rebell, "Adequacy Litigations: A New Path to Equity?" in Janice Petrovich and Amy Stuart Wells, eds., *Bringing Equity Back: Research for a New Era in American Educational Policy* (New York: Teachers College Press, 2005).

<sup>8</sup> New York Constitution, 1894, Article XI, Section 1.

<sup>9</sup> Ohio Constitution, 1851, Article VI, Section 2; emphasis added.

Ironically, however, shortly after the common-school movement had achieved this constitutional triumph, much of its dynamic egalitarian thrust waned. As public school systems expanded at the end of the 19<sup>th</sup> century through compulsory education laws and the absorption of large numbers of immigrants in the urban centers, the original common school vision tended to atrophy, and the public schools increasingly became mechanisms for political acculturation and occupational sorting.<sup>10</sup> The blunting of this egalitarian ideal most heavily affected the descendants of the former slaves. Children of African descent had, for the most part, been excluded from the first common schools.

Sparked by *Brown v. Board of Education*, the civil-rights movement revived the common school ideals and sought to extend educational opportunity to all children regardless of race. In 1965, to facilitate and accelerate the dismantling of segregated school systems, Congress enacted the federal Elementary and Secondary Education Act (ESEA). Grounded in the principles of *Brown*, and part of President Lyndon Johnson's "war on poverty," the law was enacted specifically to expand educational opportunities for poor children:

...the Congress hereby declares it to be the policy of the United States to provide financial assistance...to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute to meeting the special educational needs of educationally deprived children.<sup>11</sup>

In the 1980s, international comparisons revealed poor performance by American students, especially in science and mathematics, and U.S. Department of Education assessments showed that few American students had "the capacity for complex reasoning and problem solving."<sup>12</sup> Concerns about American's future ability to compete in the global economy culminated in the 1989 National Education Summit, convened by President George H. W. Bush and attended by all 50 of the nation's governors and a cadre of major corporate CEOs, which resolved to articulate national educational goals and to establish explicit standards for educational achievement in each of the states. The Summit launched the standards-based reform movement, which promotes excellence and equity by establishing high expectations for all students and ensuring meaningful educational opportunities, in particular for poor and minority students.

Standards-based reform is grounded in substantive content standards in English, mathematics, science, social studies and other major subject areas. These content standards are usually set at levels high enough to meet the competitive requirements of the global economy. Once content standards are established, every other aspect of the education system—teacher training, teacher certification, curriculum frameworks, textbooks and other instructional materials, and student assessment—should be overhauled to conform to these standards. The aim is to create a seamless web of teacher preparation, curriculum implementation and "instructionally supportive"<sup>13</sup> assessments, all coming together to create a coherent system that will result in significant improvements in achievement for all students. A primary tenet of standards-based reform is that virtually all students can meet these high

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<sup>10</sup> See M.B. Katz, *The Irony of Early School Reform: Educational Innovation in Mid-Nineteenth Century Massachusetts* (New York: Teachers College Press, 2001). See also D.B. Tyack, *The One Best System: A History of American Urban Education* (Cambridge, MA: Harvard University Press, 1974).

<sup>11</sup> Section 201, The Elementary and Secondary School Act. Public Law 89-10 (April 11, 1965).

<sup>12</sup> National Assessment of Educational Programs, *America's Challenge: Accelerated Academic Achievement* (Washington, D.C., 1990).

<sup>13</sup> W. James Popham, *America's "Failing" Schools: How Parents and Teachers Can Cope with No Child Left Behind* (New York: RoutledgeFalmer, 2004), 83-92.

expectations if given resources for a genuine opportunity.<sup>14</sup> By the early 1990s, nearly every state had made a commitment to establish thoroughgoing statewide standards that identify what students need to know and be able to do, ensure properly trained teachers to provide instruction aligned with the standards, and provide the books, facilities and other resources necessary for proper instruction in accordance with the standards.

As a result of a long and continuing commitment to educational opportunity, the United States has made enormous strides toward expanding the capacity of the public school system to educate all students. Most of America's students go to schools in their own communities that are equipped with the resources, teachers, books and libraries, labs and technology they need to succeed, and a majority of American children graduate from high school prepared to be productive citizens and to take their places in institutions of higher learning or in the world of work.

Today, scores on the SATs<sup>15</sup> are at the highest levels ever, even though a much broader group of students are taking them.<sup>16</sup> Many scores on the National Assessment of Educational Progress (NAEP), particularly in math and early reading, are also at 30-year highs.<sup>17</sup> Graduation rates have been climbing steadily since 1972. Public schools provide a richer curriculum to more students, including more poor and English language learner (ELL) students than ever before.<sup>18</sup> More students are going to college, and minorities are increasingly among those ranks.<sup>19</sup> African Americans have made significant gains in college enrollment in the past 20 years and now go to college at rates approaching those of white students.<sup>20</sup> In addition, rural Americans now have more years of schooling than ever before.<sup>21</sup>

## B. HOW FAR WE HAVE TO GO

In spite of this progress, *Brown's* vision of equal educational opportunity for minority and poor children is still far from realization. All across this country, dual education systems exist. Today over 75 percent of Latino and over 70 percent of African-American public school students in the United States attend predominately minority schools—a greater percentage than attended such segregated schools a decade ago.<sup>22</sup> Poor children and children of color are more likely to be taught by unqualified

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<sup>14</sup> "All children can learn; and we can change our system of public elementary, middle, and secondary education to ensure that all children do learn at world-class levels." New York Board of Regents, *All Children Can Learn: A Plan for Reform of State Aid to Schools* (1993).

<sup>15</sup> In his January 2005 essay, "Is Public Education Working? How Would We Know?" (Retrieved from: [www.commondreams.org/views05/0103-22.htm](http://www.commondreams.org/views05/0103-22.htm)), Robert Freeman writes, "Last year's SAT scores were the highest in 30 years. English scores were the highest in 28 years. Math scores were the highest in 36 years. The scores were at record levels for all ethnic groups: whites; Asian Americans; African Americans; Native Americans; and Latinos. And they were achieved by the broadest test-taking pool in testing history. Forty-eight per cent of the nation's 2.9 million high school seniors took the test—a record. Thirty-six percent of the test takers were minorities, another record."

<sup>16</sup> Center on Education Policy, *Do You Know the Latest Good News About American Education?* (August 2005), 24.

<sup>17</sup> *Ibid*, 14-20.

<sup>18</sup> *Ibid*, 9-11. More students from all ethnic groups are taking advanced courses in math and science, and the gender gap in these courses has almost disappeared.

<sup>19</sup> See, e.g., William Mathis, "Financing America's Future: How Money Counts," in Carl D. Glickman, ed., *Letters to the Next President: What We Can Do About the Real Crisis in Public Education* (New York: Teachers College Press, 2004).

<sup>20</sup> The American Council on Education, Annual ACE Report Shows Minority College Enrollment Continues to Climb but Gaps Still Persist (February 14, 2005). Retrieved from: <http://acemail.nche.edu/hena/readArticle.cfm?articleID=1223>.

<sup>21</sup> Economic Research Service, USDA Briefing Room, "Rural Labor and Education: Rural Education." Retrieved from: [www.ers.usda.gov/Briefing/LaborAndEducation/ruraleducation](http://www.ers.usda.gov/Briefing/LaborAndEducation/ruraleducation).

<sup>22</sup> Gary Orfield and Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality* (The Civil Rights Project, Harvard University, 2005), 13; Gary Orfield, "Conservative Activists and the Rush Toward Resegregation," in J. Heubert, ed., *Law and School Reform: Six Strategies for Promoting Equity* (New Haven: Yale University Press, 1999), 39-41; Gary Orfield, *Schools More Separate: Consequences of a Decade of Resegregation* (The Civil Rights Project, Harvard University,

teachers than other children.<sup>23</sup> Secondary-school students in high-poverty areas are twice as likely as those in low-poverty areas to have teachers who are not licensed in the subjects they teach; students in high-poverty and high-minority schools are more likely to be taught by inexperienced teachers and are also more likely to be taught by newcomers with no practice-teaching experience.<sup>24</sup> In New York City, the state's highest court found that "[T]ens of thousands of students are placed in overcrowded classrooms, taught by unqualified teachers, and provided with inadequate facilities and equipment. The number of children in these straits is large enough to represent a systemic failure."<sup>25</sup>

As a result of these and other inequities, wide achievement gaps persist. According to the 2005 National Assessment of Educational Progress (NAEP) in reading, 59 percent of African-American fourth graders and 49 percent of African-American eighth graders, as well as 56 percent of Hispanic fourth graders and 45 percent of Hispanic eighth graders tested at a level considered "below basic" competency. Only 25 percent of white fourth graders and 19 percent white eighth graders tested at this level.<sup>26</sup> Nationwide, black students are twice as likely to drop out before graduating from high school as white students, and Hispanic students have the highest dropout rate of all students. The dropout rate for students from the lowest 20 percent of all family incomes is six times that of their peers from families in the highest 20 percent.<sup>27</sup> In New York City, "[O]f those...ninth graders who do not transfer to another school system, only 50 percent graduate in four years, and 30 percent do not graduate or receive a general equivalency degree (GED) by the age of 21, when they cease to be eligible for free public education."<sup>28</sup>

In the 1970s and 1980s, when the federal ESEA targeted funds for poor students and these students attended increasingly integrated schools, the black-white achievement gap was cut in half, demonstrating that when given the opportunity, minority children do succeed.<sup>29</sup> Unfortunately, that progress has not continued. Affluent school districts that serve children who attended high-quality preschools and come to school ready to learn continue to have more resources and better teachers, while poorer districts that serve children who did not have access to preschool and have greater educational needs consistently have fewer resources with which to meet those needs. An analysis by the Education Trust, which excluded federal dollars, found that, nationwide, the annual funding gap—the difference between the lowest-poverty and highest-poverty districts—is \$907 per student or over \$22,000 per year for each class of 25 students.<sup>30</sup> In Illinois and New York, the gap for poor children is much larger—over \$2,000 per student; in New York, this translates into an annual shortfall of \$65,375 per 25-student classroom or \$1,046,000 for a 400-child elementary school. Some 25 of 49 states studied actually provide fewer dollars to their highest-poverty districts than they do to their

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2001), 32. See also, Jonathan Kozol, *The Shame of the Nation: The Restoration of Apartheid Schooling in America*. (New York: Crown Publishing Group, 2005).

<sup>23</sup> Gary Orfield and Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality* (The Civil Rights Project, Harvard University, 2005), 7.

<sup>24</sup> Lynn Olson, "The Great Divide," in *Quality Counts 2003: [If I Can't Learn from You...Ensuring a Highly Qualified Teacher in Every Classroom]*, (*Education Week*, January 9, 2003), 13-14.

<sup>25</sup> *CFE v. State* 801 N.E.2d 326, 336 (N.Y. 2003)

<sup>26</sup> National Center for Education Statistics, *National Assessment of Student Progress, The Nation's Report Card, Reading 2005*. Retrieved from: <http://nces.ed.gov/nationsreportcard/pdf/main2005/2006451.pdf>.

<sup>27</sup> National Center for Education Statistics, *Dropout Rates in the United States: 2000* (November 2001).

<sup>28</sup> *CFE v. State* 801 N.E.2d at 336-37.

<sup>29</sup> Education Trust, *African American Achievement in America*, 1. See also David W. Grissmer, Ann Flanagan, Jennifer Kawata, and Stephanie Williamson, *Improving Student Achievement: What State NAEP Test Scores Tell Us* (The Rand Corporation, July 2000).

<sup>30</sup> Education Trust, *The Funding Gap 2005*, 2. (These statistics do not take into account the greater educational needs of students in poorer districts.)

lowest-poverty districts.<sup>31</sup> Rural schools also frequently lack adequate funding for essential educational resources because of inequitable school funding systems.<sup>32</sup>

The U.S. Census Bureau projects that by 2025 nearly one-half of all American children under age 18 will be minorities; by the year 2050, minorities will comprise 60 percent of the U.S. school population.<sup>33</sup> There will be a dramatic impact on the U.S. economy and political participation in coming decades if minority children continue to be subjected to educational disadvantage. Without a change in the attainment of these groups, America's economy and political system will simply degenerate. According to Stephen P. Coelen of the Massachusetts Institute for Social and Economic Research, who studied demographic change, education and the work force in New England, "[G]rowth in an educated work force now heavily depends on improving the educational 'success rate' of minority populations. Without a concentrated effort to increase educational throughput, there will undoubtedly be an inadequately trained work force...during the next decade."<sup>34</sup>

The same is true for civic engagement and political participation, which will continue to decline without improved educational opportunities for minority children. As Justice Marshall wrote in the *Rodriguez* decision, "...education is the dominant factor affecting political consciousness and participation."<sup>35</sup> A 2003 study from the Center for Information & Research on Civic Learning and Engagement confirmed that "Educational attainment, both at the post-secondary and the secondary levels, has large and independent effects of most measures of civic engagement and attitudes" including voter participation, newspaper readership, and support for free speech.<sup>36</sup> Professor Jane Junn of the Eagleton Institute of Politics at Rutgers University argues that "[e]ducation plays a dual role in driving democratic citizenship, at once enabling individuals to be active and engaged citizens, while simultaneously replicating structural hierarchies that reinforce inequality."<sup>37</sup> Civic engagement and political participation in our country will continue to decline and perpetuate a society characterized by inequality if we do nothing to provide meaningful educational opportunities for poor and minority students.

Providing our children with the educational opportunities to which they are entitled is vital if our nation is to thrive. As Thomas L. Friedman argues, "the biggest challenge and opportunity facing us today [is] the flattening of the global playing field in a way that is allowing more people from more places to compete and collaborate with your kids and mine than ever before...We can't rely on importing the talent we need anymore—not in a flat world where people can now innovate without having to immigrate."<sup>38</sup>

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<sup>31</sup> Ibid, 1.

<sup>32</sup> Jerry Johnson and Marty Strange, *Why Rural Matters 2005: The Facts about Rural Education in the 50 States* (Rural School and Community Trust, May 2005).

<sup>33</sup> Gary Orfield, "Why Segregation Is Inherently Unequal: The Abandonment of *Brown* and the Continuing Failure of *Plessy*," *New York Law School Law Review*, Vol. 49, No. 4, 1051.

<sup>34</sup>See, e.g., Stephen P. Coelen, *Demographic Change, Education and the Work Force, Existing Relationships and the Prognosis in New England* (Massachusetts Institute for Social and Economic Research, University of Massachusetts at Amherst, 1993). Lack of education also leads to crime. An estimated 40 percent of state prison inmates, 27 percent of federal inmates, 47 percent of inmates in local jails and 31 percent on probation had not completed high school or its equivalent compared with about 18 percent of the general population that failed to attain high school graduation. U.S. Department of Justice, Office of Justice Programs, *Education and Correctional Populations* (Bureau of Justice Special Report, 2003).

<sup>35</sup> *Rodriguez v. San Antonio Independent School District*, 411 U.S. 1, 113 (Marshall, J., dissenting) (1973).

<sup>36</sup> Thomas Dee, "Are There Civic Returns to Education?" (Center for Information & Research on Civic Learning and Engagement, Circle Working Paper 08, July 2003).

<sup>37</sup> Jane Junn, "The Political Costs of Unequal Education" Retrieved from: [http://devweb.tc.columbia.edu/manager/symposium/Files/73\\_junn\\_paper.ed.pdf](http://devweb.tc.columbia.edu/manager/symposium/Files/73_junn_paper.ed.pdf).

<sup>38</sup> Thomas L. Friedman, "What, Me Worry?" *The New York Times*, April 29, 2005; see also, Thomas L. Friedman, *The World Is Flat* (New York: Farrar, Strauss and Giroux, 2005).

High levels of academic achievement will not be attained until true educational opportunity is available to all American children, but enormous inequities in school funding in most states create a major barrier to the equal-opportunity promise of *Brown v. Board of Education*. This became clear to civil rights attorneys in the late 1960s—even if *de jure* school segregation were eliminated, poor minority children would still be starkly disadvantaged by state education finance systems. Bringing poor black and poor white students together in a dilapidated school building with inexperienced teachers and out-of-date textbooks did not fulfill Horace Mann’s vision of the common school, nor did it adequately prepare students to exercise their rights and responsibilities as citizens or meet the challenges of the modern economy.<sup>39</sup> Civil rights activists saw the need to devise new political and legal strategies for ensuring the provision of adequate resources to these students.

A number of attorneys and advocates tackled this issue on “equal protection” constitutional grounds, but, in 1973, the United States Supreme Court in *Rodriguez v. San Antonio Independent School District* held that education is not a “fundamental interest” under the federal constitution. In dissent, Justice Thurgood Marshall indicated that “further review of state educational funding schemes under state constitutional provisions” might lead to remedies for the “unjustified state discrimination” he saw in the *Rodriguez* record.<sup>40</sup> Acting on this cue, attorneys in the years since *Rodriguez* have filed state court litigations in 45 states, under equal protection clauses and education articles in state constitutions that do in most cases guarantee substantive education rights.<sup>41</sup>

In the early years, most of these cases sought equal per-pupil funding (“equity”), but state defendants won about two-thirds of those cases. Since 1989, however, education advocates and lawyers have emphasized a different legal theory—known as “education adequacy”—that has led to a dramatic wave of plaintiff victories, including landmark cases in Kentucky, New York and Texas. Over the past 16 years, plaintiffs have won in 21 of the 28 highest state court “adequacy” cases.

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<sup>39</sup> As Orfield and Lee write, “The civil rights movement was never about sitting next to whites, it was about equalizing opportunity.” (*Why Segregation Matters*, 9). Though adequate funding will eventually improve racial and class integration, once adequate funding is achieved, the multidimensional effects of segregation will still need to be addressed.

<sup>40</sup> *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1, 132-133 n. 100, (Marshall, J., dissenting) (1973).

<sup>41</sup> For a more in-depth treatment of the history of the education adequacy movement, see Michael A. Rebell, “Education Adequacy, Democracy, and the Courts,” in Timothy Ready, Christopher Edley, Jr., Catherine E. Snow, eds., *Achieving High Educational Standards for All: Conference Summary* (National Research Council, 2000).

### III. DEFINING ADEQUACY

#### A. ADEQUACY AND STANDARDS-BASED REFORM

The shift in plaintiffs' favor resulted, in part, from new educational developments that overcame many of the practical problems raised by the earlier "equity" cases. In terms of legal theory, plaintiffs began to emphasize the provisions in state constitutions that, harking back to the 18<sup>th</sup> and 19<sup>th</sup> century revolutionary democracy and common school movements, promised a basic, "adequate" level of education for all students. At the same time, the standards-based reform movement and related educational research provided the tools that courts needed to deal with the complex educational issues involved with defining adequacy.

An "adequate education" was no longer a vague notion that could be assumed under any state education system. With the advent of standards, the concept now had documented content, and the emerging evidence revealed that most state education systems—and certainly school districts that served predominantly poor and minority students—were probably below, and not above, the level of substantive expectations. Standards-based reform highlighted the fundamental goals and purposes of our system of public education because the standards were usually designed to deliver the knowledge and skills students need to become capable citizens and workers. In the judicial arena, state standards could quickly telescope the ideals of the 18<sup>th</sup>- and 19<sup>th</sup>-century constitutional education clauses into 21<sup>st</sup>-century reality.

The new state standards provided the courts practical tools for developing judicially manageable approaches for implementing effective remedies. They acted as benchmarks for a court's analysis of the adequacy of educational "inputs" and student "outcomes." In North Carolina's school funding case, for example, the trial court examined the state's student content standards and the "course of study" and student assessments that flowed from them. Along with specific content in all major subject areas for each grade, the standards required each high school to offer the coursework required for admission to the University of North Carolina. Relying on the state standards and its assessments of student progress, the court determined that schools in poor rural areas did not have the necessary resources to provide adequate instruction and deliver the required content to their students. After hearing additional evidence, the court found that the main cause of the shortfalls was the state's education finance system and declared the system unconstitutional.

Standards-based reforms are integral to the adequacy movement and vice versa. As Montana District Court Judge Jeffrey Sherlock wrote in a recent adequacy decision:

The logic of the [standards-based] approach implies that a state will assure that sufficient resources are available in all school districts, if not in all schools, so that they can reasonably be expected to meet state standards...A discussion of adequacy involves a determination of funding necessary to produce a specific level of student performance. For the standards-based approach to have any chance of success, the state must assure that districts have sufficient resources available so that they can reasonably be expected to meet the state's standards concerning student performance...That is, [the school finance system] should provide adequate funding to allow districts to meet the expectations established under state law, and the funding should be allocated in an equitable manner to assure equal opportunities for all students in the state.<sup>42</sup>

In Montana, North Carolina, Arizona and other states, the focus on adequacy has led to an important dialogic process among state courts, state legislatures responsible for funding the schools, and state education departments responsible for devising the standards. Emerging from this dialogue

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<sup>42</sup> *Columbia Falls Elementary School District No. 6 v. State*, No. BDV-2002-528 (First Judicial Dist. Ct., Apr. 15, 2004), *aff'd*, 109 P. 3d 257 (Mont. 2005).

are both increased resources for students in under-funded schools and a new focus on the purposes of education and states' obligation to ensure that students actually develop the cognitive skills they need to be capable citizens in modern society and to succeed in the global marketplace.

## B. A CORE CONSTITUTIONAL DEFINITION OF ADEQUACY

The appeal of the adequacy approach is reflected in the emerging consensus among the courts, the other branches of government and—increasingly—the public at large<sup>43</sup> that all students should be provided the opportunity to obtain an “adequate,” 21<sup>st</sup> century education and that schools require adequate resources to build the capacity to provide it. This consensus is reflected in the 1998 report of a Task Force of the National Conference of State Legislatures (NCSL), which stated, “State policy makers and the courts should apply the test of ‘adequacy’ as a primary criterion in examining the effectiveness of any existing or proposed state school finance system.”<sup>44</sup> The NCSL then set forth basic principles for building an adequate education system that emphasized (1) articulating “clear and measurable educational goals, or objectives,” (2) identifying “the conditions and tools that...provide...every student a reasonable opportunity to achieve expected educational goals or objectives,” and (3) ensuring that “sufficient funding is made available and used to establish and maintain these conditions and tools...”<sup>45</sup>

The term “education adequacy” seems to connote a rather minimal sense of what a basic education should be. But the combination of the egalitarian momentum of the revolutionary democracy and common school ideals, plus the practical policy imperatives of the contemporary standards movement, has resulted in a general judicial understanding of “adequate” that, in essence, means a basic “quality” education that provides students with the essential skills needed to function productively in contemporary society.<sup>46</sup>

Many of the courts have emphasized that the understanding of *adequacy* in education must mean *adequate to meet contemporary needs*. As the Wyoming Supreme Court put it, “the definition of a proper education is not static and necessarily will change.”<sup>47</sup> And, as the New Jersey Supreme Court noted, although a high school education was not an attribute of a thorough and efficient education in 1895, it clearly is today.<sup>48</sup> In New York, the core issue that emerged in the litigation was whether eighth-grade or twelfth-grade reading and math skills were required by the state constitution: in the end the

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<sup>43</sup> In many of the states where there have been effective remedies, the productive interchange among the branches has been accompanied by significant public engagement processes. For example, in Kentucky, the remedial principles adopted by the Kentucky Supreme Court were strongly influenced by an extensive round of state-wide dialogues—including a 20,000-person televised town meeting—which the Prichard Committee had initiated years before the court's decision. The Campaign for Fiscal Equity, Inc., has instituted a state-wide public engagement process in New York in conjunction with its on-going adequacy litigation. For a detailed analysis of the use of public engagement in the remedial phase of institutional reform litigations, see Michael A. Rebell and Robert L. Hughes, “Efficacy and Engagement: The Remedies Problem Posed by *Sheff v. O'Neill*—and a Proposed Solution,” *Connecticut Law Review*, Vol. 29, No. 3 (Spring 1997): 1115.

<sup>44</sup> National Conference of State Legislatures, *Educational Adequacy: Building an Adequate School Finance System* (July 1998), 5.

<sup>45</sup> *Ibid.*, 10-18. Additional principles set forth in the NCSL report relate to the capacity of state education departments to support the conditions for essential learning and the establishment of an appropriate accountability system.

<sup>46</sup> See, e.g., William H. Clune, “The Shift from Equity to Adequacy in School Finance,” *Education Policy*, Vol. 8, No. 4: 376, describing the thrust of the cases as calling for a high minimum level: “This ‘high minimum’ approach focuses on what would be necessary to assure that all children have access to those educational opportunities that are necessary to gain a level of learning and skills that are now required, say, to obtain a good job in our increasingly technologically complex society and to participate effectively in our ever more complicated political process.” See also P.A. Minorini and S.D. Sugarman, “Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm,” in H.F. Ladd, R. Chalk, and J.S. Hansen, eds., *Equity and Adequacy in Education Finance: Issues and Perspectives* (Washington, DC: National Academy Press, 1999), 34-71.

<sup>47</sup> *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1274 (Wyo. 1995); see also *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997) (holding that framers of education clause intended to allow students to “participate fully in society as it existed in his or her lifetime”); *McDuffy v. Secretary*, 615 N.E.2d 516, 555 (Mass. 1993) (“Our Constitution, and its education clause, must be interpreted ‘in accordance’ with the demands of modern society or it will be in constant danger of becoming atrophied...”) (citing *Seattle Sch. Dist. No.1 v. State*, 585 P.2d 71 [Wash. 1978]).

<sup>48</sup> *Robinson v. Cabill*, 303 A. 2d 273 (1973).

state's highest court ruled that "a meaningful high school education" was the constitutional standard.

The courts' general tendency to equate "adequacy" with basic "quality" is logically linked to the way that states' standards-based reforms have, in essence, raised academic expectations and assumed (and, indeed, required through the "high stakes" graduation tests that half of the states have adopted) that the "basic" education that virtually all students will receive is at a relatively high level.

The courts' constitutional concern with the fundamental purposes of public education has also led them in this direction. There is widespread agreement that an adequate system of education is one that "will equip students for their roles as citizens and enable them to succeed economically and personally."<sup>49</sup> Once courts probe the level of skills students need to function as capable citizens and productive workers they conclude that these roles require "the intellectual tools to evaluate complex issues, [and a range of ] verbal, reasoning, math, science and socialization skills that should be imparted in public schools."<sup>50</sup>

The many state courts that have dealt with this issue have arrived at virtual consensus:

- The *constitutional standard* for a basic quality education is an education that prepares students to (1) function productively as capable voters, jurors and civic participants in a democratic society; and (2) compete effectively in the economy.
- The types of *knowledge and skills* that students need to be effective citizens and workers are (1) sufficient ability to read, write and speak the English language and sufficient knowledge of fundamental mathematics and physical science to enable them to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable them to make informed choices with regard to issues that affect them personally or affect their communities, states and nation; (3) sufficient intellectual tools to evaluate complex issues and sufficient social and communication skills to work well with others and communicate ideas to a group; and (4) sufficient academic and vocational skills to enable them to compete on an equal basis with others in further formal education or gainful employment in contemporary society.
- The *essential resources* students need to acquire this knowledge and these skills are (1) qualified teachers, principals and other personnel; (2) appropriate class sizes; (3) high-quality early childhood and preschool services; (4) adequate school facilities; (5) supplemental programs and services for students from high-poverty backgrounds including summer and after-school programs; (6) appropriate programs and services for students with disabilities and English language learners; (7) instrumentalities of learning, including, but not limited to, textbooks, libraries, laboratories and computers; and (8) a safe, orderly learning environment.

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<sup>49</sup> *Vincent v. Voight*, 614 N.W.2d 388, 396 (Wis. 2000); see also, e.g., *Serrano v. Priest*, 487 P.2d. 1241, 1258-59 (Cal. 1971) (education is "crucial to...the functioning of democracy [and to] an individual's opportunity to compete successfully in the economic marketplace..."); *Edgewood Indep. Sch. Dist v. Kirby*, 777 S.W.2d 391, 395-96 (Tex. 1989) (citing intent of the framers of the education clause to diffuse knowledge "for the preservation of democracy...and for the growth of the economy"); *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993) (defining constitutional duty in terms of preparing "citizens for their role as participants and as potential competitors in today's marketplace of ideas"); *Campbell Sch. Dist. v. State*, 907 P.2d 1238, 1259 (Wyo. 1995) (defining the core constitutional requirement in terms of providing students with "a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually"); *Abbeville County. Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999) (defining minimum adequacy, *inter alia*, in terms of "fundamental knowledge of...history and governmental processes" and "vocational skills"); *CFE v. State of New York*, N.E. 2d (N.Y. 2003) (defining sound basic education in terms of preparing students to "function productively as civic participants capable of voting and serving on a jury" and for "competitive employment").

<sup>50</sup> *Campaign for Fiscal Equity v. State of New York*, 719 N.Y.S.2d 475, 485 (N.Y. Cup. Ct, 2001), *aff'd*, N.E. 2d (2003).

## IV. THE MOVEMENT'S GROWING MOMENTUM

In the past three years alone, plaintiffs have won court victories in the highest courts in Arkansas, Idaho, Kansas, Montana, New York and North Carolina. In Massachusetts and Texas, the State Supreme Courts, although reiterating the holdings in their prior adequacy rulings, refused to order additional adequacy remedies requested by the plaintiffs. The Massachusetts Court indicated that in light of the legislature's past compliance efforts, it would assume that the legislature would continue to respond to the unmet needs of the plaintiff districts.<sup>51</sup> The Texas Supreme Court invalidated the State's current education finance system as violative of a constitutional prohibition on statewide property taxes but not on adequacy grounds.<sup>52</sup> Additional litigation is pending in 10 states. The most recent trial court decision, issued by The Court of Common Pleas in South Carolina on December 29, 2005, held that the state has an "enhanced" obligation to provide an adequate education for children born to poverty and that South Carolina's failure to adequately fund early childhood education intervention programs violates the State Constitution.<sup>53</sup> This active education adequacy docket reflects the scarcity of basic resources in both urban and rural schools in many states.

Typically, plaintiffs plan and file a lawsuit only after years of being turned away by the legislature and governor in their requests for educational opportunity on behalf of poor children. They do so reluctantly because adequacy cases are usually difficult and expensive to litigate and often take years to produce a final high court decision and an effective remedy.

State responses to plaintiffs' victories and the courts' remedial orders fall across a broad spectrum of action from acquiescence to resistance. In Iowa, within a year after a coalition of 160 school districts and individuals filed suit challenging the school funding system, the legislature passed a bill replacing the current local-option sales tax for schools with a pool of sales-tax money that would be distributed on a per-pupil basis. The governor signed the legislation and the plaintiffs and state reached a settlement on the lawsuit, which was then withdrawn without prejudice.<sup>54</sup> Within months of court decisions in Kentucky and Vermont, those states had enacted new funding systems that have greatly narrowed resource and opportunity gaps and raised student achievement. A number of other states have taken positive steps in a timely fashion. Wyoming's legislature, for example, set out immediately after the state supreme court decision to perform a costing-out study and reform its funding system accordingly. In states like Arizona, the legislative and executive branches of state government, on one hand, and the judicial branch, on the other, engaged in a dialogic process that narrowed the remedial issues and led over time to a constitutionally acceptable education finance system.

In Kentucky, the state not only enacted a new funding system, but redesigned and implemented its entire education system. Deemed a "model for the nation," this interwoven fabric of change consisted of three overarching components: curriculum, governance and finance. The new system transferred governance authority to local schools, instituted an assessment and rewards process, and increased overall spending while dramatically reducing spending disparities.<sup>55</sup> In the subsequent decade, Kentucky's NAEP scores improved significantly, and progress toward the state's ambitious learning goals was impressive. Unfortunately, in the last few years the state has failed to fund this

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<sup>51</sup> *Hancock v. Commissioner of Education*, 443 Mass. 428; 822 N.E.2d 1134; 2005 Mass. LEXIS 78 (Massachusetts Supreme Judicial Court, 2005), 66.

<sup>52</sup> *Neeley v. West Orange Cove Consolidated Independent School District*, 176 S.W.3d 746; 2005 Tex. LEXIS 868; 49 Tex. Sup. J. 119 (Supreme Court of Texas 2005), 69, 77.

<sup>53</sup> *County of Lee v. State of South Carolina*, No. 93-CP-31-0169 (Ct. Common Pleas, 3<sup>rd</sup> Cir., 2005).

<sup>54</sup> Lynn Okamoto, "House OKs Bill on School Tax Pool," *Des Moines Register*, April 24, 2003. Retrieved from: <http://desmoinesregister.com/news/stories/c4780934/21086606.html>. Iowa Dep't of Rev., "SF445 Press Release," June 2, 2003. Retrieved from: [www.state.ia.us/tax/news/nrSF445.html](http://www.state.ia.us/tax/news/nrSF445.html). Molly A. Hunter, *Iowa Suit Seeks Equitable and Adequate School Funding*. Retrieved from the ACCESS site: [www.accessednetwork.org/states/ia/lit\\_ia.php3](http://www.accessednetwork.org/states/ia/lit_ia.php3).

<sup>55</sup> Molly A. Hunter, "All Eyes Forward: Public Engagement and Educational Reform in Kentucky," *Journal of Law & Education*, Vol. 28, No. 4 (October 1999): 485.

successful education undertaking, and concerns have arisen about lost momentum and the potential for stagnating achievement.<sup>56</sup>

In Massachusetts, the legislature promptly enacted the Massachusetts Education Reform Act in 1993 and phased in full funding over seven years. The results of this effort were impressive. For example, the funding gaps between districts based on property wealth or income dropped dramatically or even reversed. The districts educating the highest percentage of children in poverty now actually spend four percent more than the districts educating the lowest percentage of children in poverty.<sup>57</sup> On state tests, the percentage of students achieving proficiency on the fourth grade English Language Arts examinations rose from 20 percent in 1998 to 55 percent in 2003; on the 10<sup>th</sup> grade math examination the percentage meeting proficiency over that five-year period rose from 25 percent to 50 percent.<sup>58</sup> Even more impressive than these statewide accomplishments, in the recent Massachusetts litigation, the court documented significant gains by the Commonwealth's lowest-performing school districts in programs and instrumentalities of learning and also in test scores.<sup>59</sup>

New Jersey's legislature was one of the slowest to enact full-scale reforms. The legislature did not respond fully to the court, necessitating further directives and clarification. Persistence by the state supreme court in ordering remedial measures was critical, therefore, to improving the state's methods of financing public education. Along with Massachusetts, New Jersey, over time, experienced one of the most dramatic improvements in the equity of funding. The infusion of resources into poor and immigrant communities resulted in better opportunities and has already generated many positive results including higher test scores.

For example, fourth-grade language arts test scores for general education students enrolled in New Jersey's poor districts have jumped from 33 percent to 75 percent attaining proficiency.<sup>60</sup> Since the changes began to be implemented, preschool enrollment has more than doubled and is now at 72 percent of eligible children. At the same time, the qualifications of the preschool teachers improved markedly; over 90 percent now hold a bachelor's degree.<sup>61</sup> The national average is less than 50 percent. Less noticed but also important to student achievement, school nurses and counselors have been added in these schools.

Plaintiffs in the Arizona adequacy lawsuit that ended in 1998 sought adequate school facilities for the state's low-wealth school districts. The results have been stunning, with all of Arizona's school districts benefiting. The state shifted primary responsibility for funding school facilities and equipment away from local school districts to the state. Facilities' standards were aligned with the state's learning standards, and all school buildings were brought up to the new standards. Growing districts are building rapidly, while all districts are receiving at least some state funds to improve their facilities. The highest costs were incurred in rural and remote communities where some buildings were so dilapidated that replacing them was less expensive than renovation. In many rural areas the new or renovated schools now are the centers of their communities and have generated great enthusiasm.

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<sup>56</sup> See, for example, Robert F. Sexton, "Time to Decide Which Way Kentucky Goes in Education," *Lexington Herald-Leader*, April 27, 2004; Robert F. Sexton, *March Madness* (Prichard Committee for Academic Excellence, March 21, 2005).

<sup>57</sup> *Hancock v. Driscoll*, No. 02-2978 etc. (Mass. Sup. Ct. Apr. 26, 2004), overruled on other grounds, *Hancock v. Commissioner of Education* 822 N.E.2d 1134 (Mass. 2005).

<sup>58</sup> The Rennie Center for Education Research and Policy, *Reaching Capacity: A Blueprint for the State Role in Improving Low Performing Schools and Districts* (Spring 2005), 9.

<sup>59</sup> *Hancock v. Driscoll*, No. 02-2978 etc. (Mass. Sup. Ct. Apr. 26, 2004), overruled on other grounds, *Hancock v. Commissioner of Education* 822 N.E.2d 1134 (Mass. 2005). Unfortunately, the court also found that these districts face extraordinary challenges, such as a high proportion of ELL students, and have experienced significant recent funding cuts that prevent them from providing many of their students with the programs they require to succeed.

<sup>60</sup> "Student Achievement in the Abbott Districts," Statement of Gordon MacInnes, Assistant Commissioner for Abbott Implementation (New Jersey Senate Education Committee, February 3, 2005).

<sup>61</sup> *Ibid.*

## V. ADEQUACY'S LESSONS FOR FEDERAL EDUCATION POLICY

As the adequacy movement has matured, plaintiffs' arguments have grown more strategic, and the courts have become increasingly sophisticated in their remedial orders. Recent decisions reflect a growing understanding of the concrete measures necessary to ensure real education opportunity for students currently being denied. Adequacy—with a broad scope that takes in the entire education enterprise and a persistent focus on creating meaningful opportunity—provides a constructive, capacity-building approach to the goal of fulfilling the promise of standards-based reform. As such, the adequacy movement points to the future of successful national education policy.

State courts, as partners with other branches of state government, have much to contribute to the national and federal education policy conversations. The trials in these cases provide broad, balanced data on a range of education policy issues and host a powerful dialogue among experts; the judicial context can also provide sophisticated, objective evaluation for implementing remedies in a sustained manner. Other branches within these states often tap the understandings gained from the evidence, and states are learning from one another.

The enactment of NCLB<sup>62</sup> in 2002 was the culmination of nearly 40 years of federal efforts to promote equity in public education for minority and low-income students. Its stated purpose is to implement the vision of *Brown v. Board of Education* by ensuring “that all children have a fair, equal and significant opportunity to obtain a high-quality education” and by closing “the achievement gap between...minority and non-minority students, and between disadvantaged children and their more advantaged peers.”<sup>63</sup> The Act further requires that *all* students be proficient in their state standards by 2014. Half a century after the Supreme Court issued its landmark ruling in *Brown*, it is both appropriate and necessary that the federal government act to ensure that all students will actually obtain a high-quality education within the next 10 years.

NCLB's enactment attempts a new and significant step for our nation toward equal education opportunity for all American students. The fundamental national principle that all American children are entitled to the opportunity for a high-quality education is now the law of the land. NCLB has created a new sense of urgency by setting a deadline for closing the achievement gaps among students, both poor and rich, and minority and white, students; its new requirements have exposed the dark underbelly of U.S. public policy—the fact that, in a largely robust and successful system of schools, large subgroups of children have consistently been—and continue to be—neglected.

Judges in adequacy cases throughout the country have directly asked the question, “Why are some children not learning?” In state after state, they have begun to find answers based on school and classroom realities, school data, education research and expert testimony presented as evidence at trial. Now there is a vast wealth of evidence from these trials. This extensive database—and the pragmatic wisdom it conveys—has barely been tapped. Indeed, adequacy cases may be considered the best current example of Justice Brandeis's famous formulation of federalism, where states serve as “laboratories” for developing innovative public policy, in this case, education policy.<sup>64</sup>

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<sup>62</sup> 20 U.S.C. 6301 et seq. NCLB is the name for the 2001 reauthorization of the Elementary and Secondary Education Act of 1965.

<sup>63</sup> 20 U.S.C. 7801.

<sup>64</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

## VI. CONCLUSION

What the courts' extensive, pragmatic analyses have shown us, state by state, is that meeting or satisfying a state constitutional mandate for adequate education requires states, localities and the federal government to sustain a high-quality educational enterprise. This enterprise must include adequate systemic funding based on actual costs; rigorous educational content and teacher qualification standards; an accountability system that includes comprehensive planning; and the ability to use test results and other school quality data to build instructional capacity for effective and permanent school improvement. The role of state and federal education policy should be to support and "incentivize" this full agenda.<sup>65</sup>

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<sup>65</sup> The Equity Campaign's preliminary proposals for applying the lessons of the education adequacy movement to the 2007 reauthorization of the NCLB are set forth in Policy Paper No. 2, "Opportunity Knocks: Applying Lessons from the Education Adequacy Movement to Reform the No Child Left Behind Act" (2006). In the fall of 2006, The Equity Campaign will sponsor its second annual symposium which will closely examine the NCLB and will further explore the role of the federal government in ensuring educational equity.

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