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School Finance Policy
A problem of definition and measurement

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Introduction

The events and actions that mark the shifts of social change are difficult to pinpoint and are often clouded by our own values and perspective. The development of public school finance policy is no exception. Since the early 1960's, school finance policy has been debated and contested in almost every state in the country and been influenced by state and federal court decisions, by legislative action, and by non-governmental social activism. Recognizing and understanding the intersection of the courts, the legislature, and social movements is critical for a more nuanced and informed description of how school finance policy has developed over time. How do these three important aspects of the American polis interact and what are the implications of their interactions? Has the discussion of school finance policy shifted over time? And if so, why and how? And finally, are there any policy lessons to be learned from their interaction?

To begin to explore these questions, I provide a brief overview of the history of school finance policy, an area already well documented, and a brief summary of the development of the educational standards movement. Building upon this overview, I use a problem definition framework to categorize the various types of arguments posed by advocates for school finance policy. How educational issues are defined dramatically impacts the set of solutions available to policymakers (Rochefort & Cobb, 1994). Policymakers and legislators (who are often, but not always the same) are experts at framing issues so that the problem is well-defined, the definition includes a presumption of causality (e.g., something causes the problem) and a relatively fleshed out description of the problem, and so that there are clear policy solutions that are justified through the presumed causality and the description of the problem (Ibid.). Once a problem has been defined, it can be analyzed, its units measured, and a reasoned solution can be proposed and then implemented. Complementing the problem definition framework, I utilize Stone's (2002) approach to policy analysis, focusing on the language used by policymakers—the language of policy discourse—to consider the role that two related, yet distinct, definitions of equality in school finance have played in how political actors (e.g. the courts, the legislature and advocacy groups) have framed and advocated for their particular points of view. I close with a brief summary of school finance policy in New York State to illustrate the interaction between the courts, the legislature and advocacy groups as well as the unintended consequences of the standards movement on school finance litigation.

I. The Intersection of Advocacy Groups, the Courts, and the Legislature

Before engaging in an analysis of the interaction among advocacy groups, the courts and the legislature within the arena of school finance, we should explore the extent to which there actually is meaningful interaction between these three important elements of politics and policymaking. For the interaction to be meaningful, there should be evidence that the interaction actually makes a difference in the communities, schools, and for the students for which changes in school finance policy is intended to impact.

To facilitate our analysis, two exhibits are provided. The full listing of states from which this data is drawn is provided in Appendix A. The two exhibits provided in the text display school finance policy litigation in each state. Exhibit 1 lists states and cases in which legislative action occurred after a court's decision and Exhibit 2 lists the states and instances where no legislative action was taken, regardless of the court's decision. Each exhibit details whether or not there was a legal challenge to the state's system of school finance, the type of argument used by the litigants (e.g., an equity-based or adequacy-based argument), the court decision, whether or not legislative action was taken due to the litigation, and the presence of advocacy coalitions and groups in each state. In a number of states, there have been multiple cases of school finance litigation over the past 30 years. To capture the different cases, some states are listed multiple times, with the different court cases designated by the letters "A", "B", or "C" after the state's name. Cases symbolized with the letters "B" or "C" are the more recent cases. All information was compiled from the Access network's Web Site < http://www.schoolfunding.info/>. This table does not exist on their Web Site.

It is clear that legislative action was driven, at least in part, by court decisions in numerous states over the past 30 years. Litigants have challenged the constitutionality of state educational finance systems in 46 states since 1971. Among those 46 states, legislative action was taken in 27. In a few cases, litigants simply had pose the threat of a court case and the legislature moved to action. While the nuances of each particular case and state are too numerous to entertain, it is clear that legislative action and court decisions interact, more often resulting in policy moving towards the position argued by the plaintiff. Exhibit 1 displays the states in which the state legislature changed school finance policy. In most cases (n=17 of 27) the legislative action occurred after the plaintiff had won the court case, although the action of the legislature often occurred many

years (in Michigan's case, 15 years) after the original court decision. In other cases, such as Massachusetts and Kentucky, the legislature made immediate changes to the state's system of school finance, even going so far as to make significant changes to the state's overall system of public education (Rebell, 2002). In some cases, the very threat of litigation (n=5), or a ruling in favor of the defendant (n=5) preceded legislative action[1].

Exhibit 1. Court Decisions and Positive Legislative Action, 1971 to 2004

State	Litigation	Type Equity	Type Adequacy	Decision	Legislative Action	Advocacy
Arizona	Yes	Yes	No	Defendant	Yes	Yes
California A	Yes	Yes	No	Plaintiff	Yes	Yes
Colorado B	Yes	No	Yes	Settled	Yes	Yes
Connecticut A	Yes	Yes	No	Plaintiff	Yes	Yes
Connecticut B	Yes	No	Yes	Withdrawn	Yes	Yes
Indiana	Yes	Yes	No	Withdrawn	Yes	No
Iowa	Yes	Yes	Yes	Withdrawn	Yes	No
Kansas A	Yes	Yes	No	Plaintiff	Yes	Yes
Kansas B	Yes	No	Yes	Plaintiff	Yes	Yes
Kentucky	Yes	Yes	Yes	Plaintiff	Yes	Yes
Maryland B	Yes	No	Yes	Withdrawn	Yes	Yes
Massachusetts A	Yes	No	Yes	Plaintiff	Yes	Yes
Missouri	Yes	Yes	Yes	Plaintiff	Yes	No
Montana A	Yes	Yes	No	Plaintiff	Yes	Yes
New Hampshire	Yes	Yes	Yes	Defendant	Yes	Yes
New Jersey A	Yes	Yes	No	Plaintiff	Yes	Yes
New Jersey B	Yes	Yes	Yes	Plaintiff	Yes	Yes
New Mexico A	Yes	Yes	No	Plaintiff	Yes	Yes
Ohio B	Yes	No	Yes	Plaintiff	Yes	Yes
Oklahoma B	Yes	No	Yes	Withdrawn	Yes	No
Tennessee	Yes	Yes	No	Plaintiff	Yes	Yes
Texas B	Yes	Yes	Yes	Plaintiff	Yes	Yes
Washington	Yes	Yes	No	Plaintiff	Yes	Yes
West Virginia A	Yes	Yes	No	Plaintiff	Yes	Yes
Wyoming A	Yes	Yes	Yes	Plaintiff	Yes	Yes
Oregon A	Yes	Yes	No	Defendant	Yes	Yes
Idaho B	Yes	No	Yes	Plaintiff	Yes	No
Vermont	Yes	Yes	Yes	Defendant	Yes	No
Michigan	Yes	Yes	No	Defendant	Yes	Yes
Arkansas A	Yes	Yes	No	Plaintiff	Yes	Yes

Exhibit 2 provides an overview of cases where limited or no legislative action was taken as a result of the court's decision. A few caveats are needed to explain this exhibit. Many of the states

[1] I realize that making a causal connection between a court case and legislative action can be questioned, for all that really exists is temporal precedence. However, it is the intent of the court case to influence policy. Also, I reviewed the short narratives for each state, and one can make a plausible argument that the court cases do put intensive pressure on the legislature to take action.

listed in Exhibit 2 are also listed in Exhibit 1. For instance, Texas A, Oklahoma A and Idaho A were all early court cases won by the defendant. In subsequent years, litigants in each of these states brought a new case to court, using an adequacy-based argument instead of equity-based, and were subsequently successful. Another important caveat is illustrated by the cases listed in purple, signifying that the plaintiff won the court case. Each of these cases is relatively recent; as a result, it is too early to say with certainty if the legislature will take action or not.

Exhibit 2. School Finance Court Decisions without Legislative Action, 1971 to 2004

State	Litigation	Type Equity	Type Adequacy	Decision	Legislative Action	Advocacy
Alabama	Yes	Yes	Yes	Defendant	No	Yes
Alaska	Yes	Yes	Yes	Plaintiff	No	Yes
Arkansas B	Yes	Yes	Yes	Plaintiff	No	Yes
California B	Yes	No	Yes	Pending	No	Yes
Colorado A	Yes	Yes	No	Defendant	No	Yes
Florida	Yes	Yes	Yes	Defendant	No	Yes
Georgia	Yes	Yes	No	Defendant	No	No
Idaho A	Yes	Yes	No	Defendant	No	No
Illinois	Yes	Yes	No	Defendant	No	Yes
Kansas C	Yes	No	Yes	Plaintiff	No	Yes
Louisiana	Yes	Yes	Yes	Defendant	No	No
Maine	Yes	Yes	No	Plaintiff	No	Yes
Maryland A	Yes	Yes	No	Defendant	No	Yes
Massachusetts B	Yes	No	Yes	Plaintiff	No	Yes
Minnesota	Yes	Yes	No	Defendant	No	Yes
Montana B	Yes	No	Yes	Plaintiff	No	Yes
Nebraska	Yes	Yes	Yes	Defendant	No	Yes
New Mexico B	Yes	No	Yes	Plaintiff	No	Yes
New York A	Yes	Yes	No	Defendant	No	Yes
New York B	Yes	No	Yes	Plaintiff	No	Yes
North Carolina A	Yes	Yes	No	Defendant	No	Yes
North Carolina B	Yes	No	Yes	Plaintiff	No	Yes
North Dakota A	Yes	Yes	No	Defendant	No	No
North Dakota B	Yes	Yes	Yes	Pending	No	No
Ohio A	Yes	Yes	No	Defendant	No	Yes
Oklahoma A	Yes	Yes	No	Defendant	No	No
Oregon B	Yes	No	Yes	Defendant	No	Yes
Rhode Island	Yes	Yes	Yes	Defendant	No	No
South Carolina A	Yes	Yes	No	Defendant	No	Yes
South Carolina B	Yes	No	Yes	Pending	No	Yes
South Dakota	Yes	No	Yes	Defendant	No	No
Texas A	Yes	Yes	No	Defendant	No	Yes
Virginia	Yes	Yes	No	Defendant	No	No
West Virginia B	Yes	No	Yes	Plaintiff	No	Yes
Wisconsin	Yes	Yes	No	Defendant	No	Yes
Wyoming B	Yes	No	Yes	Defendant	No	Yes

Over the past 30 years, there have been 32 cases in which school finance litigation has gone to court without subsequent legislative action. Among the 32 cases, 23 are examples of instances when the court decided for the defendant rather than the plaintiff. And as noted earlier, most of the cases won by the plaintiff without subsequent legislative action are recent cases, still being debated in state legislatures or under appeal. When court decisions are found in favor of the defendant, it is unlikely that legislative action will be taken.

The influence of advocacy groups is difficult to measure without an intensive, case-by-case analysis of the data from each state. However, using the data provided in Exhibits 1 and 2, we can begin to explore potential connections. Networks of advocacy organizations supported the efforts of the litigants in 22 of the 27 cases in which the legislature took action, regardless of the outcome of the case (either for the plaintiff or the defendant). In the cases in which legislative action was absent (n=32), in-state advocacy support was provided in only 20 instances. When cases in which the court decided for the plaintiff are removed from the set of 32, reducing the number of cases in which legislative action was absent to 20, we see that advocacy support is provide in only 13 cases, illustrating the potential impact of advocacy groups.

The interaction between the court and legislature cannot be over-emphasized. First, it is clear that court decisions correlate with legislative action, in that decisions for the plaintiff tend to result in positive legislative action and decisions for the defendant more often lead to inaction. However, there are examples of cases in which a court decision led to unexpected legislative shifts in policy, suggesting that state legislatures are often reluctant to enforce court decisions or, on the other hand, are sometimes prompted by litigants to make far reaching changes to a state's education system. The real impact of advocacy organizations is unclear without an in-depth analysis of the particular actions taken by advocacy groups across all states; however, the data suggests that the presence of advocacy organizations does contribute to the increased litigant action as well as court decisions for the plaintiff. The real influence of the legislature is equally uncertain. While changes in fiscal policy must ultimately come out of the state legislature, the evidence suggests that legislatures are more likely to be a barrier to efforts to change education finance policy, regardless of the threat of litigation or of negative public opinion. Elected officials represent their constituents and are hesitant to vote (or propose) legislation that will

draw money away from their local schools. We now turn to the question of impact—Is there a meaningful impact on schools from shifts in school finance policy?

In 1966, the Coleman report, named after its primary author, James S. Coleman, was published as an outgrowth of the 1964 Civil Rights Act. The Coleman et al. (1966) report documented the achievement gab between black and white students, yet argued that the gap was not due to uneven distribution of resources across schools, especially within particular state and regions of the country. Further, the Coleman report argued that there was no statistical correlation between school funding levels and academic performance, after controlling for factors such as race, poverty, and social background. Although the findings presented by Coleman were ultimately "diluted" by litigants who questioned the study's methods and design, it is important to recognize that many educational researchers and policymakers once did (and some continue to this day) to dismiss the connection between resources and student achievement levels.

Although the Coleman report remains part of the policy debate even to this day, there is relatively clear evidence that school finance litigation and court decisions in favor of plaintiffs (typically students or groups of students) have led to actual changes in the distribution of resources among schools. Reed (1998) analyzed the distribution of fiscal resources in states where courts had found for the plaintiff as compared to states where the defendant (e.g., the state) had won. Overall, Reed found that "state supreme courts have had a significant and durable impact on the distribution of educational resources" (p. 214). Interestingly, Reed also found that the ability of the courts to impact actual shifts in policy was related to the political climate in the state. Instead of focusing on the positive impact of advocacy groups, Reed analyzed the negative impact of interest groups, what he calls "interest group blockage" as a mechanism that reduces the potential impact of state court decisions. A similar analysis of the impact of successful school finance litigation in 16 states between 1971 and 1996 provides comparably positive results, finding that "court-mandated reform of school-finance systems reduces within state inequality in spending by 19 to 34 percent" (Murry, et al., 1998, p. 790).

Now that we have demonstrated that there is indeed a link between court decisions, legislative action and real shifts in fiscal policy, it is time to turn our attention to the ways that school finance policy advocates and opponents have framed their positions.

II. School Finance Policy: a question of problem definition

Distributions are at the heart of public controversies
Deborah Stone, 2002, p. 40

School finance policy is essentially a question of equality. However, just because it is a question of equality doesn't mean that it's an easy question to answer. How society-wide policy questions, such as school finance policy, are conceptualized and defined tend to shift over time (Carmines and Stimson, 1989). Similarly, the problem of 'school finance' has shifted over the past 30 years, primarily as a result of litigants striving to find the most legally plausible argument for their court cases.

What does equality really mean in the context of school finance policy? Are inequities in school funding fair simply because they represent the status quo? Should communities submit to different local tax rates so that funding across schools is equalized? Should communities be asked to pay a higher percentage of their income to the state, and have the state redistribute those funds equally among schools? Or, should the definition of equality focus, instead, on the relative needs and starting points of different groups of students, and then develop mechanisms by which students with the greatest needs receive the funding and support needed to thrive in school? If we focus on the needs of students, how can we accurately measure student need? And finally, how will we know if students are succeeding in school if we don't have some objective way to measure student success?

The moral imperative of social justice and equal opportunity lies at the heart of advocates' arguments for shifts in school finance policy. However, advocates have used different terms and justifications for their arguments depending on the social context of the times and the receptivity of the courts and the public to different conceptions of equality. As Stone (1998) points out, the primary argument in any policy debate often revolves around the question of meaning and definition. The evolution of school finance policy illustrates how illusive the concept of equality actually is, and how advocates have shifted their definition of equality in pursuit of a relatively straightforward set of goals. Namely, advocates of school finance policy have emphasized, at different times and under different logics, two related permutations of social justice and equality: (1) equity and (2) adequacy. Equity and adequacy, as concepts in education policy, rise from the

decisions in Brown v. Board of Education and subsequent policies related to the push for social equality across many elements of the American social system, and particularly in public education (Guthrie, 1983). Within the context of school finance, these two concepts have dominated the debate and have played a significant role in how school fiscal policy is understood, rationalized and argued in the courts and the legislature. A brief overview of the two perspectives is provided to frame the analysis.

Equity. In the school finance literature, equity is most often associated with the principle of fiscal neutrality, which argues that the amount of resources available to students, and the resultant quality of public education, should not be a function of wealth. This argument, posed by Coons, Clune, and Sugarman (1970), formed the basis for many of the early constitutional challenges to education finance systems (e.g., *Serrano v. Priest*). At the base of the fiscal neutrality position was the argument that systems of school financing were inequitable and discriminatory. The solution provided by advocates of fiscal neutrality was to redesign local and state tax rates so that funds would be more equitably distributed across districts and schools, reducing the impact of wealth on the school resources. Rather than focus on student needs, the fiscal neutrality principle understood equality as the equalization of the tax burden so that resources provided to schools did not mirror the economic status of different communities.

Adequacy. The concept of adequacy focuses on the expectations we have for students, the expected outcomes of a quality education, and how to provide support for the different levels of need that students have when entering the public school system. Adequacy, as described in state constitutions, addresses what is needed to provide students with the skills, resources, tools, and capacity to be successful and engaged citizens (e.g., to find work, to vote, and be productive citizens) (Rebell, 2002). In defining equality as a matter of adequacy, it was recognized that individuals had different needs, that schools serving poor and minority children were not meeting expectations, and that it was the responsibility of the state to provide the resources needed to give these students and adequate education (Guthrie, 1983). Although the concept of adequacy has always been a part of the definition of fiscal equity, it has reemerged in recent years, stemming in part from its usefulness in recent court cases.

The prevalence and use of different definitions of equality in school finance has shifted over the past 30 years, as displayed in Exhibit 3. In the early 1970's and through the mid-1980's, most

school finance litigants used an equity-based argument, although some also incorporated adequacy into their cases. In the mid-1980's and continuing through 2004, litigants have moved towards the use of adequacy-based arguments (Murry et al., 1998; Odden & Clune, 1998; Rebell, 2002). Exhibit 3 displays the shifting definitions of fiscal equity as two related problem definitions. Most recently, two variants of the adequacy definition, which I characterize as equal access and equal opportunity, have emerged. The equal access argument, as seen in *Willams v. State of California*, uses an adequacy argument in that it "is an effort to reframe the issue of school financing around the conditions of education rather than funding" (Powers, 2004 p. 769) and emphasizes the responsibility of the state and district to provide equal access to a productive learning environment. The second adequacy-based argument, illustrated by *CFE v. State of New York*, focuses less on the access of students (which can quickly slip down the slope into a *Plessy v. Ferguson* line of reasoning) and more of the costing out, or the measuring, or what is needed for individuals to become productive citizens.

Exhibit 3. Changing Definitions of Fiscal Equity

Equal slices but unequal invitations? Unequal slices for unequal ranks?	⟷	Unequal slices but equal meals? Unequal slices but equal starting resources?
Definition: Fiscal Neutrality "Level of resources available to students in each school district should not be a function of wealth" (CITE) Case Example: *Serrano v. Priest (CA)*	⟶	**Definition: Adequacy** <u>a) Equal Access:</u> Defines equity as equal access to resources and a productive learning environment. Case Example: *Williams v. State of California* <u>b) Equal Opportunity</u>: Defines equity as student opportunity to receive a sound, basic education. Requires a costing out (measurement) of what is needed for individuals to become productive citizens, as defined by the state constitution. Case Example: *CFE v. State of New York*
Argument State equal protection clause	⟶	Argument State constitution definition of "citizen"

The reasons for the shift in how fiscal equity has been defined, understood and framed over the past 30 years are complex and multi-faceted. In the late 1960's, advocates of school finance policy realized that they would not be able to change policy through the legislature (Guthrie, 1983). As a result, they developed judicially feasible tools and arguments, and distributed these tools through a network of like-minded advocacy groups and universities (Ibid.). The use of equity-based litigation was relatively successful through the mid-1970s to 1980s, although through 1988 approximately two-thirds of plaintiffs using the fiscal neutrality argument ended up losing their cases. Since 1988, close to two-thirds of the plaintiffs have successfully challenged the constitutionality of state finance systems, using an adequacy-based argument (Rebell, 2002).

The current proponents of adequacy-based litigation are using strategies similar to those used by the early advocates of fiscal neutrality to engage and inform advocacy groups across the county[2]. Furthermore, the success of adequacy-based litigation has been substantially aided by the emergence of the educational standards movement.

A review of the evolution of school finance litigation explains why and how litigants first emphasized equity and then, in the mid-1980s and through the 1990's, shifted their focus towards adequacy-based arguments.

[2] See Guthrie, 1983, p. 211 for interesting info – organizations across the country were "to be the hub of such informational and coordinating activities"

III. Historical Overview of School Finance Litigation.

The evolution of school finance litigation follows a path that, like many policy issues, tends to come full circle. Although the history of school finance litigation goes back over 150 years (with the first case in Massachusetts in 1819), the modern history typically begins after Brown v. Board of Education and the subsequent policy action in the 1960s (Guthrie, 1983; Reed, 1998, Berke & Moskowitz, 1976).

In 1968, plaintiffs in the case of *McInnis vs. Shapiro* argued that school funds should be redistributed based on the different needs of students across the state of Illinois. The Illinois state Supreme Court decided for the defendant, the state, under the reasoning that it was too difficult to measure the actual needs of different students. In doing so, potential plaintiffs in other states saw that an argument based on an adequacy concept of equality (e.g., based on needs) without appropriate means to measure need was likely to fail. As a result, litigants began to pursue different arguments more likely to be successful (Elmore & McLaughlin, 1982; Guthrie, 1983)[3].

As noted earlier, the arguments posed by litigants in the early 1970's were based on the work of policy analysts and educational researchers advocating for increased equity in school finance systems (Coons et al., 1970). The *Serrano v. Priest* (1971) case was the first of many cases to successfully use the fiscal neutrality argument. In contrast to the *McInnis* adequacy argument, *Serrano* and subsequent equity-based cases didn't rely on having to measure the "needs" of students or attempt to ascertain the adequate resources necessary to education students from different backgrounds.

In 1973, the U.S. Supreme Court decided, in *San Antonio Independent School System v. Rodrguez* (1973) to overturn the state court's decision, arguing that education was not a "fundamental interest" of the country because education is not explicitly mentioned in the U.S. Constitution. As a result, the threshold for holding a state's educational finance system constitutional was substantially lower; state educational finance systems were was acceptable as long as they were developed on a "rational basis" (Guthrie, 1983; Power, 2004). Although

[3] It's always interesting to see how folks don't cite each other. It's like there's west coast academics and east coast, although Elmore and McLaughlin seem to have transcended both, The Guthrie article is excellent, but no one seems to be citing him. What's up?

advocates were initially discouraged, the subsequent success of plaintiffs in the *Robinson v. Cahill* (1973) case in New Jersey demonstrated that challenging the equal protection clauses in state constitutions was an equally, if not more viable route towards successful court decisions and legislative action.

The emphasis on equity-based litigation continued throughout the 1970's and 1980's, although some cases continued to include arguments that included elements of equity- and adequacy-based positions. For the most part, litigation using adequacy-based arguments was unsuccessful. However, the tipping point in the shift towards adequacy-based litigation came in 1989. According to Rebell (2002), *Rose v. Council for Better Education* in Kentucky represents the transition in the shift to adequacy-based litigation. In *Rose*, the Kentucky Supreme Court found Kentucky's entire system of public education unconstitutional and, in their decision, outlined seven basic capacities for an efficient education (Ibid. p. 234). Rebell argues that the success of *Rose* and subsequent cases has much to do with the emergence of the educational standards movement. On a related note, there are also traces of what Guthrie (1983) describes as the efficiency movement, a movement that began in the early 20th century and has reemerged at different times over the course of the history of American public education[4].

According to Rebell (2002), Odden & Clune (1998) and others, the emergence of the educational standards movement contributed significantly to the effectiveness of adequacy-based arguments because standards—academic content and performance standards—provided "judicially manageable tools" by which courts could measure the needs and expectations of students as described in the education clauses of state constitutions. As a result, plaintiff's success rates are rising and states and legislatures are engaging in discussion and dialogue (sometimes heated and contentious) over the meaning of an adequate education and, more pragmatically, who is going to pay for such an education (Rebell, 2002).

Odden & Clune, among other policy researchers/advocates, are using strategies similar to those used in the early 1970's to disseminate information and propose policy solutions. Interestingly, Professor Clune was part of the team that developed the original fiscal neutrality argument along

[4] This is really just a footnote here for me to read Tyack (1974) the cult of efficiency and to consider tracing the roots of the standards movement farther back.

with Coons and Sugarman in 1970. Today, Odden and Clune (1998) actively promote adequacy-based policy solutions:

> *School finance is at an important crossroad. Though it is still plagued by disparities in education resources per pupil, the system needs to move rapidly toward supporting education adequacy—programs, strategies, and funding sufficient to teach students to high standards. Thus, the system needs simultaneously to improve equity, provide adequate resources, and improve the productivity of the system by producing much higher levels of student achievement results.*

This 1998 text illustrates the shifts in language and definitions used by policymakers to redefine problems and propose policy solutions. Odden & Clune recognize that "disparities" still exist, but that "the system needs to move rapidly toward supporting education adequacy". Adequacy is defined in terms of methods that will allow students to reach high standards. And finally, they focus on a certain kind of outputs, namely, those that can be measured by state assessments. Odden & Clune, as significant representatives of the field of education finance, have either been caught up in the winds of policy change or (and this would be my bet) are pragmatically working to achieve the overarching goals of social justice and equality and are willing to use the methods that are currently the most effective in achieving that goal.

If it is true that the standards movement provided the tools for adequacy-based litigation to be successful, then it is necessary to reconsider the implications of interactions among the courts, the legislature and social movements. For instance, the standards movement was borne not out of the courts, but out of state legislatures and federal incentives. In effect, state legislatures and the public that supports the standards movement have, intentionally or not, provided the means for the courts to impose and require state legislatures (and their local community constituents) to address issues that they may not want to address.

The Standards Movement

The educational standards movement emerged out of the rhetoric of *A Nation at Risk (1983)* and the later convening of the National Governor's Summit in 1989 by President Bush and then Governor Clinton of Arkansas. In 1994, the Goals 2000 Act became policy, institutionalizing federal support for the development of state content and performance standards, essentially

definitions of what students should know and be able to do at the end of grade 12, with leveled performance (now called achievement) standards for each grade-level.

As states developed and refined their academic content standards, it became more and more feasible to actually measure an adequate education. By providing to measurement tools, the standards movement legitimated the definition of equality—adequacy—posed by current proponents of school finance policy. The logic of the standards movement requires ways to measure efficiency and, ultimately, student outcomes. The emphasis on grades 3-8 testing found in the recent reauthorization of the 1965 Elementary and Secondary Education Act, the No Child Left Behind (NCLB) Act of 2001, represents the logical progression of the standards movement in federal education policy (See Lane, 2005). Both the standards movement and adequacy-based school finance litigation require school-level accountability and a focus on outcomes. However, it is still an open question if society's definition of equality will likewise require an emphasis on equal outcomes. For me, this is one of the central questions of the current educational reform movement, and I now see it playing out in school finance litigation as well as through the standards movement.

IV. School Fiscal Policy in New York State: A review of court cases and legislative action

The current cycle of school finance litigation in New York State begin with the 1982 case of *Levittown v. Nyquist*. In *Levittown*, the Court of Appeals upheld the constitutionality of the New York's education clause and found for the defendant. In particular, the Court of Appeals found that the economic disparities across the state were the result of a rational process, and thus did not violate the state's equal protection clause. However, *Levittown* also based a portion of their argument on the adequacy of education, arguing that the students in New York City were not receiving a sound basic education as required by the state's constitution. In its decision, the Levittown court let this claim stand, but did not consider it in its final decision because of the difficult in measuring adequacy claims (*CFE v. State of New York* Court of Appeals Decision, 2001). In ruling on the later *CFE v. State of New York* (2001) Judge DeGrasse expanded on this important artifact of the *Levittown* decision:

> *The Levittown Court thus rejected an attack on New York State's school funding based on an equality principle, a principle that posits that all school districts must be funded equally. However, it left open the door to an argument based on an adequacy principle, an argument based on the premise that the State must ensure an education to public school students that satisfies some basic minimum requirements.*

The willingness of the Court to consider adequacy-based arguments set the stage for the CFE litigation, beginning in the early 1990s. In May 1993, the Campaign for Fiscal Equity, a broad-based advocacy group with support from organizations across New York State, filed a lawsuit (*CFE v. State of New York*) that challenged New York State's system of funding for public education. The original lawsuit incorporated equity- and adequacy-based positions, arguing that the New York City school system received less, and unequal funding and that, as a result, the students in New York City did not have the opportunity to a sound basic education. In 1995, the New York State Court of Appeals decided to allow the *CFE* case to proceed, recognizing that the state did have a constitutional responsibility to provide a sound basic education.

In the 1995 decision, the Court spelled out exactly what was required in order to assess the claim made by CFE, the plaintiffs in the case. Specifically, the court was asked to: (1) define exactly what is meant by a sound basic education; (2) investigate if the students in New York City

actually have the opportunity to obtain a sound basic education; and (3) identify, if possible, the causal link between the state's system of education funding and the lack of an opportunity to a sound basic education (*CFE v. State of New York* Court of Appeals Decision, 2001)[5]. In 1999, the case went to court and, after almost two years of testimony from expert witnesses brought forward by the plaintiffs and defendants, the Court found in favor of the plaintiffs.

The arguments used by the defendants in the 1999 case fall into two broad categories. One line of reasoning argued that school funding didn't make a substantial difference in the educational opportunity afforded to students, building upon the reasoning first developed by Coleman (1966) and effectively used by defendants in the early 1970's. The second line of reasoning placed the blame for lowered educational opportunity on New York City's management of fiscal resources. The argument between New York City and upstate (e.g., Albany) over the use of funds and resources is longstanding and continues to affect all areas of public schooling[6] (Education Alliance, Forthcoming). The Court did not find either line of reasoning used by the defendants compelling or persuasive.

The 2001 decision spelled out in great detail the definition of a sound basic education and did determine that there was a link between the state's system of school funding and the opportunity afforded to students in New York City. The Court also defined the particular inputs (e.g., resources, books, chairs) needed to provide a sound basic education and the expected outcomes (e.g. performance on the Regents Competency tests [high school] and graduation rates). In doing so, the Court made significant efforts to define equality in terms of an adequate education and determine methods to measure the inputs and outputs needed for this level of education. However, they did not specify specific monetary values or remedies. Instead, it asked the legislature to design a system of school finance that would address the issues illustrated in the Court's ruling.

Between 2001 and 2003, the legislature did not take action. In fact, the state appealed the decision and initially had the 2001 decision rejected in the Appellate Division of the State

[5] Note – I didn't actually look at the 1995 Court of Appeals decision, that's why the footnote is from the 2001 decision.

[6] The Regional Educational Laboratory work that I do in New York has documented this rift again and again.

Supreme Court (June 25, 2002). In 2003, almost exactly one year later, the Court of Appeals overturned the Appellate Court's decision, reinstating the original decision and, further, requiring that the state determine the actual cost of a sound basic education as a means of developing a specific strategy to reform the current system of school financing (*Referees Report for CFE v. NY*, 2004). Another full year went by with little substantive action taken by the state or the legislature. As a result, the Court appointed, in August of 2004, three referees to determine the cost of a sound basic education and fulfill the 2003 Court of Appeals order.

The three referees spent over three months conducting an intensive review of documents and interviews with noted experts across the field of education, striving to obtain input "not just from the parties themselves, but also from a long list of amici curiae. We have conducted many hearings held multiple oral arguments, requested and received extensive written submissions, and heard from numerous witnesses" (*Referees Report for CFE v. NY*, 2004, p. 3). After reviewing all of the evidence, the referees submitted six recommendations that specified the state develop a funding plan that would provide specific amounts of operational and capital (facilities) funding for the New York City schools beginning in July, 2005. The referees also recommended that the state conduct a costing-out study (again, both operationally and for facilities) every four years. After further delay from the state, Judge DeGrasse ordered, on March 1st, 2005 that the state comply with the recommendations presented by the referees. Since March 1st, the state has appealed the compliance order of the Court of Appeals, arguing that it be granted an automatic stay of the Court's order while the case is appealed. In April, the state legislature passed a budget that included some additional funding for education, but nowhere near the amount listed in the referees recommendations. On April 20, 2005, the Campaign for Fiscal Equity filed a motion to deny the state's claim for an automatic stay, arguing that that state is simply avoiding the court order (Jessica Garcia email, April 19, 2005 [appendix B]). In addition, CFE has submitted a bill to the state legislature calling for a complete overhaul of the state's system of education finance.

So, what are we to make of all of this?

A number of points are clear. The *CFE v. NY* case makes explicit use of an adequacy-based argument. As a result, a sound basic education has been defined as the "opportunity for a meaningful high school education, one which prepares them [students] to function productively as civic participants". Further, every nuance and detail of the inputs needed to provide such an

education as well as the expected outputs has been analyzed and documented. The Court has even gone so far as to cost out the actual monetary funding needed to provide an adequate education for the students in New York City. The costing-out process used by the Court appointed referees was intensive and included input from every key stakeholder, thus ensuring that their recommendations would be perceived as legitimate and based on a careful review of all the evidence. The definition of equality and adequacy is precise and measurable to the point that the Court has required that a costing-out study, including the input of relevant stakeholders, be conducted every four years.

The role of advocacy groups is critical in New York's story. The Campaign for Fiscal Equity is a not-for-profit organization with over 20 staff located in New York. Board members include highly prominent academics, educators and business representatives. Their member organizations include local community groups, universities, and local school boards. The ability of CFE to take action quickly, as evidence by their ability to file a motion within a week of the state's attempt to appeal the most recent Court decision, signifies CFE's stature as the central organizing force in school finance policy in New York State. However, it is interesting to note that CFE has not been able, up to this time, to significantly alter school finance policy in New York. Clearly, their relative lack of success in affecting real policy change reflects the resistance of the state legislature and the Governor. Also part of the context is the ongoing debate between Albany, as the home to the legislature, and New York City—demographically large but geographically small in comparison to the rest of New York State.

One of the central premises of advocates of adequacy-based litigation is that the emergence of the standards movement provided the tools—judicially manageable tools—though which the courts could measure adequacy. There is evidence of this process occurring in the case of New York, although it is not as pronounced as presented in Section III and by the academics promoting this line of reasoning. To begin, I found an interesting argument regarding the Levittown case that I find particularly perplexing. Chambers et al. (2004) contend that the development of the Regents Learning Standards (the state's content standards) was, in essence, an effort to define a "sound basic education" as a response to Levittown's inability to measure this term. In other words, the development of content standards in New York is tied to school finance policy litigation. I was unable to find any other documents or research pertaining to

school finance or the history of the standards movement that links early school finance litigation, and the inability to define adequacy, with the emergence of the standards movement.

When I analyzed the referee's recommendations and the costing out process, I expected to find direct references to New York's Learning Standards. Surprisingly, I found that although the plaintiffs wanted to use the Learning Standards to define adequacy, that the 2001 Court of Appeals "was unwilling to codify the Regents Learning Standards as the touchstone for a sound basic education" (p. 34). Instead of using the Learning Standards as a 'judicially manageable tool', the Court of Appeals decided to use the Regents Criteria as the measure of a sound basic education. The criteria identified districts as successfully providing a sound basic education if 80 percent of the students scored proficient or above on the 4th grade mathematics and English assessment and on the High School regents exams. According to the Regents, the Regent's Criteria better matches NCLB requirements and is a more objective measure of student results. Since state assessments are being used to measure performance, there is still a direct link to the Learning Standards, although the definition of adequacy is now dependent on the construction of a test rather than the actual content of the standards and the teaching and learning that occurs in classrooms.

Final Thoughts

The assertion that the development of the Learning Standards stemmed from the *Levittown* decision is perplexing and opens up many more questions (of which I have little time to address). If the Courts (e.g., the *Levittown* decision) are actually the cause of New York's development of the Learning Standards, then it is clear that the legislature is waging a no-win battle to hold off the inevitable policy changes, spelled out in much detail, by Judge LaGrasse's March 2005 Court Order and the Referee's report. On the other hand, if the development of Learning Standards is actually more akin to the situation in other states across the nation, then there exists an argument that the state legislate and the New York State Education Department (NYSED) unintentionally provided the tools for successful school finance litigation – a success that New York State and NYSED clearly do not have the means or the will to appropriately enact into policy and fund as needed. Similarly, the role of the Campaign for Fiscal Equity is equally problematic, for their effectiveness will ultimately be judged by the implementation of school finance policy. If the legislature and Governor do not support CFE's efforts, then the model of interest groups as

blockers of fiscal policy is clearly more accurate, at least in the context of New York State. Even if policy is enacted in the coming years, the story of New York may be more about the ability of the legislature to successfully block, or reduce, a particular policy instead of a proactive legislature focused on issues of social justice.

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NOTE: All information about the cases came from secondary sources.

Appendix A

State	Litigation	Type		Decision	Legislative Action	Advocacy
		Equity	Adequacy			
Alabama	Yes	Yes	Yes	Defendant	No	Yes
Alaska	Yes	Yes	Yes	Plaintiff	No	Yes
Arizona	Yes	Yes	No	Defendant	Yes	Yes
Arkansas A	Yes	Yes	No	Plaintiff	Yes	Yes
Arkansas B	Yes	Yes	Yes	Plaintiff	No	Yes
California A	Yes	Yes	No	Plaintiff	Yes	Yes
California B	Yes	No	Yes	Pending	No	Yes
Colorado A	Yes	Yes	No	Defendant	No	Yes
Colorado B	Yes	No	Yes	Settled	Yes	Yes
Connecticut A	Yes	Yes	No	Plaintiff	Yes	Yes
Connecticut B	Yes	No	Yes	Withdrawn	Yes	Yes
Delaware	No	--	--	--	--	No
Florida	Yes	Yes	Yes	Defendant	No	Yes
Georgia	Yes	Yes	No	Defendant	No	No
Idaho A	Yes	Yes	No	Defendant	No	No
Idaho B	Yes	No	Yes	Plaintiff	Yes	No
Illinois	Yes	Yes	No	Defendant	No	Yes
Indiana	Yes	Yes	No	Withdrawn	Yes	No
Iowa	Yes	Yes	Yes	Withdrawn	Yes	No
Kansas A	Yes	Yes	No	Plaintiff	Yes	Yes
Kansas B	Yes	No	Yes	Plaintiff	Yes	Yes
Kansas C	Yes	No	Yes	Plaintiff	No	Yes
Kentucky	Yes	Yes	Yes	Plaintiff	Yes	Yes
Louisiana	Yes	Yes	Yes	Defendant	No	No
Maine	Yes	Yes	No	Plaintiff	No	Yes
Maryland A	Yes	Yes	No	Defendant	No	Yes
Maryland B	Yes	No	Yes	Withdrawn	Yes	Yes
Massachusetts A	Yes	No	Yes	Plaintiff	Yes	Yes
Massachusetts B	Yes	No	Yes	Plaintiff	No	Yes
Michigan	Yes	Yes	No	Defendant	Yes	Yes
Minnesota	Yes	Yes	No	Defendant	No	Yes
Mississippi	No	--	--	--	--	No
Missouri	Yes	Yes	Yes	Plaintiff	Yes	No
Montana A	Yes	Yes	No	Plaintiff	Yes	Yes
Montana B	Yes	No	Yes	Plaintiff	No	Yes
Nebraska	Yes	Yes	Yes	Defendant	No	Yes
Nevada	No	--	--	--	--	No
New Hampshire	Yes	Yes	Yes	Defendant	Yes	Yes
New Jersey A	Yes	Yes	No	Plaintiff	Yes	Yes
New Jersey B	Yes	Yes	Yes	Plaintiff	Yes	Yes
New Mexico A	Yes	Yes	No	Plaintiff	Yes	Yes
New Mexico B	Yes	No	Yes	Plaintiff	No	Yes
New York A	Yes	Yes	No	Defendant	No	Yes
New York B	Yes	No	Yes	Plaintiff	No	Yes
North Carolina A	Yes	Yes	No	Defendant	No	Yes
North Carolina B	Yes	No	Yes	Plaintiff	No	Yes
North Dakota A	Yes	Yes	No	Defendant	No	No
North Dakota B	Yes	Yes	Yes	Pending	No	No
Ohio A	Yes	Yes	No	Defendant	No	Yes
Ohio B	Yes	No	Yes	Plaintiff	Yes	Yes
Oklahoma A	Yes	Yes	No	Defendant	No	No
Oklahoma B	Yes	No	Yes	Withdrawn	Yes	No
Oregon A	Yes	Yes	No	Defendant	Yes	Yes

Oregon B	Yes	No	Yes	Defendant	No	Yes
Rhode Island	Yes	Yes	Yes	Defendant	No	No
South Carolina A	Yes	Yes	No	Defendant	No	Yes
South Carolina B	Yes	No	Yes	Pending	No	Yes
South Dakota	Yes	No	Yes	Defendant	No	No
Tennessee	Yes	Yes	No	Plaintiff	Yes	Yes
Texas A	Yes	Yes	No	Defendant	No	Yes
Texas B	Yes	Yes	Yes	Plaintiff	Yes	Yes
Utah	No	--	--	--	--	No
Vermont	Yes	Yes	Yes	Defendant	Yes	No
Virginia	Yes	Yes	No	Defendant	No	No
Washington	Yes	Yes	No	Plaintiff	Yes	Yes
West Virginia A	Yes	Yes	No	Plaintiff	Yes	Yes
West Virginia B	Yes	No	Yes	Plaintiff	No	Yes
Wisconsin	Yes	Yes	No	Defendant	No	Yes
Wyoming A	Yes	Yes	Yes	Plaintiff	Yes	Yes
Wyoming B	Yes	No	Yes	Defendant	No	Yes

Appendix B

Campaign for Fiscal Equity, Inc.
CFE to File Motion to Invalidate Stay on Governor's Appeal

Attorneys for CFE have given the State notice that they will file a motion tomorrow in State Supreme Court to deny the applicability of the "automatic stay" that the State claims went into effect yesterday when it filed an appeal of the State Supreme Court's compliance order in the CFE case. The court order gave the governor 90 days to provide New York City's schools billions of dollars for operating aid and construction costs to remedy a constitutional violation. The order went into effect on March 22.

The governor claims that his appeal automatically stopped the clock with about 65 days remaining in the 90-day grace period. CFE asserts that the State's failure to comply with the Court of Appeals' June 2003 order denies the State the right to an automatic stay. CFE is asking the court to keep the clock ticking so that funds can still reach schools before the start of the next school year. In the event that the appeal goes forward, CFE urged the court to decide the appeal on a highly expedited schedule -- within 60 days.

"The governor's appeal was filed with one purpose in mind: to cover up the State's continuing disregard of the Court of Appeals' mandate in *CFE v. State*. Invalidating the assumed stay may finally induce the governor and the legislature to comply with the court mandate and put an end to their cynical delay tactics," said CFE Executive Director and Counsel Michael A. Rebell.

The motion details the frivolous nature of the appeal, which CFE asserts was filed solely to further delay the State's compliance with the Court of Appeals' mandate. The motion argues that the appeal lacks merit since all legal and factual issues relevant to the case have been definitively determined by the Court of Appeals. Even if the governor believes that the funding increase ordered by Justice DeGrasse is too high, the governor remains under a court mandate to immediately provide students a constitutionally acceptable school-funding system.

State appellants are ordinarily permitted an automatic stay of any lower court order they are appealing in order to preserve the status quo and prevent unjustifiable harm to the public. The motion argues that the State's appeal does not meet these conditions. In *CFE v. State*, preserving the status quo would mean upholding the State's defiance of the Court of Appeals' mandate, a constitutional violation that will yield undue harm to over one million public schoolchildren. Courts in the past have lifted stays when it has been determined that the stay would cause irreparable hardship against litigants. As plaintiffs explain in their motion, the reality of the harm on the city's public schoolchildren cannot be denied: the data showing widespread illiteracy and low graduate rates -- and the conditions that gave rise to this harm -- are indisputable.

Under the procedures of the Appellate Division, 1st Department, plaintiffs must give 24 hours "notice of intent" to seek expedited consideration of their motion to invalidate the stay. CFE today gave notice and will be in court on Wednesday, April 20, asking the court to expedite its consideration of the motion to lift the stay and start the clocking running again.

April 19, 2005

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