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SCHOOL FINANCE LITIGATION AND ADEQUACY STUDIES

Janet D. McDonald,* Mary F. Hughes,** and Gary W. Ritter***

I. INTRODUCTION

Education is the constitutional responsibility of each of the fifty states in the United States. Over the past three decades, school funding formulae have been legally challenged in forty-five states across the nation. Arkansas is one of those states. In May 2001 the Pulaski County Chancery Court ruling in *Lake View v. Huckabee* determined that a constitutional school funding system must be based on the amount of money needed to provide an adequate educational system, not the amount of money available.¹ In November 2002 the Arkansas Supreme Court ruled the school funding formula unconstitutional because it did not satisfy the requirements set forth in both the Education Article and the Equal Protection Clause of the state's constitution.² According to the court's interpretation of the Education Article, the state has an absolute duty to provide for an adequate education for every

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1. *Lake View Sch. Dist. No. 25 v. Huckabee*, 340 Ark. 481, 10 S.W.3d 892 (2000).

2. *Lake View Sch. Dist. No. 25 v. Huckabee*, 351 Ark. 31, 42, 91 S.W.3d 472, 477 (2002).

student in the state.³ This paper reviews the history of school finance litigation across the United States with a focus on cases related to educational adequacy. The final section highlights the Arkansas Adequacy Study conducted by Lawrence O. Picus & Associates and considers the implications.

The adequacy approach to challenging school funding systems has proven the most successful of the waves of finance litigation,⁴ and the approach serves as the foundation for new or ongoing litigation and reform in many states today, including Arkansas.⁵ The standards reform movement has provided courts with a way to measure plaintiffs' claims that school finance systems do not provide for an adequate education, and many courts have found school funding formulae unconstitutional.⁶ In some states, courts indicated a suit based on the adequacy approach might be successful even though the courts had rejected plaintiffs' claims based upon other approaches.⁷

II. OVERVIEW OF SCHOOL FINANCE LITIGATION AND ADEQUACY

Three distinct eras of school finance litigation have become apparent since the 1960's, each relying upon a different legal strategy.⁸ With the exception of the first wave where plaintiffs attempted a win in federal courts, the state courts have ruled on school finance litigation.⁹ The first two waves, including the earliest unsuccessful attempts and a unique case with a ruling on school finance adequacy, are discussed below.

A. The Earliest Cases: Litigation in State Courts

Two of the earliest cases, *McInnis v. Shapiro*¹⁰ in Illinois and *Burruss v. Wilkerson*¹¹ in Virginia, challenged the differences among revenues or

3. *Id.*

4. Michael A. Rebell, *Education Adequacy, Democracy, and the Courts*, in *ACHIEVING HIGH EDUCATIONAL STANDARDS FOR ALL: CONFERENCE SUMMARY 230* (Timothy Ready et al. eds., 2002), available at http://www.schoolfunding.info/resource_center/research/EDUADEQ.PDF (last visited Nov. 8, 2004).

5. *Id.* at 234–39.

6. *Id.* at 230.

7. ALLAN R. ODDEN & LAWRENCE O. PICUS, *SCHOOL FINANCE: A POLICY PERSPECTIVE* 41 (2d ed. 2000).

8. Tristan Greene, *Overview of Education Finance Litigation 1–2*, Paper Presented at the Arkansas Policy Forum on Education Finance, Little Rock, AR (Nov. 18, 2002), available at <http://www.sedl.org/rel/policydocs/Presentation-SEDL.pdf> (last visited Nov. 8, 2004).

9. NAT'L RESEARCH COUNCIL, *MAKING MONEY MATTER: FINANCING AMERICA'S SCHOOLS* 71 (Helen F. Ladd and Janet S. Hansen eds., 1999).

10. 293 F. Supp. 327 (N.D. Ill. 1968).

expenditures across districts in each state. These cases were filed in state courts in the late 1960s and asked the courts to find school funding formulae unconstitutional because funding levels were based upon local tax base rather than educational need.¹² During the trial, courts asked the plaintiffs to provide a standard measuring educational need.¹³ At the time, no measure of educational need had been developed, and the courts found the cases non-justiciable.¹⁴ Litigants would need to develop a new strategy to find success in state courts.

B. The First Wave: From State to Federal Courts

The first wave of litigation began in the state of California and focused on the equal protection clause of the California State Constitution. According to the Fourteenth Amendment of the United States Constitution, no state shall "deny to any person within its jurisdiction the equal protection of the laws."¹⁵ Each state constitution has some clause that is considered the equivalent of the Equal Protection Clause of the Fourteenth Amendment.¹⁶ Under equal protection clauses, courts will examine the state action in question with one of two tests: the rational basis test or the strict judicial scrutiny test.¹⁷ For the rational basis test, the court will determine if the state has a rational reason for the differential treatment of citizens.¹⁸ If the state can provide a basis for its action, then the law is upheld.¹⁹ Under the strict judicial scrutiny test, states may not treat individuals differently unless the action under question satisfies a "compelling state interest" and there is "no less discriminatory" policy to carry out that interest.²⁰ When a court applies the rational basis test, the judgment is usually in favor of state action, but when a court applies the strict judicial scrutiny test, the state action in question is usually overturned.²¹

Courts will only apply strict judicial scrutiny when the government action affects a "fundamental right" or creates a "suspect class."²² Fundamental rights are only those rights identified in state or federal constitutions or

11. 310 F. Supp. 572 (W.D. Va. 1969), *aff'd*, 397 U.S. 44 (1970).

12. ODDEN & PICUS, *supra* note 7, at 27.

13. *Id.*

14. *Id.* at 28.

15. U.S. CONST. amend. XIV, § 1.

16. ODDEN & PICUS, *supra* note 7, at 29.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. ODDEN & PICUS, *supra* note 7, at 29-30.

those defined by court cases to hold fundamental right status.²³ Fundamental rights already addressed by state and federal courts included free speech and the right to vote.²⁴ Litigants in this first wave of school finance litigation asked state courts to add education to the list of fundamental rights.²⁵ Further, they asked that wealth per pupil be identified as, and added to the list of, a suspect class, which included national origin, religion, and race. Government action that treats individuals differently on the basis of a protected characteristic, known as a “suspect class,” is subject to closer scrutiny by the courts.²⁶ If the state court agreed to either of these requests, then the school finance formula would face strict judicial scrutiny. Plaintiffs filed suit in a California court in 1968 using this strategy.

In 1971, the strategy proved successful when the California Supreme Court found for the plaintiffs in *Serrano v. Priest*.²⁷ Plaintiffs argued that the extreme disparities in funding inhibited the education of some students.²⁸ The year before the case was filed, the assessed valuation in California’s elementary school districts ranged from \$103 to \$952,156 per pupil.²⁹ As in most other states, the funding available for public education in each California district was primarily based on the property wealth of the district.³⁰ Plaintiffs asked the court to identify education as a fundamental right and property wealth per pupil as a suspect class—either of which would have triggered strict judicial scrutiny of the school funding system in California.³¹ Initially, the case was dismissed as non-justiciable, with the trial court citing the *McInnis* and *Burruss* precedents.³² The California Supreme Court disagreed with the trial court, finding that the case was justiciable according to the “fiscal neutrality principle.”³³ Fiscal neutrality requires that funding available for education be a function of the wealth of the state as a whole and not be a function of the wealth of the individual district.³⁴ On appeal, the California Supreme Court identified education as a fundamental right and per-pupil wealth as a suspect class.³⁵ Under strict judicial scrutiny,

23. *Id.*

24. *Id.* at 30.

25. *Id.* at 31–35.

26. *Id.* at 30.

27. 487 P.2d 1241 (Cal. 1971).

28. Nat’l Center for Education Statistics, *School Finance Litigation*, at http://nces.ed.gov/edfin/pdf/2003020tab3_3.pdf (last visited Sept. 21, 2004).

29. KERN ALEXANDER & RICHARD G. SALMON, PUBLIC SCHOOL FINANCE 167 (Ray Short ed., 1995) (citing *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976)).

30. Nat’l Center for Education Statistics, *supra* note 28.

31. ODDEN & PICUS, *supra* note 7, at 33.

32. *Serrano*, 487 P.2d at 1263 (Cal. 1971) (citing *McInnis v. Shapiro*, 293 F. Supp. 327 (N.D. Ill. 1968); *Burruss v. Wilkerson*, 310 F. Supp. 572 (W.D. Va. 1969)).

33. *Rebell*, *supra* note 4, at 224–25.

34. *Id.* at 225.

35. ODDEN & PICUS, *supra* note 7, at 33.

the California school system was found to violate the Equal Protection Clauses of both the Constitution of the State of California and the United States Constitution.³⁶ Allan R. Odden and Lawrence O. Picus describe the importance of this case as follows: "This was a precedent-setting opinion, gaining nationwide media, policy and legal attention, and immediately spawning a series of similar court cases in other states."³⁷

Encouraged by the California Supreme Court ruling, plaintiffs across the nation hoped to win at the federal level. A case from Texas became the first to reach the United States Supreme Court.³⁸ Plaintiffs alleged that the extreme inequities in the Texas educational finance system violated the Equal Protection clause of the United States Constitution.³⁹ A Texas district court found for the plaintiffs and contended that the Texas education finance system was not constitutional, according to the Constitution of the United States.⁴⁰ The United States Supreme Court, however, reversed the case, providing two important distinctions.⁴¹ In the split 5-4 decision, the majority held that education is not mentioned in the United States Constitution and could not be declared a federally protected fundamental right.⁴² The court did suggest that education might be declared a state protected fundamental right, since most state constitutions include an education clause.⁴³ The Court also ruled that district wealth does not qualify as a suspect class.⁴⁴ The Court noted that the disparities in question were based upon the wealth of school districts, not individuals.⁴⁵ Since the Texas educational system did not impede upon federal fundamental rights and did not discriminate based upon a suspect class, the Court did not examine the Texas educational system with strict scrutiny.⁴⁶ The Court found in favor of the defendants, stating that the funding formula in Texas was "rationally related" to the state's objective of leaving education to local control.⁴⁷ With this ruling, the United States Supreme Court eliminated the possibility of relief at the federal level, returning litigation back to the state courts.⁴⁸

36. *Id.*

37. *Id.*

38. *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973); see NAT'L RESEARCH COUNCIL, *supra* note 9, at 72.

39. See ALEXANDER & SALMON, *supra* note 29, at 29.

40. REBELL, *supra* note 4, at 221.

41. ODDEN & PICUS, *supra* note 7, at 33.

42. *Id.*

43. *Id.*

44. *Id.* at 34.

45. *Id.*

46. *Id.*

47. ODDEN & PICUS, *supra* note 7, at 34.

48. *Id.*

C. A Unique Case and an Early Adequacy Ruling

Also in 1973, the New Jersey Supreme Court found the New Jersey school finance system unconstitutional. In *Robinson v. Cahill*,⁴⁹ the court did not recognize education as a fundamental right or wealth as a suspect class, so the education system was not overturned on the basis of the state's Equal Protection Clause.⁵⁰ Instead, the court ruled that the large inequities in spending created unequal education opportunities and did not create a "thorough and efficient" system of schools as required by the education clause.⁵¹ The state supreme court, however, chose to base its decision on the state Education Clause that required a "thorough and efficient" education that prepared school children for their roles as citizens and competitors in the labor market.⁵² The ruling in *Robinson* required the legislature and state department of education to define an adequate education and fund it.⁵³ Odden and Picus describe the importance of this case as follows:

First, it kept school finance litigation alive just after *Rodriguez* seemed to sound its death knell. Second, it paved the way for challenging school finance systems on the basis of state education clauses, a substantively different strategy than using the equal protection clause. Third, it hinted at a new standard, which subsequently evolved into adequacy litigation.⁵⁴

D. The Second Wave: Equity Cases in State Courts

As statistical measures of equity were developed, litigants shifted their focus to the unconstitutionality of the inequitable funding practices supported by state school finance systems.⁵⁵ Cases in this era were based upon the equal protection and education clauses found in state constitutions.⁵⁶ Plaintiffs held that education was a fundamental right according to the education clauses of the state constitutions and the unequal spending levels violated state equal protection clauses.⁵⁷ Even though litigants could use widely accepted measures of equity to demonstrate that disparities existed,

49. 303 A.2d 273, 283–86 (N.J. 1973).

50. ODDEN & PICUS, *supra* note 7, at 34.

51. Nat'l Center for Education Statistics, *supra* note 28.

52. *Robinson*, 303 A.2d at 295.

53. *See generally id.*

54. ODDEN & PICUS, *supra* note 7, at 35.

55. NAT'L RESEARCH COUNCIL, *supra* note 9, at 74–75.

56. John G. Augenblick et al., *Equity and Adequacy in School Funding*, THE FUTURE OF CHILDREN, Winter 1997, at 68, available at

http://www.futureofchildren.org/usr_doc/vol7no3ART5.pdf (last visited Sept. 21, 2004).

57. ODDEN & PICUS, *supra* note 7, at 35.

courts were frequently unwilling to strike down funding formulae.⁵⁸ Some courts found that education was not a fundamental right and ruled that local control of schools served as the rational basis for the funding system.⁵⁹ Other courts criticized plaintiffs for failing to show that funding disparities had a negative impact on school children.⁶⁰ For these reasons, courts were hesitant to declare school funding systems unconstitutional, and the equity approach proved successful only about one-third of the time.⁶¹

Litigants in Arkansas were among the minority to find relief in the courts in the equity era of litigation. In *Dupree v. Alma School District*, the Arkansas Supreme Court found that the school finance formula in Arkansas violated both the Education Clause and the Equal Protection Clause of the Arkansas Constitution.⁶³ Arkansas Supreme Court Justice Steele Hays cited the disparities between the highest and lowest revenues per pupil (\$2,378 and \$873 respectively) to support his opinion that the court could find “no legitimate state purpose to support the system.”⁶² Noting that courts in other states had found for defendants on the basis of the legitimate state purpose of local control, Hays quoted *Serrano v. Priest* saying, “The notion of local control was a ‘cruel illusion’ for the poor districts due to limitations placed upon them by the system itself.”⁶³ In 1983 the Arkansas Supreme Court left to the legislature the task of developing a new school funding formula.⁶⁴

Notwithstanding the decision in *Dupree*, the general unwillingness of courts to find for the plaintiffs in these cases encouraged litigants to move away from arguments based only on funding inequities and find a way to show that the disparities in funding levels prevented students from receiving an adequate education.⁶⁵ Along with the standards-based reform movement, this trend led to a new strategy for the third wave of litigation, adequacy cases, which are discussed in the next section.

58. NAT'L RESEARCH COUNCIL, *supra* note 9, at 78–79.

59. Paul A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, in NAT'L RESEARCH COUNCIL, EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 55 (Helen F. Ladd et al. eds., 1999), available at <http://books.nap.edu/books/0309065631/html/R1.html> (last visited Sept. 21, 2004); NAT'L RESEARCH COUNCIL, *supra* note 9, at 79.

60. Minorini & Sugarman, *supra* note 59, at 55.

61. Education Commission of the States, *Finance Litigation*, at <http://www.ecs.org/html/issue.asp?issueid=48&subissueid=45> (last visited Mar. 17, 2003).

62. 279 Ark. 340, 651 S.W.2d 90 (1983).

63. *Id.* at 345, 651 S.W.2d at 92.

64. *Id.* at 346, 651 S.W.2d at 93 (quoting *Serrano v. Priest*, 557 P.2d 929, 948 (Cal. 1976)).

65. *Id.* at 349, 651 S.W.2d at 95.

66. REBELL, *supra* note 4, at 227.

III. ADEQUACY IN SCHOOL FINANCE LITIGATION

The standards-based reform movement served as the catalyst to direct school finance litigation and reform back to adequacy. As more states developed learning standards, plaintiffs demonstrating that certain school districts did not provide the educational opportunities to meet those standards made courts more open to adequacy claims.⁶⁶ Within the context of the reform movement, some state courts did not require the prior development of learning standards to find funding systems unconstitutional.⁶⁷ Such was the situation in the 1989 landmark adequacy case *Rose v. Council for Better Education*.⁶⁸ The Kentucky Supreme Court declared the entire state education system unconstitutional,⁶⁹ setting the stage for the "new wave" era of adequacy in school finance litigation.⁷⁰ This section summarizes the landmark *Rose* decision, discusses adequacy victories overturning state school funding systems (the entire system or a portion of the system), and summarizes litigation where the state courts upheld the school funding system. A summary of adequacy litigation since the *Rose* case is provided in Table 1.

In the *Rose* decision, the court did not identify specific learning standards but did characterize an efficient system of common schools.⁷¹ The court declared the establishment, maintenance, and funding of common schools to be the sole responsibility of the General Assembly and defined an "efficient" education as one that developed the following seven capacities in each and every child:

1. sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
2. sufficient knowledge of economic, social and political systems to enable the student to make informed choices;
3. sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
4. sufficient self-knowledge and knowledge of his or her mental and physical wellness;
5. sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

67. *Id.* at 230.

68. *Id.* at 235.

69. 790 S.W.2d 186 (Ky. 1989).

70. *Id.* at 197.

71. NAT'L RESEARCH COUNCIL, *supra* note 9, at 72.

72. *Id.* at 81.

6. sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
7. sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics, or in the job market.⁷²

The court drew upon legal sources, expert testimony, and a blue ribbon citizens' education advocacy group to outline an "efficient" education and then left to the legislative and executive branches the task of providing the structure for such a system.⁷³ The Kentucky Education Reform Act was passed by the legislature in 1990 and "has become a national model for implementing standards-based reforms."⁷⁴ Kentucky's definition of adequacy has been used directly or served as a substantive portion of the adequacy definition adopted in several other states including Alabama, Arkansas, Kansas, Massachusetts, New Hampshire, North Carolina, and South Carolina.⁷⁵ Kentucky's new educational system served the state unopposed for thirteen years, but plaintiffs filed a new case in 2003 alleging that the per-pupil foundation level has not increased as quickly as inflation and the cost of education.⁷⁶

In other states, the plaintiffs have prevailed in about two-thirds of finance litigation based upon adequacy.⁷⁷ Several courts have found that the foundation program for funding does not provide the amount of funds necessary for districts to provide all students with an adequate education, making the funding system unconstitutional according to state education clauses.⁷⁸ Most adequacy cases target the entire school funding system, but adequacy cases in Alaska, Arizona, and Colorado were based only upon facilities or capital outlay. Plaintiffs in all three states were successful in having school funding formulae declared unconstitutional with courts requiring reform only to that specific area.⁷⁹ Alaska's legislature dedicated

73. *Rose*, 790 S.W.2d at 212.

74. *REBELL*, *supra* note 4, at 235.

75. *Id.*

76. *Id.* at 235–36 nn.103–04.

77. Campaign for Fiscal Equity, *Overview of Finance Litigation*, at <http://www.accessednetwork.org/states/ky/newcase1-17-03.htm> (last visited March 17, 2003).

78. *Id.*; see also *REBELL*, *supra* note 4, at 82.

79. See Minorini & Sugarman, *supra* note 59, at 59–62; see also, Melissa C. Carr & Susan H. Fuhrman, *The Politics of School Finance in the 1990s*, in *EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES* 149–50 (Helen F. Ladd et al. eds., 1999), available at <http://books.nap.edu/books/0309065631/html/R1.html> (last visited Sept. 21, 2004).

80. Advocacy Center for Children's Success with Standards, *State by State: Alaska*, at

significant funds to facilities for one year without changing the facilities funding plan resulting in another ruling for the plaintiffs.⁸⁰ In contrast, the facilities funding systems in Arizona and Colorado have been successfully changed, and new cases in both states target adequacy for students with special needs.⁸¹

Plaintiffs in some states have been unsuccessful in convincing courts to order remedial action. In Florida, Rhode Island, and Illinois, courts held that the education clauses of the state constitutions inhibited judicial review based upon the separation of powers principle.⁸² The courts refused to infringe upon the powers and responsibilities of the legislature.⁸³ Similarly, the Pennsylvania Supreme Court seems unwilling to require the legislature to enact school finance reform, as it has declared three school funding cases non-justiciable.⁸⁴ The Louisiana Supreme Court relied upon the state's education clause requiring only a "minimal" education to determine that the funding system was adequate.⁸⁵ Defendants prevailed in North Dakota even though the majority of the court found that the school funding system was unconstitutional.⁸⁶ To declare a constitutional violation, courts in North Dakota require a "super majority," which was not reached.⁸⁷ Supreme courts in six states (Florida, Illinois, Louisiana, North Dakota, Pennsylvania, and Rhode Island) have declined the opportunity to declare school funding systems unconstitutional in response to adequacy claims.

Many states have restructured school finance systems, sometimes without prompting from litigation.⁸⁸ Within the adequacy era, states working to restructure school finance systems search for the actual cost of an

http://www.accessednetwork.org/states/ak/lit_ak.php3 (last visited Sept. 21, 2004).

81. *Id.*; Advocacy Center for Children's Success with Standards, *State by State: Arizona*, at http://www.schoolfunding.info/states/az/main_az.php3 (last visited Sept. 21, 2004); Advocacy Center for Children's Success with Standards, *State by State: Colorado*, at http://www.schoolfunding.info/states/co/main_co.php3 (last visited Sept. 21, 2004).

82. Advocacy Center for Children's Success with Standards, *State by State: Arizona*, *supra* note 80. Advocacy Center for Children's Success with Standards, *State by State: Colorado*, *supra* note 80.

83. NAT'L RESEARCH COUNCIL, *supra* note 9, at 110.

84. *Id.*

85. Advocacy Center for Children's Success with Standards, *State by State: Pennsylvania*, at http://www.schoolfunding.info/states/pa/main_pa.php3 (last visited Sept. 21, 2004).

86. Advocacy Center for Children's Success with Standards, *State by State: Louisiana*, at http://www.schoolfunding.info/states/la/main_la.php3 (last visited Sept. 21, 2004).

87. Advocacy Center for Children's Success with Standards, *State by State: North Dakota*, at http://www.schoolfunding.info/states/nd/main_nd.php3 (last visited Sept. 21, 2004).

88. *Id.*

89. William N. Evans, et. al., *The Impact of Court-Mandated School Finance Reform, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES* 74 (Helen F. Ladd et al. eds., 1999), available at <http://books.nap.edu/books/0309065631/html/R1.html> (last visited Sept. 21, 2004).

adequate education.⁸⁹ Several options for finding this target funding level are available, each with its own strengths and weaknesses.⁹⁰ The section that follows focuses on adequacy studies.

Table 1: School Finance Adequacy Litigation⁹¹

State	Case name and year	Upheld before reform	State response
Alabama	<i>Alabama Coalition for Equity v. Governor</i> (1993, 1997, 2002)	No	In 2001, the state Board of Education submitted a plan adding \$1.4 billion to the state's \$2.9 billion education budget after a costing out study, prompting the supreme court to re-open the case and dismiss it in 2002.
Alaska	<i>Kasayulie v. State</i> (1999)	No	State designated a large amount of funds for construction and renovation, but did not change facilities financing plan. The Superior Court refused the state's request to modify the decision in March 2001. In early 2004, the legislature still had not changed the funding system the court found unconstitutional in 1999.

90. Augenblick, *supra* note 56, at 75.

91. NAT'L RESEARCH COUNCIL, *supra* note 9, at 101.

91. Advocacy Center for Children's Success with Standards, "State by State," <http://www.accessednetwork.org/states/index.htm> (last visited September 15, 2004).

State	Case name and year	Upheld before reform	State response
Arizona	<i>Hull v. Albrecht</i> (1997, 1998), <i>Flores v. Arizona</i> (1999), and <i>Crane Elementary School District v. State</i> (2003)	No	Legislature phased out local property taxes and created the School Facilities Board in response to <i>Hull</i> ruling. In <i>Flores</i> , plaintiffs filed in federal court alleging inadequacy for "English Language Learners," and parties reached an agreement with stipulation. In 2004, plaintiffs filed a motion for contempt on the stipulation relating to qualification for teachers of ELL students. Plaintiffs sought an adequacy ruling for at-risk students in <i>Crane</i> case, which was dismissed in 2003, but has been appealed.
Arkansas	<i>Lake View School Dist. No. 25 vs. Governor</i> (1996, 2000, 2001, 2002)	No	The court set a deadline of January 2004 to allow time to repair "woefully inadequate" educational system, and the state conducted an adequacy study completed in 2003. The state missed the January 2004 deadline, and plaintiffs filed a compliance motion. In response, the court appointed two special masters to assess compliance.

State	Case name and year	Upheld before reform	State response
Colorado	<i>Giardino v. Colorado State Board of Education (2000)</i> and <i>Haley v. Colorado Department of Education (filed 2002)</i>	Settled	State dedicated \$190 million to school repair and construction according to court order. Litigation filed in 2002 focuses on adequate education for students with special needs.
Connecticut	<i>Sheff v. O'Neill (1996)</i>	Settled	State agreed to spend \$45 million to establish more magnet schools in 2003 after court declared that district boundaries created inadequate educational opportunities in the unusual <i>Sheff</i> adequacy suit revolving around desegregation.
Florida	<i>Coalition for Adequacy and Fairness in School Funding v. Chiles (1996)</i>	Yes	In 1996, the court cited the state's Separation of Powers Doctrine to find the education system adequate. Education advocates used the state's referendum process to amend the state constitution to contain one of the nation's most explicit education clauses.
Idaho	<i>Idaho Schools for Equal Educational Opportunity v. State (1998)</i>	No	The legislature revised the school funding plan after the Idaho Supreme Court remanded an adequacy claim for trial in 1993. In 2002, the court appointed a "special master" to assess the adequacy of facilities.

State	Case name and year	Upheld before reform	State response
Illinois	<i>Lewis E. v. Spagnolo</i> (1999)	Yes	The court rejected adequacy claims based upon the separation of powers principal, holding that the plaintiffs were asking the court to "enter the arena of Illinois public school policy."
Kentucky	<i>Rose v. Council for Better Education</i> (1989) and <i>Council for Better Education v. Williams</i> (filed 2003)	No	After this landmark case, in which the court declared the entire system of education in Kentucky unconstitutional, the legislature passed a comprehensive educational package in 1990 that dramatically increased district funding. New litigation filed in 2003 alleges that the funding is again inadequate because the plan does not account for increasing educational costs.
Louisiana	<i>Minimum Foundation Commission v. State</i> (1998)	Yes	The court granted summary judgment for the defendants, citing the state's constitutional requirement for a "minimum" education.
Maryland	<i>Bradford v. Maryland State Board of Education</i> (1996, 2002)	Consent decree	After an adequacy study, the 2002 legislative session led to the passage of a standards-based finance system to be phased in over six years. The court agreed to retain jurisdiction in the case in 2002.

State	Case name and year	Upheld before reform	State response
Massachusetts	<i>McDuffy v. Secretary of Education</i> (1993) and <i>Hancock v. Driscoll</i> (filed 2003)	No	After the court adopted the guidelines set forth in the Kentucky ruling, the legislature adopted a "foundation budget" program to be phased in over seven years. Plaintiffs in the latest case maintain that some schools still do not have the required funding to meet the guidelines set in <i>McDuffy</i> . The trial began in June 2003, and finding of fact was complete in June 2004.
Minnesota	<i>Skeen v. State</i> (1993)	Yes	A trial court found the funding formula unconstitutional on the basis of disparities, but the state Supreme Court reversed, citing that schools were adequate and the state's portion of funding was equally distributed.
Missouri	<i>Committee for Educational Equality v. State</i> (1994)	No	The state created the Outstanding Schools Act which increased school funding, improved equity, and established learning standards and assessments. The same plaintiffs filed a new case in January 2004, claiming that underfunding has again reached unconstitutional levels.

State	Case name and year	Upheld before reform	State response
Montana	<i>Helena Elementary School Dist. No. 1 v. State</i> (1990) and <i>Columbia Falls v. State</i> (2004)	No	The legislature overhauled the school funding system in 1989 and 1993 in response to adequacy challenges. In 2004, a district court refused the state's defense that fiscal difficulties limited funding and that performance on nationally-normed tests indicated adequacy. The order was stayed until October 1, 1995 to allow the state time to develop a new funding formula
New Hampshire	<i>Claremont School District v. Governor</i> (1993, 1997, 1999, 2002)	No	The state eliminated local property taxes and instituted a state property tax.
New Jersey	<i>Abbott v. Burke</i> (1985, 1990, 1994, 1997, 1998, 2002)	No	The governor established the Abbott Implementation and Compliance Coordinating Council to provide entitlements to disadvantaged children and establish a pre-school.
New York	<i>Campaign for Fiscal Equity, Inc. v. State of New York</i> (2001, 2002, 2003)	No	The New York Court of Appeals ordered the state to conduct an adequacy study, ensure that every district had the necessary funds to reach adequacy, and develop an accountability system. The Court set a July 30, 2004 deadline.

State	Case name and year	Upheld before reform	State response
North Carolina	<i>Leandro v. State</i> (1997) and <i>Hoke v. State</i> (2000)	No Decision	The state appealed the court's findings that the learning standards do describe an adequate education, but the state does not provide adequate funding to meet those standards. The North Carolina Supreme Court heard the rural defendants (<i>Hoke</i>), and determined that the legislative and executive branches must remedy lack of funding for at-risk students. The Court required the state to update the Court every 90 days. ⁹²
North Dakota	<i>Bismarck Public Schools v. North Dakota</i> (1994) and <i>Williston Public School District v. State</i> (filed 2003)	Yes	System was upheld due to lack of "super majority" vote. Citing the requirement of the "No Child Left Behind" legislation, new plaintiffs have filed an adequacy suit. Plaintiffs claim that heavy reliance on property taxes make the school funding system both inequitable and inadequate.

92. Advocacy Center for Children's Success with Standards, *Major Victory for "At-Risk" Schoolchildren in North Carolina Court Ruling* (2003), <http://www.schoolfunding.info/states/nc/4-4-02Hoke.php3> (last visited October 24, 2004).

State	Case name and year	Upheld before reform	State response
Ohio	<i>DeRolph v. State</i> (1997, 2000, 2003)	No	In response to an earlier decision, the legislature overhauled the finance system in 2001. To determine the level of funding, the legislature reduced the least amount suggested by a series of costing-out studies. Near the end of 2002, the Ohio Supreme Court again declared the finance system unconstitutional. In 2003, the Ohio Supreme Court prohibited a lower court from holding a compliance conference, ending the case.
Pennsylvania	<i>Marrero v. Commonwealth</i> (1998)	Yes	The court found the case against the state's school funding system to be non-justiciable.
Rhode Island	<i>City of Pawtucket v. Sundlun</i> (1995) and <i>Town of Exeter v. State</i> (2000)	Yes	Courts ruled in both cases that the state's education clause granted the legislature "virtually unreviewable discretion." The <i>Exeter</i> case was dismissed with no opinion.

State	Case name and year	Upheld before reform	State response
South Carolina	<i>Abbeville County School District v. State of South Carolina</i> (1999)	No	The legislature passed the Education Accountability Act and commissioned an adequacy study in 1998. The study revealed that funding needed an increase of almost fifty percent, and two legislators proposed a new sales-tax plan that would provide most districts more money. On remand from the South Carolina Supreme Court, a trial began in July 2003, but no order had been issued as of April 2004.
Tennessee	<i>Tennessee Small School Systems v. McWherter</i> (1993, 1995, 2002)	No	The Basic Education Plan (1993) was upheld in 1995, but then ruled unconstitutional in 2002, because the cost of providing teachers was not included in the plan.

State	Case name and year	Upheld before reform	State response
Texas	<i>Edgewood Indep. Sch. Dist. v. Kirby</i> (1989, 1991, 1995) and <i>West Orange-Cove Consolidated ISD v. Alanis</i> (2003)	No	After the <i>Rodriguez</i> loss in the U. S. Supreme Court, the Edgewood plaintiffs won an adequacy ruling at the state supreme court. The legislature's third attempt at reform included partial recapture of local revenues from wealthier districts and was deemed constitutional in 1995. In the latest case, wealthier school districts claimed that limits to local tax rates violated the state constitution. The case was dismissed by lower courts, but the Texas Supreme Court remanded the case for trial. The trial is scheduled to begin in July 2004.
Vermont	<i>Brigham v. State</i> (1997)	No	Within four months of the ruling, the legislature passed Act 60 to reduce tax rates but raise school funding in most districts by replacing local property tax with a state property tax. Backlash from the wealthier districts eventually led to the elimination of the recapture clause in Act 60 in the 2003 legislative session.
West Virginia	<i>Tomblin v. Gainer</i> (2002)	No	The legislature's revised system included increased funds, accountability, and monitoring. This new funding system, passed in 1998, was upheld as adequate in 2002.

State	Case name and year	Upheld before reform	State response
Wyoming	<i>Campbell County School District v. State</i> (1995, 2001)	No	The legislature relied on the results of an adequacy study to revise the funding system. In 2001, the new system was found by the courts to be adequate with the exception of facilities funding.

IV. ADEQUACY STUDIES

Many state legislatures have undertaken the task of determining the appropriate amount of funding to allow students to achieve state standards.⁹³ With about one-third of total tax resources dedicated to education, school funding constitutes a large share of legislative activity in most states.⁹⁴ Legislatures tend not to set goals and calculate the cost of achieving those goals but use political negotiation to decide school funding levels.⁹⁵ Adequacy-based court decisions have left legislators seeking the true foundation level for an adequate school system. Four approaches to finding an estimated cost of an adequate education have been developed over the last three decades: historical spending, econometric, professional judgment, and successful schools.⁹⁶ This section describes these approaches, discusses selecting an approach for conducting an adequacy study, and provides a summary of the Arkansas adequacy study.

A. Historical Spending and Econometric Approaches

The historical spending approach uses the amount of money districts spent educating students in prior years and applies an inflation or increase in educational cost formula to determine the foundation level for the next year.⁹⁷ While easy to calculate, this amount is of little value if the funding level was inadequate in the previous years.⁹⁸ The econometric approach

92. Augenblick, *supra* note 56, at 74–75.

93. *Id.* at 74.

94. *Id.*

95. *Id.* at 75; see also NAT'L RESEARCH COUNCIL, *supra* note 9, at 115–22.

96. Augenblick, *supra* note 56, at 75.

97. *Id.*

compares data on student performance with data on spending for a variety of factors.⁹⁹ A complex statistical formula that takes into account a combination of all the factors is applied to find the efficient level of each factor, which can then be used to determine cost.¹⁰⁰ Legislators avoid the econometric approach, perhaps because it is so complicated and difficult to understand.¹⁰¹ As a result, the econometric approach has not been used by any state to set a base cost for adequacy.¹⁰² The professional judgment and successful schools approaches have become the most widely used methods for setting a target foundation level.¹⁰³

B. The Professional Judgment Approach

The professional judgment approach is based upon the theory that a group of experts can accurately infer the needs of a model school district and the cost of meeting those needs.¹⁰⁴ Teachers, administrators, and local school finance personnel identify the resources needed to meet state educational standards, and the cost of those resources is summed to find the base cost of education per student.¹⁰⁵ The base cost can then be adjusted according to the special needs of students and districts.¹⁰⁶ Even though this approach implies that there is one best way to deliver educational services, it is more likely to be sensitive to varying needs than the historical or econometric approaches.¹⁰⁷ Jay Chambers and Tom Parrish originally developed this approach, sometimes known as the Resource Cost Model, which has been applied in several states.¹⁰⁸

The procedure for completing an adequacy study using the professional judgment approach involves several steps. First, a set of prototype schools for each level (elementary, middle, and high school) is created.¹⁰⁹

98. *Id.*

99. *Id.*

100. Allan Odden et. al., *An Evidence-Based Approach to School Finance Adequacy in Arkansas* 8 (2003), available at <http://www.arkleg.state.ar.us/data/education/FinalArkansasReport.pdf> (last visited Jan. 26, 2005).

101. Augenblick, *supra* note 56, at 75.

102. John Augenblick et al., *Calculation of the Cost of a Suitable Education in Kansas in 2001-2002 Using Two Different Analytic Approaches* ES-2 (2002), available at <http://www.jlmyersgroup.com/KansasAdequacyStudy2002.pdf> (last visited Sept. 21, 2004) [hereinafter *Kansas*].

103. *Id.* at ES-2.

104. NAT'L RESEARCH COUNCIL, *supra* note 9, at 121.

105. *Id.* at 121-22.

106. *Id.* at 121.

107. Odden, *supra* note 99, at 8-9. Current school funding formulae in Oregon, Maine, Maryland, and Wyoming are based upon base cost targets using this approach. *Id.* at 9.

108. *Kansas*, *supra* note 101, at II-2.

Depending upon the variation of school size across the state, different sets of prototype schools may be created for small, medium, and large schools.¹¹⁰ Second, a professional panel of well-qualified educators and school finance experts is gathered for each of the prototype schools.¹¹¹ The panel develops an underlying philosophical approach that characterizes the resource needs to allow the prototype school to achieve state adequacy standards.¹¹² The cost of each of these resources is combined to determine the total cost of services in the prototype schools.¹¹³ The resource needs may include the following: a certain number of classes, a particular class size, supplemental learning opportunities, pre-kindergarten services, equipment, professional development, technology, support services, and non-academic activities.¹¹⁴ Third, another panel is created to review the resources and costs suggested by the school-level panel and estimate the district-level costs associated with the prototype schools.¹¹⁵ Finally, a separate expert panel analyzes the work of the school-level and district-level panels and determines any necessary cost adjustments to arrive at the recommended base cost for the average student and the extra funds necessary for students with special needs.¹¹⁶

C. The Successful Schools Approach

The successful schools approach, also known as the empirical method, is another popular method for finding a target base cost. The approach relies upon school districts already achieving state standards to establish the cost of an adequate education.¹¹⁷ The successful schools approach allows for an efficiency factor.¹¹⁸ Exceptionally wealthy school districts or very small school districts may be eliminated from the analysis.¹¹⁹ The average expenditures of the successful schools providing an adequate education yield the base cost.¹²⁰ The base is then adjusted for students with special needs or

109. *Id.* at IV-1.

110. *Id.* at IV-4.

111. See NAT'L RESEARCH COUNCIL, *supra* note 9, at 121.

112. Kansas, *supra* note 101, at IV-4.

113. *Id.* at IV-5-IV-6.

114. *Id.* at IV-1.

115. See *id.* at IV-1, IV-4.

116. Odden, *supra* note 101, at 5.

117. See ACCESS, *Ensuring All Children the Opportunity for an Adequate Education: A Costing Out Primer*, Campaign for Fiscal Equity, at http://www.schoolfunding.info/resource_center/costingoutprimer.php3 (accessed March 22, 2003).

118. *Id.* at 76.

119. ODDEN & PICUS, *supra* note 7, at 73.

students considered at-risk.¹²¹ The successful schools approach has been implemented to produce base cost targets currently in use in several states.¹²²

The application of the successful schools approach involves three main steps: (a) identify successful schools, (b) explore the basic expenditures of those schools, and (c) calculate a base cost based upon the expenditures of successful schools.¹²³ To identify successful schools, the output measures of an adequate education are examined.¹²⁴ In Kansas, for example, Augenblick and Myers used standardized test scores in several subjects in different grade levels as the output measure of success.¹²⁵ This method eliminates schools that do not meet input standards then narrows the list of schools deemed successful by output standards.¹²⁶ In Kansas, state accreditation requirements identified the input standards.¹²⁷ Applying an efficiency requirement may shorten the list of successful schools even further.¹²⁸ In an Illinois adequacy study, for example, Augenblick and Myers removed from the successful schools list any district with expenditures higher than the spending level predicted by a multiple regression analysis of all the state's districts.¹²⁹ When examining the basic expenditures of the schools, not all expenditures must be included. In a Kansas study, for example, Augenblick and Myers excluded capital outlay, food service, transportation, and special education services from the successful schools base cost calculation.¹³⁰ The final per-pupil base cost is then determined by finding the weighted average of the per-pupil costs in the successful districts.¹³¹ The successful schools approach is primarily used to calculate the base cost of the average child in the average district and is not typically used to find the costs of educating students with special needs.¹³²

120. *See id.* at 73-74.

121. Odden, *supra* note 99, at 5. Current school funding formulae in Ohio, Illinois, and Mississippi are based upon base cost targets using this approach. *Id.*

122. *See* ODDEN & PICUS, *supra* note 7, at 73.

123. NAT'L RESEARCH COUNCIL, *supra* note 9, at 118.

124. Odden, *supra* note 101, at III-2-III-3.

125. *See id.* at III-3.

126. *Id.*

127. Augenblick & Myers, Inc., *A Procedure for Calculating a Base Cost Figure and an Adjustment for At-risk Pupils that Could be Used in the Illinois School Finance System 7* (2001), available at

<http://www.isbe.state.il.us/EFAB/PDFs/fullreport.pdf> (last visited Sept. 21, 2004) [hereinafter Illinois].

128. *Id.*

129. Kansas, *supra* note 101, at IV-9.

130. Odden, *supra* note 99, at 5.

131. *See* Kansas, *supra* note 101, at VI-1-VI-2.

D. Selecting an Approach to Finding the Cost of an Adequate Education

The successful schools and professional judgment approaches to finding the base cost of an adequate education serve as the most popular methods to finding the cost of an adequate education.¹³³ In general, the professional judgment studies yield higher base cost figures.¹³⁴ In states where both the professional judgment and successful schools approaches were applied (Colorado, Kansas, Maryland, and Missouri), the professional judgment model resulted in higher base cost figures than the successful schools approach.¹³⁵ Suggested foundation levels were always higher than the actual foundation level in each state where adequacy studies were conducted (see Table 2) but in the states where only professional judgment was applied, recommended increases in funding were higher than in any other state. For example, professional judgment adequacy studies in Indiana and Montana suggested that funding levels would need to be increased as much as sixty-two percent to eighty percent respectively to reach adequate levels.¹³⁶ These increases can be compared to the relatively low increases of two percent to forty-nine percent suggested in other states.¹³⁷ Table 2 provides a summary of adequacy studies conducted in the last ten years.

Research regarding the most appropriate approach is mixed. Augenblick, Myers, and Anderson noted that some states had spent considerable time pursuing the professional judgment approach, but abandoned their efforts when the approach resulted in figures well beyond the fiscal capacities

132. *Id.* at ES-2.

133. *Id.* at VI-1–VI-2.

134. Augenblick & Myers, Inc., *Calculation of the Cost of an Adequate Education in Colorado Using the Professional Judgment and the Successful School District Approaches VI-1* (2003), available at <http://www.cosfp.org/pdfs/FULLREPO.PDF> (last visited Sept. 4, 2004) [hereinafter Colorado]; Kansas, *supra* note 101, at VI-1; Augenblick & Myers, Inc., *Calculation of the Cost of an Adequate Education in Maryland in 1999-2000 Using Two Different Analytic Approaches 2-3* (2001), available at http://mlis.state.md.us/other/education/Full_AM_Report.pdf (last visited Sept. 4, 2004) [hereinafter Maryland]; Augenblick & Myers, Inc., *Calculation of the Cost of an Adequate Education in Missouri Using the Professional Judgment and the Successful School District Approaches ES-2–ES-3* (2003), available at <http://www.msbanet.org/pdf/adequacy.pdf> (last visited Sept. 4, 2004).

135. Augenblick & Myers, Inc., *Calculation of the Cost of an Adequate Education in Indiana Using the Professional Judgment Approach i–ii* (2002); Augenblick & Myers, Inc., *Calculation of the Cost of an Adequate Education in Montana Using the Professional Judgment Approach ii* (2002).

136. Illinois, *supra* note 126, at 1, 15; Maryland, *supra* note 133, at 3; Management Analysis & Planning, Inc., *A Professional Judgment Approach to Determining Adequate Education Funding in Maryland 37* (2001), available at http://www.acy.org/web_data/MAPFinial_Report.pdf (last visited Oct. 24, 2004).

of the states.¹³⁸ Picus, Odden, and Fermanich criticized how the successful schools approach can be manipulated:

Though analysts suggest that the adequate expenditure level should be the weighted average of all the expenditures of the districts meeting the performance benchmark, some policymakers have suggested using the average of only the bottom half of that sample, using an unweighted average, or even using the value of just the lowest expenditure district in the sample—in order to drive down the value, and thus the state cost, of the adequate foundation expenditure level.¹³⁹

Smith suggests that states look at adequacy through “multiple lenses” and “use multiple approaches so that you do not become boxed in. Variations between approaches within a state can be over twenty-five percent.”¹⁴⁰ As shown in Table 2, no single approach to finding the base cost of education receives support from a majority of researchers.

Kansas and Maryland commissioned studies using both approaches.¹⁴¹ In both states, Augenblick & Myers, Inc. found the foundation amount suggested by the successful schools approach was less than the foundation amount suggested in the professional judgment approach (differences of twenty-seven percent and eleven percent respectively).¹⁴² In Kansas the professional judgment panels recommended more technology, staff development, and a full-day kindergarten program, resulting in the higher base cost.¹⁴³ Because the professional judgment analysis gave the cost of these recommendations, the state could use the data to make program decisions. Identifying “weights” for students with special needs or at-risk students served as another benefit realized by the professional judgment approach in both states.¹⁴⁴ Weighting allowed the state to determine the cost of an adequate education for students requiring more services than the average child. The successful schools approach did not yield consistent weights in Kansas, and researchers made no attempt to calculate weights when applying the successful schools approach in Maryland.¹⁴⁵ In both Kansas and Maryland, Augenblick and Myers suggested that the final base cost of an adequate education in those states was based upon results from both approaches.¹⁴⁶

137. Augenblick, *supra* note 56, at 75.

138. Odden, *supra* note 99, at 6.

139. Steve Smith, Education Adequacy: Issues, Options, Perspectives, Paper Presented at the Meeting of the Joint Education Committee in Little Rock, Arkansas (Jan. 15, 2003).

140. Kansas, *supra* note 101, at ES-2; Maryland, *supra* note 133, at 2.

141. Kansas, *supra* note 101, at VI-1; Maryland, *supra* note 133, at 2-3.

142. Kansas, *supra* note 101, at VI-3.

143. *Id.*; Maryland, *supra* note 133, at 2-3.

144. Kansas, *supra* note 101, at VI-1; Maryland, *supra* note 133, at 19.

145. Kansas, *supra* note 107, at VI-2; Maryland, *supra* note 133, at 29.

E. The Arkansas Adequacy Study

In his 2001 lower court ruling of the Lake View case, Judge Collins Kilgore ordered that the state conduct a study of the costs required in the provision of an adequate education for all of the state's students.¹⁴⁷ In November 2002, the Arkansas Supreme Court upheld the lower court ruling and mandated that the General Assembly begin work on an adequacy study.¹⁴⁸ Consequently, Act 94 of 2003 created the Arkansas Joint Legislative Committee on Educational Adequacy, which was given primary responsibility for fulfilling the Court's mandate.¹⁴⁹

The Committee contracted with the national consulting firm of Lawrence O. Picus and Associates to conduct a statewide adequacy study.¹⁵⁰ On September 1, 2003, Lawrence O. Picus and Associates submitted to the Arkansas Joint Committee on Educational Adequacy an adequacy study. In the introductory letter to Senator Jim Argue and Representative Calvin Johnson, Picus promised, "If Arkansas fully implements this plan, five years from now it will be on the top of everyone's list of education reform states with programs that work."¹⁵¹ To fund this program, the study suggested increasing state educational funding by \$847.3 million over the 2001–2002 commitment of \$1.588 billion, or an increase of fifty-three percent.¹⁵² Lawrence O. Picus and Associates utilized an "evidence-based approach" to complete this study.¹⁵³

It is important to note why the evidence-based approach has not been defined earlier in this article. The authors identify the evidence-based approach as a different method than the professional judgment approach.¹⁵⁴ Picus and Odden maintain that the evidence-based approach uses "research based educational strategies" and "the professional judgments of leading Arkansas educators,"¹⁵⁵ but the professional judgment approach "depends solely on the judgments of educational professionals."¹⁵⁶ Picus and Odden used a similar approach in a Kentucky adequacy study, terming the methodology as the "State-of-the-Art Approach."¹⁵⁷ Augenblick and Myers state

146. Lake View Sch. Dist. No. 25 v. Huckabee, No. 1992–5318, 53 (Ark. Ch. 2001).

147. Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31, 56, 91 S.W.3d 472, 486–87 (2002).

148. An Act to Create the Joint Committee on Educational Adequacy, 2003 Ark. Act 94.

149. Odden, *supra* note 99, at 1.

150. *Id.* at Introductory Letter.

151. *Id.* at 73.

152. *Id.* at 2.

153. *Id.* at 5.

154. *Id.* at 10.

155. Odden, *supra* note 99, at 9.

156. Allan Odden et. al., Kentucky Department of Education, *A State-of-the-Art Approach to School Finance Adequacy in Kentucky* 4 (2003), available at

that the professional judgment approach includes the experiences of educational professionals that “may be combined with research results as a rational way to specify the resources required to produce a specific level of student performance.”¹⁵⁸ Augenblick and Myers also note that “different people interpret what each approach means somewhat differently.”¹⁵⁹ Because the distinction between evidence-based methodology and professional judgment methodology is not made elsewhere in the literature, we classify the Arkansas adequacy study strategy as the professional judgment approach.

To begin the adequacy study for Arkansas, Lawrence O. Picus and Associates prepared a preliminary report that focused on the utilization of research-based strategies in prototypical elementary, middle, and high schools in Arkansas.¹⁶⁰ The researchers provided a meta-analysis of educational research regarding pre-school, full-day kindergarten, school size, class size, principals, instructional facilitators, planning and preparation time, struggling students, gifted and talented students, student support, professional development, technology, and other resources.¹⁶¹ Working in conjunction with the Joint Committee, the researchers developed a knowledge- and skills-based teacher salary plan.¹⁶² The research and salary plan serves as the foundation for a matrix “describing the resources needed to provide an adequate education.”¹⁶³

Next, the matrix was compared with findings from professional judgment panels in other states.¹⁶⁴ Odden and Picus provide a summary of the resources suggested by panels in Kentucky, Kansas, Nebraska, Montana, and Maryland.¹⁶⁵ The researchers recommended that the original matrix be modified to “enhance the guidance counseling resources, for library staff in middle and high schools, at least 10 days of substitute time for each teacher, and for some level of dollars per pupil for instructional materials, equipment, supplies and student activities.”¹⁶⁶ The Arkansas Department of Education also suggested increasing special education staffing from 2.0 teachers per prototype school to 2.9 positions per school.¹⁶⁷ The Joint Committee supported the modifications suggested by Odden and Picus based upon

<http://www.accessednetwork.org/states/ky/KySEEKStudy.PDF> (last visited Oct. 24, 2004).

157. Colorado, *supra* note 133, at II-3.

158. *Id.* at II-2.

159. See Odden, *supra* note 99, at 14–40.

160. See *id.*

161. See *id.* at 41–43.

162. See *id.* at ii.

163. *Id.* at 44–46.

164. *Id.* at 44–52.

165. Odden, *supra* note 99, at 46.

166. *Id.*

other states' professional judgment panels and the Arkansas Department of Education.¹⁶⁸

The original matrix and the recommended changes were given to Arkansas professional judgment panels for review.¹⁶⁹ Two Arkansas professional judgment panels met in Little Rock in June of 2003.¹⁷⁰ The panels concurred with the recommendations presented and provided four suggestions:

1. Reduce class size in grades four and five to twenty students, in grades six and eight to twenty-two students, and set a maximum of 150 students per teacher per semester in high school;
2. Provide funding for assistant principals in addition to the proposed instructional facilitators;
3. Provide thirty-five dollars per student to hire supervisory aides, allowing districts to comply with law limiting teacher non-instructional duties to one hour per week; and
4. Provide thirty dollars per student at the elementary level for extra duties.¹⁷¹

These recommendations were sent back to the Joint Committee for debate.¹⁷²

The Joint Committee met in July 2003 and rejected the recommendations for class size reduction and assistant principal funding.¹⁷³ The Joint Committee approved the 150 student-per-semester cap in high school and the funding for supervisory aides.¹⁷⁴ The Committee did not discuss the recommendation for funding extra duties at the elementary level.¹⁷⁵ Also at this meeting, the Committee agreed to prorate the funding for schools larger or smaller than the prototype school size of 500 students.¹⁷⁶

The final step in the approach applied by Picus and Odden was to propose and assign a cost to a set of resources recommended by research, the Arkansas Department of Education, and the professional judgment panels.¹⁷⁷ The researchers determined the price by setting benchmarks for Arkansas teacher salaries based upon the salaries in surrounding states.¹⁷⁸ Re-

167. *Id.*

168. *Id.* at 53.

169. *Id.*

170. *Id.* at 54.

171. Odden, *supra* note 99, at 54.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 54–56.

176. *Id.* at 56–66.

177. Odden, *supra* note 99, at 59–60.

searchers proposed increases of more than \$847 million to the 2001–2002 school finance budget of \$1.588 billion.¹⁷⁹ The suggested increases, geared toward providing an adequate education to all of Arkansas's students, are detailed as follows: (1) \$224.6 million for the evidence-based matrix; (2) \$356 million for teacher salaries; (3) \$100 million for early childhood education;¹⁸⁰ and (4) \$166.7 million for the funding formula.¹⁸¹

The first three items are increases in funding based upon the work of the researchers in conjunction with the various committees.¹⁸² The fourth item is an increase realized when Picus and Odden applied their recommended needs-based funding formula to all of Arkansas's 308 school districts.¹⁸³

Picus and Odden suggest that the entire increase should be applied to Arkansas schools, with adjustments for inflation, in order for Arkansas to provide an adequate education to students.¹⁸⁴ The increases would provide "enhanced early childhood education program, substantially smaller classes in grades K-3, a comprehensive mixture of additional school personnel to meet the special needs of school children, and a teacher salary increase that totals 18 percent."¹⁸⁵ Further, Picus writes, "If fully implemented this plan will make Arkansas a leader in the educational reform movement, and more importantly will dramatically improve student performance across the state."¹⁸⁶

178. *Id.* at 73.

179. *Id.* at 66.

180. *Id.* at 69.

181. *Id.* at 66.

182. *Id.* at 69.

183. *See* Odden, *supra* note 99, at 79–80.

184. *Id.* at 79.

185. *Id.* at ii.

Table 2: Adequacy Studies by Year

State	Year	Methodology	Study Undertaken by	Pre-Study Foundation Amount	Suggested Foundation Amount
New York	2004	Professional Judgment	Management, Analysis, and Planning, Inc. ¹⁸⁷	\$11,056 (01-02)	\$12,975 (01-02)
New York	2004	Successful Schools	Standard & Poor's ¹⁸⁸	\$11,796 (02-03)	\$12,991- \$13,755 (03-04)
Arkansas	2003	Professional Judgment (Evidence Based)	L. O. Picus and Associates ¹⁸⁹	\$4,819,190 (01-02)	\$6,230 (03-04)
Colorado	2003	Successful Schools and Professional Judgment	Augenblick, Palaich, & Associates ¹⁹¹	\$4,794 (01-02)	\$4,798 (01-02)

187. Jay G. CHAMBERS ET AL., MANAGEMENT ANALYSIS & PLANNING, INC., DETERMINING THE COST OF PROVIDING ALL CHILDREN IN NEW YORK AN ADEQUATE EDUCATION 75 (2004), <http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf> (last accessed Sept. 15, 2004).

188. STANDARD & POOR'S SCHOOL EVALUATION SERVICES, RESOURCE ADEQUACY STUDY FOR THE NEW YORK STATE COMMISSION ON EDUCATION REFORM 19-24 (2004), <http://www.cfequity.org/S&PAdequacyStudy.pdf> (last accessed Sept. 15, 2004).

189. LAWRENCE O. PICUS & ALLAN R. OGDEN, L. O. PICUS & ASSOCIATES, AN EVIDENCE-BASED APPROACH TO SCHOOL FINANCE ADEQUACY IN ARKANSAS 8 (2003), <http://www.arkleg.state.ar.us/data/education/FinalArkansasReport.pdf> (last accessed Feb. 2, 2005).

190. This amount is calculated from this table by subtracting the mean proposed change in state aid per pupil from the mean adequacy model costs per pupil.

191. AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN COLORADO USING THE PROFESSIONAL JUDGMENT AND THE SUCCESSFUL SCHOOL DISTRICT APPROACHES VI-2 (2003), http://www.ukans.edu/~bdbaker/finance/co_aandm.pdf (last accessed Sept. 15, 2004).

State	Year	Methodology	Study Undertaken by	Pre-Study Foundation Amount	Suggested Foundation Amount
Kentucky	2003	Professional Judgment	L. O. Picus and Associates ¹⁹²	\$6,029 (01-02)	\$8,812 (01-02)
Kentucky	2003	State-of-the-Art	L. O. Picus and Associates ¹⁹³	\$6,020 (01-02)	\$6,893 (01-02)
Kentucky	2003	Professional Judgment	Verstegen & Associates ¹⁹⁴	\$7,271 (01-02) ¹⁹⁵	Small \$9,582 Moderate \$9,112 Large \$8,438
Missouri	2003	Successful Schools and Professional Judgment	Augenblick & Myers ¹⁹⁶	\$4,100 ¹⁹⁷ (01-02)	\$5,428 (01-02)

192. LAWRENCE O. PICUS et al., L. O. PICUS & ASSOCIATES, A PROFESSIONAL JUDGMENT APPROACH TO SCHOOL FINANCE ADEQUACY IN KENTUCKY 1, 32 (2003), <http://www.education.ky.gov/NR/rdonlyres/edf37xit2ozcwbe4wqx3cquih4yllye7zbo52weyjhg4hr2eeivvym4u24ash56gszlbz7c747mgfbz5egfeky37g/Prof%2eJudgeReport8%2e0.doc>.

193. ALLAN ODDEN ET AL., L. O. PICUS & ASSOCIATES, A STATE-OF-THE-ART APPROACH TO SCHOOL FINANCE ADEQUACY IN KENTUCKY 38 (2003), <http://www.schoolfunding.info/states/ky/KySEEKStudy.PDF> (last accessed Sept. 15, 2004).

194. DEBORAH A. VERSTEGEN, VERSTEGEN & ASSOCIATES, CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN KENTUCKY ii–iii (2003), <http://www.oldham.k12.ky.us/KYAdequacyStudy.pdf> (last accessed Sept. 15, 2004).

195. STUDY ON FUNDING ADEQUACY FOR PUBLIC EDUCATION IN MISSOURI: FAQ'S (2003), <http://www.msbanet.org/docs/adequacyqa.doc> (last accessed October 24, 2004). The differences in the “pre-study foundation amount” between the L. O. Picus & Associates Kentucky study and the Verstegen Kentucky study appears to be a difference in dividing by Average Daily Membership or Average Daily Attendance.

196. AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN MISSOURI USING THE PROFESSIONAL JUDGMENT AND THE SUCCESSFUL SCHOOL DISTRICT APPROACHES ES-3 (2003), <http://www.msbanet.org/pdf/adequacy.pdf> (last accessed Sept. 15, 2004).

197. NEBRASKA DEPARTMENT OF EDUCATION, 2000–01 STATE AID CERTIFICATION: GENERAL INFORMATION/COMPARISONS 2 (2001),

State	Year	Methodology	Study Undertaken by	Pre-Study Foundation Amount	Suggested Foundation Amount
Nebraska	2003	Professional Judgment	Augenblick & Myers ¹⁹⁸	\$5,498 (00-01)	Very Small \$11,257 (00-01) Small \$8,169 (00-01) Moderate \$7,653 (00-01) Large \$5,845 (00-01)
North Dakota	2003	Professional Judgment	Augenblick, Palaich, & Associates ¹⁹⁹	\$6,413,200 (01-02)	Very Small \$10,213 (01-02) Small \$6,521 (01-02) Moderate \$6,005 (01-02) Large \$6,662

<http://ess.nde.state.ne.us/SchoolFinance/StateAid/Downloads/0001/sainfo.pdf> (last accessed October 24, 2004).

198. AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN NEBRASKA IN 2002–2003 USING THE PROFESSIONAL JUDGMENT APPROACH ii (2003), <http://www.nsea.org/legpol/legpdfs/03AMNebraskaReport.pdf> (last accessed Sept. 15, 2004).

199. AUGENBLICK, PALAICH, & ASSOCIATES, INC., CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN NORTH DAKOTA IN 2002-2003 USING THE PROFESSIONAL JUDGMENT APPROACH Table ES-2 (2003) <http://www.schoolfunding.info/states/nd/NDCosting-OutStudy.pdf>.

200. AUGENBLICK, PALAICH, & ASSOCIATES, INC., AN ESTIMATION OF THE TOTAL COST OF IMPLEMENTING THE RESULTS OF THE SCHOOL FINANCE ADEQUACY STUDY UNDERTAKEN BY AUGENBLICK, PALAICH, & ASSOCIATES, INC. 6 (2003), <http://www.schoolfunding.info/states/nd/NDCosting-OutStudy-ExecSumm.pdf> (last accessed October 24, 2004).

State	Year	Methodology	Study Undertaken by	Pre-Study Foundation Amount	Suggested Foundation Amount
					(01-02)
Indiana	2002	Professional Judgment	Augenblick & Myers ²⁰¹	\$4,400 (01-02)	\$7,142 (01-02)
Kansas	2002	Successful Schools and Professional Judgment	Augenblick & Myers ²⁰²	\$3,820 (00-01)	\$4,650 (00-01)
Montana	2002	Professional Judgment	Augenblick & Myers ²⁰³	\$4,471 (01-02)	Small \$8,041 (01-02) Moderate \$6,751 (01-02) Large \$6,004 (01-02) Very Large \$6,048 (01-02)

201. AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN INDIANA USING THE PROFESSIONAL JUDGMENT APPROACH i-ii (2002), <http://www.jlmyersgroup.com/indianafinalreportssummary.pdf>.

202. JOHN AUGENBLICK ET AL., AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF A SUITABLE EDUCATION IN KANSAS IN 2001-2002 USING TWO DIFFERENT ANALYTIC APPROACHES VII-11 (2002), <http://www.jlmyersgroup.com/KansasAdequacyStudy2002summary.pdf> (last accessed Sept. 15, 2004).

203. JOHN MYERS & JUSTIN SILVERSTEIN, AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF A SUITABLE EDUCATION IN MONTANA IN 2001-2002 USING THE PROFESSIONAL JUDGMENT APPROACH ii (2002), <http://www.mtsba.org/study/Final%20Report.pdf>.

State	Year	Methodology	Study Undertaken by	Pre-Study Foundation Amount	Suggested Foundation Amount
Illinois	2001	Successful Schools	Augenblick & Myers ²⁰⁴	\$4,425 (01-02)	\$4,600 (01-02)
Louisiana	2001	Successful Schools	Augenblick & Myers ²⁰⁵	\$3,103 (00-01)	\$4,234 (00-01)
Maryland	2001	Professional Judgment	Management, Analysis, and Planning, Inc. ²⁰⁶	\$3,901 (99-00)	\$4,230 - \$6,082 (99-00)
Maryland	2001	Successful Schools and Professional Judgment	Augenblick & Myers ²⁰⁷	\$3,901 (99-00)	\$5,969 (99-00)
Oregon	2000	Professional Judgment	State Appointed Commission ²⁰⁸	\$5,216 (01-02) \$5,762 (02-03)	\$5,444 (01-02) \$5,880 (02-03)

204. AUGENBLICK & MYERS, INC., A PROCEDURE FOR CALCULATING A BASE COST FIGURE AND AN ADJUSTMENT FOR AT-RISK PUPILS THAT COULD BE USED IN THE ILLINOIS SCHOOL FINANCE SYSTEM 1, 15 (2001), <http://www.isbe.state.il.us/EFAB/PDFs/fullreport.pdf> (last accessed Sept. 15, 2004).

205. Education Commission of the States, *A Survey of Finance Adequacy Studies*, at <http://www.ecs.org/clearinghouse/29/23/2923.htm> (last accessed Sept. 15, 2004).

206. MANAGEMENT ANALYSIS & PLANNING, INC., A PROFESSIONAL JUDGMENT APPROACH TO DETERMINING ADEQUATE EDUCATION FUNDING IN MARYLAND 17, 37 (2001), http://www.acy.org/web_data/MAPFinalReport.pdf (last accessed Sept. 15, 2004). The suggested foundation amount provided here is found by adding the actual base cost from page 37 and the suggested foundation program increases on page 17.

207. AUGENBLICK & MYERS, INC., CALCULATION OF THE COST OF AN ADEQUATE EDUCATION IN MARYLAND IN 1999-2000 USING TWO DIFFERENT ANALYTIC APPROACHES 3, 5 (2001), <http://www.txsc.org/Adequacy/MarylandAdequacyStudy.pdf> (last accessed Sept. 15, 2004).

208. Education Commission of the States, *A Survey of Finance Adequacy Studies*, at <http://www.ecs.org/clearinghouse/29/23/2923.htm> (last accessed Sept. 15, 2004).

State	Year	Methodology	Study Undertaken by	Pre-Study Foundation Amount	Suggested Foundation Amount
South Carolina	2000	Professional Judgment	Augenblick and Myers ²⁰⁹	\$5,990 (98-99)	\$6,189 (98-99)
Maine	1999	Successful Schools	Maine Education Policy Research Institute ²¹⁰	\$4,498 ²¹¹ (96-97)	K-5 \$4,407 (96-97) 6-8 \$4,543 (96-97) 9-12 \$5,081 (96-97)
New Hampshire	1998	Successful Schools	Augenblick & Myers ²¹²	\$3,201 (00-01)	Elementary \$4,145 (99-00) Secondary \$4,722 (99-00)
Ohio	1997	Successful Schools	Augenblick & Myers ²¹³	\$3,500 (93-94)	\$3,930 (93-94)

209. JOHN AUGENBLICK et al., AUGENBLICK & MYERS, INC., DETERMINING AN ADEQUATE PER PUPIL FUNDING LEVEL FOR PUBLIC K-12 EDUCATION IN SOUTH CAROLINA IN RELATIONSHIP TO PUPIL PERFORMANCE OBJECTIVES 2 (2000), <http://www.apaconsulting.net/Flash/papers/sc00.pdf>.

210. Essential Essential Programs and Services Committee of the State Board of Education, EQUITY AND ADEQUACY IN FUNDING TO IMPROVE LEARNING FOR ALL CHILDREN 32 (1999), <http://www.usm.maine.edu/cepare/pdf/fi/epsreport.pdf>.

211. Maine Department of Education, 1996-1997 Maine Resident Students: Per Pupil Operating Costs, <http://www.state.me.us/education/data/ppcosts/1997/wppts97.htm> (last accessed October 24, 2004).

212. AUGENBLICK & MYERS, INC., ALTERNATIVE APPROACHES FOR DETERMINING A BASE FIGURE AND PUPIL-WEIGHTED ADJUSTMENTS FOR USE IN A SCHOOL FINANCE SYSTEM IN NEW HAMPSHIRE 10, TABLE 1A (1998), <http://www.apaconsulting.net/Flash/papers/newhamp.pdf>. Only the executive summary of the report is available at the website. The full report can be requested from Augenblick, Palaich & Assoc. at 700 Broadway, Suite 804, Denver, CO 80203.

213. JOHN AUGENBLICK, AUGENBLICK & MYERS, INC., RECOMMENDATIONS FOR A BASE FIGURE AND PUPIL-WEIGHTED ADJUSTMENTS TO THE BASE FIGURE FOR USE IN A NEW SCHOOL FINANCE SYSTEM IN OHIO 10 (1997), <http://www.apaconsulting.net/Flash/papers/ohio97.pdf>.

V. CONCLUSION

Lawmakers were not enthusiastic about asking the taxpayers for such a large funding increase in one year. Nevertheless, at the end of the special session of the legislature in February 2004, the Arkansas legislature approved a bill for an additional 7/8 cent on the sales tax to support the reform.²¹⁴ The tax hike is expected to raise about one-half of the increase suggested by the adequacy study. Time will tell whether this increase in resources results in positive change. The special masters—appointed by the Arkansas Supreme Court to examine the state's compliance with the *Lake View*²¹⁵ decision—have filed a report to the court concluding, effectively, that any judgments on the compliance of the legislature should be withheld until some time has passed and the outcomes of the reforms can be examined.²¹⁶ In fact, the special masters suggest that the effectiveness of the reform cannot be fully assessed until five to ten years have passed.²¹⁷

As this review clearly shows, litigation and adequacy studies are not unique to the state of Arkansas. The outcomes of such legal and political battles vary from state to state. It is clear that the recent tax increase passed by the Arkansas legislature, although less than that suggested by the adequacy study, represents a major financial commitment by the state to the education of the nearly half-million elementary and secondary students in the State of Arkansas. How effectively these new funds are utilized and how firmly policymakers can stay the course of education reform will be key factors in determining the impact the litigation will have on Arkansas students. As the special masters' report suggests, time will tell.

186. Act of Feb. 2, 2004, No. 1030, 2004 Ark. Acts 1030.

187. *Lake View Sch. Dist. No. 25 vs. Huckabee*, No. 01-836, 2004 Ark. LEXIS 69, (Ark. Feb. 5, 2004) (per curiam).

188. *Court Orders for Special Masters*, ASSOCIATED PRESS, Apr. 3, 2004, available at <http://www.lawschool.westlaw.com> at 4/3/04 APWIRES 01:31:53.

189. *Id.*

