

# Unequal Access: How Debt Exacerbates Inequality in Education Financing

Matthew J. Razzano\*

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## INTRODUCTION

When school funding flows from property taxes, it follows that geographic wealth disparities will lead to unequal districts. In the 1970s, courts began wading into the legally murky water of school funding to correct such gaps, but they did so without a comprehensive understanding of what creates them in the first place.<sup>1</sup> Courts focused on property taxes and spending per pupil to measure

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\* Law Clerk, J.D., Notre Dame Law School, 2019; M.Sc. London School of Economics, 2016; B.A. University of Notre Dame, 2012. I would like to thank Professor Nicole Garnett, whose Law of Education class inspired this Essay, my classmates who helped shape its content, and the members of the *California Law Review* who provided thoughtful advice and careful editing.

1. See generally William S. Koski & Rob Reich, *When “Adequate” Isn’t: The Retreat from Equity in Educational Law and Policy and Why It Matters*, 56 EMORY L.J. 545 (2006) (discussing the history of education financing litigation).

inequality, instead of debt and the ability to access financial markets.<sup>2</sup> Given this incomplete understanding of inequality, most courts shirk the opportunity to ensure that students have equal access to education, deferring school funding questions to state legislatures. This Essay does not argue that equal financial access solves all problems, but it does suggest that spending per pupil is an imperfect barometer to measure funding inequality among school districts. Courts need to paint a more complete picture that includes additional metrics, while policymakers should consider legislative solutions that increase financial access for poor and rural districts. Part I provides a brief history of school funding cases, as well as background on debt issuances. Part II discusses the added inequalities accompanying limited financial access. And Part III evaluates whether courts should intervene to correct this underexplored aspect of school financing, offers potential solutions.

## I.

### COURTS AND THE HISTORY OF THE SCHOOL FINANCING

#### A. *A Brief History of Education Financing*

School funding cases first appeared after the Civil Rights era. Many state constitutions include provisions for free and fair education,<sup>3</sup> but early cases rarely mentioned them. After *Brown v. Board of Education*,<sup>4</sup> courts started to address discrepancies in funding among districts. The first wave of litigation “relied primarily on the Federal Equal Protection Clause and argued that equal protection guaranteed a right to substantially equal funding among school districts.”<sup>5</sup> Based on this theory, the California Supreme Court, in *Serrano v. Priest*, tore down the traditional financing infrastructure.<sup>6</sup> There, the court assessed whether the “public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment.”<sup>7</sup> *Serrano* held that wealth was a suspect class and claimed that small districts “cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts.”<sup>8</sup>

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2. See Edgar H. Bittle, *School Building Programs, Equipment Acquisitions and Cash Flow: The Anatomy of School Debt Financing*, 73 ED. L. REP. 593, 594 (1992).

3. See, e.g., COLO. CONST. art. IX, § 2; N.J. CONST. art. VIII, § IV; PA. CONST. art. III, § 14; VT. CONST. ch. I, art. 7 and ch. II, § 68.

4. See *id.*; see also *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

5. Koski & Reich, *supra* note 1, at 557.

6. See 487 P.2d 1241 (Cal. 1971).

7. *Id.* at 1244.

8. *Id.* at 1250. The court further distinguishes beyond individual tax bases, and argues that property taxes for business augments the disparities. *Id.* at 1252–53 (“To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child’s education dependent upon the location of private commercial

The Supreme Court of the United States halted this progress, however, and reversed course in *San Antonio Independent School District v. Rodriguez*.<sup>9</sup> Facing comparable facts to *Serrano*, the Court held that property taxes fund a variety of local services beyond education,<sup>10</sup> and such a system is not so “irrational as to be invidiously discriminatory.”<sup>11</sup> Despite creating inequalities among districts, financing education through property taxes remained constitutional, which stood counter to the spirit of *Serrano*.

As a result, state courts ushered in the second wave of litigation “with [their] discovery of educational rights in state constitutions.”<sup>12</sup> In *Robinson v. Cahill*, the New Jersey Supreme Court relied on its own constitution’s Efficient Education provision to strike down the state’s school financing system.<sup>13</sup> Similarly in *Brigham v. State*, the Vermont Supreme Court rejected the state’s funding arrangement based on the Common Benefits Clause in its constitution.<sup>14</sup> The court held that “poorer districts cannot realistically choose to spend more for educational excellence than their property wealth allows, no matter how much sacrifice their voters are willing to make. The current system plainly does not enhance fiscal choice for poorer school districts.”<sup>15</sup> The resultant trend saw a shift toward more equitable funding mechanisms.

Nevertheless, a more recent wave of cases moved away from this *equity* approach, as state legislatures struggled to amend their tax-based systems to account for poorer districts.<sup>16</sup> In *Rose v. Council for Better Education*, the Supreme Court of Kentucky argued for an *adequacy* approach to education financing, which focused on setting minimum benchmarks for accessing education.<sup>17</sup> In essence, the state constitution provided for an “efficient” education system, but the court could “not engage in judicial legislating” to mitigate all disparities.<sup>18</sup> It upheld the current system of public education financing, and other states followed suit to bolster this adequacy approach.<sup>19</sup> Some cases challenged state provisions based on past instances of discrimination, but most of these efforts fell short.<sup>20</sup> Taking these developments

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and industrial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.”).

9. See 411 U.S. 1 (1973).

10. *Id.* at 54.

11. *Id.* at 55.

12. Koski & Reich, *supra* note 1, at 557.

13. 303 A.2d 273, 282 (N.J. 1973).

14. VT. CONST. ch. I, art. 7; *id.* ch. II, § 68.

15. 692 A.2d 384, 396 (Vt. 1997). The court noted however that it was not prescribing a specific remedy; rather, the specific mode of recourse would be left to the legislature. *See id.* at 398.

16. Koski & Reich, *supra* note 1, at 559.

17. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 190 (Ky. 1989)

18. *Id.* at 211.

19. See, e.g., *King v. State*, 818 N.W.2d 1 (Iowa 2012); *Vincent v. Voight*, 614 N.W.2d 388, 397 (Wis. 2000); *Paynter v. State*, 797 N.E.2d 1225, 1231 (N.Y. 2003).

20. See *I.L. v. Alabama*, 739 F.3d 1273, 1288 (11th Cir. 2014) (demonstrating that the redress requested would not solve the past problems with discrimination).

together, courts since the 1970s have distanced themselves from *Serrano*'s interventionist stance.<sup>21</sup> Yet they've done so without a full understanding of education financing, ignoring one of the most critical features—debt.

### B. Background on Debt Issuances and Education

At issue in most funding cases is a system that predominantly leverages local property taxes to finance education.<sup>22</sup> That is, homes in the school district pay taxes based on the location and property size.<sup>23</sup> When a district is wealthier, the tax base<sup>24</sup> for the school system expands.<sup>25</sup> To analyze school funding problems, courts have used spending per pupil since *Rodriguez*, which measures money spent against the student population.<sup>26</sup> But this metric only tells part of the story.

Debt is also a critical metric in determining the financial health of a school system.<sup>27</sup> In 2016, the United States Census Bureau found that public schools across the country held over \$433 billion in debt<sup>28</sup>—or the equivalent of 67 percent of public school expenditures in a given year.<sup>29</sup> Schools take on debt because their yearly operational budgets might not cover long term expenses like facilities renovations or capital projects.<sup>30</sup> Therefore, school districts turn to bond markets.<sup>31</sup>

Local school districts typically manage the types of projects that require debt financing.<sup>32</sup> When a district wants to complete an infrastructure project, like erecting a new building or renovating an old one, it hires an investment bank<sup>33</sup>

21. See *Brigham v. State*, 692 A.2d 384, 396 (Vt. 1997); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 190 (Ky. 1989).

22. See Laurie Reynolds, *Uniformity of Taxation and the Preservation of Local Control in School Finance Reform*, 40 U.C. DAVIS L. REV. 1835, 1887 (2007) [hereinafter Reynolds, *Uniformity*].

23. See Richard Briffault, *The Role of Local Control in School Finance Reform*, 24 CONN. L. REV. 773, 774–76 (1992).

24. See Reynolds, *Uniformity*, *supra* note 22, at 1887–8.

25. See *id.*; see also Laurie Reynolds, *Skybox Schools: Public Education As Private Luxury*, 82 WASH. U.L.Q. 755 (2004) [hereinafter Reynolds, *Skybox*] (offering various examples of states with property-based systems and the wealth inequalities that result).

26. U. S. CENSUS BUREAU, PUBLIC EDUCATION FINANCES: 2015 12 (Jun. 2017), [hereinafter CENSUS FINANCE REPORT], <https://www.census.gov/content/dam/Census/library/publications/2017/econ/g15-aspf.pdf> (showing that current spending per pupil is left separate from debt); see also *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 11 (1973) (discussing expenditures on a per pupil basis).

27. See CENSUS FINANCE REPORT, *supra* note 26, at 12.

28. See *id.* at 13. Additionally, this figure excludes capital projects that are part of other, not exclusively school-related, bonds. See *id.* at 3.

29. See *id.* at 13 (demonstrating debt in the amount of \$433 billion and expenses amounting to \$639—revealing a 67.7 percent debt to spending ratio).

30. See Bittle, *supra* note 2, at 598.

31. See *id.* at 594 (“Generally, school districts issue general obligation bonds secured by the full faith and credit and general taxing power, usually ad valorem property taxes, of the school district.”).

32. See Reynolds, *Uniformity*, *supra* note 22, at 1886–87.

33. See Paul Perry, *How Investment Banks Cash in on School Construction*, PRICEONOMICS (Aug. 25, 2016), <https://priceonomics.com/how-investment-banks-cash-in-on-school/>; see also

and a law firm<sup>34</sup> to underwrite the security. Because state constitutions often require a bond election,<sup>35</sup> the district then holds a vote to gauge constituent support.<sup>36</sup> Once a bond election passes, banks issue the debt publicly, and larger institutional investors—such as endowments, hedge funds, and asset managers—purchase the bond in the open market.<sup>37</sup> Schools receive the capital directly and pay the principal back over time with interest.<sup>38</sup> These interest payments vary according to the type of bond traded.<sup>39</sup> Traditionally, school districts issue current interest bonds,<sup>40</sup> but other variations such as *capital appreciation bonds* have become popular.<sup>41</sup> With these securities, the interest continues to compound, and only a single payment is made at maturity. These securities have inspired controversy—and could even be considered predatory—because they increase interest payments throughout the payback period, often at three to eight times the value of the initial principal.<sup>42</sup>

Gaining access to debt markets can prove challenging for certain school districts, and courts have not adequately considered how access to debt financing leads to greater disparity. As of today, there has not been a direct constitutional challenge to a bond issuance on the grounds that it creates inequality among school districts.<sup>43</sup>

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*Municipal Bonds*, MORGAN STANLEY, <https://www.morganstanley.com/wealth-investmentsolutions/municipalbonds> (last visited Oct. 17, 2018) [hereinafter Morgan Stanly Municipal Bonds] (soliciting investors); *Select Public Finance Financings*, R.W. BAIRD, <http://www.rwbaird.com/fixed-income/public-finance/select-public-finance-transactions> (offering examples of some of its public financings, which include various school districts).

34. See, e.g., *Public/Municipal Finance*, CHAPMAN AND CUTLER LLP, <https://www.chapman.com/practices-Public-Municipal-Finance.html> (last visited Oct. 15, 2018); *Public Finance*, K&L GATES, <http://www.klgates.com/public-finance-practices/> (last viewed Oct. 15, 2018).

35. See *id.*; Perry, *supra* note 33.

36. See Bittle, *supra* note 2, at 598–99.

37. See MORGAN STANLEY, *supra* note 33.

38. See Bittle, *supra* note 2, at 594.

39. See Kevin Dayton, *Capital Appreciation Bonds: Disturbing Repayment Terms*, CAL. POL'Y CTR. (July 21, 2015), <https://californiapolicycenter.org/capital-appreciation-bonds-disturbing-repayment-terms-section-5-9/>.

40. Current interest bonds what we typically think of as municipal bonds. They are issued, and the debtor pays back the bond in installments, with interest, until the bond reaches maturity. Thus, the final payment ends up being roughly two times the amount of the initial principal.

41. See Floyd Norris, *Schools Pass Debt to the Next Generation*, N.Y. TIMES (Aug. 16, 2012), <https://www.nytimes.com/2012/08/17/business/schools-pass-debt-to-the-next-generation.html>.

42. *Id.*

43. *But see Abbott v. Burke*, 710 A.2d 450 (N.J. 1998). There, the court noted that impoverished districts, because of “poor bond rating[s],” faced greater challenges in making capital improvements. *Id.* at 471.

## II.

## PROBLEMS WITH EDUCATION DEBT FINANCING

A. *Why Bonds Reflect a District's Resources*

Funding disparities exist because of the geographic nature of tax collection, but also because of the resources that many school districts lack when attempting to access financial markets.<sup>44</sup> Courts have “treated local control as the cornerstone of the American system of public education,”<sup>45</sup> but this system creates a self-perpetuating cycle of underfunding for certain schools. For instance, when a district is composed of poorer families that have less valuable property, it requires a higher tax rate to fund schools.<sup>46</sup> When a school has less money, it has fewer resources for its students, which often leads to worse academic performance.<sup>47</sup> As a result, fewer people move to that district, further depleting the tax base.<sup>48</sup> This cycle burdens struggling districts, and when “not aided adequately with funds from the state, [it] leads to vast funding disparities [among] school districts.”<sup>49</sup>

While this problem seems obvious, the mechanics of issuing debt worsen disparities among school districts. Property taxes reflect the community as it stands now, whereas bonds reflect prospective wealth.<sup>50</sup> When districts issue debt, the total capital raised and the associated credit rating measure the ongoing health of a particular area.<sup>51</sup> What is the likelihood that the principal will be paid back? How much should the school district receive? Answers to these questions influence the bond's rating, and the rating determines the interest rate and marketability of the security. These answers are also a qualitative reflection of the community, its tax base, and its local government—all district-centric concerns.

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44. See Billy D. Walker, *Local Property Tax for Public Schools*, 9 J. EDUC. FIN. 265, 285 (1984).

45. Briffault, *supra* note 23, at 774–75.

46. This is part of the great irony of educational underfunding in inner cities. These school districts typically have more money coming in, but this deters business and families from moving to the district—diminishing the tax base. See Jim Fenwick, *Funding Public Education: The Constitutionality of Relying on Local Property Taxes*, 27 J.L. & EDUC. 517, 519 (1998).

47. See Cory Turner et al., *Why America's Schools Have a Money Problem*, NPR (Apr. 18, 2016), <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem>; Alana Semuels, *Good School, Rich School; Bad School, Poor School*, THE ATLANTIC (Aug. 25, 2016), <https://www.theatlantic.com/business/archive/2016/08/property-taxes-and-unequal-schools/497333/>; PRESIDENT'S COMM'N ON SCH. FIN., SCHOOLS, PEOPLE, & MONEY: THE NEED FOR EDUCATIONAL REFORM (1972), <https://eric.ed.gov/?id=ED058473>.

48. See Fenwick, *supra* note 46, at 519.

49. See *id.* at 523.

50. U. S. CENSUS BUREAU, BOND RATINGS FOR CITY GOVERNMENTS BY LARGEST CITIES (2009), <https://www2.census.gov/library/publications/2010/compendia/statab/130ed/tables/11s0444.pdf>.

51. See *id.*

*B. Under-Resourced Districts and the Challenges of Small-Scale Bonds*

Before districts face the daunting challenge of paying back bonds, they must figure out how to gain access to debt markets. Property taxes are collected every year, constrained by a geographically enclosed boundary.<sup>52</sup> A bond issuance, while also geographically limited, requires greater forethought and strategic long-term planning.<sup>53</sup> It requires the assistance of a law firm and investment bank to underwrite the security.<sup>54</sup> Associated service fees burden struggling schools. For smaller districts, sometimes convincing the bank to make the investment in the first place proves difficult.<sup>55</sup> Bonds from smaller and poorer communities are more likely to yield lower credit ratings, which implies a lower likelihood of paying the principal back.<sup>56</sup> The debt carries higher interest rates, and the moniker of “junk” status.<sup>57</sup> As a result, investor demand for these securities might be lower.<sup>58</sup> Small-scale bonds pose an additional problem. While many poorer school districts are located in urban areas, these districts tend to pool resources from many schools across large geographic areas.<sup>59</sup> And this consolidation promotes better access to large-scale financing.<sup>60</sup> For example, when schools in Chicago, IL, need renovating, the individual schools do not issue their own ad hoc bonds—rather, Chicago Public Schools issues generalized bonds, and the funding is dispersed to schools in need.<sup>61</sup>

Small, rural districts have the most trouble accessing funding. These districts operate independently with only a few schools under their control, so capital expenditures are not made with the backing and support of a large tax

52. See Reynolds, *Uniformity*, *supra* note 22, at 1886–87.

53. See Bittle, *supra* note 2, at 600.

54. See *id.*

55. See MARC JOFFE, HAAS INST. FOR A FAIR AND INCLUSIVE SOC’Y, DOUBLY BOUND: THE COSTS OF ISSUING MUNICIPAL BONDS 13 (2015).

56. See MARC JOFFE, *Doubly Bound: The Costs of Issuing Municipal Bonds*, HAAS INSTITUTE FOR A FAIR AND INCLUSIVE SOCIETY 13 (2015).  
cnn.com/2018/09/19/poor-credit-keeps-low-income-people-paying-higher-fees-and-stiff-interest-rates.html.

57. See Fran Spielman, *Bond Ratings for Chicago and Chicago Public Schools a Tad Less Junky*, CHI. SUN-TIMES (Jul. 12, 2018), <https://chicago.suntimes.com/business/moodys-raises-bond-rating-chicago-public-schools-keeps-junk-status/>.

58. See JOFFE, *supra* note 56, at 12–13.

59. See, e.g., *Top 10 Largest School Districts by Enrollment and Per Pupil Current Spending*, U.S. CENSUS BUREAU, <https://www.census.gov/library/visualizations/2019/comm/largest-school-districts.html> (last viewed Apr. 15, 2020).

60. See *id.*; see also U.S. CENSUS REPORT, *Comprehensive Annual Financial Report, Chicago Public Schools* (2018), [https://cps.edu/About\\_CPS/Financial\\_information/Documents/FY17\\_CAFR.pdf#148-50](https://cps.edu/About_CPS/Financial_information/Documents/FY17_CAFR.pdf#148-50) (listing the current outstanding bonds, how they are funded, and how large they are). Still, these districts are often poorer and typically have lower credit ratings. See *Chicago Board of Education*, MOODY’S, <https://www.moodys.com/credit-ratings/Chicago-Board-of-Education-IL-credit-rating-600038814> (last visited Oct. 25, 2018).

61. See *Buying CPS Bonds: Information for Investors*, CHI. PUB. SCH., [https://cps.edu/About\\_CPS/Financial\\_information/Pages/BuyingCPSbonds.aspx](https://cps.edu/About_CPS/Financial_information/Pages/BuyingCPSbonds.aspx) (last viewed Mar. 17, 2020).

base.<sup>62</sup> These bonds might be worth a few million dollars, as opposed to large urban districts that issue bonds worth hundreds of millions, if not billions of dollars, because they bundle multiple schools. The fees that banks earn for underwriting a bond are often proportionate to the size of the security. Yet the effort to issue the bond might be similar regardless of size.<sup>63</sup> Therefore, banks lack the incentive to take on a small school district as a client—even one with a high credit rating. The alternative result then is for banks to offer small districts capital appreciation bonds, which leaves already struggling schools more vulnerable to default.<sup>64</sup>

### C. What the Data Shows—and Does Not Show

The data confirm these assumptions. While not a comprehensive fifty-state study, this Essay uses data from Kansas, Pennsylvania, and Virginia schools, which act as a geographic and economic microcosm for the broader United States.<sup>65</sup>

**Table 1.** Correlation Coefficient for Each State<sup>66</sup>

	Kansas	Pennsylvania	Virginia
Income and Spending per pupil	-0.24	0.07	0.16
<b>Income and Debt per pupil</b>	<b>0.33</b>	<b>0.28</b>	<b>0.24</b>

First, the level of indebtedness is correlated to wealth.<sup>67</sup> That is, communities with higher average household income are more likely to have higher debt per pupil ratios.

62. See *infra* Tbl. 1.

63. See *id.*

64. See Dayton, *supra* note 39.

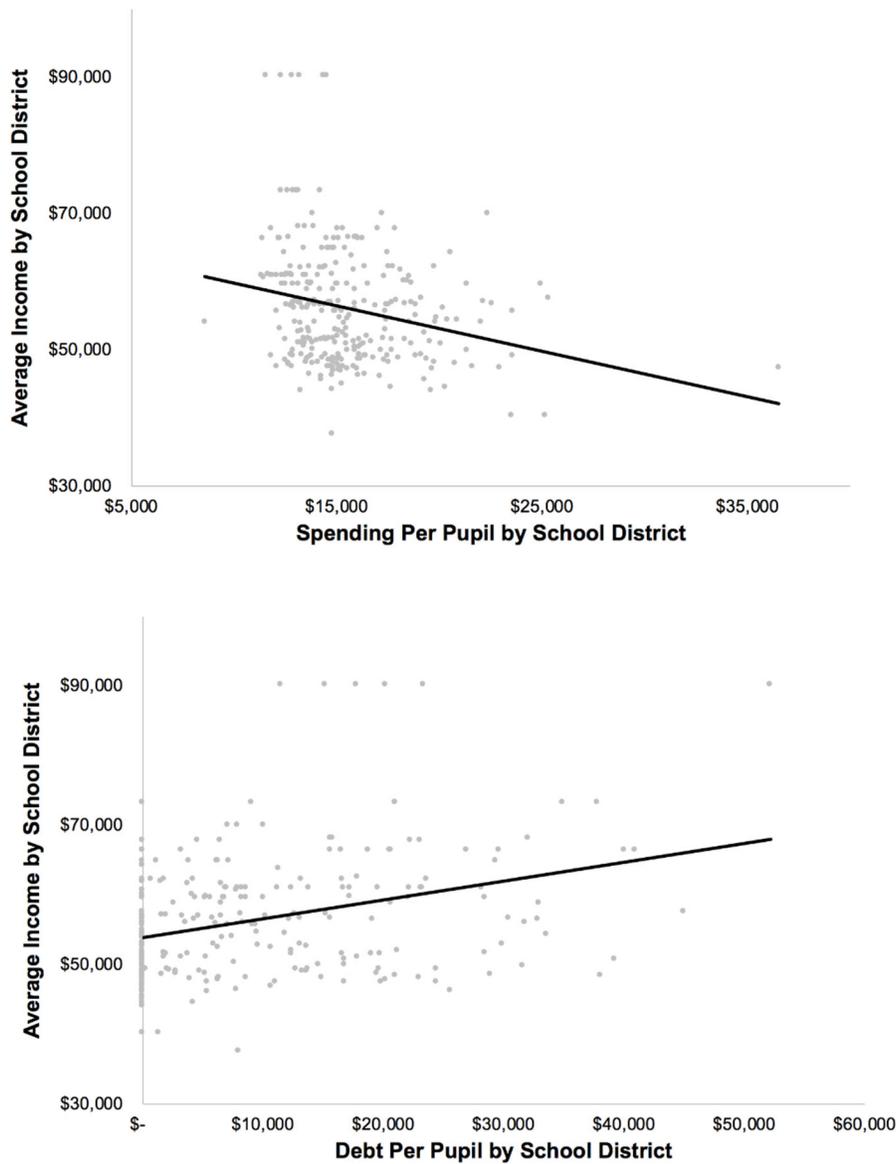
65. See Asma Khalid, *The Perfect State Index: If Iowa, N.H. Are Too White To Go First, Then Who?*, NPR (Jan. 29, 2016), <https://www.npr.org/2016/01/29/464250335/the-perfect-state-index-if-iowa-n-h-are-too-white-to-go-first-then-who>. In addition to the diversity of school districts that these states offered, their respective departments of education provided better data than comparable states.

66. See *School Finance Publications*, KAN. ST. DEP'T OF EDUCATION, <https://www.ksde.org/Agency/Fiscal-and-Administrative-Services/School-Finance/Reports-and-Publications>. Charts made in excel using data from state website; *AFR Data Files*, PENN. DEP'T OF EDUCATION, <https://www.education.pa.gov/Teachers%20-%20Administrators/School%20Finances/Finances/AFR%20Data%20Summary/Pages/default.aspx>.

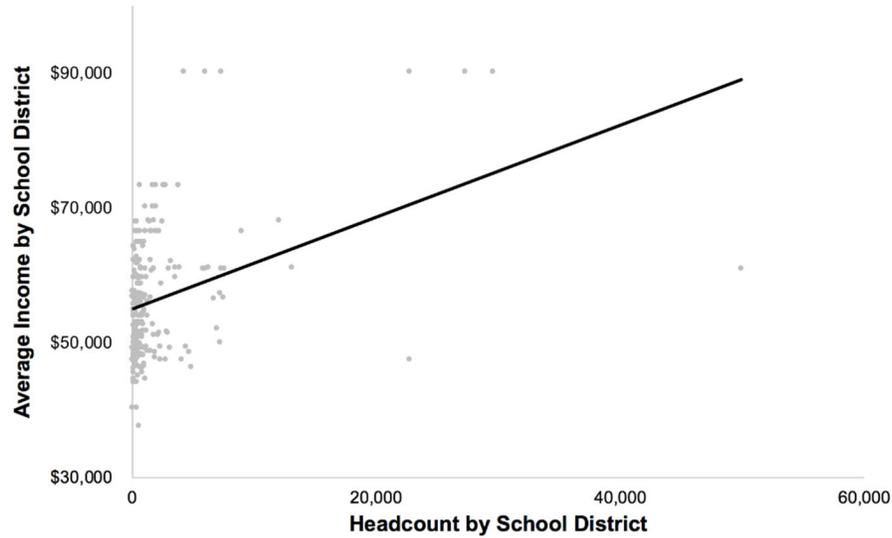
Charts made in excel using data from state website; *Finance Data Collections*, VA. DEP'T OF EDUCATION, [http://www.doe.virginia.gov/info\\_management/data\\_collection/finance/index.shtml](http://www.doe.virginia.gov/info_management/data_collection/finance/index.shtml). Charts made in excel using data from state website. *A coefficient of determination indicates the proportion of the variation of the dependent variable (spending/debt) that can be predicted from the independent variable (income).*

67. See Tbl. 1.

**Figure 1.** Kansas Spending Per Pupil, Debt Per Pupil, and Headcount by School District, Average Income Per Headcount by School District<sup>68</sup>



68. These graphs are meant to be exemplary. Pennsylvania and Virginia data show comparable relationships. See *School Finance Publications*, KAN. ST. DEP'T OF EDUCATION, <https://www.ksde.org/Agency/Fiscal-and-Administrative-Services/School-Finance/Reports-and-Publications>. Charts made in excel using data from state website.



This was true in each of the three states. Income also correlates with population across the states.<sup>69</sup> Like the previous discussion, it is likely that smaller districts have a difficult time raising small bond issues because the fees are too high. Conversely, large, urban districts are typically unified and pool resources. This makes bond issuances more cost-effective. It is often the case that the schools with greater populations, however, also have higher average incomes—particularly in suburban districts. Thus, taking these two trends together, we see that wealthier, more populous districts have greater access to debt markets.

**Table 2.** R-Squared Values for Each State

	Kansas	Pennsylvania	Virginia
Income and Spending per pupil	0.055	0.005	0.026
<b>Income and Debt per pupil</b>	<b>0.109</b>	<b>0.079</b>	<b>0.059</b>

At the same time, the courts' go-to metric to measure inequality—spending per pupil—appears less useful.<sup>70</sup> In Pennsylvania and Virginia, debt per pupil is more closely aligned with income.<sup>71</sup> And in Kansas, spending per pupil is negatively correlated with income.<sup>72</sup> The r-squared values do not reveal the most statistically important relationship between debt and income—only that it has

69. See Tbl. 1.

70. See *id.*

71. See *id.*

72. See *id.*

more explanatory power than spending per pupil.<sup>73</sup> This is not to say that spending is irrelevant. In fact, yearly spending is tied to the property taxes collected and can reflect a district's wealth. What this data shows is that (i) explaining inequality is inordinately complex and (ii) courts have neglected important metrics and analysis that helps explain inequality—separate from a district's spending. The data show that even if parity existed among districts in spending per pupil, schools cannot gain equal access to resources without equal access to financial markets.

### III.

#### HOW TO FIX THE PROBLEM OF FINANCIAL ACCESS

##### *A. Courts Should Rethink School Financing Decisions*

Unequal access to debt financing should prompt courts to reconsider how they view economic inequality among districts. Limited access to financing impacts equity when it comes to both resources and student outcomes.<sup>74</sup> Access to capital to build new schools, improvements in technological infrastructure, and renovations to dilapidated facilities all have a direct impact on educational progression.<sup>75</sup> This is even more striking in a modern educational setting that relies on technology.<sup>76</sup> The global economy requires proficiency in these subjects, and wealthier areas are better equipped to secure such resources.<sup>77</sup>

*Serrano* and *Brigham* demonstrate that wealthier school districts have flexibility in how they allocate their resources, whereas poorer communities are never afforded this opportunity because of unequal funding.<sup>78</sup> Annual shortfalls within districts or states may contribute to this outcome, but the lack of financial access limits the ability to make long-term decisions for the financial health of a district. *Serrano*, *Brigham*, and *Rodriguez* all use the spending per pupil metric to evaluate inequality among school districts. But the data from Kansas, Pennsylvania, and Virginia suggest other factors contribute to economic disparities, and in fact, spending has little explanatory power. Courts decide these cases based on an incomplete financial picture of school districts, while deferring to state legislatures to make the ultimate decisions. Courts have the authority and have used their authority to force lawmakers to rethink their

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73. See Tbl. 2.

74. See, e.g., *Brigham*, 692 A.2d at 386.

75. Cf. James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 TEX. L. REV. 1223, 1233 (2008).

76. N.Y. City Dep't of Educ., Press Release, Proposed NYC DOE Smart Schools Bond Act Investment Plan 1 (Mar. 4, 2016) (emphasizing the need for technology investment), [https://infohub.nyced.org/docs/default-source/default-document-library/revised-smart-schools-bond-act-investment-plan.pdf?sfvrsn=ea75b8af\\_2](https://infohub.nyced.org/docs/default-source/default-document-library/revised-smart-schools-bond-act-investment-plan.pdf?sfvrsn=ea75b8af_2) [hereinafter NYC Report].

77. Cf. Aneesh Chopra, *Access to Capital*, WHITE HOUSE (Mar. 23, 2011), <https://obamawhitehouse.archives.gov/blog/2011/03/23/access-capital-fueling-business-growth-and-job-creation-0> (discussing the importance of accessing capital, particularly for small businesses).

78. See *supra* Part I.

financing schemes in the past. Realizing that disparities in financial access are pervasive should spur them to make our public education system more equitable. To address this problem, Courts should consider debt disparities among districts in school financing litigation. It is unlikely that courts will revert to their pre-*Rodriguez* activism, but they should at least acknowledge this problem and present a complete financial profile of school districts to give legislatures greater incentive to act.

### B. State Legislative Options

Though courts are still likely to defer to state legislatures to design the system, many potential solutions exist that offer greater financial access to poor and rural districts. Shifting debt financing from a purely local operation to a state-based endeavor can balance financial access among districts. While this may disrupt the popular *local schools know best* mantra in education, when it comes to funding that education, it makes sense to look beyond the community. Local districts would keep their property tax systems in place to fund yearly operations, but debt financing would be housed in the state's education department. Districts would apply to the state for funding, and the state would issue debt and allocate a portion of a larger bond offering to each school district.

A more state-centered approach to issuing education bonds would solve the financial access disparities among districts and grant rural and poorer areas greater access to capital. If school districts have the option to issue bonds through state bodies, new facilities might be funded using the state as intermediary. This arrangement places a state's stamp of approval on the debt that a small school district in Adams County, PA, or Stanton County, KS, might not otherwise receive. Therefore, the debt becomes more appealing to investors. A state-based system would also reduce the fiscal burden on smaller districts to pay service fees. The state could build these fees into the payback agreement, but because the state pools district funds into a larger bond offering, it would be cheaper than a small district issuing its own debt. In a sense, the state operates like a larger version of a unified school district that can spread expenses across all schools. This system would also yield higher credit ratings because the debt from various school districts is pooled and maintains the backing of the state.

New York recently implemented a similar scheme. It issued over two billion dollars in the Smart Schools Bond Act—primarily tied to advancing technology investment in schools—and disbursed the proceeds to school districts throughout the state.<sup>79</sup> New York City received over seven hundred million dollars.<sup>80</sup> The initial proposal directed nearly 50 percent of the funds to

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79. See *Smart Schools Bond Act Information*, NYSED.gov, <http://www.p12.nysed.gov/facplan/SmartSchoolsBondAct.html> (last viewed Apr. 16, 2020).

80. See Press Release, N.Y. City Dep't of Educ., Proposed NYC DOE Smart Schools Bond Act Investment Plan 1 (Mar. 4, 2016) (emphasizing the need for technology investment),

“upgrade . . . schools’ digital networks” and \$100 million to “construct new pre-kindergarten buildings and to lease space . . . in areas of high need.”<sup>81</sup> The city plans to spend an additional \$300 million on various renovation projects throughout the city.<sup>82</sup> This is an example of a purely state-centric plan, with districts having to demonstrate need and apply to the state in order to receive funds.<sup>83</sup> While such plans slightly increase the burden on the state, they are less costly for individual districts than having to secure financing directly with banks and law firms on an individual basis.

#### CONCLUSION

Regardless of whether courts intervene to correct inequalities among school districts, many cases at least recognize the existence of such disparities. Still, none have acknowledged the added burden that limited financial access places on districts. If courts factored metrics like debt per pupil or access to capital alongside traditional ones like spending per pupil, school financing decisions might offer a more complete picture of the inequities facing under-resourced districts. This new understanding may pressure legislators to remedy financial access challenges, while preserving local control for micro-level budget issues. Having a complete and accurate picture of school finances helps us understand how resources are allocated, but more importantly, it is the starting point to ensure that equality remains of paramount importance in how we educate American children.

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[https://infohub.nyced.org/docs/default-source/default-document-library/revised-smart-schools-bond-act-investment-plan.pdf?sfvrsn=ca75b8af\\_2](https://infohub.nyced.org/docs/default-source/default-document-library/revised-smart-schools-bond-act-investment-plan.pdf?sfvrsn=ca75b8af_2).

81. *Id.*

82. *Id.*

83. Taxes are then disbursed throughout the entire state, so the burden is not falling to one particular district.