

# School Finance Reform and Professor Stephen D. Sugarman’s Lasting Legacy

Rachel F. Moran\*

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Once, over lunch, I recall a law professor reflecting on scholarly work’s ephemeral nature. Legal academics, he thought, should consider themselves lucky if their articles sparked a discussion that lasted for even a few years. By that standard, Professor Stephen Sugarman’s seminal work on school finance reform, done in collaboration with John Coons and William Clune, must count as a Methuselah of academic concepts. Decades later, this research continues to prompt scholarly debate, legal advocacy, and legislative reform. In this essay, I

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first describe the origins of the theory of school finance reform. I then turn to the ongoing influence that this approach has had on how schools are funded. I close with some thoughts on the reasons for this idea's tremendous staying power.

## I.

### THE SEEDS OF PROFESSOR SUGARMAN'S TRANSFORMATIVE WORK ON SCHOOL FINANCE REFORM

Professor Sugarman's work on school finance reform is unusual not only for its longevity but for how early the work came in his career. In the mid- to late 1960s, he and Clune were students at Northwestern University School of Law when Professor Coons invited them to assist him in studying inequalities in school funding.<sup>1</sup> As part of the project, Sugarman conducted empirical research that showed that, by using the local property tax system to fund the public schools, a school district's wealth dictated per capita student funding. Poorer districts with low property values, even if they taxed themselves at high rates, could not match the revenues generated by wealthier districts.<sup>2</sup> Ultimately, Coons, Sugarman, and Clune concluded that advocates might challenge these disparities both as a deprivation of the right to education and as illicit wealth discrimination.<sup>3</sup> Working together, the team produced a law review article and a book that set forth their theory.<sup>4</sup> At the heart of their analysis was what they called Proposition 1, a principle of fiscal neutrality that mandated that "the quality of public education, measured most commonly by looking at dollar inputs, may not be a function of wealth other than the wealth of the state as a whole."<sup>5</sup> In other words, differences in a school district's property values standing alone should not determine the amount of resources that public schools had available to educate students.<sup>6</sup>

The principle of fiscal neutrality was a significant departure from earlier efforts to promote equal educational opportunity. Most notably, Proposition 1 said nothing about race.<sup>7</sup> When Coons, Sugarman, and Clune began their work

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1. STEPHEN D. SUGARMAN, STEPHEN D. SUGARMAN ON JACK COONS AND EDUCATIONAL FINANCE REFORM: INTERVIEWS CONDUCTED BY MARTIN MEEKER IN 2016, at 4 (2016), [https://digitalassets.lib.berkeley.edu/roho/ucb/text/sugarman\\_stephen\\_2016.pdf](https://digitalassets.lib.berkeley.edu/roho/ucb/text/sugarman_stephen_2016.pdf) [<https://perma.cc/HY3E-LMFL>].

2. *Id.* at 5.

3. *Id.*

4. John E. Coons, William H. Clune, III & Stephen D. Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305 (1969); JOHN E. COONS, WILLIAM H. CLUNE III & STEPHEN D. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970) [hereinafter PRIVATE WEALTH].

5. Paul A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE 34, 37–38 (Helen F. Ladd, Rosemary Chalk & Janet S. Hansen eds., 1999).

6. SUGARMAN, *supra* note 1, at 14.

7. *See id.* at 6; Paul A. Minorini & Stephen D. Sugarman, *Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE, *supra* note 5, at 175, 179.

on school finance in the 1960s, the dominant paradigm for thinking about educational reform focused on desegregation.<sup>8</sup> The U.S. Supreme Court handed down its landmark opinion in *Brown v. Board of Education* in 1954, striking down state-mandated segregation as a violation of equal protection.<sup>9</sup> In a unanimous opinion, Chief Justice Earl Warren recognized that “[e]ducation is perhaps the most important function of state and local governments” and that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>10</sup> Therefore, if the state undertook to provide schooling, the Court held that “the opportunity of an education . . . is a right which must be made available to all on equal terms.”<sup>11</sup> To many advocates, this sounded as though education was a fundamental right.

In addition, the Court noted that equalizing material resources—whether the number of qualified teachers, the conditions of facilities, or the quality of instructional texts and supplements<sup>12</sup>—would not necessarily cure the harms of state-mandated segregation. Forced separation would continue to create intangible harms by sending a message of inferiority to African American students that could “affect their hearts and minds in a way unlikely ever to be undone.”<sup>13</sup> As a result, separate schools were “inherently unequal” and constitutionally impermissible.<sup>14</sup>

Despite this inspiring rhetoric, implementation of the Court’s mandate proved difficult, and in the mid- to late 1960s, advocates began to consider new strategies for promoting equal educational opportunity.<sup>15</sup> It was by no means a foregone conclusion that the theory of fiscal neutrality advanced by Coons, Sugarman, and Clune would take center stage. In fact, several competing approaches were proposed at the time. Rather than examining school districts’ wealth and the structure of the property tax system, these approaches typically looked at individual students’ claims to fair treatment.

For example, education scholar Arthur Wise drew on Supreme Court decisions on school desegregation, fairness to indigent criminal defendants, and electoral reapportionment to call for school finance reform.<sup>16</sup> In arguing for an equal protection claim, he noted that the Court had effectively recognized education as a fundamental right, had acknowledged that discrimination against

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8. See Minorini & Sugarman, *supra* note 7, at 176–79; Stephen D. Sugarman, *The Failed Quest for Equal Educational Opportunity: Regulating Education the Way We Regulate Business* 6 (Dec. 12, 2019) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3497127](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3497127) [<https://perma.cc/DKJ3-7Z9Y>].

9. 347 U.S. 483, 495–96 (1954).

10. *Id.* at 493.

11. *Id.*

12. *Id.* at 486 n.1, 492 & n.9.

13. *Id.* at 494.

14. *Id.* at 495.

15. Minorini and Sugarman, *supra* note 7, at 177–79.

16. ARTHUR E. WISE, *RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY* 11–92 (1968).

the poor could be unconstitutional, and had developed a norm of equity by requiring that states respect a principle of “one-person, one-vote” in apportioning political representation.<sup>17</sup> Taken together, Wise contended, these holdings showed that students should receive an “equal educational opportunity,” regardless of wealth or geographic location, based on equalized per-pupil funding.<sup>18</sup> He cautioned, however, that his approach should not be confused with a rigid commitment to “one scholar, one dollar” because he would allow some deviations based on differences in the cost of educational services and in the educational needs of students.<sup>19</sup>

At the same time, Berkeley law professor Harold Horowitz was exploring disparities in per capita school funding as a form of geographic discrimination within a state. In his view, the state had to adopt a uniform funding model that did not depend on a school district’s location.<sup>20</sup> Horowitz, however, would have allowed legislatures to distinguish among districts on other grounds, such as student need.<sup>21</sup> Finally, some legal aid attorneys were eager to pursue claims based entirely on the differential needs of rich and poor students; these arguments assumed that poor students required more resources than their privileged peers to benefit equivalently from public schooling.<sup>22</sup>

Coons, Sugarman, and Clune adopted a distinctive approach not only by focusing on wealth instead of race but also by emphasizing school district wealth rather than student or family wealth. As one review of Wise’s book noted, his approach failed to address “the most troubling aspect of the school finance quagmire,” which is not just that “wealthier communities have more money per pupil than poorer communities,” but that “they have more *while taxing themselves less*.”<sup>23</sup> Coons, Sugarman, and Clune tackled this problem head on. In conceptualizing equal funding, they did not want to impose rigid uniformity that precluded districts from expressing preferences for investing in public education rather than in other municipal services. Coons, in particular, was acutely aware of the signal importance of local control, which he called subsidiarity, to school governance in the United States. To preserve this tradition,

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17. *Id.*

18. Arthur E. Wise, *The Constitutional Challenge to Inequities in School Finance*, 51 PHI DELTA KAPPAN 145, 145 (1969).

19. WISE, *supra* note 16, at xii, 133, 159, 184, 200–05.

20. See generally Harold W. Horowitz, *Unseparate but Unequal: The Emerging Fourteenth Amendment Issue in Public School Education*, 13 UCLA L. REV. 1147, 1150, 1155–56, 1165 (1966) (describing disparities in public school funding and arguing that per capita student spending had to be equalized).

21. See generally Harold W. Horowitz & Diana L. Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State*, 15 UCLA L. REV. 787 (1968) (acknowledging that equality might require unequal spending to address the needs of disadvantaged students).

22. Minorini & Sugarman, *supra* note 5, at 36–37 (describing competing approaches, including those of Wise, Horowitz, and legal aid lawyers).

23. William A. Kaplin, Book Review, 55 CORNELL L. REV. 152, 156 (1969).

he wanted any system of centralized state funding to allow school districts the flexibility and autonomy to make choices about how much to spend on schools.<sup>24</sup> As a way to address that concern, Sugarman came up with an idea called “district power equalizing.”<sup>25</sup> This formula allowed each school district to receive funding based on its tax effort—that is, the property tax rate—rather than its property values.<sup>26</sup> As Coons, Sugarman, and Clune concluded, “In this way the dilemma of choosing between subsidiarity and equality is eliminated, because by equality we mean equality of power.”<sup>27</sup>

Initially, lawsuits challenging disparities in school finance did not fare well. For example, legal aid attorneys sued, arguing that funding levels should reflect student need, but these efforts did not succeed.<sup>28</sup> Eventually, however, Coons and Sugarman collaborated with public interest litigator Sid Wolinsky on a case based on the theory of fiscal neutrality. That effort led to the California Supreme Court’s groundbreaking decision in *Serrano v. Priest*.<sup>29</sup> In *Serrano*, plaintiffs contended that reliance on the property tax system violated the Equal Protection Clauses of the federal and state Constitutions.<sup>30</sup> The lawsuit asserted that education was a fundamental right and that wealth was a suspect classification.<sup>31</sup> As a result, the state of California had to satisfy strict scrutiny; that is, the property tax system had to be necessary to promote a compelling state interest.<sup>32</sup> At the outset, the case seemed likely to fail like others before it. The trial court granted the defendants’ motion to dismiss without holding a trial.<sup>33</sup>

Plaintiffs appealed the decision, and the California Supreme Court agreed to hear the case.<sup>34</sup> Both Coons and Sugarman, along with Wolinsky, participated in the oral argument.<sup>35</sup> The court first found that the property tax system led to substantial disparities in per-pupil funding, citing as an example schools in the Los Angeles area.<sup>36</sup> While a public school in Beverly Hills could spend \$1,231.72 on each student’s education, a public school in Baldwin Park had only \$577.49 to spend.<sup>37</sup> The majority concluded that the evidence that the property tax system discriminated based on wealth was “irrefutable.”<sup>38</sup>

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24. SUGARMAN, *supra* note 1, at 6–7.

25. *Id.* at 7.

26. *Id.* at 7, 14.

27. SUGARMAN, COONS & CLUEN, PRIVATE WEALTH, *supra* note 4, at 202.

28. SUGARMAN, *supra* note 1, at 10, 12.

29. 487 P.2d 1241 (Cal. 1971).

30. *Id.* at 1244.

31. *Id.* at 1249–50, 1255.

32. *Id.* at 1249.

33. *Id.* at 1245.

34. *See id.*

35. SUGARMAN, *supra* note 1, at 12; Minorini & Sugarman, *supra* note 5, at 47.

36. *Serrano*, 487 P.2d at 1247–48.

37. *Id.*

38. *Id.* at 1250.

Moreover, the court held that there was no need to prove that the disparities were the product of illicit animus when a fundamental right was at stake.<sup>39</sup> It was enough that the differences deprived the plaintiffs of access to this important right. The majority found that students had a fundamental interest in education because of its indispensable role in society, its impact on the lives of individuals, and its importance in ensuring full participation in democratic self-governance.<sup>40</sup> The court ultimately held that the property tax system was not necessary to preserve the state's interest in local control.<sup>41</sup> In fact, the system left poorer school districts with nothing but a "cruel illusion" of autonomy.<sup>42</sup> Moreover, as the district power equalizing model demonstrated, it was possible to distribute funds more equitably while allowing school districts to express their preferences for investing in public education.<sup>43</sup> Because there had been no trial on the merits, the high court remanded the case to the trial court for further proceedings.<sup>44</sup>

## II.

### THE ONGOING IMPACT OF FISCAL NEUTRALITY AND SCHOOL FINANCE REFORM

The *Serrano* litigation's success laid the foundation for the fiscal neutrality principle's ongoing impact and widespread influence. At that time, every state in the country except Hawaii relied on local property taxes to fund public schools, and litigators immediately filed similar challenges in other jurisdictions.<sup>45</sup> The most fateful filing, however, was *Rodriguez v. San Antonio Independent School District*, a Texas case challenging unequal per-pupil funding in the San Antonio school system.<sup>46</sup> That lawsuit did not begin with an exclusive focus on fiscal neutrality and wealth discrimination.<sup>47</sup> Instead, the plaintiffs' attorney, Arthur Gochman, likened the isolation of students by race and poverty in the public schools to the practice of ability tracking.<sup>48</sup> Tracking regularly produced classrooms that were identifiable by race and socioeconomic status, effects prompting a federal district court in *Hobson v. Hansen* to strike down the practice as unconstitutional.<sup>49</sup> Eventually, however, a young education law scholar at the University of Texas, Mark Yudof, convinced Gochman to abandon

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39. *Id.* at 1253–54.

40. *Id.* at 1255–56, 1258–59.

41. *Id.* at 1259–60.

42. *Id.* at 1260.

43. *Id.*

44. *Id.* at 1266.

45. SUGARMAN, *supra* note 1, at 6, 14; Minorini & Sugarman, *supra* note 5, at 47–55 (describing school finance litigation in the 1970s).

46. 337 F. Supp. 280 (W.D. Tex. 1971) (per curiam), *rev'd*, 411 U.S. 1 (1973).

47. See PAUL A. SRACIC, *SAN ANTONIO V. RODRIGUEZ AND THE PURSUIT OF EQUAL EDUCATION: THE DEBATE OVER DISCRIMINATION AND SCHOOL FUNDING* 22, 25 (2006).

48. *See id.*

49. 269 F. Supp. 401, 512–14 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

the tracking theory and adopt *Serrano*'s approach.<sup>50</sup> As a result, questions about the intersection of race and poverty disappeared from the case, and issues of a right to education and freedom from wealth discrimination came to the fore.<sup>51</sup>

At first, when the plaintiffs prevailed before a three-judge federal court in Texas,<sup>52</sup> this strategy seemed inspired. However, when the United States Supreme Court agreed to hear the case,<sup>53</sup> Coons, Sugarman, and Clune fully appreciated how vulnerable their theory would be. In a 1972 article that can be described as prescient, they outlined the reasons why the Supreme Court, based on "a general condition of stasis," might reject a novel constitutional theory.<sup>54</sup> First, *Serrano*'s architects worried that, unlike the California high court, the Supreme Court would be unwilling to presume a significant relationship between the amount of money spent on a child's education and the quality of instruction.<sup>55</sup> Next, they were concerned that the theory did not directly address an individual student's right to education but instead focused on the rights of school districts to make meaningful political decisions about education.<sup>56</sup> In addition, the article noted that the Justices might object to a theory that arguably could extend to other governmental services like health care and welfare.<sup>57</sup> The authors contended, however, that education was distinguishable from these other interests if the Court recognized "its crucial relation to the viability of our political system and its inseparability from the values of liberty of thought and speech."<sup>58</sup> Finally, Coons, Sugarman, and Clune acknowledged the distinction between collective and individual wealth. These two forms of wealth did not always coincide: "Not only do poor people inhabit rich industrial enclaves with low populations, but they also are found in large numbers in certain large cities, a few of which, for school purposes, are relatively well off . . . . Equally troublesome, perhaps, the rich sometimes live in tax-poor areas."<sup>59</sup> Even so, the authors argued, the school finance system was "hardest upon those inhabitants

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50. SRACIC, *supra* note 47, at 54–55.

51. See generally Rachel F. Moran, *Stopping the Conversation About Isolation by Race and Poverty Before It Really Began: The Case of San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), in CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND LAW (Devon Carbado, Bennett Capers, Robin Lenhardt, and Angela Onwuachi Willig eds., forthcoming) (manuscript on file with author) (describing how shifts in litigation strategy prevented the U.S. Supreme Court from considering patterns of school isolation by race, ethnicity, and poverty that persist today).

52. *Rodriguez v. San Antonio Indep. Sch. Dist.*, 337 F. Supp. 280 (W.D. Tex. 1971) (per curiam).

53. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 406 U.S. 966 (1972) (mem.).

54. John E. Coons, Wm. H. Clune, III & Stephen D. Sugarman, *A First Appraisal of Serrano*, 2 YALE REV. L. & SOC. ACTION 111, 114 (1971).

55. *Id.*

56. *Id.*

57. *See id.*

58. *Id.*

59. *Id.*

of poor school districts who are themselves poor and thereby precluded from exercising their right of exit.”<sup>60</sup>

When the *Rodriguez* decision rebuffed the California Supreme Court’s approach in *Serrano*, the caveats in the article almost read like a playbook of the issues that featured in Justice Lewis Powell’s majority opinion. The Court rejected the claim that there is a fundamental right to an equal education.<sup>61</sup> That *Brown* had noted that education was important did not render it fundamental.<sup>62</sup> For one thing, there was no explicit mention of a right to education in the Constitution.<sup>63</sup> Nor was the *Rodriguez* majority willing to imply such a right based on the relationship between education and other protected rights, most notably First Amendment free speech rights and the right to vote. Even while acknowledging that relationship, Justice Powell concluded that the Court had “never presumed to possess either the ability or the authority to guarantee to the citizenry the most *effective* speech or the most *informed* electoral choice.”<sup>64</sup> At most, Powell concluded, there might be a right to a basic level of instruction to enjoy these First Amendment rights, but there was no evidence that school children in San Antonio had suffered an absolute deprivation of education.<sup>65</sup>

In addition, the Court rejected plaintiffs’ claims about wealth discrimination. Justice Powell concluded that focusing on school districts’ wealth did not fit well with past precedents.<sup>66</sup> First, in earlier cases, indigency had completely barred an individual’s access to a government service; for example, an impoverished criminal defendant could not afford a trial transcript and thus was unable to pursue an appeal.<sup>67</sup> By contrast, the property tax system did not completely deprive students of a desired benefit, in this case, education.<sup>68</sup> Moreover, the system of financing schools did not predictably burden indigent children because “the poorest families are not necessarily clustered in the poorest property districts.”<sup>69</sup> In fact, the Court found no straightforward correlation between median family income and school district property values.<sup>70</sup> The simple fact that a family resided in a district with low property wealth was not proof of a suspect classification.<sup>71</sup> Such a class of residents was “large, diverse, and amorphous”<sup>72</sup> and had not suffered any history of purposeful mistreatment, nor

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60. *Id.* at 115.

61. *See* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29–31 (1973).

62. *See id.* (“[T]he importance of a service performed by the State does not determine whether it must be regarded as fundamental . . .”).

63. *Id.* at 35.

64. *Id.* at 36 (emphasis added).

65. *See id.* at 36–37.

66. *See id.* at 18–19.

67. *See id.* at 20–22.

68. *See id.* at 23–24.

69. *Id.* at 23.

70. *See id.* at 26–27.

71. *See id.* at 28.

72. *Id.*

did it lack the political power to protect itself in a majoritarian system of government.<sup>73</sup>

Having rejected equal education as a fundamental right and wealth discrimination based on property values as a suspect classification, Justice Powell found no basis on which to apply strict scrutiny to the property tax system.<sup>74</sup> He went on to find that the school finance system in Texas was rationally related to the goal of promoting local control.<sup>75</sup> In reaching this determination, he noted that there was no consensus about the relationship between school spending and educational quality; as a result, it was premature for courts to intervene in these matters.<sup>76</sup> Although plaintiffs argued that their approach preserved and even enhanced local control, the Court concluded that there was no basis for interfering with Texas's political judgments.<sup>77</sup> Indeed, any such effort would open the door to legal challenges to other necessary municipal services financed in a way similar to education.<sup>78</sup> Although Powell ultimately rejected the theory that Coons, Sugarman, and Clune had advanced, he observed that there was a need for "innovative thinking as to public education, its methods, and its funding"<sup>79</sup> and that "[t]hese matters merit the continued attention of the scholars who already have contributed much by their challenges."<sup>80</sup> However, he admonished, "the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them."<sup>81</sup>

This stunning setback left Coons, Sugarman, and Clune wondering what kind of future there was for school finance reform.<sup>82</sup> In the end, though, the California Supreme Court revived the movement by finding that there was an adequate and independent state ground for its initial decision: the property tax system violated the California Constitution, regardless of whether or not it violated the United States Constitution.<sup>83</sup> In the years that followed, other lawsuits before state courts initially focused on the equity-based approach to school finance that had succeeded in *Serrano*.<sup>84</sup> These cases enjoyed some high-profile success in the mid-1970s, but by the early 1980s, more state courts were denying relief to the plaintiffs.<sup>85</sup>

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73. *See id.*

74. *See id.* at 37–39.

75. *See id.* at 49.

76. *See id.* at 42–43.

77. *See id.* at 50–51.

78. *See id.* at 54.

79. *Id.* at 58.

80. *Id.* at 58–59.

81. *Id.* at 59.

82. SUGARMAN, *supra* note 1, at 17.

83. *Serrano v. Priest*, 557 P.2d 929, 939–40, 947–52 (Cal. 1976).

84. Rachel F. Moran, *The Constitution of Opportunity: Democratic Equality, Economic Inequality, and the Right to Compete*, in *A FEDERAL RIGHT TO EDUCATION* 261, 267 (Kimberly Jenkins Robinson ed., 2019).

85. *Id.*

Once again, however, the push for school finance reform did not die out. Instead, advocates found a new strategy that capitalized on the nationwide push for accountability testing in the schools.<sup>86</sup> Accountability tests were a response to concerns about America's declining competitiveness in a global economy, but proponents of school finance reform argued that testing standards also defined the minimum levels of proficiency that an adequate education should provide.<sup>87</sup> A new round of litigation began, this time asking state courts to protect a child's right to a basic education.<sup>88</sup> This shift in strategy from equity to adequacy met with considerable success in state courts.<sup>89</sup>

In fact, for a brief moment, it appeared that the adequacy movement might breathe new life into a federal right to education. In a 2020 decision in *Gary B. v. Whitmer*, the Sixth Circuit held that the Fourteenth Amendment's Equal Protection Clause includes a right to basic literacy.<sup>90</sup> There, students in some of Detroit's lowest-performing schools alleged that they lacked access to qualified teachers, facilities conducive to learning, and appropriate textbooks and supplemental instructional materials.<sup>91</sup> In addition, the plaintiffs cited the depressed educational outcomes in these schools. For example, only 4.2 percent of third graders at one of the plaintiffs' schools scored proficient or above in English, while 46 percent of their peers statewide met this standard.<sup>92</sup> Nor did these outcomes improve significantly with age. Just 12.5 percent of students at one of the plaintiffs' Detroit high schools met the proficiency standard in English, while 49.2 percent did so statewide.<sup>93</sup> Based on this evidence, the Court of Appeals held that the Detroit students had suffered an absolute deprivation of access to literacy.<sup>94</sup> In holding that this deprivation violated equal protection, the court relied on the country's long-standing history of providing free public education, literacy's essential role in exercising other constitutional rights, and literacy's integral place in a concept of ordered liberty.<sup>95</sup> The *Gary B.* decision garnered attention across the country and promised to reanimate the quest for school finance reform in the federal courts. However, the Sixth Circuit subsequently vacated the opinion to rehear the case en banc.<sup>96</sup> Because the parties had already agreed to settle the lawsuit, there was no rehearing, and *Gary B.* concluded without generating binding precedent on a federal right to

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86. *Id.* at 267–68.

87. *Id.* at 268.

88. *Id.*

89. *Id.*

90. 957 F.3d 616, 621 (6th Cir.), *reh'g granted and vacated*, 958 F.3d 1216 (6th Cir. 2020) (mem.).

91. *Id.* at 624–27.

92. *Id.* at 627.

93. *Id.*

94. *Id.* at 662.

95. *Id.* at 648–55.

96. *Gary B. v. Whitmer*, 958 F.3d 1216 (6th Cir. 2020) (mem.).

education.<sup>97</sup> Even so, the Michigan litigation reveals the remarkable traction that the movement Coons, Sugarman, and Clune launched to reform school finance has achieved.

### III.

#### LEAVING A LEGACY: EXPLAINING THE LONGEVITY OF SCHOOL FINANCE REFORM

The longevity of Coons, Sugarman, and Clune's path-breaking work on school finance reform is not in doubt. The obvious question for scholars who aspire to leave an enduring legacy is why Coons, Sugarman, and Clune's research had such a long-lasting effect.

For those who want their ideas to be discussed for decades rather than just a few years, here are some points to consider.

##### *A. Pick a Big Problem but Not Too Big*

Coons, Sugarman, and Clune began their work in the late 1960s and 1970s at a time of social ferment. Sugarman recalls a belief among public interest lawyers that “the courts [were] going to deal with these entrenched discriminations in society based on race and based upon wealth” as a way to deal with “inequalities in our country.”<sup>98</sup> Those inequalities were widespread and long-standing, but Coons, Sugarman, and Clune tackled one aspect of the problem: persistent disparities in per-pupil resources in the public schools.<sup>99</sup> That choice made the research project manageable but in no way detracted from its fundamental significance because the property tax system was a pervasive feature of school finance systems around the nation.

##### *B. Do the Groundwork that Gives You a Deep Understanding of the Problem*

Coons, Sugarman, and Clune well understood the importance of moving beyond an abstract understanding of school finance to a deep and nuanced appreciation of its dimensions. Sugarman, in particular, did empirical studies of how states—Utah, Nevada, Ohio, and Illinois, among others—financed public schools.<sup>100</sup> Armed with these data, he could show that property wealth in poorer districts dictated the per-pupil resources available, even in those districts with high tax rates.<sup>101</sup> These findings in turn allowed Coons, Sugarman, and Clune to

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97. See John Wisely, *Michigan Right to Literacy Settlement Stands as Court Rejects Legislature's Appeal*, DETROIT FREE PRESS (June 10, 2020), <https://www.freep.com/story/news/education/2020/06/10/right-literacy-ruling-stands-court-rejects-legislatures-appeal/5337778002/> [https://perma.cc/2C5Z-PEHJ].

98. SUGARMAN, *supra* note 1, at 7.

99. See *id.* at 4–5.

100. *Id.* at 5.

101. *Id.*

theorize the disparities in school funding as a form of wealth discrimination and to propose possible legal solutions.<sup>102</sup>

*C. Develop an Innovative, Even Paradigm-Shifting Approach*

At the time that Coons, Sugarman, and Clune began their seminal work, educational reform primarily focused on race-based discrimination. However, when the team reviewed the available data, they realized that the statistics tracked school district wealth but did not allow them to map racial differences.<sup>103</sup> As a result, the three concluded that “school finance wasn’t a race case, it was a wealth case.”<sup>104</sup> This in itself was a paradigm shift, but their approach went even further in challenging the prevailing wisdom. Despite some efforts to attack wealth discrimination based on individual indigency, no one had tackled structural inequalities in wealth like the ones reflected in the property tax system.<sup>105</sup> Acknowledging how the school finance system perpetuated disparities in access to educational opportunity also represented a paradigm shift. Such insights in turn prompted “a legal revolution that helped change the economic foundation on which much of American public education was built.”<sup>106</sup>

*D. Insert Your Work into the Public Discourse on the Issue*

Coons, Sugarman, and Clune were not content just to publish their ideas in academic journals. As a full-time faculty member, Coons devoted substantial time to giving talks on fiscal neutrality and its implications for school finance.<sup>107</sup> He was not only a thinker but a proselytizer, seeking to convince a broad audience of the research’s practical significance. As the concept of fiscal neutrality entered the public discourse, it began to attract interest from lawyers who wanted to pursue the issue in court. Initially, Coons, Sugarman, and Clune did not partner with these attorneys because they had divergent approaches to challenging the property tax system, but the three of them were open to working on the right case when it came along.<sup>108</sup>

*E. Collaborate with Change Agents and Influence Policy-Makers*

Through partnerships with change agents, Coons, Sugarman, and Clune’s work moved from rhetorical to real-world significance. Coons and Sugarman were selective about participating in litigation, but they seized the opportunity to get involved when public interest litigator Sid Wolinsky agreed to pursue the

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102. *Id.*

103. *Id.* at 6.

104. *Id.*

105. *See id.* at 5–6.

106. Robert Lindsey, *Men Behind Voucher Debate*, N.Y. TIMES, Dec. 4, 1979, at C1.

107. SUGARMAN, *supra* note 1, at 9–10.

108. *Id.* at 10.

fiscal neutrality approach in the *Serrano* case.<sup>109</sup> Coons and Sugarman prepared the petition seeking California Supreme Court review, and they wrote an amicus brief setting out their theory and proposed remedy.<sup>110</sup> They even participated in oral argument before the state high court.<sup>111</sup> When the high-profile victory in *Serrano* led to other legal challenges, they offered assistance in some of those cases.<sup>112</sup> In doing so, they helped to sustain the push for equity in school finance during its early years. This sustained mobilization reshaped the way that policy-makers thought about school finance, a point that Justice Powell himself acknowledged, even as he rebuffed Coons, Sugarman, and Clune's arguments in *Rodriguez*.<sup>113</sup>

*F. Embrace the Generative Potential of Your Work So That It Can Evolve*

As the original equity-based challenges began to falter, Coons, Sugarman, and Clune's initial insight prompted innovations that would keep the movement for school finance reform alive. The most notable was the shift from equity to adequacy, as advocates insisted not on equal education but instead on minimum access to instruction. A successful paradigm shift should spark additional innovation, and in his later work with Paul Minorini, Sugarman acknowledged the ongoing value of adequacy litigation. As he wrote, "these two different legal approaches—equity and adequacy—are not so far apart as some commentators have suggested."<sup>114</sup> Though framed differently, both claims "argue that each school district must have adequate resources, given its circumstances and nature of its pupils, to be able to offer an educational program that reasonably promises to teach at least most of them to reasonably high standards."<sup>115</sup> Whatever the nomenclature, Sugarman and Minorini contended, there was a fundamental commonality because "in the end both the equity and adequacy theories depend upon the courts primarily to perform the role of striking down the traditional approaches to school finance."<sup>116</sup> Both equity and adequacy litigation, then, grew out of the new paradigm that Coons, Sugarman, and Clune advocated and that the California Supreme Court eventually adopted in *Serrano*.

CONCLUSION

The legacy of school finance reform that Stephen D. Sugarman began with his colleagues John Coons and William Clune is well worth celebrating. Not only did their work meet the highest academic standards, but it also has had a lasting impact on America's public schools. There is something bold about leaving the

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109. *Id.* at 12.

110. *Id.*

111. *Id.*

112. *Id.* at 14–16.

113. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 56–57 (1973).

114. Minorini & Sugarman, *supra* note 5, at 63.

115. *Id.*

116. *Id.* at 64.

academic enclave and entering policy-making circles, armed only with a novel idea and some supporting data. Yet, the success of Coons, Sugarman, and Clune's quest to make a difference in *Serrano* is a reminder that when scholars have the courage of their convictions, they can be a powerful force for change.