

“...Litigation is high stakes gambling.”

# The Impact of School Finance Litigation\*

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## Introduction

School finance litigation has been a hot topic for more than three decades. Starting in the 1960s, school districts began bringing suit in federal and state courts in an effort to force greater fairness in funding for schoolchildren. Although litigation involving school funds actually reaches back into the 19th century, the modern blitz of lawsuits aimed directly at school funding formulas has resulted in nearly every state being challenged for its method of funding public K-12 schools.

Whether litigation has made much difference on a grand scale has not been well known. There has been a belief that litigation forces states to fund schools more aggressively, but a definitive body of research evidence to support that belief does not exist. The research literature has mostly focused on the daily particularities of each state's own constitutional requirements and the details of each state-specific funding scheme so that larger questions about measurable impact have not been well addressed. In effect, much effort has been devoted to analyzing the behavior of individual federal and state courts from a legal theory perspective, but too little effort has been given to a deeper examination of the relationship between changes in funding and court decisions.

This present study went to the larger issues of whether a lawsuit is an effective way to rectify concerns about how schools are funded. The study first asked what the literature has to say about the impact of school finance litigation. The study then examined data from four states to consider whether litigation in fact improves funding equity and resource levels for schools. The ultimate purpose of the study was to provide new objective evidence on the efficacy of school finance litigation. These states—Arizona, Montana, Tennessee, and Washington—were selected in large part because they appear to have been less studied than others and hence offer a fresh perspective.

These states offered the added benefit of representing a spectrum of legal, political, and geographic experiences that enhanced the goals of the study. All four states had experienced dramatic rulings in the sense that the courts studied the entire educational system. Likewise, legislative changes to state aid schemes generally followed these court rulings. These states further offered a sustained view of litigation by covering several decades; for example, cases in Arizona and Washington first dated back to the 1970s, while newer actions were also included in this group so that the evolution of equity could be followed over time.

The article is divided into four sections. The first consists of a review of the relevant literature on school finance litigation, focusing on *direct litigation effect* studies. The second section describes the data sources and research methods used, including the criteria for selection of the four states studied. In the third section, the analysis of results is presented where trends internal to the individual states along with an analysis that

contrasts individual state results with national trends. The final section draws conclusions from this study *vis a vis* previous research and offers implications for those considering litigation as a means of achieving school finance reform.

## State of the Literature on the Impact of School Finance Litigation

Depending on one's perspective, the literature has much to say about the impact of litigation on school funding, or it has little to say at all. Using the first perspective, it can be said that nearly all literature in school finance actually deals with litigation. This view argues that since school funding is a legislative issue in each state and since the foundation of school finance is the study of legislative actions affecting how schools are funded, then scholarly scrutiny of legislative funding acts is a *de facto* analysis of litigation since nearly every state has experienced a challenge to its school aid formula. This view has practical value since legislatures are sensitive to the potential for lawsuits and may give greater attention to the constitutionality of changes to school aid schemes. In contrast, it is possible to argue that the literature has little to say about litigation effects. This does not dispute the pervasiveness of litigation in the literature, but it discriminates among studies by asking which analyses have actually attempted to assess the impact of litigation on fiscal equity. Using this view, most do not actually try to measure the impact *per se*.<sup>1</sup>

A reasonable position is that no part of the literature can be ignored when asking about the effects of litigation. As a result, the authors acknowledged the contribution of the entire knowledge base which is comprised of the *general* literature, *single-state* studies, and *multi-state* studies, and *direct litigation effect* studies. However, this review focuses on the last category, direct litigation effect studies, given its particular relevance to this study.

## Direct Litigation Effects Studies

There is a body of literature that has gone directly to the question of the effectiveness of litigation. The literature search for this current analysis identified 28 works judged useful to the goals of this study. While the studies vary in approach, all make a contribution to the knowledge base about the risks and potential outcomes when suing over school funding.

## Favorable Impacts of Litigation

The 1990 yearbook of the American Education Finance Association dealt in part with the topic of litigation impacts. Salmon and Alexander examined state supreme court decisions and compared them on pre- and post measures of percentage of state aid and whether the aid formula structure became more equitable on its face.<sup>2</sup> They argued that revenue increases were greater in plaintiff states, while no clear pattern emerged in defendant states, *i.e.*, plaintiffs gained an average 21% compared to defendants' gain of 11%.

The idea that litigation forces legislatures to accept funding concepts that otherwise might receive a cool rejection gained support in the work of Henderson in 1991.<sup>3</sup> His study indicated that the benefits of forcing the issue in the contentious context of a lawsuit included more equitable tax bases, implementation of specific educational improvement standards, and increased state percentage shares of total revenue to school districts. Support for the same idea was offered by Goetz and Debertin, who suggested that intensive reform as seen in Kentucky can lead to gains despite an initially reluctant legislature.<sup>4</sup> Their presentation of data indicated that court-ordered reform resulted in inclusion of aid to economically disadvantaged students and a beneficial move toward funding pupils instead of classroom units.

The most data-intensive studies favoring lawsuits have appeared in just the last few years. Hickrod and colleagues probably pioneered the effort to measure litigation effects in two useful studies covering long periods. In 1983, Hickrod and Goertz examined approximately ten years of data in

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reform states and concluded that litigation had had some benefit, although they admitted that litigation, reform, and equity will never be a finished product.<sup>5</sup> In 1992, Hickrod and several colleagues looked at data covering 1970-1990,<sup>6</sup> arguing that reworked data from another study showed that winning plaintiffs gained more dollars than losers or nonlitigants. Hickrod also argued that litigation may actually serve tax equity better than it serves adequate funding, and that revenue shifts may be the greater result than any real funding increase.

Dayton's analysis in 1993 examined every supreme court case up to that time,<sup>7</sup> arguing that cases seem to turn on whether a court can find a positive correlation between educational opportunity and fiscal resources. His thesis was that litigation has been effective since the majority of cases at the state level had found such correlation. The most important aspect of his analysis lay in making the case that there is evidence to support the notion that courts often accept the argument that spending does have a positive impact on students and that an indisputable correlation need not be absolutely settled.

An important analytical work pointing to benefits of litigation was produced by Evans and colleagues.<sup>8</sup> They examined data on all districts in 46 states over five years, finding that court intervention led to a 22% increase in state funds while local shares remained unchanged and that revenue increased by 29% in the poorest districts. They concluded that the worst inequality is no longer within states, but rather that concern for fairness should be refocused toward interstate inequality. Subsequent analysis by Evans, Murray, and Schwab resulted in reiteration of their earlier conclusions.<sup>9</sup> Additionally they noted that their analysis showed spending to be 34% lower in nonreform states; however, they observed that gains among lower spending districts were not uniform across all states after reform.

### Questionable Impacts of Litigation

The overall observation of direct-effects litigation studies finding a positive impact of lawsuits is that such works are relatively few and are almost always cautious in their conclusions. A large body of studies raises questions about whether lawsuits represent wise investment, at least in terms of confidence in the outcome of a court challenge.

The work of Berne and Stiefel surfaces when considering the measurement of litigation effects. In 1983 these authors conducted a meta-analysis of general equity studies from 1940 to the 1970s at the national level, concluding that improvement trends were strong until the 1960s but mixed to poor results were seen thereafter.<sup>10</sup> Although the context of their study was larger than litigation effects *per se*, it provided a background on the evolution of equitable performance of aid formulas and simultaneously suggested that the increase in litigation has not been accompanied by undisputed increases in equity.

Several authors holding optimistic views of litigation have also advocated caution. Dayton considered whether rural schools should launch lawsuits over fiscal disparity, making the point that rural schools should not hastily join the reform frenzy in that reform success has been blurred by variations in the economy and that courts refuse to legislate or to make public policy decisions such as whether maintaining rural schools is a wise use of public funds.<sup>11</sup> Dayton suggests that in reality courts can only bluster in the face of legislatures, and that legislatures can thwart reform if they wish. A similar note was sounded by Hickrod as he analyzed national data from 1973-1993.<sup>12</sup> Hickrod concluded that it is risky to challenge an aid formula because it is expensive and time-consuming, and there may be unanticipated effects if an adverse ruling is issued.

The aftermath of litigation has been of some interest. Heise considered litigation trends, arguing that when lawsuits succeed, other factors are triggered in ways that offset or even nullify the court's intent.<sup>13</sup> In the same vein, Mintrom argued that people who are frustrated by a lack of

school finance reform do not understand political economies and thus underestimate the barriers to change.<sup>14</sup> Mintrom argued that inescapable realities exist: politicians must obey constituents, taxpayers try to minimize taxes, and parents see education as a rival good. These realities produce a Tiebout-style market<sup>15</sup> where, as equalization begins to work through an aid formula, wealthy parents pressure legislators to maintain the status quo. If this fails, wealthy parents then vote to increase local funding. Mintrom's point is that as long as local tax leeway is possible, equalization will be thwarted in the end. He uses New Jersey to show that for each \$1,000 in new equalization aid, low and medium wealth districts reduce local shares by about \$500, while wealthy districts spend more by matching new dollars. He then tested political will to vote for reform, finding that in wealthy districts a 1% reduction in support for equalization occurs for each \$5,000 per capita increase in property value. He then argued that these shifts are sufficient to unseat legislative incumbents, thereby thwarting equalization in the end.

Similar effects were observed by Manwaring and Sheffrin. They argued that litigation and reform can have different effects depending on the approach to how inequalities in spending are addressed.<sup>16</sup> They first argue for a *state* effect, *i.e.*, changes in funding follow naturally after moving control to the state, a thesis first examined by Fischel<sup>17</sup> who found that Proposition 13 in California actually reduced support since taxpayers had previously paid for a local system based on preferences that was no longer available once the state took control of school funding. They then argue for a *legislative* effect, *i.e.*, a positive or negative outcome based on changes in legislative representation, a thesis examined by Leyden<sup>18</sup> who found that whichever group of voters controls the legislature will determine the level of school fiscal support. Manwaring and Sheffrin then argue for an *income* effect, *i.e.*, fiscal centralization leads to an increase in spending as a fraction of income. They then argue for a *budget status* effect, *i.e.*, where schools compete with other agencies for the same dollars. Manwaring and Sheffrin add a *base* effect which captures the effects associated with litigation, *e.g.*, the phenomenon of the higher profile that education takes on after a court decision or after legislative reform. Manwaring and Sheffrin's findings were that the base effect is positive for both litigation and reform, while the state effect is negative. The income effect is negative in that citizens' desire to spend falls by 40% after centralization, while the budget status effect is positive, although expenditures track the economy closely. Their conclusion was that litigation has had a negative impact in eight states and a positive effect in fourteen states. Their ultimate findings were that centralized control leads to lower levels of funding compared to other kinds of state aid plans such as foundation, power-equalized, or multi-tier funding systems.<sup>19</sup>

One of the more exhaustive litigation effects studies is Joondeph's work on school finance reform.<sup>20</sup> Studying the states of Arkansas, California, Connecticut, Washington, and Wyoming, Joondeph argued that litigation has produced mixed results. On the positive side, litigation has been moderately able to produce a more equal distribution of resources, but the bad news is that in four of the five states funding grew more slowly than the national average. Moreover, he found a negative correlation between equalization and overall school expenditures such that those states which most dramatically reduced disparities were the same states that increased funding levels the least. If generalizable to litigation as a strategy for educational improvement, such correlations could suggest a relationship between equality and funding that could erase the effectiveness of litigation-based school finance reform, *i.e.*, reform that assures a more equal distribution of funds may trigger forces that pressure overall spending downward. Joondeph's overall conclusion was not encouraging to school finance reform as he considered California, arguing that despite significant equalization, poor districts might have been better off under the pre-reform financing system.

## Findings from the Literature

There is no question that the literature does not encourage plaintiffs to see litigation as a fail-proof strategy to increase school funding. Rather, as Crampton notes in an analysis of trends in school finance litigation over the past twenty-five years, litigation is "risky business."<sup>21</sup> Gains have not been remarkable on average, raising the question of whether comparable gains might have been achieved legislatively under more amicable conditions. Litigation is by nature adversarial, time-consuming, and often expensive. Often, the children on whose behalf a suit was filed may well have left school before the benefits of a plaintiff victory become reality.

Litigation cannot be dismissed, however, as having such low benefit that it is completely useless. The literature speaks strongly regarding increased public, legislative, and judicial sensitivity to fiscal equity flowing from litigation. The literature also indicates that while equity gains have not been enough to delight reformers, there is substantial evidence that equity has increased in ways that reflect the impact of public and judicial pressure. The literature also points to equity gains due in part to legislative choice, as well as the force of law. As Banks explained, there is a fine line to be observed when considering a strategy likely to produce reform.<sup>22</sup> The balance seems to lie in finding the right combination of constitutional force, judicial activism, and legislative voluntarism supported by an informed electorate. Banks points out that reformers will fail if they believe courts are tools by which to create legislation since courts have said they will intervene only when it is clear that a legislature is unwilling or unable to pass effective remedial legislation. He adds that political realities really do exist, including the method by which judges are selected, the political orientation of the court in terms of its doctrine and activism, and the social values of a state's people. As a result, the debate about the impact of litigation is not resolved and will continue to need investigation well into the future.

## Data Sources, Selection Criteria, and Method

Data for the study were taken from multiple sources. The NEA *Estimates of School Statistics* provided the best source for longitudinal data at the national level. Standardized by a single agency across a long period, these data permitted comparison of the selected reform states against all other non-reform states to estimate changes following litigation. The NCES *Common Core of Data* also was used to descriptively and qualitatively profile the selected states. Data from state departments of education also aided descriptive analysis and provided one of the few ways to understand the peculiarities of states' historic and current aid schemes.

This study examined selected states that have not received much scrutiny in the literature. Four qualifications were used in evaluating states for inclusion in the study. First, a ruling on the constitutionality of the state school finance plan must have been issued by the state's highest court. Second, some time must have elapsed after the opinion of the court in order to assume some impact of any legislative changes to the state aid scheme that might have followed. Third, the ruling of the state supreme court must have been for plaintiffs. Fourth, eligible states had to be among those which had not been subjected to much analysis in the belief that knowledge about 'new' states would make a useful contribution to the literature.

The study was guided by the following research question:

- *What can be determined from longitudinal data in each selected state regarding changes in resource levels: i.e., were there changes that seem to be associated with a state supreme court decision favoring plaintiffs?*

To answer this question, a data analysis model was constructed to look more closely at the four selected states individually and comparatively. The study is grounded in a descriptive analysis of major legislative and judicial events in each state that resulted in changes in state aid plans.

The quantitative analysis examined trends in student enrollment, per pupil expenditure, average salaries of professional staff, capital outlay expenditure, and the number of school districts from 1970-1997. For the purposes of the analysis, student enrollment, more specifically, average daily attendance, served as a contextual variable where it was recognized that, for example, rapidly increasing enrollments can place pressures on state resources. The remaining variables served as outcome variables. Per pupil expenditure and average salaries of professional staff, more specifically certified staff, are key indicators of the level of resources dedicated to education within a state. Capital outlay expenditure was selected as an outcome variable first for its key role in Arizona litigation, but also because it served as a complement to operating expenditures, which were captured in the per pupil expenditure and average salaries of professional staff. The final outcome variable, number of school districts, that is, a reduction of school districts over time, represents a potential efficiency measure that legislatures may turn to in an attempt to achieve a more efficient allocation of existing resources through greater economies of scale. It was hypothesized that a legislature might have a stronger interest in school district consolidation after a supreme court decision favorable to plaintiffs as a means to minimize the amount of new funding needed to meet the court's demands. Evaluation analyzed changes within each state over time using only trends internal to each state itself, followed by a second analysis focusing on relative changes in these states compared to changes in all other states.<sup>23</sup> The latter point addressed a criticism that the majority of existing studies have been state-specific and noncomparable.

Statistical measures were chosen to estimate the magnitude of variability within the selected states and to permit interstate comparisons to all other states during the time period. The range, mean, and standard deviation were derived and used to profile all 50 states for baseline purposes. These measures formed the basis for comparisons wherein selected states were analyzed in terms of their performance over time. Changes were plotted two ways. The first set of plots yielded an internal trend line for each selected state from 1970-1997, while the other set of plots tracked a trend line for the four states in relation to all other states for the same period.

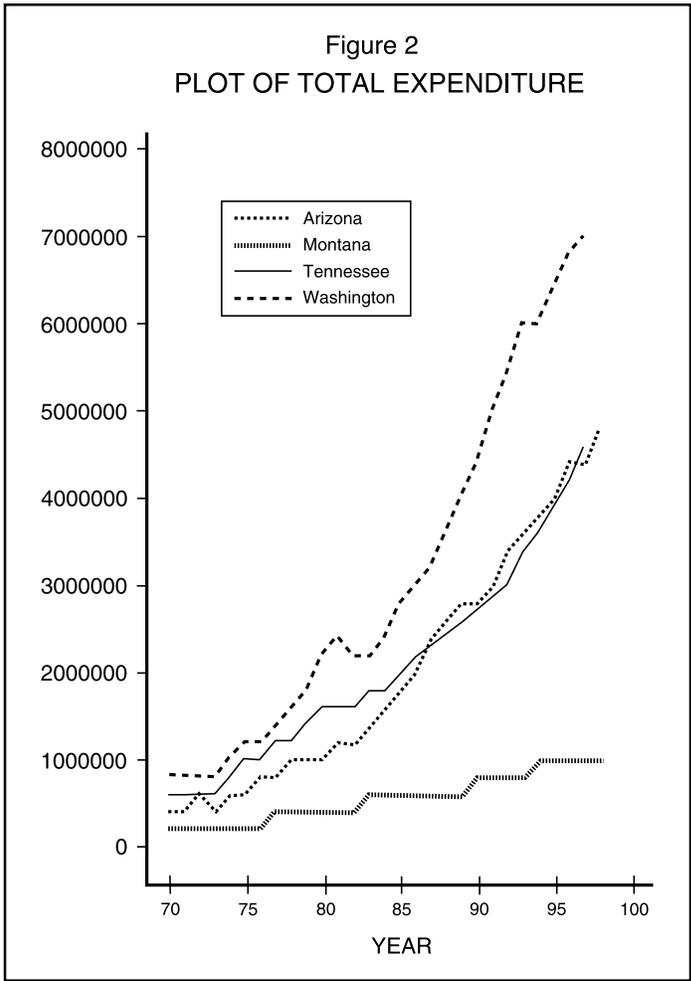
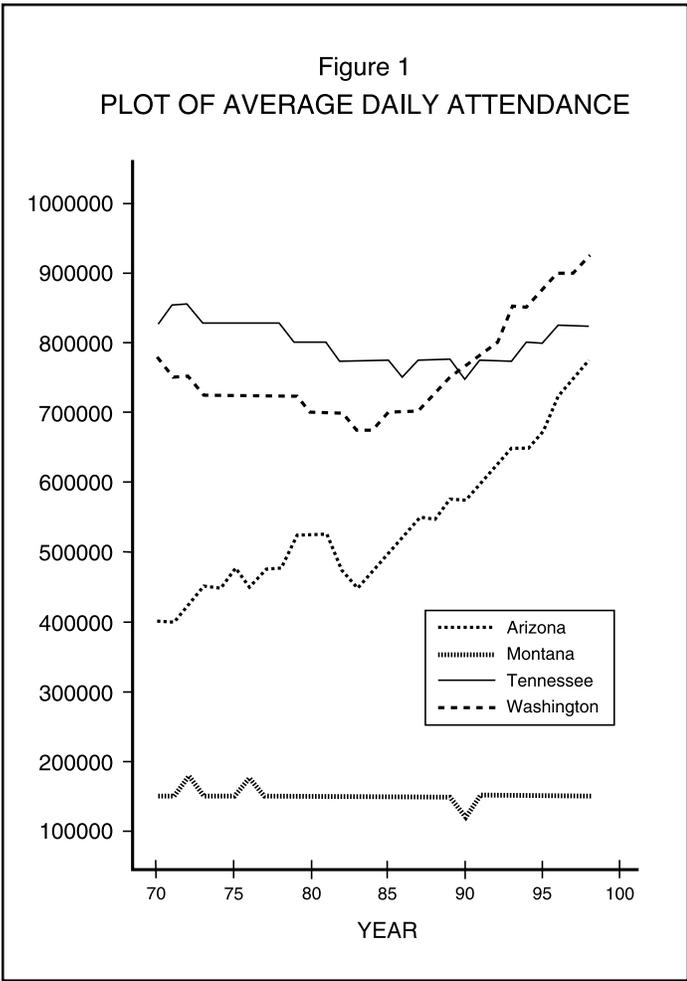
## Results of the Data Analysis

This current study sought to add to the discussion about whether litigation has observable effects on how well schools are funded. In the belief that states having high court plaintiff victories are the best cases about which to ask such questions, this study examined four states where plaintiffs prevailed and examined funding gains in these states during the period 1970-1997, both internally and in relation to the rest of the nation. Such an approach permitted observation about whether winning or losing made a difference, as well as inviting speculation about whether the presence or absence of litigation seemed to make much difference.

Results of this study are organized by state around two sections. The first section provides a descriptive analysis of the relevant aspects of reform in each selected state and presents the research findings by first discussing observations about internal changes in each state, followed by presentation of findings on changes relative to national trends. The second section presents an overall analysis of trends.

### Arizona<sup>24</sup>

Like several other states, Arizona has been the subject of longstanding dispute about how schools are funded. One of the earliest modern school finance equity suits occurred in Arizona, as the case of *Shofstall*<sup>25</sup> was decided by the Arizona Supreme Court in 1973. Despite the court's opinion that education is a right under the state constitution, the court nonetheless ruled for the state, effectively leaving plaintiffs no redress for a constitutional guarantee nor any room on which to file a new cause of action since the high court had voiced its approval of the status quo.



As the reform tide swept the country, however, Arizona's legislature began to take greater interest in education. Recent reform in Arizona is marked as beginning in 1990, as a task force appointed by the governor proposed over sixty education reform items at a cost of more than \$200 million. By 1994, significant reform legislation had been approved, but funding was not available without significant tax increases, and by 1992 voters had also approved Proposition 108 requiring a two-thirds majority of the legislature to increase taxes. Forces were clearly in place to suggest that reform would not be funded easily and in fact faced some uncertainty, especially if it depended entirely on money to guarantee its success.

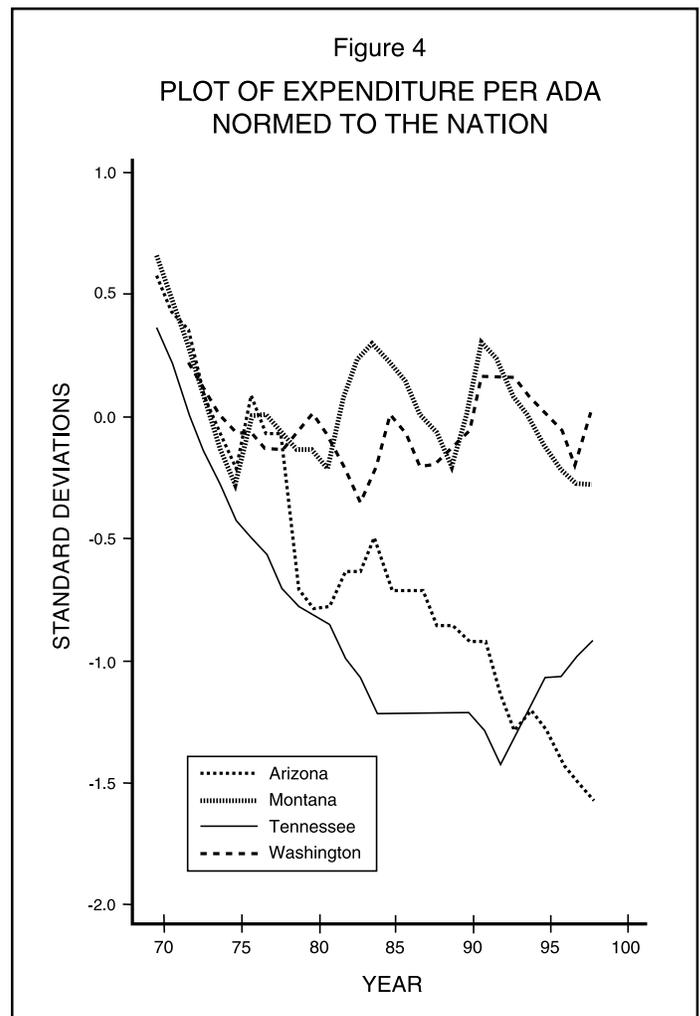
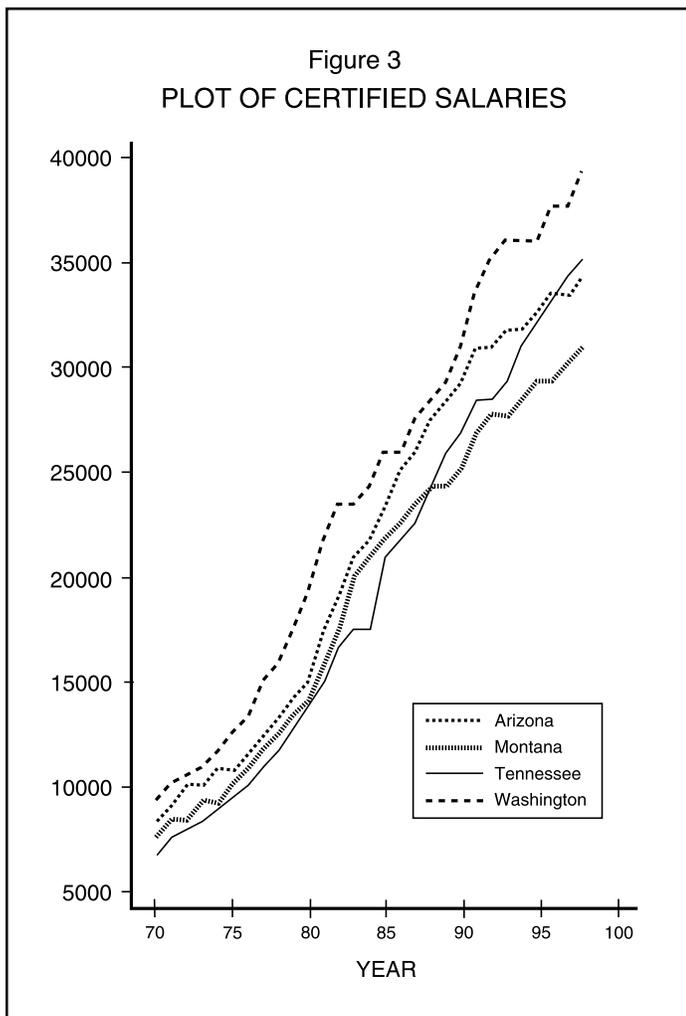
The matter was further complicated by a new court challenge to Arizona's school finance formula. Decided in 1994, *Roosevelt*<sup>26</sup> challenged the capital outlay provisions of the school finance system, alleging constitutional violations and deplorable school facility conditions based on differences in local ability to raise taxes for school purposes.<sup>27</sup> The legal basis for the challenge argued that the state had failed to observe its duty to provide a system of general and uniform schools under the state constitution and that it violated students' equal protection guarantees by allowing differential treatment based on district wealth. In a highly unusual move that completely reversed its stand from 21 years earlier, the state supreme court ruled not only on the limited scope of the complaint but also held the entire school finance system unconstitutional because it failed to meet general and uniform provisions. The legislative response was to provide immediate funds for capital improvements that included continued increases across several years, but it simultaneously ignored the order to revise the remainder of the school finance plan, leading to

judicial rebuke that the system would have to be fixed by 1998 or the court would take further action.

The formula disputed in *Roosevelt* had been in place since 1980, with significant revision in 1985. In 1994, the state's foundation aid formula provided only 39% of general fund revenues and was heavily dependent on sales and income taxes appropriated from the state's general fund.<sup>28</sup> Property taxes constituted the entire local tax base. Key features of the formula called for resource equalization based on weighted average daily memberships, stemming from assumptions about costs of education related to economies of scale for similar-size districts. Other adjustments were also in place, including aid to high growth districts, aid for higher salaries of more experienced teachers, aid to small and isolated schools, and other off-formula adjustments which benefited approximately 10% of districts in the state. Total general fund state aid in 1993-94 when the ruling was handed down by the court was \$1.46 billion.

Plaintiffs in Arizona and equity advocates around the nation were greatly encouraged by the state supreme court's action in 1994. By 1999, the state legislature had reacted to *Roosevelt* and to conditions in schools by leaving the basic foundation formula mostly unchanged but with new monies for capital outlay purposes. General fund state aid had risen to about \$2 billion unadjusted for inflation or enrollment changes, with 79.4% of total appropriations earmarked for equalization through the formula and the remaining 20.6% reserved for categorical and other programs.

The question, of course, is how a supreme court victory for plaintiffs in a state with a history of little sympathy for school finance complainants measures up against other states in the nation, as well as how it has



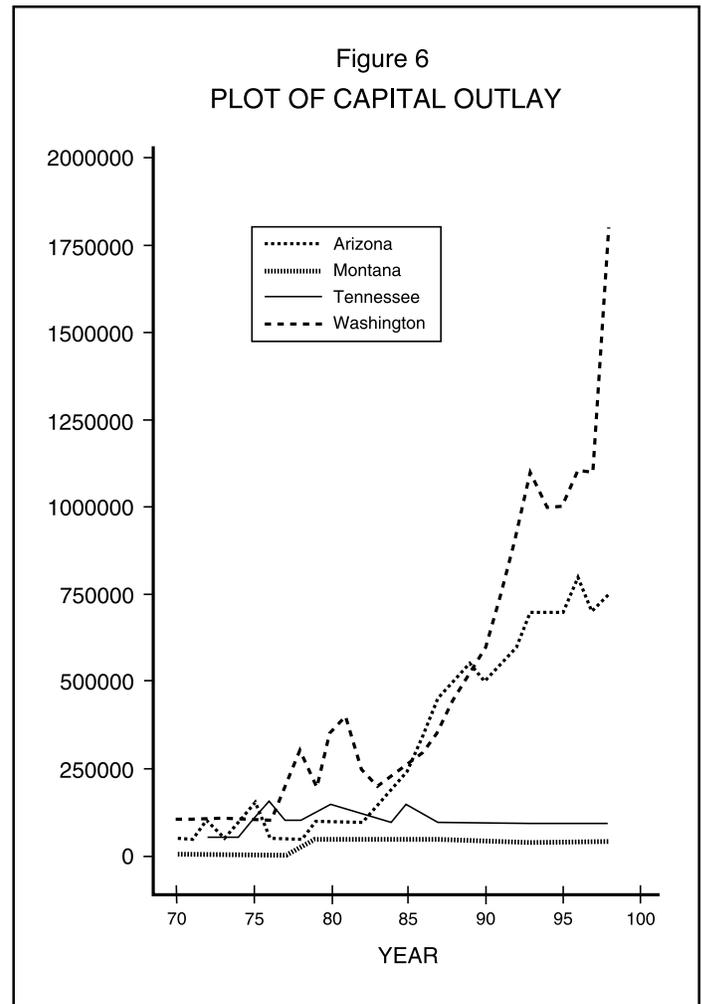
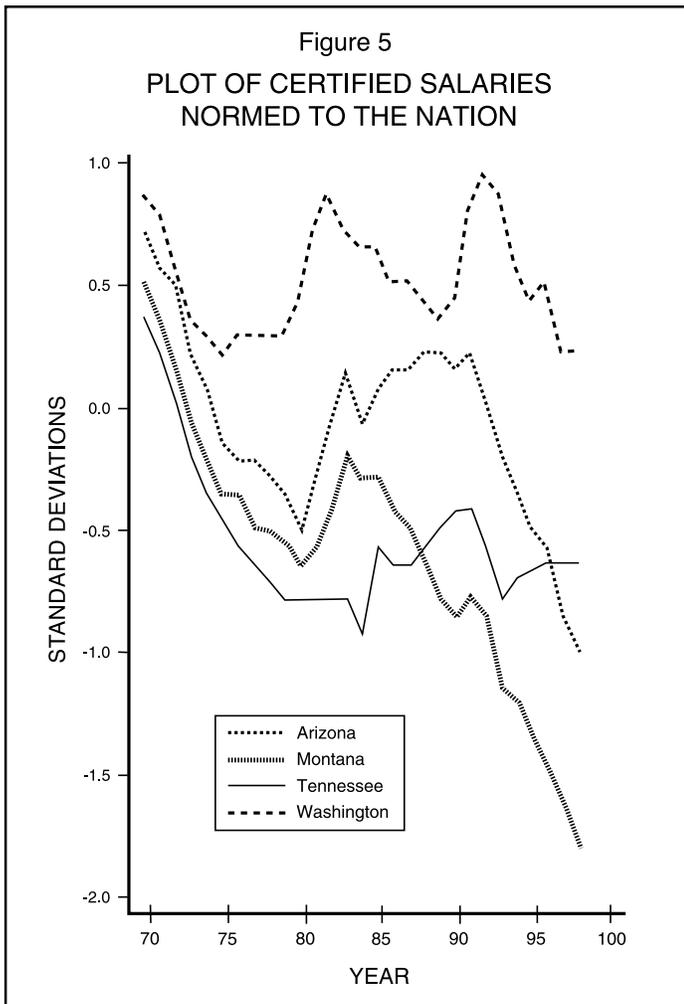
performed in the context of its own fiscal effort trend line. To place the analysis in context, it is important to note that since the early 1970s, Arizona has experienced substantial student enrollment growth, and beginning in the mid 1980s, the increases accelerated. (See Figure 1.) This long-term sustained enrollment growth undoubtedly places pressure on state and local funding sources. Still, average per pupil expenditure and salaries for professional staff, in nominal dollars grew steadily. (See Figures 2 and 3.) However, from a national perspective, the picture is quite different. (See Figures 4 and 5.) Over time, Arizona has lost substantial ground in both. While in the early 1970s, average per pupil expenditure was pegged at approximately one-half standard deviation above the national average, by 1997, it had fallen to one and one-half standard deviations below the national average. The decline in average salaries for professional staff was not quite as severe or as linear. However, while average salaries stood at approximately three-quarters standard deviation above the national average in 1970, they fell to one standard deviation below by 1997. Neither litigation nor legislative reform seemed to slow or reverse this decline, and the passage of Proposition 108 seemed to accelerate it. At the same time, expenditures for capital outlay have increased modestly over time. (See Figure 6.) In fact, the *Roosevelt* decision was preceded by several years of growth in capital outlay expenditures, but in the wake of the decision capital outlay expenditure actually declined for a short period before rising once again. Comparatively speaking, Arizona has consistently spent above the national average on capital outlay, and since the mid 1980s, the level of expenditure has grown to one standard deviation above the national

average. (See Figure 7.) Finally, while the number of school districts has remained virtually unchanged since the late 1970s, after the unsuccessful *Shofstall* case in 1973, the number of school districts dropped by approximately one-third over the ensuing five years (See Figure 8.) Nonetheless, Arizona has consistently had fewer districts than the national average. (See Figure 9.) Overall, litigation and legislative reform seemed to have little impact on outcome variables with the possible exception of school district consolidation. If anything, the passage of ballot initiative in the early 1990s requiring a supermajority of the legislature to approve tax increases may have contributed to a substantial decline in average per pupil expenditure and professional salaries.

#### **Montana<sup>29</sup>**

While many states have experimented by frequently changing state aid philosophies and aid formulas in response to new needs or disgruntled constituencies, the structure of Montana's state aid formula has remained basically unchanged for the last fifty years. Enacted in 1949, the basic foundation program still serves as the distribution vehicle for school funds. As originally enacted, the formula called for state participation of 80% for general fund purposes, with the balance to come from district and county sources. While the notion of relative calm surrounding the school aid formula would likely be the topic of some argument among those closely associated with the daily operation of schools in Montana, the longevity of the basic aid structure has been unusual by most accounts of politics and economics.

Like many states, however, Montana's resolve to fully fund the intended state aid ratio fell short in actual practice. By 1986, the state's share had

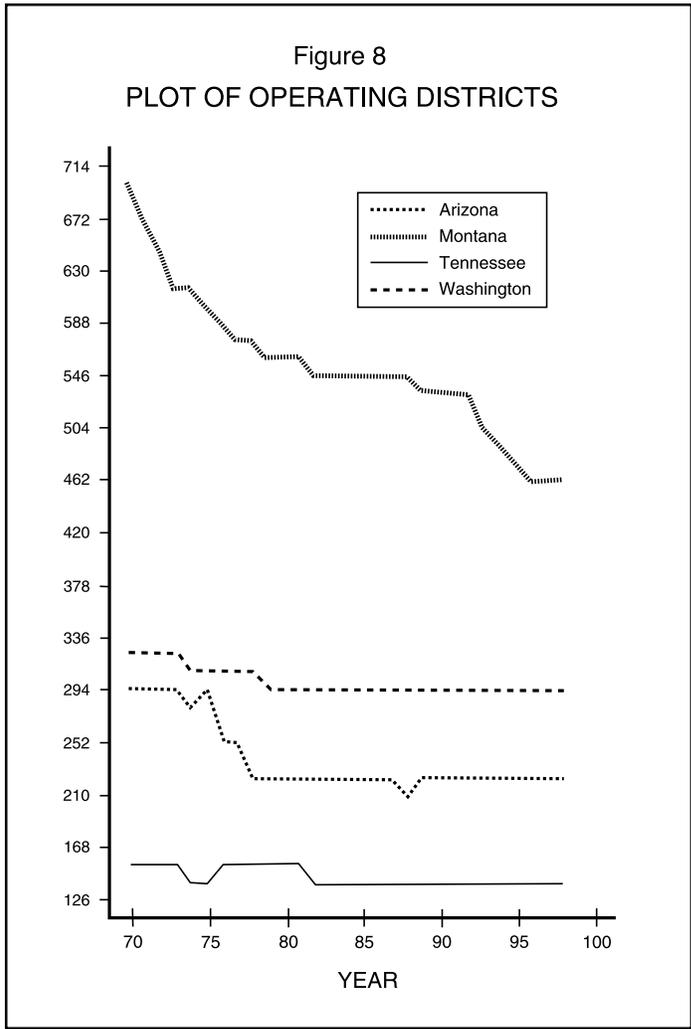
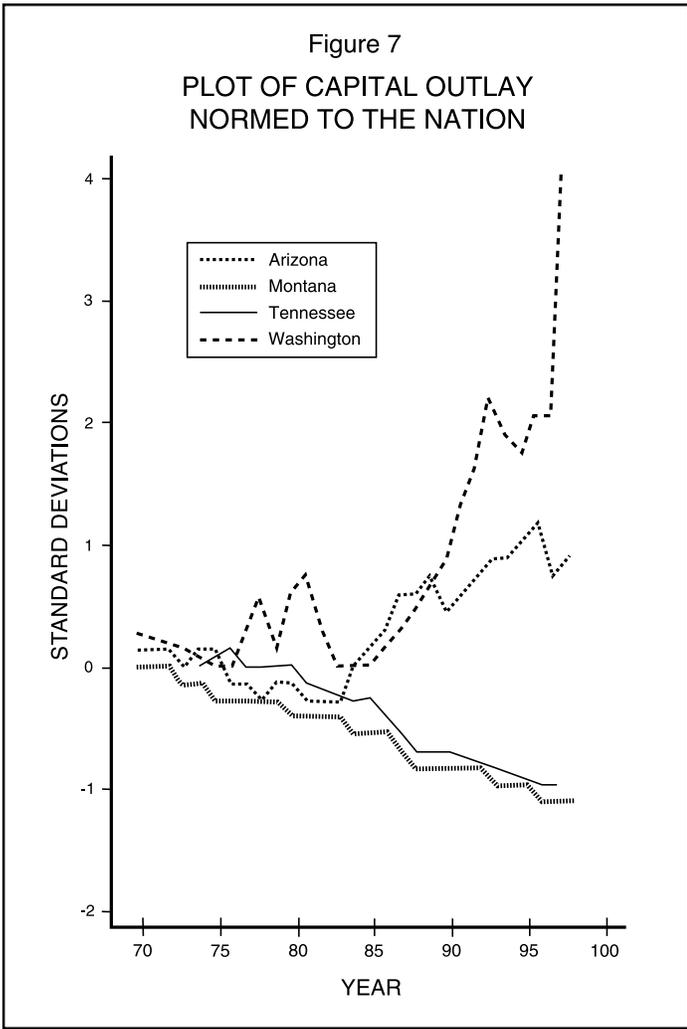


slipped to only 55%, and 64 of the state's approximately 500 school districts filed a lawsuit. In 1989, the Montana Supreme Court in *Helena*<sup>30</sup> ruled for plaintiffs, holding in a wide sweep that the mechanisms used to fund general operations, retirement, transportation, and debt service funds were unconstitutional. Regarded by many equity advocates as one of the more strongly stated rulings, *Helena* caught the attention of the state legislature, which attempted to completely revise the formula to make it acceptable to the court. The concept of a foundation was retained, but the new system devised by the legislature contained a guaranteed tax base component. The essential operation of the formula was centered in a 40 mill property tax rate levied statewide in addition to the 55 mills that were currently levied in each county for equalization fund purposes, with the added feature that all 95 mills were deposited directly to the school equalization fund. The new formula also provided that any amount of a district's budget beyond a permissively allowable option would be funded from local district tax sources and subject to voter approval. Accelerated equalization was also built into the formula, so that school districts below a calculated base budget per pupil tied to enrollment size would be able to increase budgets faster than districts which already spent more on a per pupil basis. Districts above the maximum were frozen at the level of the previous year, so that the goal was to force a minimum expenditure level and to narrow the disparity in range of expenditures per pupil. Total general fund state aid in 1990-91 shortly after the ruling was handed down by the court was \$370 million.

As in other states, plaintiffs in Montana and equity advocates around the nation were pleased by the state supreme court's actions. By 1999,

the Montana legislature had reacted to *Helena* by effectively enacting a statewide equalization tax for school purposes and had created a mechanism to narrow funding disparities. In the decade since the ruling, general fund state aid rose to \$428.7 million unadjusted for inflation or enrollment changes. But not everyone was pleased, however, as an unsuccessful challenge was later mounted by rural plaintiffs alleging fiscal disadvantage.<sup>31</sup>

The question, of course, is how a supreme court victory for plaintiffs in a state where the legislature moved fairly quickly to meet the court's demands measures up against other states in the nation, as well as how it has performed in the context of its own fiscal effort trendline. Since the timeline for this present study covers the years 1970-1997, analysis should reveal trends for both pre- and post-litigation performance in Montana. As background, student enrollment in Montana has remained flat, which might indicate lower demands for new resources over time. (See Figure 1.) Like Arizona, Montana's average per pupil expenditure and professional salaries have increased significantly, in nominal dollars, over this time period. (See Figures 2 and 3.) On the other hand, a national comparison reveals very different trends for expenditures and salaries. (See Figures 4 and 5.) Average per pupil expenditures have hovered around the national mean for over two decades although after *Helena*, there appeared to be a bump pushing expenditures from approximately one-quarter of a standard deviation below the mean to one-quarter above, but this increase was not been sustained. The net trend for per pupil expenditures for the twenty-seven year period was downward. Montana moved from a position at approximately half a standard deviation above the national



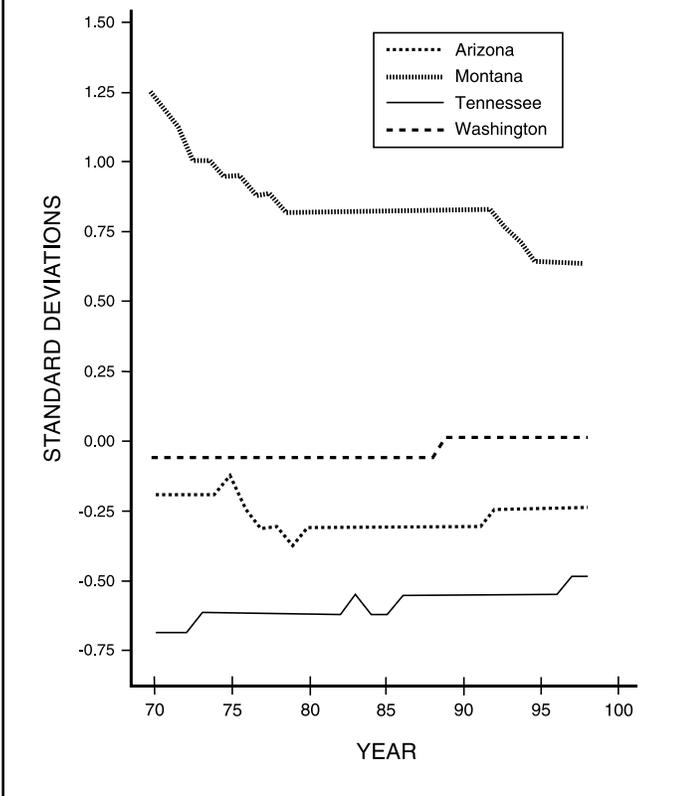
mean in 1970 to one-quarter standard deviation below the mean in 1997. Average professional salaries tumbled over this time period from one-half standard deviation above the mean in 1970 to approximately 1.75 standard deviations below the mean in 1997. Capital outlay expenditures in the state have remained flat, but when compared to the nation, Montana has lost ground here also. (See Figures 6 and 7.) Montana went from being at the national average in the early 1970s to one standard deviation below the mean in 1997. Of the four states studied, Montana experienced the most dramatic decreases in the number of school districts. (See Figure 8.) While the overall trend is downward, the reduction in the number of school districts took a sharp downward turn after the *Helena* decision in 1989. Still Montana has substantially more school districts than the national average, even after years of consolidation. (See Figure 9.) It is important to note that this analysis does not take into account the most recent legislative response of 1999, but based upon data up through 1997, it appears that in the wake of successful litigation, Montana experienced a brief upward spike in per pupil expenditures but then returned to a long held pattern of hovering around the national mean. At the same time, average professional salaries while showing steady intrastate increases plummeted in relationship to the national mean. In addition, although internally Montana has held capital outlay expenditures constant, it has lost ground with regard to national mean. Finally, litigation seemed to accelerate a long-term trend in school district consolidation that began a number of years prior to the supreme court ruling.

**Tennessee<sup>32</sup>**

Like many other states, school finance in Tennessee has had a history of change in reaction to needs and politics. Lack of reform has not been due to lack of political effort, as the legislature tried on various occasions to engage formula reform, with significant funding changes occurring in 1909, 1925, 1955, and 1972. An even greater effort to provide reform followed in 1977 with enactment of the Tennessee Foundation Program (TFP), which sought to provide a high level of state funds to all school districts in the context of equalized distribution. Yet despite equalization features in the TFP that caused the state to provide 92.5% of funding to school districts, the TFP was struck down in 1993 by the Tennessee Supreme Court in *McWherter*.<sup>33</sup> The ruling held that although the state provided a high percentage of funds, the state aid formula underfunded schools in that only \$60 million of the \$2.5 billion spent by schools was equalized at the time of trial. The state supreme court found a correlation between funding and school quality, so that constitutional requirements for a uniform system of public schools were not met.

Perhaps in anticipation of an adverse ruling and in likely response to the need for reform, the Tennessee legislature reacted to school funding woes by enacting the Basic Education Program (BEP) in 1992. The new law contained massive educational changes. Among those changes were a requirement that the state provide 75% of classroom expenditures, a requirement that full funding of the BEP must be met within six years, a requirement that the formula must adjust for differences in local tax capacity, and a requirement that districts must implement performance-based standards resulting in increased student achievement. The funding

Figure 9  
PLOT OF OPERATING DISTRICTS  
NORMED TO THE NATION



requirement called for nearly \$1 billion in new revenues over five years. Green suggests that increased fiscal effort on the part of the state has been realized, as he points to data showing that the state aid ratio had increased to 51% by 1998, up from 45% in 1992, the year prior to the court's decision.<sup>34</sup> Total general fund state aid in 1992-93 when the ruling was handed down by the court was \$1.57 billion, an amount which would require an additional \$513 million by 1997 if the court's order to fully fund the formula were to be observed.

As one of the most publicized plaintiff successes in recent years, the lawsuit in Tennessee seemed to suggest to some scholars that legislatures can be responsive to courts either in advance or after the fact of litigation. The question, of course, is how a supreme court victory for plaintiffs in a state where the legislature moved in advance to meet the demands for equity and where reformers have trumpeted the success of litigation measures up against other states in the nation, as well as how it has performed in the context of its own fiscal effort trendline. Since the timeline for this present study covers the years 1970-1997, analysis should reveal trends for both pre- and post-litigation performance in Tennessee by assessing performance under three separate school aid schemes.

As a beginning point for analysis, student enrollment trends in Tennessee offer a different scenario from both Arizona and Montana. Arizona has had the fiscal burden of steady to steep increases in enrollments over many years while Montana has had the advantage of stable student enrollments over the same period. After a short-lived increase in enrollments in the early 1970s, Tennessee experienced declines in enrollment, bottoming out in the late 1980s. (See Figure 1.) From that point, enrollments have increased steadily, but not sharply. The last decade of enrollment increases may indicate new pressures on funding sources.

Still average per pupil expenditures and professional salaries, in nominal dollars, have climbed within the state. (See Figures 2 and 3.) In particular, after the 1992 legislative reform and 1993 court decision, per pupil expenditure rose sharply, but when Tennessee is compared to the rest of the nation, it does not fare as well on these measures. (See Figures 4 and 5.) Per pupil expenditure dropped from the early 1970s to the mid 1980s, beginning at a point approximately four-tenths standard deviation above the national mean and ending at one and one-quarter standard deviations below the mean. It plateaued there for several years. Prior to the 1992 legislative reform, per pupil expenditure took another sharp downward turn. The 1992 legislative reform, followed closely by the 1993 *McWherter* decision, reversed this trend and resulted in a sustained growth in per pupil expenditure through 1997. Still, Tennessee continues to lag behind with a per pupil expenditure that is approximately one standard deviation below the national mean, and it is substantially worse off than it was in the early 1970s when per pupil expenditure was above the national mean. Trendlines for average professional salaries also raise concerns. While the 1992 legislative reform appears to have reversed a negative trend, neither legislation nor litigation had more than a brief positive impact on salaries. Average professional salaries fell from almost one-half standard deviation above the mean in 1970 to nearly one standard deviation below the mean in the mid 1980s. Some ground was recovered during the late 1980s and early 1990s, but salaries never approached much less exceed the national mean again. Prior to and immediately after legislative reform and the *McWherter* decision, average professional salaries fell. It appears they have regained some ground in the last two years of the analysis, but they remain more than one-half standard deviation below the national mean. Like Montana, Tennessee's level of capital outlay expenditure has remained fairly constant over time, in spite of early enrollment declines and more recent enrollment increases. However, like Montana, it lost ground nationally. Although Tennessee ranked slightly above average to average in capital outlay expenditure until the early 1980s, the state continued to lose ground on this measure ending up at approximately one standard deviation below the mean in 1997. (See Figures 6 and 7.) With regard to school district consolidation, legislative reform and litigation appear to have had no visible effect as the number of school districts remained fairly constant. (See Figure 8.)

#### Washington<sup>35</sup>

Without doubt, the state of Washington was a pioneer among the early fiscal equity suits and in terms of aggressive legislative response to a state supreme court decision. Numbering among the most highly centralized education systems in the nation, Washington's experience with litigation offers an intense opportunity to observe the possible effect of equity lawsuits on school funding.

In some ways, many states could look enviously at Washington's history of providing aid to schools. As early as 1961, Washington school districts received nearly 60% state aid, almost 20% more than the average district across the nation at that time. Concomitantly, however, the state was not immune to economics or changes in attitudes toward state support for schools, as by 1970 the balance of funding had shifted dramatically so that state support had only grown by 10% while at the same time local shares had increased more than 500% in constant dollars. Concern regarding growing reliance by districts on local property wealth to fund the true cost of education led to the court case of *Northshore*<sup>36</sup> in 1974 which was styled after the successful *Serrano* case in California. Although *Northshore* failed, it was quickly followed in 1978 by *Seattle*<sup>37</sup> which was upheld for plaintiffs on appeal to the Washington Supreme Court. The court held the funding system unconstitutional, mandating that the state must make 'ample provision' for the basic educational program through regular and dependable tax sources instead of permitting the heavy reliance on the annual local special tax levies that

had come to characterize Washington school finance and which accounted for the unaided 500% increase in local school districts' budgets. Simply put, education's costs had risen sharply at the local level, and the state's increase of 10% over a period of years had left the state derelict in its duty to make ample provision for education

Responding to the trial court in advance of appeal to the state supreme court, the Washington state legislature moved quickly to adopt a new funding plan. Special levy failures boosted the impetus for reform, along with an unexpected state revenue windfall. A new formula was enacted in 1977 based on staff units, limits on special levy authority, and staff compensation factors designed to narrow ranges of expenditures and to correct the growing imbalance in state aid ratio. Enacting the Basic Education Act (BEA) of 1977 foreshadowed the adequacy movement by defining a basic education in terms of goals, programs, and distribution of funds, including specific skills expected of students. Subsequent amendments to the law sought to address both new improvements and the impact of budget reductions that would occur due to the leveling down effect of the BEA, a phenomenon that would result in the loss of \$115 million per year affecting 84% of the state's students. Various additional adjustments were made to deal with problems arising out of the new law, but the basic features remained intact so that state aid increased from its recent low point of 47% prior to trial in 1975 to its current level of approximately 80% in 1999.

Not all scholars have been encouraged by the structural modifications or the results of Washington's school aid plan. Theobald and Hanna argued that equity is rather abstract unless it has substantive benefits, and their view is that the BEA did not live up to its promise. They argue that the BEA provided little in the way of 'ample' provision and instead only redistributed funds more equitably. Echoing the question of this present research, Theobald and Hanna concluded that the Washington system did not improve per pupil revenues in relation to the rest of the nation, that teacher salaries were cut in some instances due to differences in cost of living that were not redressed in the centralization of personnel costs across the state, that resources available to low income students actually declined, and that reform best benefited nonminority students.<sup>38</sup>

As one of the plaintiff successes heralded for its intense reform efforts, the lawsuit in Washington may suggest that litigation can have undesirable consequences in that equity may be more than what is actually sought. On the other hand, it may be a case of reform that had a real and valuable effect. The question is how a supreme court victory for plaintiffs in a state where the legislature moved aggressively to meet the court's demand for equity measures up against other states in the nation, as well as how it has performed in the context of its own fiscal effort trendline. Since the timeline for this present study covers the years 1970-1997, analysis should reveal trends for both pre- and post-litigation performance in Washington.

In terms of student enrollment, Washington experienced modest declines from the early 1970s to mid 1980s, but from that point forward, the state has seen consistent growth. (See Figure 1.) This sustained period of enrollment growth, approximately fifteen years in length, can prove challenging as the state must annually find additional revenues to fund education. Like the other states in this study, Washington's average per pupil expenditures and professional salaries have consistently risen, in nominal dollars, over the years. (See Figures 2 and 3.) In fact, of the four states, Washington's per pupil expenditure and average professional salaries ranked highest in 1997, but national comparisons yield a more complicated picture. (See Figures 4 and 5.) State legislative reform in 1977 briefly halted a downward trend in per pupil expenditure relative to the rest of the nation, pushing this measure slightly above the national mean. However, per pupil expenditure soon fell below the national mean and remained there until the early 1990s. Before 1997, per pupil expenditures

fell once again below the national mean, but then rose once more to a point slightly above the mean. Overall, Washington has seen a downward trend in per pupil expenditure that neither legislative reform nor judicial mandate was capable of reversing for more than a brief period. Professional salaries present a scenario that distinguishes Washington from the other states in this study. Only Washington kept their average professional salary above the national mean from 1970-1997. That is not to say however, that professional salaries did not suffer. In 1970, the average professional salary was almost one standard deviation above the national mean. From there the trendline resembled a roller coaster ride, with professional salaries ending at a point approximately one-quarter standard deviation above the mean. In a break from the other states studied, Washington's professional salaries fared relatively better than per pupil expenditure. Washington proved to be an outlier with regard to both selected states and the rest of the nation with regard to capital outlay expenditures. (See Figures 6 and 7.) Beginning in the 1980s, its capital outlay expenditures skyrocketed in comparison with the Arizona, Montana, and Tennessee as well as the rest of the nation. In 1997, the state's capital outlay expenditures were four standard deviations above the national mean. During this same time period, Washington experienced substantial student enrollment growth that would account for part of the increase. Finally, Washington has experienced some small decreases in the number of its school districts up through 1980, and from that point the number has remained fairly constant. It does not appear that legislative reform or litigation resulted in school district consolidation.

### **Overall Analysis of Trends**

Results of this data analysis confirmed the overall tone of the literature regarding litigation effects. The first level of analysis, considering only internal performance profiles, held that all four states made significant improvement in school funding and professional salaries over nearly three decades 1970-1997. This was not surprising, since trend lines should increase over time naturally as a consequence of inflation and other factors, although such analysis is still useful in making certain that decline has not been present. The major purposes of such analysis are simply to see if expected upward increases in fact occurred and that no downward trend is observable, and to assert that states might exert significantly greater effort in comparison to previous effort that might be missed if comparing only against external benchmarks: *i.e.*, external benchmarks are a moving target that may be beyond reach if a comparison group has managed to surge ahead for various reasons, including differences in economic capacity.

In contrast, the second level of analysis returned more cautious results. In some cases, internal trends from the first analysis were upheld, while in other cases trends were moderated or reversed. Since the second level analysis is more interesting and more predictive in the larger national context in terms of assessing whether or not litigation had a positive impact in states where plaintiffs won at the state supreme court level, those results are the focus of the summary appearing next. In essence, the second level analysis held the four selected reform states up against fiscal performance in the rest of the nation, asserting that the relative position of the selected states compared to the nation over time provides an estimate of whether filing a lawsuit is a worthwhile goal.

The following observations summarize both first and second level analyses by comparing and contrasting the results:

1. In the first level analysis, reform states were evenly divided on enrollment trends. Arizona and Washington increased enrollments sharply, while Montana and Tennessee remained relatively unchanged. In the second level analysis, Arizona's and Washington's growth was greater than the national average, while Montana and Tennessee also experienced slight gains. The implication is that if

enrollments grow, expenditures should keep pace, but if expenditures grow at a rate faster than the nation and faster than enrollments, then real gain is perceived. The data show that only Washington increased attendance and expenditures at least in parallel or greater.

2. In the first level analysis, all four states recorded sizable growth in per pupil expenditure. The second level analysis weakened this observation when comparing to the national rate of increase. All four states declined relative to the nation from 1970 until the mid-1990s. The implication is that internal trends can indicate significant effort when comparing against each state's own history, but the national target moved so strongly that no state was able to make noticeable improvement against the national norm.

3. In the first level analysis, all four states appeared to increase all certified staff salaries. In the second level analysis, all four states lost ground over time against the national mean, although Washington was the only state to maintain average certified staff salaries above the national mean from 1970 through 1997. The implication is that states were able to make dramatic internal salary improvements but did not make much progress against a nation that improved salaries in a climate of reform.

4. In the first level analysis, selected states were split evenly on spending for capital programs, as Arizona and Washington dramatically increased capital expenditures and Montana and Tennessee remained flat. In the second level analysis, Arizona and Washington sustained their position exceeding the national norm, but Montana and Tennessee lost ground. The implications are mixed, in that Washington's surge in funding finds a supreme court case nearby, but Arizona's burst of spending began before capital programs were a legal issue.

5. In the first level analysis, selected states were evenly divided on reducing the number of operating school districts. Montana, as the most sparsely populated state, experienced the greatest reduction. In the second level analysis, three states increased the number of districts compared to the national norm, while Montana reduced districts more rapidly than the rest of the nation. The implication is that numbers of districts can have a significant impact on resources through the policy decisions underlying how legislatures choose to organize schools in a state. Fewer districts may be more economical, and consolidation should have the expected effect of freeing resources for redistribution. Ideally, such resources should translate into higher expenditures per pupil instead of tax reductions. While the data did not indicate where the money went in Montana, this seems not to have been the case since it will be seen later that expenditure growth in that state fell behind the nation and was not the result of commensurate enrollment losses.

## Conclusion

The literature review in this study indicated that knowledge regarding litigation effects is very limited. The literature continues to hope and believe that litigation has had a positive impact on school funding, but it is unable to present definitive research establishing a causal link between a court ruling and school funding outcomes. In fact, the literature hints that the impact of winning or losing a lawsuit may be less important than the political windfall (or negative fallout) that can be engendered by filing suit. In fairness, the literature does not present any hard data confirming the greater value of a threatened lawsuit, but it does repeatedly suggest that perhaps the greatest value to school funding litigation is the heightened awareness and sensitivity that follows in the public and legislative arenas.

The literature is also clear that litigation is high stakes gambling, and that the only certainty is the enormous amount of time and perhaps money that must be invested in bringing a case to the highest judicial level. A win may produce great or hardly noticeable gains, or it may engender fierce legislative resistance or subtle subversion among wealthy taxpayers. Similarly, a loss is no assurance of either retribution or a failed cause, as a legislature may abruptly decide to embrace school finance reform despite having successfully defended an existing state aid formula. Perhaps some of the uncertainty in the literature is due to the influence and interaction of so many variables that it becomes difficult for any research design to effectively sort out the different effects of so many variables. But above all it can be said that the literature on school funding litigation effects is very young in relative terms, at least in comparison to other fields of study such as penal reform which has more vigorously attacked issues of judicial effect.<sup>39</sup>

The data analysis carried out in this study indicated that it is difficult to point to specific instances and claim that events are the result of litigation. The first level of analysis examined the four reform states independent of changes in school funding in the nation on the assumption that progress toward equity need not be judged in relation to how other states fared. Beneath this assumption lay yet another assertion, *i.e.*, that a state's own internal progress in relation to its history should be respected. This viewpoint argued that a state may make significant gains even though it may surge ahead or lag behind other states on a national scale. The second level of analysis benchmarked progress against national norms, arguing that selected states were losing the battle if they could not improve their positions relative to the rest of the nation, *i.e.*, litigation had no justifying benefit. The first level analysis indicated that all four selected states made significant funding gains, but there was only modest indication at best in the data to suggest that increases paralleled court activity. The second level of analysis found even less evidence of court impact. While these states likely made genuine gains in the context of their own settings, the national target moved so strongly that all four states dropped on expenditures per average daily attendance. In other words, the data argued that neither legislative will nor the force of litigation were sufficient.

The simple truth is that despite supreme court victories, litigation did not cause any of the four selected states to gain significantly against the rest of the nation. Importantly, these observations flow from a very long period of time, yielding the observation that time itself may eradicate some of the effects of litigation. The argument is at once economic and social, such as the one advanced earlier in which it is questionable whether courts shape society or if the opposite is true. While pessimistic, the data suggest that time and changes in events may smooth out the effects of litigation so that, at least in this instance, the national norm is both a moving target and a difficult one to overtake.

Yet in all fairness, the positive should be noted. All four states moved ahead at varying rates of progress. In most instances, the state's share increased and reductions in local effort were observed. The sheer volume of excitement surrounding these lawsuits has undoubtedly focused attention on the needs of schools, and legislatures across the nation have closely scrutinized school aid schemes either as a result of real understanding or a desire to voluntarily reform rather than be ordered to do so. In sum, litigation has had positive effects, but its contribution may be incompletely reflected in the data.

Based on the entirety of literature on school finance litigation effects, the judicious advice to prospective litigants is to go slowly while objectively seeing the risks and costs. Some level of reason, persuasion, and force has the best opportunity for success. Yet the experience in states suggests that the mixture changes in response to politics and economics and that there is no prescription for success. The news is not welcome

among reformers who want to believe that a new legal theory will be found which will trigger automatic rulings for plaintiffs. But a democracy calls for disagreement, and democracy itself will always struggle between liberty and equality. It is in this context that school finance policy is made, and it is the context in which school funding lawsuits are decided.

### Endnotes

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15. See also Fischel, William A. (1989). Did Serrano Cause Proposition 13? *National Tax Journal* 42, 465-473; see also Silva, Fabio and Sonstelie, Jon. (1995). Did Serrano Cause a Decline in School Spending? *National Tax Journal*, XLVII, 199-216.

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Series #96-05. Department of Economics, University of California-Davis (1996). See also Manwaring, Robert L., and Sheffrin, Steven M. *Litigation, School Finance Reform, and Aggregate Educational Spending*. *International Tax and Public Finance* 4(2) May 1997 pp. 107-127.

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18. Leyden, Dennis. Court-Mandated Changes in Educational Grant Structure. *Public Finance* 47, 229-247 (1992).

19. The point that income drives spending is consistent across the economic literature and is beginning to appear in school finance scholarship. For example, see Fernandez, Raquel. New York University, Department of Economics. The Determination of Public Education Expenditures: Evidence from the States, 1950-1990. Manuscript submitted to the *Journal of Education Finance*, April 1999, arguing that changes in school funding follow changes in income proportionally.

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23. "Non-reform" refers here to all remaining 46 states. The point is to compare these four states to all other states to measure relative changes. While many of the remaining states had experienced legal action on school funding, the language here is to distinguish the four selected states from all other states in the comparison pool.

24. This section relies in part on Thompson, David C., and Wood, R. Craig. *Analysis for Plaintiffs: Roosevelt Elementary School District et al v C. Diane Bishop et al*. Manhattan, Ks: UCEA Center for Education Finance (1992); see also McKeown, Mary P. Education Finance in Arizona: 1997 The Unsettled State of the State. *Educational Considerations* v25 n1 Fall (1997) pp1-4.

25. *Shofstall v. Hollins*, 515 P.2d 590 (Ariz. 1973).

26. *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994).

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28. Some fiscal data were drawn from the American Education Finance Association, *Public School Finance Programs of the United States and Canada 1993-94*. Albany, NY: Center for the Study of the States (1995). Additional data were provided courtesy of Judy Richardson and Rita Sauv from their forthcoming updated chapter on Arizona in the AEFA twin volume set. In addition, documents from appropriate state agencies provided some detail.

29. This section relies in part on Jean, Ernie. School Funding in Montana. *Educational Considerations* v25 n2 Spring 1998) pp39-41; see also Thompson, David C; Wood, R. Craig; Miller, M. David. Resource Accessibility, Wealth Neutrality, and Tax Yield in Montana. *Educational Considerations* v21 n2 (1994); see also Honeyman, David S; Miller, M. David; Wood, R. Craig; Thompson, David C. *The Study of Resource Accessibility, Wealth Neutrality, and State Yield in Montana Rural Education Association v State: Expert Witnesses' Analysis for Defendants*. Gainesville, Fl: UCEA Center for Education Finance (1992). Wood, R. Craig; Thompson, David C; Honeyman, David S; Miller, M. David. *Funding Public Education in Montana Based on the Concept of Cost of*

*Living Indices in Montana Rural Education Association v State: Expert Witnesses' Analysis for Defendants.* Gainesville, FL: UCEA Center for Education Finance (1992). In addition, documents from appropriate state agencies provided some detail.

30. *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684 (Mont. 1989).

31. *Montana Rural Education Association v State* (1991) failed at the district court level and is not considered here.

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33. *Tennessee Small Sch. Sys. v. McWherter*, 851 S.W.2d 139 (Tenn. 1993).

34. Green, Harry A. Education Finance Reform in Tennessee. *Educational Considerations* v25 n1 Fall (1997) p44.

35. This section relies in part on Plecki, Margaret. Financing K-12 Education in Washington State. *Educational Considerations* v25 n2 Spring (1998) pp71-75; see also American Education Finance Association, *Public School Finance Programs of the United States and Canada 1993-94*. Albany, NY: Center for the Study of the States (1995); see also Theobald, Neil D. and Hanna, Faith. Ample Provisions for Whom?: The Evolution of State Control Over School Finance in Washington. *Journal of Education Finance* v17 n1 Summer (1991) pp7-32. In addition, documents from appropriate state agencies provided some detail.

36. *Northshore Sch. Dist. No. 417 v. Kinneer*, 530 P.2d 178 (Wash. 1974).

37. *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71 (Wash. 1978).

38. Theobald, Neil D. and Hanna, Faith. Ample Provisions for Whom?: The Evolution of State Control Over School Finance in Washington. *Journal of Education Finance* v17 n1 Summer (1991) pp29-30.

39. See Schuck, Peter H. Why Don't Law Professors Do Much Empirical Research? 39 *J. Legal Educ.* 323, 323-36 (1989) on reasons for lack of empirical legal research. In contrast, see Horowitz, Donald L. *The Courts and Social Policy* (1977) on courts' ability to affect social policy; see also Rebell, Michael and Block, Arthur. *Educational Policy Making and the Courts: An Empirical Study of Judicial Activism* (1982) on effects of courts on education policy; see also Rosenberg, Gerald N. *The Hollow Hope: Can Courts Bring About Social Change?* (1991) on conditions under which courts are able to influence social issues. Notwithstanding, the legal impact literature in education is quite limited.

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