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Capital Outlay as an Educational Equity Issue: A Review of Educational Research and Legal Opinion

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This paper examines the issue of how school districts have financed facility needs and notes that numerous recent legal decisions address capital outlay as an equity issue. The decisions are reviewed and implications for educational policy makers are discussed.

INTRODUCTION

Educational policymakers have reason to be concerned with capital outlay financing. Over the past seventy years, school finance observers have voiced concerns about how school construction and maintenance are financed, but in general the issue has received more avoidance than attention. While some inattention has undoubtedly resulted from conscious decisions favoring instructional priorities, some significant avoidance has likely been deliberate, as a discussion of capital outlay funding and resulting implications about state involvement typically evoke emotional responses from state governments and local school districts.

The issue that triggers powerful emotions frequently emanates from the suggestion that financing capital outlay may become an equitable concern. Certainly equity in school finance is not a recent phenomenon as evidenced by the fierce litigation of the past twenty years. But despite the relative degree of tranquility following *Serrano* [45] in California which established principles of wealth neutrality, there is growing evidence to suggest a resurgence of equity challenges to school finance schemes.

The evidence suggests that equity in school finance faces redefinition. Any redefinition is especially significant to both rural and urban schools, as many states are also facing critical issues related to demographic changes, property appraisal, and legislative reapportionment. Several states are also facing new court challenges with lawsuits being brought, decided, or threatened in 23 states in the last two years [8]. The renewed emphasis on equity interjects new interest in how finance mechanisms and instructional programs are interdependent [9], and one facet of equity expansion suggests that capital outlay is emerging as an equity focus. Just as there are concerns about teacher quality, instructional resources, and other achievement variables, there is a concern that equality of opportunity may be affected by bricks and mortar. As the new decade and century approach, a quietly growing body of court comments about facility finance and an increasing body of capital outlay research suggest it is time to examine capital outlay through the lens of broad equity in an effort to analyze the depth and value of the concern and to speculate on its potential impact on rural and urban schools.

THE PRESENT RESEARCH

An indepth policy analysis demands some sense of the emergence of the concern, a synthesis of existing research, expanded knowledge through new evidence, and speculation about the future. This paper examines the origins of the issue, the legal basis for concern, and discusses existing research involving school facility finance in both rural and urban settings.

The issues are thus succinctly stated: What are the sources of concern, and what are the legal concepts surrounding potentially troublesome issues? What has been the level of involvement in financing facilities in the various states, and how widely applicable is any legitimate concern? A companion paper (in press) addresses the specific situation in Kansas. What are the dimensions and effects of the problem in Kansas? Are there differences between rural and urban areas of the state, or are problems generic to the entire state? Finally, is there an association between educational facilities and the quality of educational programs? Answers to these questions help to evaluate the concern and may assist in policy decisions regarding future state involvement in funding school facilities.

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EMERGENCE OF THE CONCERN

Historically, facility finance has been a low priority in the states. This is despite the fact that superintendents hold strong concern for capital outlay funding [28]. But the evidence also suggests that superintendents are slow to embrace state involvement [50], with indications of strong resistance to extension of state support despite overwhelming evidence that facility needs are going unmet as a consequence of local wealth dependency [24]. While sophisticated formulas have been developed for operating budgets, special programs, transportation and other services, capital outlay and debt service have received less than enthusiastic attention at nearly all policy levels among the fifty states [12].

Reasons for state inaction appear to be based in logic, fiscal constraints, and assumptions. Chief among the reasons has been tradition. Prior to 1900, education was community based with a smaller percentage of children attending school in a time when building costs and programs were simpler. Schools were local possessions often raised with volunteered labor, materials, and land. Obsolescence was nonexistent, and the demands of a rural nation on tax bases for competing governmental services were minimal [7]. The early years of the twentieth century, however, saw the advent of bonding for construction of facilities, as school districts experienced needs that increased faster than cash reserves, raising questions about tax base adequacy and equity. In the new economy of the growing nation, assessed valuation of property and location of power plants, oil and gas facilities, railroads and other industries became critical to local ability to fund educational programs [49; 44].

Although the individual states have not collectively rushed to support facility funding, a longstanding recognition at the state level of local insufficiency has existed such as Alabama's aid to rural school construction in 1901 and Delaware's assistance to black schools in 1903. In the intervening years, a number of states experimented with aid to construction because of twentieth century events. The devastating effects of the Depression and World Wars led several states to provide funding to communities, as these events had resulted in a severe backlog of unmet needs. As the effect of increasing costs of education, demands for new curricular programs, and postwar mobility emerged, the concept of education as the sole responsibility of close-knit communities declined in the face of widespread reorganization of over 125,000 school districts into less than 16,000 in the late 1960s [35]. Although not a sudden process, these events prompted some states to contribute to the construction of school facilities, resulting in 45 states currently providing either grant or loan assistance [29].

A majority of states provide some form of assistance to local districts. In many instances, however, state participation appears to be only perfunctory involvement which does not lessen local burdens or result in a more equitable solution to serious fiscal needs. Analysis of state involvement mechanisms has led researchers to the conclusion that 22 states presently offer no true relief to capital outlay needs, raising the question of potential legal responsibility for state participation in school building costs [50]. These states give rise to the concern evidenced in this research where the absence of state assistance may potentially be attacked on grounds of unequal educational opportunity.

EQUITY, THE COURTS, AND CAPITAL OUTLAY

Equity has been the guiding principle of court decisions in finance reform. While equity is variously defined, it is generally sensitive to principles of student and taxpayer equity. Student equity is frequently viewed on two dimensions of *wealth neutrality* and *accessibility* to fiscal resources. Taxpayer equity is generally seen as equal yield for equal effort. Both dimensions are further constructed horizontally and vertically, where student and taxpayer equity are defined horizontally as the equal treatment of equals, and vertically as the unequal treatment of unequals, as in compensatory programs where equality of outcomes may require added resources to provide appropriate opportunities. While the dimensions of equity have become extremely complex, the context of finance equity may be crystallized from the reform movement following the *Serrano* [45] decision in California where wealth neutrality became a governing principle by requiring states to assure that the quality of educational services was not unduly related to local tax base capacity, and that variations should instead be related to local preference [34]. The multiple dimensions of resource accessibility and fiscal neutrality have provided a definition of equity which states that students should have access to resources to meet their individual needs regardless of location in a state, and that taxpayers have a right to expect the state to support education to such an extent that variations in local wealth will not have an adverse effect on local ability to provide an adequate educational opportunity.

The courts have exerted powerful influence on developing and enforcing the broad concept of equity, providing strong indications that capital outlay and equity are compatible considerations. Although powerful federal intervention involving equity has reshaped education as in *Brown v Broad of Education* [5], most of the finance equity controversy has been played out in state courts as a consequence of the decision in *Rodriguez v San Antonio Independent School District* [43] where reformers suffered a fatal blow to efforts to establish education as a fundamental right under the Fourteenth Amendment's equal protection clause. As a consequence of *Rodriguez,* equity cases were filed in state courts seeking protection on the logic that individual states' constitutions might prove to be a means to force states to substantially equalize educational expenditures. Many of the suits were modeled after *Serrano* which had experienced success in California in 1971. The tactic proved to be an effective strategy, as the New Jersey Supreme Court in *Robinson v Cahill* [42] struck down that state's finance formula, resulting in an onslaught of state court filings. States were besieged with equity suits centering on constitutional provisions of 'thorough and/or efficient' clauses and language which implied or guaranteed education to be a fundamental right [20; 41].

Of the equity suits, *Serrano* had the widest impact. The court ruled that uncorrected variations in wealth violate equity principles and noted that equity requires education to be a function of the wealth of the state as a whole. The court also indicated that failure by the state to correct extreme variations in ability of local districts to sufficiently provide funds for education represented an abdication of the state's constitutional requirement to establish an adequate system of schools. These statements guided a flurry of activities as many states realigned their finance formulas under the presumption that if challenged, their own system for funding schools might be declared unconstitutional. The net effect of *Serrano* was that states had to find means by which to adjust for uncontrollable wealth variations.

There was a common assumption in new state finance formulas that equalization principles applied only to general fund expenditures. The expanding redefinition of equity, however, is causing the accuracy of that assumption to be questioned, and there are indicators which suggest that the assumption may have been erroneous due to a growing body of court decisions intimating other areas where equity may be a consideration.

The courts have taken note of several concerns involving capital outlay financing. Although equity claims have been brought initially on facility equity in only two relatively unique instances, courts have commented peripherally for the last fifteen years on how districts provide funding for school buildings. Much of that court attention has focused on a broad recognition of *Serrano* principles of state responsibility for reducing wealth-related educational opportunities by condemning dependence on local property tax sufficiency. For example, in *Robinson v Cahill* [42], in New Jersey, the court added reinforcement to the concept that educational systems unduly relying on local property taxes violate the rights of taxpayers and deny equal opportunity by unequal access to fiscal resources.

Direct reference to capital outlay appears in numerous court cases, and the effect of principles of general equity upon capital outlay funding are currently being hypothesized. *Shofstall v Hollins* [46] in Arizona noted that funds for capital improvements were more closely tied to district wealth than funds for operating expenses, and that the capacity of a school district to raise revenue by bond issue is a function of assessed valuation. The court noted in *Robinson v Cahill* [42] that the state's obligation included capital expenditures, without which required educational opportunity could not be provided. Provisions were also made in *Serrano II* [45] for deferred maintenance funds to satisfy the court. The court noted in *Board of Education of the City of Cincinnati v Walter* [3] that a thorough and efficient system of schools is not met if any schools are starved for funds, teachers, buildings, or equipment. The court recognized unequal wealth issues in *Diaz v Colorado State Board of Education* [15], stating that some districts were better able to provide facilities. In *Lujan v Colorado State Board of Education* [32] the court concluded that the fiscal capacity of school districts to raise revenue for bond redemption and capital reserve was a function of property wealth. More recently, capital outlay was an issue in the court decisions of *Christiensen v Graham* [10] in Florida and *Helena Elementary School District v State of Montana* [22]. Although the Florida court ruled in summary judgment that the state finance formula did not violate equal opportunity, Florida has historically been a leader in state assistance to facility financing. In contrast, the Montana court in the *Helena* case found that the state's system of funding public schools did violate constitutional protection provisions, and the court specifically noted that school district ability to fund capital outlay was dependent on local wealth. The Montana court criticized the absence of state aid to capital outlay, citing an unacceptable wealth dependency.

Other court cases have noted capital outlay concerns with considerable detail. A Texas court also recently required capital outlay attention from the state in *Edgewood Independent School District v Kirby* [17]. The giant Texas school finance system was severely shaken when a district court judge declared the state's finance system unconstitutional. The ensuing court order to correct conditions included specific remedies, and funds for school facilities were a part of the requirements needed to satisfy the court. Under court mandate, the legislature would be required to take action guaranteeing adequate funding for educational expenditures, including facilities, to every district through legislative appropriation or local taxation [19].

Although many court decisions have noted concern for capital outlay, the emerging concept of equity leads to the West Virginia case of *Pauley v Bailey* [39] which offered a revealing analysis of the potential breadth of concern for financing school buildings [50; 53; 52; 47]. Originally filed as *Pauley v Kelly* [39] as a general finance concern for inaccessibility to a quality education, the focus in *Pauley* also became for the first time a fully developed concern for equal opportunity as defined by adequate school buildings. Although the case was originally dismissed, the lower court's ruling against the plaintiffs was reversed by the West Virginia Supreme Court based on findings that education was a constitutional right in West Virginia, that a constitutional right required high quality across the state, and that failure to meet high standards must not be attributable to the state itself. In its ruling, the court saw a primary flaw in the state's finance scheme caused by excessive reliance on local property taxes for providing quality education, including facilities.

The *Pauley* case contains broad implications for funding capital outlay in its extensive definition of a quality education and equal educational opportunity. The court went to historic lengths to describe the scope of a quality education in which it clearly indicated that facilities were a part of equal opportunity. The court-ordered master plan for improvement included broad facilities mandates and specified in detail that each school would provide adequate space and quality for each are of the curriculum. The court ordered, for example, that each elementary school must have an art room for every 350-500 pupils with at least 50 square feet per child, and that every secondary school of 500 students would need at least one art room with a minimum of 65 square feet per pupil. Similar minute specifications were provided for each academic and activity function [47]. *Pauley* signaled a potential change in court attitude toward becoming involved in definitions of quality education, reversing a clear judicial preference of determining broad principles and leaving funding mechanisms to legislatures. In *Pauley,* the court not only delineated exhaustively the characteristics of a quality education, but also indicated a willingness to define for the state what was expected by equity and equal opportunity. While later intervening political activities confused and distorted the mandate, the actions of the court in *Pauley,* together with other continuing litigation, have provided a sense of concern for potential danger in states which do not support capital funding.

New court filings continue to suggest implications for capital outlay financing in the various states. While the outcome of court decisions cannot be surmised, several cases are current in Alaska, Florida, Kentucky, Missouri, New Jersey, Texas, and West Virginia which challenge state finance systems on broad equity issues and may ultimately hold implications for facility funding.

Although the courts have frequently suggested major implications for the relationship of facilities to educational opportunity as in *Pauley,* the mandate in *Serrano* for deferred maintenance funds, the court order in *Edgewood* to include capital outlay in state support mechanisms, and the notice in *Helena* of capital outlay wealth dependency, two Alaska cases represent the only suits initially filed as challenges to capital outlay funding mechanisms. *Kenai Peninsula Burrough and Jerry Anderson v State of Alaska* and *Matanuska-Susitna Burrough v State of Alaska* [31] are companion cases reflecting Alaska's unique system of governance and remote geography. Both cases were filed in protest of unequal protection resulting from an earlier general equity lawsuit in *Hootch v Alaska State Operated School System* [25]. In *Hootch,* general equity claims were brought seeking to force the state to build schools in outlying communities to reduce the need for boarding schools for rural students. While the court initially ruled against the plaintiffs, the state agreed to build rural schools and reimburse both rural and urban communities for debt retirement in order to avoid continued litigation on unsettled resource accessibility issues. Reimbursement levels varied with the condition of the economy, and the net result was differing levels of reimbursement to rural and urban districts, giving rise to unequal protection claims. Because the cases are unique to remote geography, some speculation has suggested that the cases will not have a far reaching application to broader capital outlay equity principles. Other speculation suggests that the increased focus on capital outlay is indicative of a climate conducive to expansion of equity principles and that the specifics of the cases are of less importance than the emergence of a broad redefinition of equity.

Other recent equity cases may hold implications for capital outlay, particularly as appeals develop. The likelihood appears good that capital outlay will be addressed since those cases are judicial reviews or continued disputes involving earlier important court cases which noted capital outlay as a state responsibility. *Abbott v Burke* [1] in New Jersey is a continuation of the *Robinson* case. *Council for Better Education v Martha Layne Collins* in Kentucky was filed in late 1987 as a general finance equity dispute. *Jenkins v State of Missouri* [27] provides strong indications that new definitions of finance equity will emerge, promising to keep the issues of facility finance in turmoil as funding for school buildings has been a $37 million focus in *Jenkins* thus far.

Finally, leading cases citing the importance of capital outlay in state support mechanisms continue toward appeal in Florida, Texas, and West Virginia. The Florida decision in *Christiensen v Graham* [11] is on appeal. The *Edgewood v Kirby* appeal will likely be carried even higher, as an appeal court recently overturned the lower court's ruling, denying that the Texas finance system violated equity principles. *Pauley* in West Virginia returned as *Pauley v Gainer* [39], and the *Jenkins* case in Missouri holds potential for further appeal. The eventual outcome of these and forthcoming cases may be of critical importance in redefining equity in school finance and to how capital outlay is funded in the future. Inasmuch as the outcome may substantially affect all fifty states and particularly the 22 states which provide no true assistance, the court decisions may have profound implications in states such as Kansas where more than 1,400 school buildings dot a landscape of over 82,000 square miles of mostly rural territory.

RESEARCH ADDRESSING CAPITAL OUTLAY

The issues surrounding capital outlay finance provide a curious mixture of events. While court comments have been sharp, legislatures have been slow to act. In the policy making triad, a sharp imbalance is shown with growing court comments and dramatically increasing research activity, contrasted with marked legislative inaction.

The early research literature focused on identifying problems in funding capital outlay, suggesting practical ways for states to implement relief to local districts. Proposals as early as 1922 suggested the usefulness of state aid to building funds. Updegraff's idea of tying state aid to construction and maintenance cost experience and local school district ability to pay was one of the earliest proposals, and Mort suggested state support as a fixed percentage of current expenditures. While proposals for state assistance have varied from a minimum to the extreme full state assumption of all educational costs, they have consistently focused on the concept of ability to pay, attempting to provide some form of assistance to substantially equalize ability to provide educational facilities. These early efforts led to attempts to provide more sophisticated responses to national concerns such as the National Education Finance Project (NEFP) which had as a corollary effort the National Capital Outlay Project. The NEFP provided the first comprehensive national study of funding school facilities by surveying legal bases, procedures, and practices for funding facilities in the fifty states, suggesting new models for implementation.

The majority of quantitative and policy research in capital outlay equity has appeared since the mid-1960s. Findings have been fairly consistent, indicating that heavy reliance on property wealth has had a deleterious effect on the adequacy and condition of facilities. Consistently, the research has called for increased state involvement to neutralize effects of local assessed valuation as the principal determinant of facility adequacy. Even in the relatively favorable economy of the 1960s, Palmer [38] concluded that a need existed for emergency and long-range facility needs assessment and appropriate funding mechanisms to address inadequacy problems in Oklahoma. The difficulty in funding both current and extended expenditures was borne out by Edington [18] who found extreme disparity in ability to service capital outlay and debt retirement in Texas and that construction problems were heightened by inflation, demographics, program improvements, and normal deterioration of facilities. Hehr [21] indicated that even with actual state assistance in Kentucky, needs were still going unmet and that a plan for providing equal dollars did not adequately address the issue of unequal needs. Keller [30] provided further evidence to suggest suspect relationships in a study of 1,071 Texas districts, concluding that wealthier districts were able to tax less for services, could simultaneously produce more revenue, and that smaller districts in Texas were generally wealthier than larger districts. Cross [12] offered a view of the magnitude of proposed funding schemes in Colorado districts, concluding that the state system which offered no support to capital outlay failed to provide acceptable fiscal neutrality, and that proposed state participation as high as 50 percent still would not provide adequate revenues to local districts. Research in Kansas yielded similar results, as Thompson [52] analyzed all 304 districts in the state to assess achievement of equity under five proposed alternative models for state participation. Results indicated that extreme variations in fiscal capaqcity existed, that the state's failure to fund capital outlay violated accepted equity principles, and that the introduction of state aid would significantly reduce reliance on local property wealth while simultaneously satisfying equity principles.

These findings have generally implied a troublesome relationship between facility funding and educational opportunity. Additionally, they have held strong implications for horizontal and vertical dimensions of both student and taxpayer equity. But ultimately, equity is relatively abstract until linkages are suggested which tie resource accessibility to perceived educational outcomes. The evidence has suggested that local wealth may have detrimental effects on the quality of programs offered and the quality of facilities available to students. Darbison [13], in looking at district ability to pay for programs and facilities, observed positive relationships between tax base, educational programs, and school facilities in Oklahoma. Supporting evidence was found by Ikoku [26] in a study of bonding practices in Oklahoma where it was found that significant wealth disparity existed in her pupil bond revenue, leading to conclusions that variations significantly affected the quality of facilities and ultimately impacted educational programs. Peccia [40], in a study linking quality of facilities to fiscal capacity, concluded that variance in facility quality in Virginia was attributable to size of the district, local fiscal capacity and tax effort, and that districts with low assessed valuations could not provide equal facilities when compared to wealthier districts. Still other research studies have speculated peripherally [9] that there is a positive association, and that the concept of interdependency is likely to grow rather than to languish.

The research weaves together the areas of child equity, taxpayer equity, and specific facility needs, indicating that the backlog experienced earlier in the century has never been overcome and is currently increasing. Repeatedly, the literature emphasizes a backlog of needs among districts, and their relative ability to pay for unmet needs is documented. Stewart [48] and Woolbright [56] noted that state inaction had severely limited facilities and had placed a heavy burden of unmet facility needs on local districts in Arkansas. The American Association of School Administrators [2], in cooperation with the Council of Great City Schools and the National School Boards Association, reported estimates a $25 billion for maintenance backlog in the nation's urban schools. These estimates, when combined with other estimation studies, suggest a large and growing need for attention for which apparently no effective mechanism presently exists.

The literature indicates that modernization, replacement, and other uncontrollable influences such as handicapped accessibility, Title IX, and expanding curricular needs including technology have outstripped local capacity [51]. Districts have typically been unable to meet such needs from reserve funds or current expenditures. The concept of deferred maintenance and construction has yielded huge amounts of unmet needs in the various states as in an Oklahoma State Department of Education study [37] where it was estimated that more than $622 million in needs had gone unaddressed, and if all districts extended themselves to the legal maximum, needs would still exceed $125 million. In 1987, North Carolina similarly noted $3.2 billion in unmet needs, enacting new legislation addressing some of the state's facility shortcomings with $793 million in new state monies [36]. Evidence in Texas suggests that a total of $5.4 billion will be needed to fund facility projects by 1996 [19]. Honeyman and Stewart [23] sampled rural school districts in Kansas and found the average age of buildings was sufficiently high to warrant evaluation regarding continued utility, that maintenance decisions were significantly related to debt levels, and that estimates for maintenance deferral approached $60 million in districts of less than 1,000 enrollment. The researchers concluded that local wealth contributed significantly to decisions to proceed or defer needed maintenance projects in rural schools. A recent study sponsored by the National Rural Education Association, the Kansas State University Center for Extended Services, and the Center for Rural and Small Schools identified large unmet deferred maintenance needs in the nation's rural school districts, amounting to $2.6 billion in actual deferred dollars, and an $18 billion need to replace or renovate buildings at current replacement cost. Again, positive correlations with wealth and condition were noted, with the researchers concluding that the presence or absence of wealth was positively related to the condition of facilities.

Other studies have confirmed and extended the concepts of equity [53; 23], and deferred maintenance [24]. Devin [14] reviewed unmet maintenance needs in Kansas districts with over 1,000 FTE and concluded that deferred levels exceeded $321 million. Devin noted a positive correlation between level of general fund aid and level of deferred maintenance, indicating a positive relationship between wealth and condition which is unaddressed in the state's equalization formula. Devin concluded that districts receiving higher state aid also held the highest unmet needs. Random sample research in Kansas districts similarly found high positive relationships between wealth and facility condition [6].

Such indicators suggest that the absence of state support to facilities violates accepted principles of equity, results in wealth-related physical condition of facilities, determines deferred maintenance decisions, relies substantially on local property wealth as a determinant of facility quality, and allows for speculation regarding the effect of state finance mechanisms on the interrelationship of facilities and educational programs. That similar results could be found in all 22 states which do not provide funding to facility construction and maintenance seems likely, and some question of adequacy of funding in the remaining 28 states appears to be generally relevant.

SUMMARY

The court proceedings, research literature, and general sensitivity to the issue suggest an important association between wealth dependency and unmet needs in funding school district facility projects. The research literature thoroughly documents the legitimacy of concerns about how school districts finance their facility needs, and the research on equity establishes a relationship between wealth and facilities, suggesting that an association between facilities and educational programs somehow exists. The literature also provides ample evidence that there are extensive school building needs in the areas of maintenance, renovation, and new construction. The interest in capital outlay financing is not likely to diminish in the near future as evidenced by both continued research and potential interest of the courts in facility finance issues.

The question becomes: What are the trends for finance reform challenges? What is the application to capital outlay? What does the research imply about the first two questions? What are the implications for rural schools? What should policymakers expect from the emerging redefinition of equity? The first three questions can be tentatively addressed in the present context of this research.

The past two decades have provided many lessons about equity in general. Courts in those states in which successful suits were brought advanced arguments either for a fundamental right to an appropriate education or for equal protection under the state constitution. Yet some inconsistencies in general trends remain, as efforts to overturn general finance schemes in the 1980s failed in Georgia, Colorado, New York, Maryland, Michigan, Connecticut, California, Oklahoma, and Florida [57]. Cases which were successful in overturning existing finance formulas were brought in Wyoming, Arkansas, Texas, and Montana. Courts in Colorado, Georgia, Michigan, Maryland, Oklahoma and Texas noted that equal protection provisions were not violated, and the courts in Maryland, Michigan, and Oklahoma noted that equal funding and expenditures were not conditions of equal protection. The Oklahoma court dismissed without trial the case which alleged wide disparities in expenditures, stating that guarantees of equal protection were not violated by unequal expenditures. The Texas court reversed the lower court's ruling entirely, citing no issues of sufficient concern to warrant the plaintiffs' allegations.

In contrast, cases which were brought successfully were often argued under the same contentions and produced opposite results. In the Wyoming case of *Washakie* [55], the state supreme court agreed that the system of finance failed to afford equal protection under the state constitution, and that poor districts consistently produced less revenue based on assessed valuation. The Wyoming court stated that equality of educational opportunity cannot be achieved until equality of financing is a reality. The Arkansas Supreme Court in *Dupree* [16] followed similar reasoning when it held that equal opportunity provisions of the constitution were violated when the system for finance substantially bound educational needs and property tax base together. Additionally, the Montana court in *Helena* [22] agreed that the state finance formula violated constitutional provisions and that capital outlay emerged as an issue. Still other cases are new filings or are on appeal. The answers to the first two questions presently appear to be that the trend in court decisions seems to be still emerging, and that the implications for capital outlay financing may be significantly increasing.

The research also offers evidence supporting increased state involvement. Finance methodology has improved in its ability to measure equity achievement for students and taxpayers on numerous vertical and horizontal measures. The improvement of equity using proposed models for funding capital outlay has been simulated [53], and the growing problem of modernization and replacement of obsolete structures has been demonstrated [23; 14; 6]. The expression of need among school districts, the estimation of the backlog of maintenance in the nation's school districts, and the apparent relationship between tax base, facilities, educational program, and equal opportunity all suggest the legitimacy of concerns relating to facility finance. Inasmuch as the relationship of wealth to educational opportunity is important to the development of legal responsibility and the fiscal policy of states, the research indicates that close examination of varying levels of ability among school districts is important.

While the application of court trends and research to the eventual outcome of capital outlay as an equitable concern remains to be seen, the relationship seems volatile. As new court cases are occurring, continued research is providing evidence which seeks to respond to the remaining questions regarding implications for both rural and urban schools. The emerging redefinition of equity suggests that policymakers need to watch the educational finance research and the courts as they seek to provide equity in terms of school finance models.

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