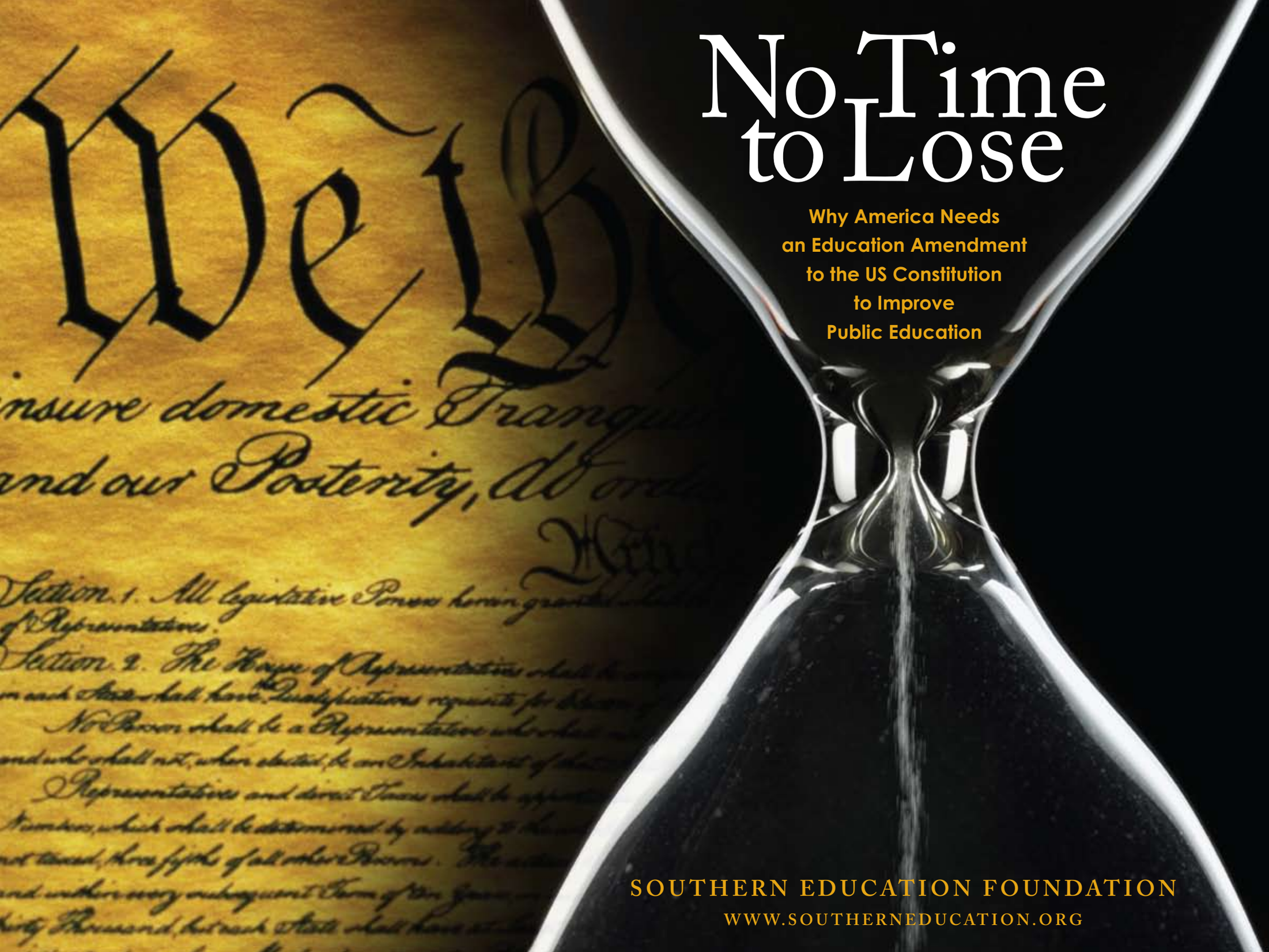

No Time to Lose

Why America Needs an Education Amendment to the US Constitution to Improve Public Education

SOUTHERN EDUCATION FOUNDATION
WWW.SOUTHERNEDUCATION.ORG

THE SOUTHERN EDUCATION FOUNDATION

The Southern Education Foundation (SEF), www.southerneducation.org, is a nonprofit organization comprised of diverse women and men who work together to improve the quality of life for all of the South's people through better and more accessible education. SEF advances creative solutions to ensure fairness and excellence in education for low income students from preschool through higher education.

SEF develops and implements programs of its own design, serves as an intermediary for donors who want a high quality partner with whom to work on education issues in the South, and participates as a public charity in the world of philanthropy. SEF depends upon contributions from foundations, corporations, and individuals to support its efforts.

SEF'S VISION

We seek a South and a nation with a skilled workforce that sustains an expanding economy, where civic life embodies diversity and democratic values and practice, and where an excellent education system provides all students with fair chances to develop their talents and contribute to the common good. We will be known for our commitment to combating poverty and inequality through education.

SEF'S TIMELESS MISSION

SEF develops, promotes, and implements policies, practices, and creative solutions that ensure educational excellence, fairness, and high levels of achievement for all students. SEF began in 1867 as the Peabody Education Fund.

CREDITS

No Time to Lose: Why America Needs an Education Amendment to the US Constitution to Improve Public Education, as well as other SEF reports and publications, may be found at www.southerneducation.org.

SEF thanks the wide array of persons of good will and expertise who have contributed to the ideas and possibilities set forth in this report. In particular, SEF acknowledges the contributions of Anthony Amsterdam, Drew S. Days III, Jay Heubert, Jerome Bruner, Theodore Shaw, Goodwin Liu, Sarah Burns, Christopher Cross, Paulette Caldwell, and Carl Kaestle. All took valuable time from busy schedules to meet with SEF staff multiple times to discuss what impact some form of education amendment to the US Constitution might have on improving public education. SEF also thanks Gene Maeroff for his input into the crafting of the report, Steve Suitts for his analysis of data, Bernard Gifford for his advice, and Molly Hunter for authoring Appendix 2 to the report.

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This inquiry would not have been possible without support from the William and Flora Hewlett Foundation and the Deer Creek Foundation. These donors' open-mindedness is refreshing.

None of the persons whose names are listed above would agree with everything in this report, and some would disagree with the conclusions reached. At the end of the day, the report solely reflects SEF's views.

NO TIME TO LOSE

WHY AMERICA NEEDS AN EDUCATION AMENDMENT TO THE US CONSTITUTION TO IMPROVE PUBLIC EDUCATION

SEF
SINCE 1867

The Southern Education Foundation
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FOREWORD

Vision without resources is a hallucination.

–THOMAS FRIEDMAN

This report outlines the case for an education amendment to the US Constitution to reduce radical disparities in the allocation of resources and funds for the education of the nation's public school students. The report argues that an education amendment is the best way to fundamentally reform the *structural arrangements* that are wasting the talent and productive capacities of millions of Americans. Such an amendment would provide a permanent framework for the exercise of federal power in the area of public education and provide sorely needed clarification of the federal role. Enactment of an education amendment requiring the federal government to augment state resources and finances to ensure that all Americans have fair and equal access to quality public education is an idea, a possibility, whose time has come.

The Southern Education Foundation (SEF) is the South's only and oldest public charity devoted to advancing equity and excellence in education, from preschool through higher education. In this interconnected world, providing more and better education to *all* Americans should be a national priority of magnitude and importance. For over 142 years, SEF has not shied from putting "inconvenient truths" about public education opportunity structures before the public and policymakers and pressing for change. This report is written in that tradition.

Since the nation's founding, America has experimented with highly decentralized systems of public education, primarily financed and controlled by the states. The results have been decidedly mixed. The status quo in public education—disturbingly low rates of education access, achievement, and attainment—constitutes a crisis that, though unheralded, is every bit as important to present and future national well-being as the economic emergency that recently turned all eyes toward Wall Street.

Today, as a result of low quality public education, America is literally awash in millions of unskilled and under-skilled people who are unable to meet contemporary workforce requirements for jobs that pay livable wages. Many of these Americans will end up in prison, dependent upon public largesse, addicted to drugs, vulnerable to dysfunctional lifestyles, and consigned to the ranks of the working poor with no real prospect of future improvement. Each day their numbers increase. In an economy that privileges skills, inequality grows every day—creating a time bomb in our "hot, flat, and crowded" world, to paraphrase Thomas Friedman's book of the same name.

It is hard to imagine our great nation continuing to muddle along at current, or even greater, levels of public education inadequacy and inferiority. It is painful to consider the consequences of education structures that fail to develop the talent and productive capacities of our nation's human capital. It is unacceptable that the nation we love is in danger of losing its competitive standing in the global marketplace, and of facing formidable difficulties in outfitting a technologically and scientifically sophisticated military to provide for national security. It is deeply troubling to think of our country's widening gap between the rich and the poor, and it is contrary to all that the nation stands for to continue to treat millions of people as second-class citizens, denying them the means and possibility of better lives through more and better public education. America cannot afford to have its economy, its democratic values, its ability to protect itself, or its commitment and international standing in

relation to human rights further eroded due to deepening caste-like opportunity structures that privilege some and disadvantage many. Change is necessary and long overdue.

Archbishop Desmond Tutu once said, "It is very difficult to awaken a man pretending to be asleep." It is time for all Americans to open their eyes and acknowledge that deep and radical disparities in public education resources and finance hurt millions of students and the well-being of the entire nation. America can and must do better.

The suggestion of an education amendment to the US Constitution is not put forth lightly. But given the importance of quality education and the scale and gravity of problems in public education that the nation currently faces, SEF thinks that the possibility of an education amendment deserves serious consideration by any and all who care about America's future.

There is no time to lose. An education amendment to the US Constitution provides a way forward.

Lynn Huntley
President
The Southern Education Foundation

August 2009

EXECUTIVE SUMMARY

NO TIME TO LOSE: WHY AMERICA NEEDS AN EDUCATION AMENDMENT TO THE US CONSTITUTION TO IMPROVE PUBLIC EDUCATION

This report outlines the case for an education amendment to the US Constitution to reduce radical disparities within and between states in necessary resources and funds allocated for the education of the nation's public school students. In the present system, millions of low income students are denied a quality opportunity to learn. The quality of public school systems in the United States largely reflects the wealth, place, and color of the students and communities served.

An education amendment to the US Constitution is the best way to ensure efficient use of national resources; abrogate place, wealth, and color as markers of education quality; and improve the quality of opportunity to learn afforded to *all* of the nation's public school students. Such an amendment would clarify and enhance the role of the national government in ensuring finance and resource adequacy, address the education needs and priorities of the nation as a whole, and provide necessary guidance to state and local governments to help raise the baseline of education quality, achievement, attainment, and accountability.

High Quality Public Education for All: Vital to America's National Interests

Education, the Global Economy, and the American Dream: Developed nations such as the United States increasingly must depend on skilled labor and innovation to spur and sustain economic development, investment and growth, and national competitiveness in a technology-driven global economy. Due to lagging educational quality and achievement, America's future economic progress is at risk. Business, investment, job creation, earnings levels, productivity, and creativity are hobbled by declining education levels. The growing inequality between rich and poor, as well as falling incomes for the middle class, are endangering the ability of millions to escape from poverty and enjoy the American Dream of freedom.

Education and American Demographics: Because of changing demographics, the nation's future human capital and economic growth increasingly depend upon how well minority and low income students are educated. Today, minority students constitute almost 45 percent of public school enrollment in the United States, and more than 46 percent of the nation's public school students are low income (eligible for free or reduced cost lunches). While diversity is an important economic asset, these demographics pose an enormous challenge for America's systems of education: the children who are fast becoming a new majority in America's schools have the nation's lowest levels of educational achievement and attainment.

Education and National Security: America's national security depends on the intelligence, analytic capacities, and proficiencies of its people in a world that has grown increasingly dangerous. Between 2005 and 2008, however, the number of military recruits with a high school diploma decreased from 84 percent to 73 percent. At every level—from battlefields, to technology, to diplomacy—education is a national security issue. In order to thrive and survive, the United States must develop education systems that provide students—tomorrow's leaders—with the skills needed to understand, guide, and make good decisions in relation to national security and defense in increasingly complex and uncertain times.

Education and American Democracy: Education is the foundation for preserving American democratic practices, ideals, and values. Education enables Americans to exercise sound judgment, participate in civic and political

participation on an informed basis, and help improve the larger society. As John Kenneth Galbraith observed: "…[E]ducation makes democracy possible, and along with economic development, it makes it necessary, even inevitable." More than ever before, education is now the means by which the nation can demonstrate and preserve its values and constitutional principles.

Gross Inequalities in Financing Public Education in America

Intrastate and interstate disparities in public education financing and the resources that money can buy—quality facilities and teachers, access to technology, advanced course offerings, effective counseling, and other services—reveal vast canyons of educational inequality. One measure of inequality is found in the distance between what the nation provides to educate students in America's lowest-spending districts compared to its highest-spending districts *regardless* of state boundaries. For instance, students in Missouri who attended a school in a low-spending district in 2006 had nearly *$69 million less* spent at their school over four years than those attending high school in one of New York's highest-spending school districts. The effects of these disparities do not pre-determine all educational outcomes, but they reflect a wide pattern of profound inequality in educational resources.

Funding Disparities for Low Income and Minority Students: Inadequate and unequal finances and resources for public education hurt low income and minority students the most. In 2005, 76 percent of the nation's low income students attended public schools in districts with a per pupil expenditure below the national average. The same was true for almost 66 percent of the nation's African American students, 76 percent of Latino students, 68 percent of all Native American students, and 62 percent of all Asian/Pacific Islander students. The nation cannot meet its educational challenges in the 21st century so long as disparities in educational resources continue to fall most heavily on the students who are becoming America's new majority.

State Capacity and Effort for Education Funding: States with local school districts that suffer the largest disparities in education funding often do not have the resources to do a great deal more. A significant number of low income states are spending a larger share of their state gross domestic product (GDP) for K-12 education than wealthier states with much higher per pupil expenditures, but the amount of money for students is significantly less because of the low income states' smaller GDP. In a free nation with unfettered population mobility, this is a uniquely federal problem. States lacking in resources can't solve this problem without national help.

Federal Funding in Title I: Part of the Problem of Funding Disparities: Though a worthy effort, the formulas governing the distribution of funds pursuant to Title I of the Elementary and Secondary Education Act of 1965—enacted to provide supplementary funds for the education of impoverished children—widen funding inequality. High-spending states receive much more funding per poor child than do low income states. This mismatch exacerbates radical interstate disparities in funding for impoverished children.

The Impact of Funding Disparities on the Opportunity to Learn

Money and resources matter in education. Radical disparities in funding and resources create "savage" educational inequalities and deny students a fair opportunity to learn. As the Chief Justice of the Arizona Supreme Court observed, "Logic and experience tell us that children have a better opportunity to learn biology and chemistry, and are more likely to do so, if provided with the laboratory equipment for experiments and demonstrations; that children have a better opportunity to learn English literature if given access to books." In the world's greatest and most affluent nation, many children are being educated in schools resembling those in the Third World.

The Case for an Education Amendment to the US Constitution

The federal government's engagement in public education entails setting education policy, practice, funding, and standards. Its current efforts are, however, inadequate in relation to the complexity and scale of the problem of finance and resource inequality in public schools. A new national strategy and

commitment to address these issues should begin with serious consideration of an education amendment to the US Constitution.

National Engagement in Public Education: Despite the failure of the US Constitution to mention the word "education," the federal government has a long history of involvement in public education. The US government has a vested interest in desirable education outcomes. No federal standards exist for funding and resources to ensure that state-run public schools have what is necessary to provide high quality public education to all students.

The Federal Government Should Protect Vulnerable Groups: One of the most significant turning points in American education was reached when the United States Supreme Court outlawed *de jure* racial segregation in public elementary and secondary education in *Brown v. Board of Education*. *De jure* segregation in public education is now clearly unlawful. But *de facto* segregation, which may be attributed to class, school district boundaries, and assignment policies, is pervasive and difficult to challenge.

Equity and Adequacy Litigation: Important, but Half-Measures: A line of cases, epitomized by the Texas case *San Antonio Independent School District v. Rodriguez,* sought unsuccessfully to establish that the US Constitution provides a cognizable right to equal education opportunity. Rebuffed by the High Court, lawyers for low income students and school districts litigated a series of cases in state courts relying on state constitutional provisions with mixed results. Both "equity" and "adequacy" cases have sought to affect per pupil expenditures as a means by which to reduce large-scale funding and resource disparities among school districts. The cases have had a generally positive impact on public education financing and resourcing, but are unable to address radical inequality in the willingness or capacity of discrete states to generate necessary public education funds and resources. Interstate issues involving demographics, varying tax bases, wealth, and diverse political inclinations can only be addressed through federal leadership. Unless students are to be forever consigned to "geography as destiny," the federal government must address these concerns.

An Education Amendment is the Best Way to Reduce Radical Disparities in the Opportunity to Learn: America's many systems of public education constitute a patchwork of radical inequality in resources and finance, yielding opportunities to learn of widely variable quality determined by place and class and race. The only way to address the gross disparities in education resources and finance within and between states is for the federal government to assume the duty of safeguarding against such disparities.

A first step in this regard might be to convene a high-level, independent, national commission to assess these complexities and recommend options for the way forward. By inserting education into the highest law in the land, an amendment would codify a commitment to development of the nation's human capital to its utmost potential.

An Education Amendment Would Ratify Existing Public Support for National Leadership in Education: Americans believe that the federal government ought to involve itself more meaningfully in the search for solutions to address the failings of public education. State-based efforts that rely on state standards to set appropriate benchmarks for education achievement and attainment are variable and produce uneven, unfair results. There is a need to align federal responsibility and authority with public expectations, and to create a focal point for accountability.

An Education Amendment Process Would Foster National Consensus and Build Public Will for Change: An earnest national debate about the causes and consequences of education inequality in light of changing national demographics is long overdue. The American people need to become involved at every level in a searching inquiry about the value of quality public education to individuals, families, communities, and the nation.

An Effort to Pass an Education Amendment Would Have Positive Effects Even if the Effort Were Unsuccessful: An effort to amend the US Constitution in relation to education would: 1) underscore the importance of the public schools to the preservation of democratic values and national security; 2) draw attention to the question of whether the current system of resource allocation for public schools is sufficient to meet the needs of the 21st century; 3) remind Americans that the quality of education now depends extensively on venue—where a child lives—and that inequality is built into the current system; 4) lead to consideration of whether the federal government should be obliged to help schools that serve students in low resource states or districts gain access to more funding and resources; and 5) create "space" for intermediate measures to reduce inequality by legislation or the reform of practice.

Time for Change

Whatever the form of the amendment, its aim should be to reduce, if not eliminate, radical resource and financing disparities based on place, color, or wealth in American public education. A measure of such importance should be the result of in-depth deliberation by the American people and their representatives and leaders at all levels. A federal education amendment could be modeled in several different ways, depending upon its primary aim and desired impact. An amendment effort would draw attention to the primary value of education to the nation's well-being and the need for development of new structures, relationships, and collaborative partnerships between local, state, and federal governments to create a world-class public education opportunity for all Americans.

No Time to Lose

Equal opportunity in America means little if one cannot develop through education the capacity to take advantage of equal opportunity. The day is close at hand when America will pass a point of no return. The country will simply have too many uneducated, undereducated or miseducated people and too few financial resources with which to address a problem of such scale and to effect fundamental change. An education amendment offers the possibility of change before it is too late. Putting "education" in the US Constitution is an idea, a possibility, whose time has come.

Without a fair, high quality public education system, America's promise of democracy is an empty shell, and the nation's future is imperiled. America has no time to lose.

INTRODUCTION

This report examines the warrant for an amendment to the US Constitution to clarify and enhance the role of the federal government in public education. Many discrete state, local, and national government efforts to improve finance and resources for public education of low income students, though steps in the right direction, have largely fallen short of achieving their desired goals. The imperative to address these failings is urgent.

Today, as the data below demonstrate, the United States has public school systems that fail to provide millions of low income students with the necessary skills to function well in our technology-driven information and energy age. As a result of public education failures, many linked to inadequate resources and finance, the productive capacity of millions of Americans is compromised. The nation's economic future, democratic governance, national security, and quality of life are in danger.

A variety of factors explain why public education is failing to meet contemporary needs of many students. As Michael Allen reminds us:

> The severity of the family dysfunction and of the emotional and cognitive deficits that doom many poor children to academic failure remains beyond the ability of our social institutions to redress effectively. But we do indeed have the ability to vastly improve the educational outcomes and the life prospects of the majority of poor and minority children. We only have to create the political and societal will to implement the interventions we have good reason to believe will work—if they are implemented sincerely.[1]

This report focuses on one of the most important factors contributing to the failings of public education systems in relation to low income students: the manner in which public education is financed and resourced. The report identifies *structural infirmities* that create radical disparities in resources and monies for public education *within* states and *between* states.

The report examines why there is no mention of education made in the US Constitution and the ways in which federal, state, and local government roles are intertwined in education policy and practice. It considers the effects of shared governmental responsibility for public education, now spread across many entities, on accountability and transparency needed to effect fundamental change and improvements. It questions whether it is any longer feasible to diffuse responsibility for education finance, resources, content, and quality control in light of changed circumstances and emergent challenges. It concludes with an examination of different models of amendment to the US Constitution and how they could improve public education.

America is in the midst of a global sea change where no existing education arrangement should be accepted without critical analysis, and where informed suggestions for structural change—a vision of what might be—are a fit subject for exploration. As the saying goes, "You can't get to where you want to go with the same old thinking that got you where you are." It is time for bold ideas and action. There is no time to lose.

In this time of extraordinary complexity and of daunting challenges to the environment, governance structures, human rights, and national defense, America must enhance and expand its increasingly diverse human capital at a scale equal to the challenges ahead. The single most powerful investment that any nation can make in its future is in the education of its people.

The United States was once a global leader in education. It can regain its place and a renewed position of strength by drawing on the talent, capacity, ingenuity, and innovation of a well-educated people. It must.

HIGH QUALITY PUBLIC EDUCATION FOR ALL: VITAL TO AMERICA'S NATIONAL INTERESTS

In a global economy where the most valuable skill you can sell is your knowledge, a good education is no longer just a pathway to opportunity—it is a pre-requisite. The countries that out-teach us today will out-compete us tomorrow.

–PRESIDENT BARACK OBAMA

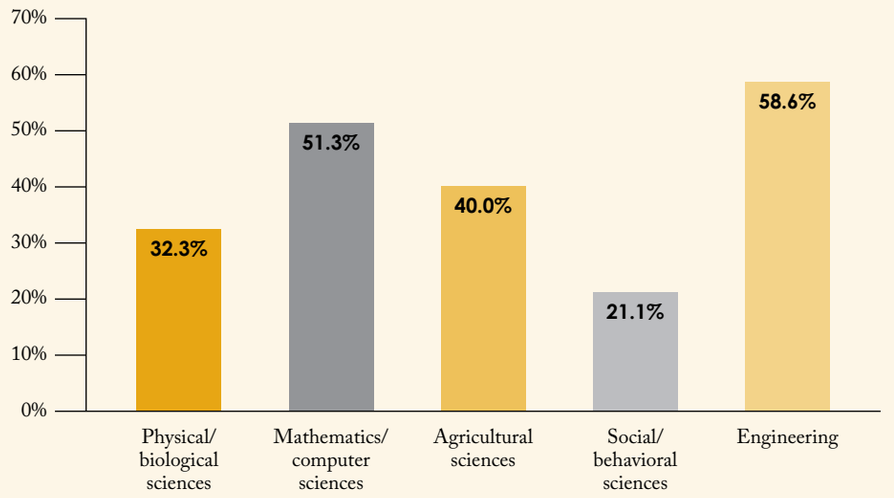
Education, the Global Economy, and the American Dream

Globalization and technological advances have created an interconnected world with a competitive economic marketplace. High-wage, high-profit industries are largely free of the old constraints of geography, distance, and nationality in hiring workers, finding customers, securing capital, and locating work. In this global economy, developed nations like the United States increasingly depend on skilled labor and innovation to spur and sustain economic development.

Education is among America's most critical economic assets—the primary means for developing the necessary human capital to assure future growth and prosperity. As Nobel laureate economist Gary Becker has observed: "Economic growth closely depends on the synergies between new knowledge and human capital, which is why large increases in education and training have accompanied major advances in technological knowledge in all countries that have managed significant economic growth."[2]

America's new global competitors, countries such as China and India, are moving rapidly to increase education to spur economic development and growth. Compared to the United States, China and India now have more than 8 times the number of college-age youth, and their rates of access to and attainment of college education are expanding exponentially. In 2003, for instance, China alone had almost half as many college graduates in the fields of engineering, manufacturing, and construction as did most of the rest of the globe's advanced economies combined—including the United States *and* 29 other countries in Europe and elsewhere that make up the

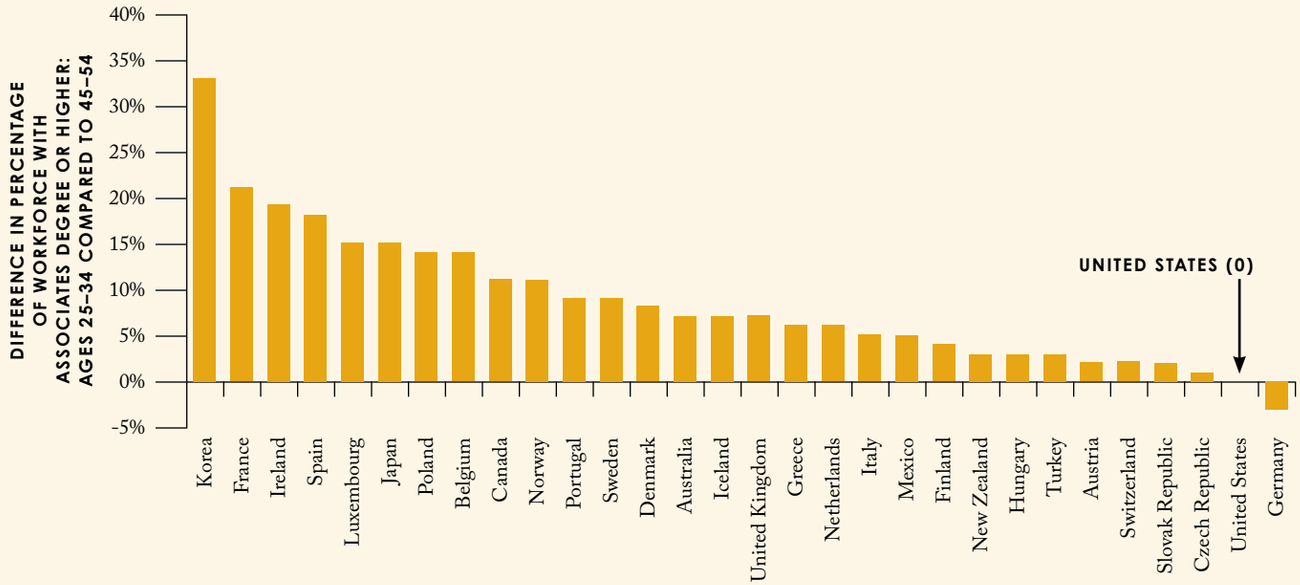
USA Science & Engineering Doctoral Degrees
PERCENT EARNED BY FOREIGN STUDENTS, 2006



Organisation for Economic Co-operation and Development (OECD).[3]

In the United States today, most students in doctoral and post-doctoral programs in the fields of engineering and mathematics are "foreign nationals," students who come to the United States from other nations to study and who may—or may not—stay in America during their careers.[4] If this trend continues, the US could have a severe under-production of highly skilled engineers and scientists among its own students and a problematic over-reliance on other nations for technical know-how. By the same token, as America's trained professionals find greater opportunities abroad, the United States may find it increasingly difficult to keep skilled people at home.

Workers' Comparative Education Levels by Age Group
2005



America's educational problems begin in elementary and secondary schools. High quality pre-kindergarten has a proven record in effectively helping small children to be school-ready and to succeed in school and in life, but state programs are available today to less than 18 percent of the nation's three- and four-year olds.[5]

America's K-12 students score behind many of their counterparts across the globe, especially in science and mathematics. In 2006, the United States ranked 23rd among 30 other OECD countries—one point ahead of the Slovak Republic and Spain—in average test scores measuring the science knowledge of 15-year-olds. A recent study comparing mathematics scores of 8th grade students in each of the 50 states with comparable tests by counterparts elsewhere in the world found that students in states such as Alabama, Mississippi, Louisiana, and New Mexico were behind students in *all* other nations with advanced economies, as well as behind students in countries such as India, Romania, Slovenia, and Malaysia.[6]

America's international ranking in high school graduation rates has also begun to lag significantly. In 2006, students in the United States graduated at a rate lower than the average OECD country and significantly below European students. Similarly, in recent years, the United States has been one of only a few developed nations across the globe where the percentage of college-educated young adults (25-34 years of age) failed to exceed the percentage of older adults (45-54) with college degrees.

America has no permanent advantage in the global market of education and educated workers. According to a recent estimate, the United States currently has only about one-fourth of the world's college-educated adults. In 2007, one in six adults in the United States did not have a high school diploma, and 46 percent had only a high school diploma or less.

As a result of these trends, Americans' standard of living is at risk. During the last four decades, the earnings of persons with no high school diploma—or just a high school diploma—have declined sharply in comparison to college-educated adults. As recently as the early 1970s, the average high school

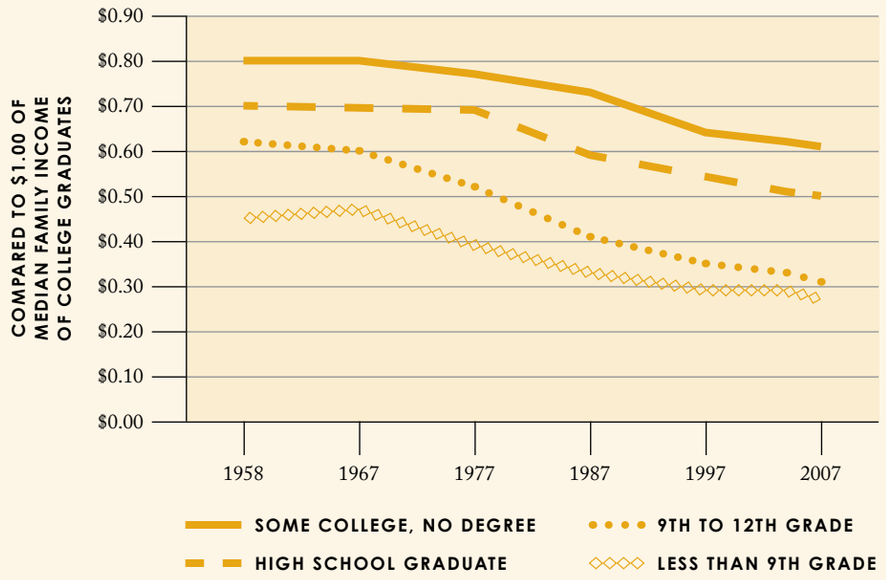
dropout could make $.60 for every dollar earned by the average college graduate. By 2007, the dropout's earnings had declined to $.27 on the dollar of the college graduate.

For those Americans who do manage to graduate from high school, the opportunity for higher education depends more and more on their families' wealth and income. Thirty years ago, a student in a family with an annual income of more than $105,800 was five times more likely to graduate from college than a student in a family earning less than $38,500. According to estimates by Pell Institute scholar Tom Mortenson, America's rates for college attainment among students from the top-income families have jumped by over 40 percent since 1979, while the rate of college graduation for students at the bottom has increased by only 3.5 percent.

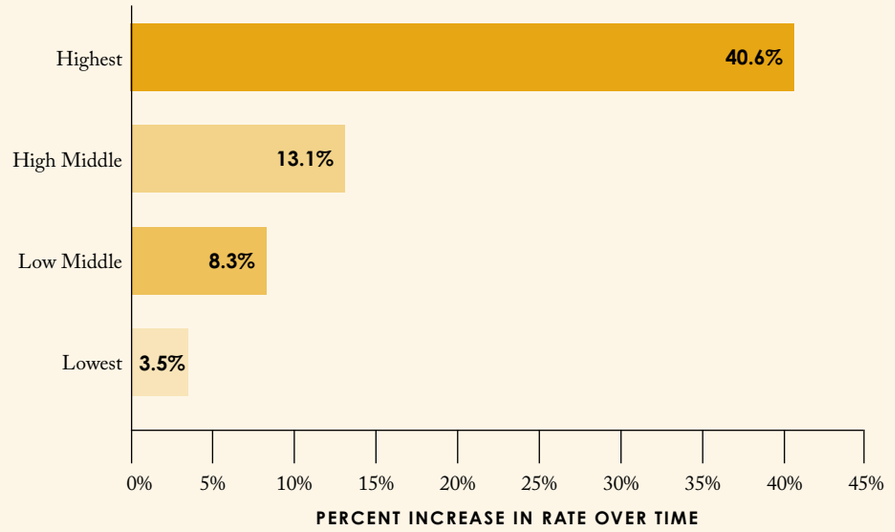
During roughly the same period, the United States returned to the largest inequality in income since before the Great Depression—a condition that the financial crisis of 2008 has not and will not alleviate. This trend is not a coincidence. As economist Isabel Sawhill states: "At virtually every level, education in America tends to perpetuate rather than compensate for existing inequalities." In 2005, Federal Reserve Chairman Ben Bernanke echoed this conclusion. In examining whether "increases in the returns to education and skills over the past twenty-five years or so led to greater economic inequality," Bernanke concluded that the nation's gaps in education and skills explain much of America's widening economic inequality.[7]

The growing gap between America's rich and poor, as well as falling incomes for the middle class, is shaking the country's collective faith in the American Dream. In an economy that distributes income largely according to levels of education, America's schools—as much as America's workplaces—are where the nation will decide the future growth of the US economy and whether the nation will remain the world's greatest land of opportunity.

Changing Economic Value of Education
1958–2007

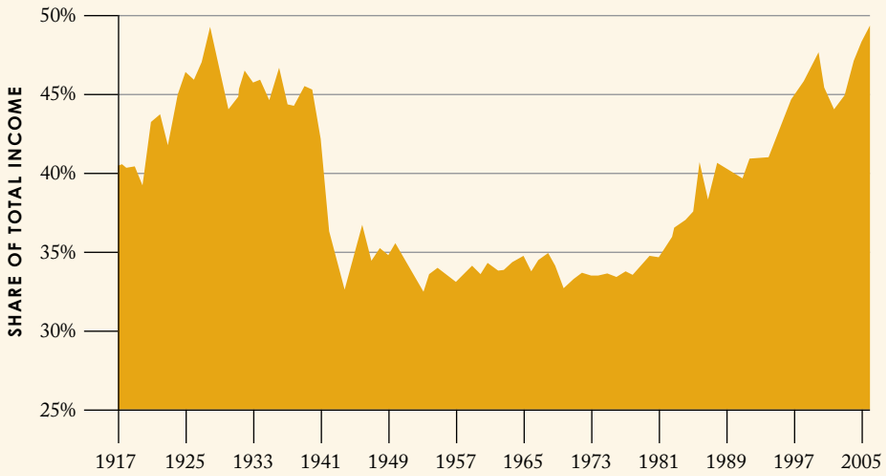


Gains in Bachelor Degrees
BY QUARTILES OF FAMILY INCOME, 1977–2007



Income Inequality in America

TOP TEN PERCENT OF TAXPAYERS' SHARE OF TOTAL US INCOME, 1917–2006



Education and American Demographics

The face of America's students is constantly changing. In recent decades, the largest wave of immigration in more than a century has brought millions of newcomers into the United States. Today, almost one-fifth of American children live in immigrant households, and the numbers of racial and ethnic groups already in the country are growing.

As a result, minority students constituted almost 45 percent of public school enrollment in the United States in 2007. Children from minority groups already make up a majority of students in 10 states and in most of the nation's largest school systems. According to Census projections, a virtual majority of the nation's children of school age will be non-White by 2020, and by 2030, 54 percent of America's school-age children will come from minority groups.

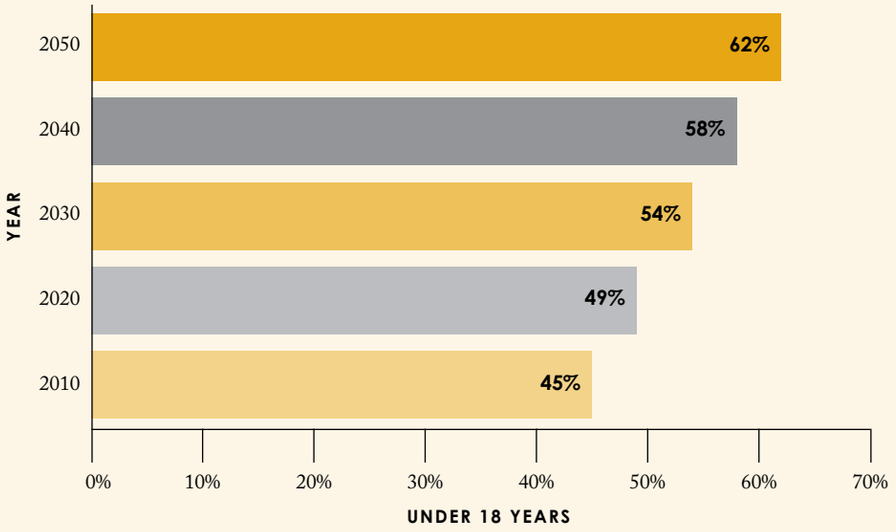
In addition, low income children are becoming an increasingly large proportion of America's K-12 public school students. More than 46 percent of all the nation's public school students in 2008 were low income, eligible for free or reduced cost lunches.[8] Low income students constitute a majority of all the public schoolchildren in 14 states, 12 of which are in the South.

These trends are not likely to change in the foreseeable future. Latino and African American children continue to represent the fastest growing groups of American children, and America will remain a destination of choice for many of the world's immigrants for years to come. The number of families with children whose incomes have declined due to the financial crisis of 2008 also continues to grow. These demographics pose enormous challenges for America's systems of education. As a group, the children who are fast becoming a new majority in America's schools have the nation's lowest levels of educational achievement and attainment.

If the country meets these educational challenges, America's growing diversity can become a major national asset in driving economic opportunity in a global marketplace.[9] Research now indicates that divergent backgrounds in the workplace offer a variety of perspectives that often helps to create new

Minorities as Percent of Youth Population in USA

2010 TO 2050



Too often we are content to live off the investments previous generations made, and … we are failing to live up to our obligation to make the investments needed to make sure the U.S. remains competitive in the future.

–BILL GATES

ideas and solutions of higher overall quality. Diversity also can improve international competitiveness by making organizations "more attuned to the diverse markets' characteristic of global competition."

According to an estimate developed in 2000, national income would increase by almost $200 billion annually were minority students afforded equal educational opportunities across the states.[10] More recent studies likewise document the nation's potential for economic gains by improving the education of students from minority and low income families.[11] As the demography of America's students shifts toward a new majority, the nation's future human capital and economic growth will rise or fall with the education of minority and low income students.

Education and National Security

In 1983, the influential "A Nation at Risk" report proclaimed: "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war."[12] Today more than ever, America's national security depends in large measure on the intelligence, analytic capacities, and proficiencies of its people in a world that has grown increasingly dangerous.

In order to thrive and survive, America needs a public education system that not only successfully promotes basic reading, writing, and arithmetic—an unmet challenge especially for the nation's low income students—but also provides students with critical thinking and analytic skills, resilience, and knowledge of diverse cultures, languages, histories, and traditions.

The United States increasingly relies on both smart power and new technologies to maintain its military presence in war and in peacetime across the globe. As of 2008, the US armed forces employed more than 5,000 unmanned aircraft systems and three times as many unmanned ground vehicles, primarily in Iraq and Afghanistan. Drone aircraft systems are often controlled by soldiers and computer operators two thousand miles away. In war zones, soldiers are also re-trained to make more decisions in the field and to decide when and how to use new and sophisticated weaponry. As one Army sergeant in Iraq said in 2007, "Every time we turn around they are putting some new technology in our hands."[13]

Between 2005 and 2008, however, the number of military recruits with a high school diploma decreased from 84 percent to 73 percent. "High quality" recruits—based on education levels and scores on the Armed Forces Qualification Test—also have steadily declined.[14]

America's education systems must meet a new challenge in developing the skills, knowledge, and understanding of young people. As adults, they will be needed in multiple ways to provide for the common defense of America and its ideals at home and around the world.

Education and American Democracy

Education is the foundation for preserving American democratic practice, ideals, and values. The bedrock of the nation, as solid as it may feel, is insufficient to bear the weight of the tens of thousands of diverse young people who emerge each year from the country's school systems without the knowledge and skills necessary to participate fully in society.

Democracy depends on an informed electorate to unleash the potential of its citizens. People who can exercise sound judgment become better citizens and help to improve the larger society. As economist John Kenneth Galbraith once observed:

> Traditionally we think of democracy as a basic human right. So it is. But it is also the natural consequence of education and of economic development. That is because there is no other practical design for governing people, who, because of their educational attainments,

expect to be heard and cannot be kept in silent subjugation. So, to repeat: education makes democracy possible, and along with economic development, it makes it necessary, even inevitable.[15]

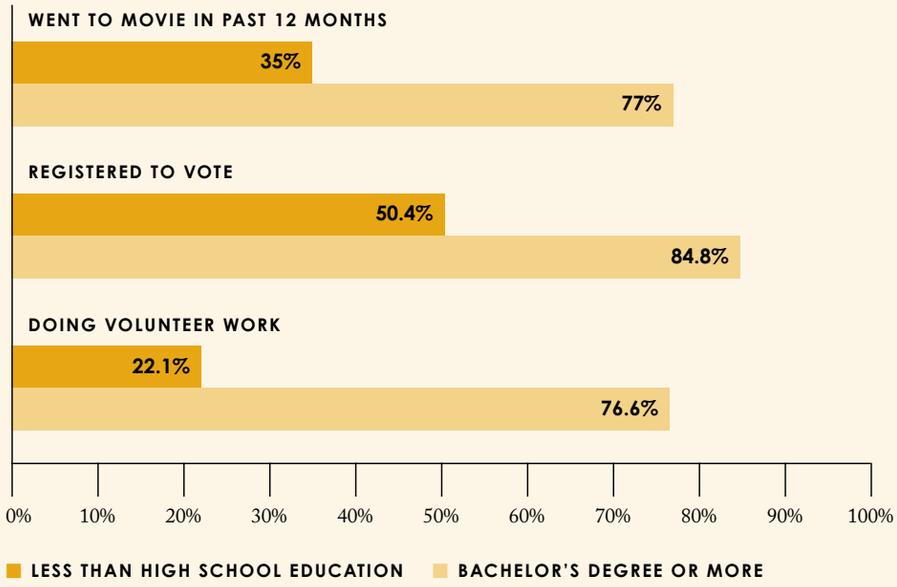
"International human rights standards indicate that education is needed for effective participation in society," writes human rights advocate Gay McDougall.[16] She notes that the Convention on the Rights of the Child states that a child "shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society."[17]

In the United States, the role of education in increasing community involvement and democratic participation is quantifiable. As Americans acquire more education, they are more likely to vote and engage in community life.

Public schools in the United States face their biggest challenge in more than a century in teaching democratic ideals and conveying a sense of national identity to students. The surge in immigration has helped fill classrooms with children from many backgrounds and cultures, some from countries where democracy is barely known. In an age when ethnic and religious rivalries have torn asunder Rwanda, Yugoslavia, Sri Lanka, Ethiopia, Kenya, and many other nations, classrooms in the United States must be effective laboratories for democracy. More than ever before, education is the means by which our nation can demonstrate and preserve its bedrock values and Constitutional principles.

This role for America's schools was the vision of our nation's founders. Reflecting on the link between healthy democratic institutions and a well educated population, John Adams wrote more than two centuries ago: "A memorable change must be made in the system of education, and knowledge must become so general as to raise the lower ranks of society nearer to the higher. The education of a nation, instead of being confined to a few schools and universities for the instruction of the few, must become the national care and expense for the formation of the many."[18]

Education Improves Civic Life



GROSS INEQUALITIES IN FINANCING PUBLIC EDUCATION IN AMERICA

Across America, gross disparities persist in spending for instruction, student support, and other vital provisions of learning in public schools. Within the 50 states, between the 50 states, and even within many individual school districts throughout the states, differences in available educational resources remain astonishingly vast. Disparities in resources for K-12 education deny millions of children, especially low income and minority children, a fair opportunity for a good education and imperil the nation's capacity to meet 21st century imperatives.

Not only is there no equality of opportunity in education, there is also no equality of resources among school districts. … It seems to me that the best chance to get at the problems and solve at least some of them is to place them in a national context and impose on them a national responsibility. They cannot be solved on a local basis any more than they can be solved in a vacuum. They are so critically important to the future of this country that they deserve to be attacked with all the power and resources at our command. The talent, experience, and material resources needed for their solution can only be commanded by the nation as a whole, acting through its national agencies such as the federal government.

–JOHN HOPE FRANKLIN

Funding Disparities Within States

There are enormous differences in the funding of K-12 public education across the United States. These disparities begin with the differences in resources that school districts have available within the same state.

In Alaska, for instance, the gap in school revenues in 2006 between the highest and lowest school districts was the nation's largest—a difference of more than $20,000 per student.[19] In Montana, Nevada, and North Dakota, the differences in per pupil revenues amounted to more than $15,000 annually in each state. In New York, gaps in revenues per student were over $13,000. In Wyoming, Washington, Arizona, New Mexico, Oregon, and Nebraska, the differences were well over $10,000 per pupil.

Nationally, funding discrepancies within states in 2006 ranged from a low of 25 percent in West Virginia—where the top-revenue district received 25 percent more funding per student than the lowest-revenue district—to a high of 276 percent in Montana. In New York, the state's funding gap means that a high school with an average of 900 students in the lowest-revenue district has $12.4 million less per year to spend on educating its students than a similar high school in the highest-revenue district. Over four years of high school, the difference in revenues between these schools amounts to an astronomical $49.6 million. By the same measure, Nebraska's disparities create a total difference of almost $36.4 million in expenditures over four years between the lowest-revenue and the highest-revenue school districts.

SIDEBAR

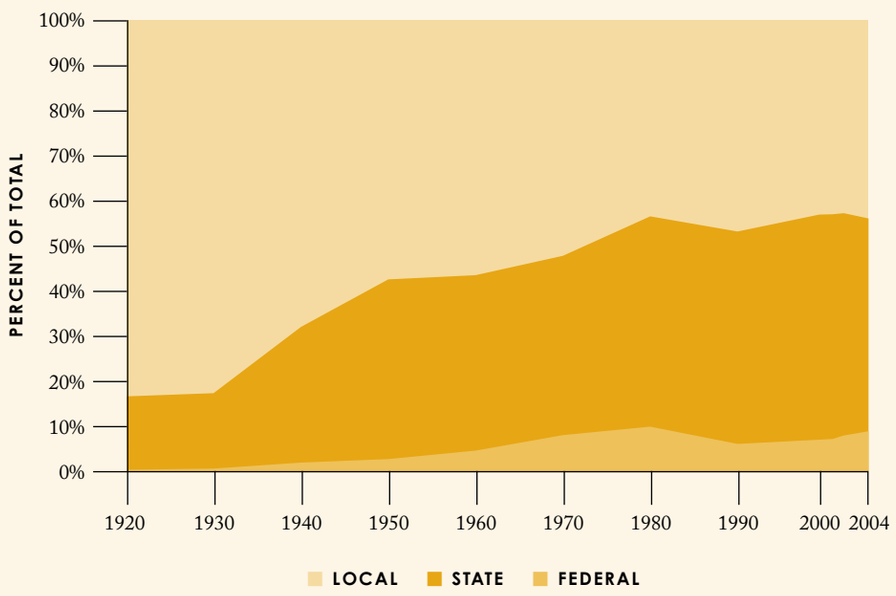
History of Funding Sources in American Public Education

The national government has yet to provide a substantial proportion of funding for America's schools. Throughout the 18th and 19th centuries, public schools in the United States were funded almost entirely by local communities. By the start of the 20th century, federal support for K-12 education was less than one half of one percent. State education funding, however, had increased to almost 20 percent.

During the two decades following the Great Depression, the state governments' share of funding for K-12 public education doubled. By 1949, state support had grown to almost 40 percent of all public funding, while federal support had inched upward to only 2 percent. These trends continued to scale upward so that as of 1980, for the first time in American history, local support was less than half of all school funding for America's public schools.

K-12 Education Funding Sources Changed in 20th Century

REVENUES FOR K-12 SCHOOLS



Funding Disparities Between States

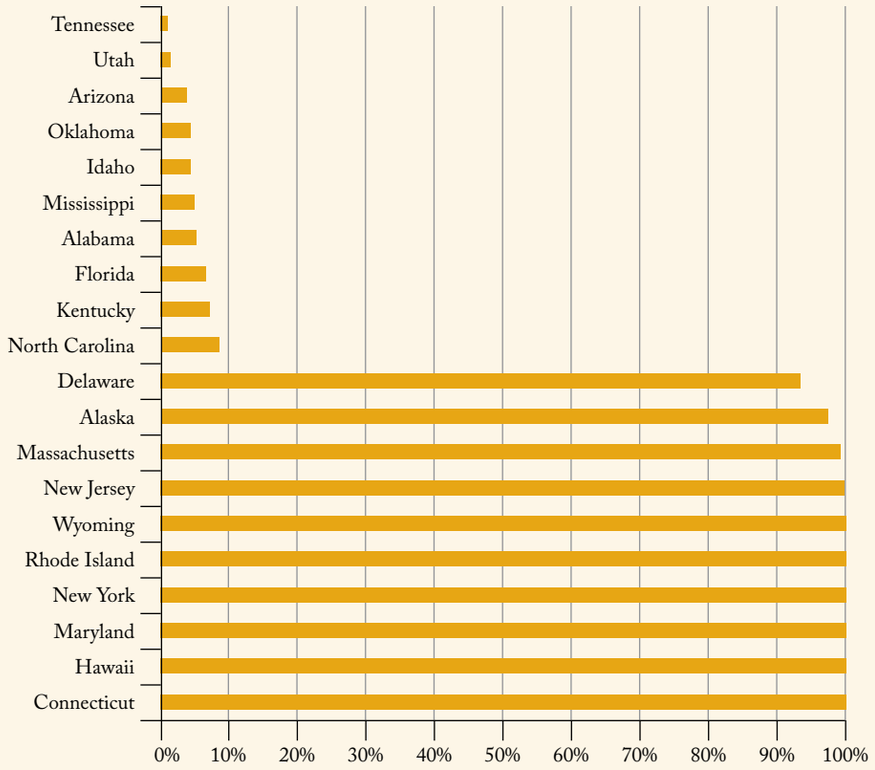
Funding disparities in K-12 education within states are enormous, but they represent only a part of the pattern of inequality in American education. Differences in expenditures *between* states are also huge.

In 2006, twelve states had an average per pupil expenditure of over $10,000, including Alaska ($15,827), New York ($14,292), New Jersey ($13,165), Wyoming ($12,133), Rhode Island ($11,949), Connecticut ($11,898), and Vermont ($11,413). Those states at the bottom of the list in average per pupil expenditures included Utah ($6,321), Tennessee ($6,457), Mississippi ($7,274), Idaho ($7,313), Oklahoma ($7,216), and Kentucky ($7,484).[20] In effect, New Jersey's per pupil expenditure was over 150 percent greater than the expenditure per student in Utah, and 125 percent greater than the average per pupil expenditure across Mississippi.

These interstate differences are not confined to a small number of students in a few states. In states such as New York, New Jersey, Maryland, and Wyoming, 100 percent of the state's students attend schools in districts that spend at or above the national average in per pupil expenditure. But in 2006, not even 1 out of 10 students in states such as Tennessee, Utah, Arizona, Alabama, Mississippi, and North Carolina attended schools in districts that spent as much as the nation's per pupil average.

Vast Interstate Disparities in Per Pupil Expenditure (PPE)

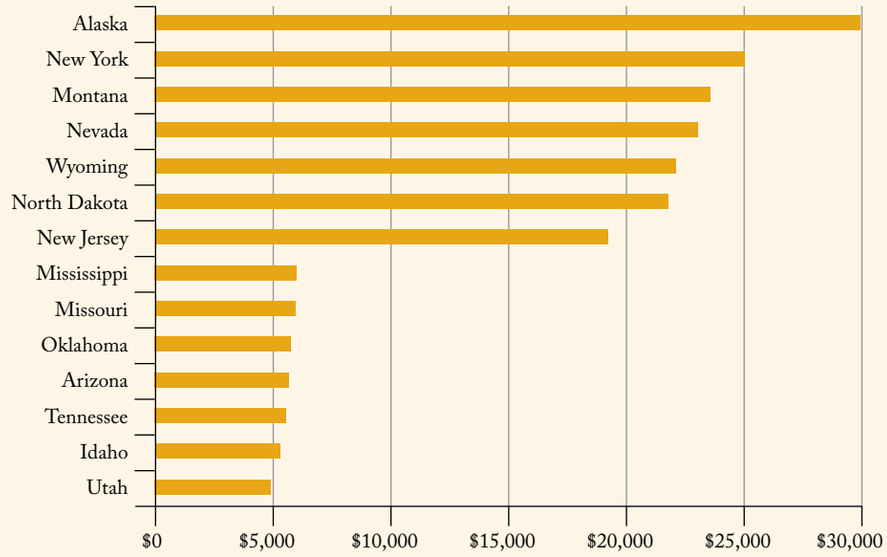
PERCENT OF STUDENTS ATTENDING SCHOOL DISTRICTS SPENDING AT OR ABOVE THE NATIONAL AVERAGE PPE, BOTTOM AND TOP STATES, 2006



Both intrastate and interstate disparities in resources reveal vast canyons of educational inequality, but, viewed separately, they actually *understate* the real range of disparities. The true measure of inequality today in the United States is found at the level of school districts in the almost unbelievable distance between what we as a nation spend educating students in America's highest-expenditure districts and what we spend on students in the country's lowest-expenditure districts, regardless of state boundaries.

Gross US Disparities – Average Per Pupil Expenditure (PPE)

STATES WITH SEVEN HIGHEST & LOWEST DISTRICT PPE, 2006



The gaps in per pupil expenditures between the highest-spending districts in Alaska, New York, and Montana and the lowest-spending school districts in Utah, Idaho, and Tennessee mean that the country annually spends 400 to 500 percent more to educate some American students than other American students due simply to the accidents of geography and birth.

In a typical high school of 900 students, these gaps make for extraordinary differences in education resources. A student attending high school in one of Idaho's lowest-spending districts had $89 million less spent at his school over four years than a student attending high school in the highest-spending Alaska district. Similarly, students in Missouri who attended a school in a low-spending district had nearly $69 million less spent at their school over four years than those attending high school in one of New York's highest-spending school districts.

Funding Disparities Within Districts

There are also gross disparities in funding and resources *within* school districts. In recent years, Marguerite Roza pioneered a set of case studies documenting "how within-district spending inequities help some schools to fail."[21] In the City of Baltimore schools, for example, one school spent $800,000 more on teacher salaries during the academic year than a comparable school. In a California district, Roza found a $788 per pupil difference between comparable schools due to one school's higher spending for more experienced teachers and larger amounts of discretionary funds. In Texas, a recent study found that funding disparities between different schools within the same district were larger than school spending differences between school districts.[22]

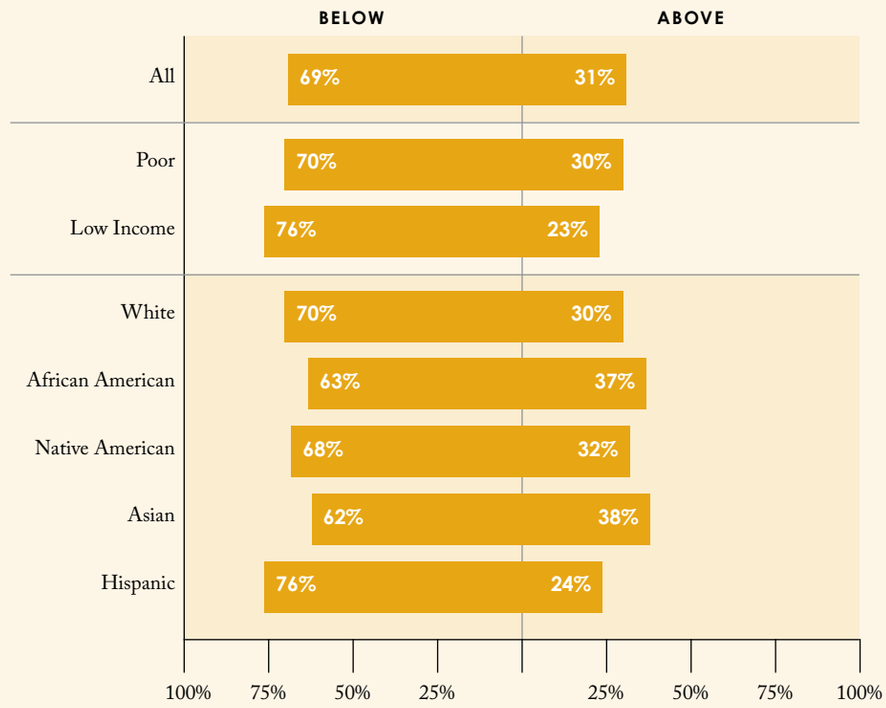
The cumulative effects of these stunning disparities in per pupil expenditures across the nation—within the same district, within states, and between and across states—do not pre-determine all educational outcomes, but reflect a wide range of deeply unequal educational resources essential for successful student learning.[23]

Funding Disparities for Low Income and Minority Students

America's unequal pattern of financing K-12 education has the largest impact on low income and minority students—those who are becoming the new majority in the nation's public schools. In 2005, for example, districts in the bottom one-third of the nation's ranking for public school funding included almost half of the entire nation's low income and Latino students, and more than 40 percent of all students in poverty across the United States.

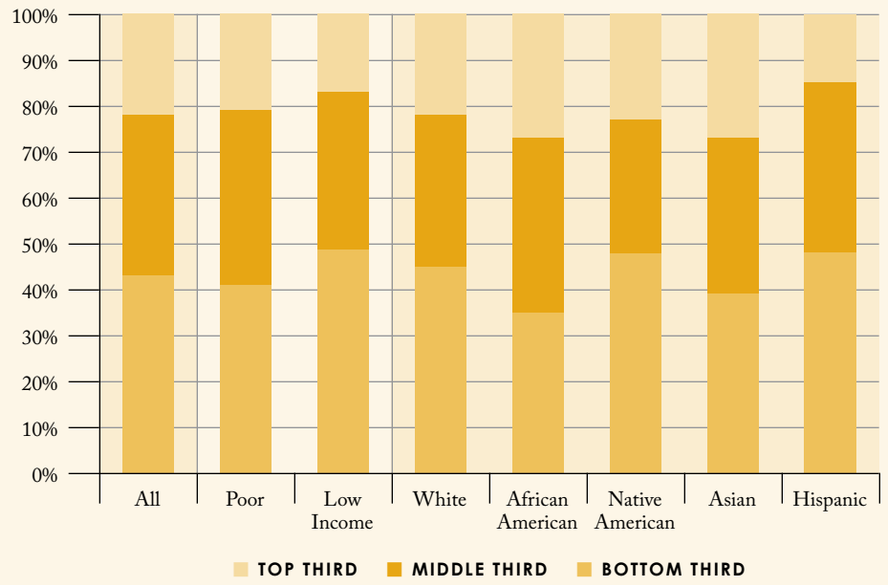
In addition, 70 percent of the nation's poor students and 76 percent of the nation's low income students attended public schools in districts with a per pupil expenditure below the national average in 2005. The same was true for almost two-thirds of the nation's African American students, 76 percent of the Latino students, 68 percent of all Native American students, and 62 percent of all Asian/Pacific Islander students.

Percent of US Students in Public School Districts Above and Below the National Per Pupil Expenditure
2004–05

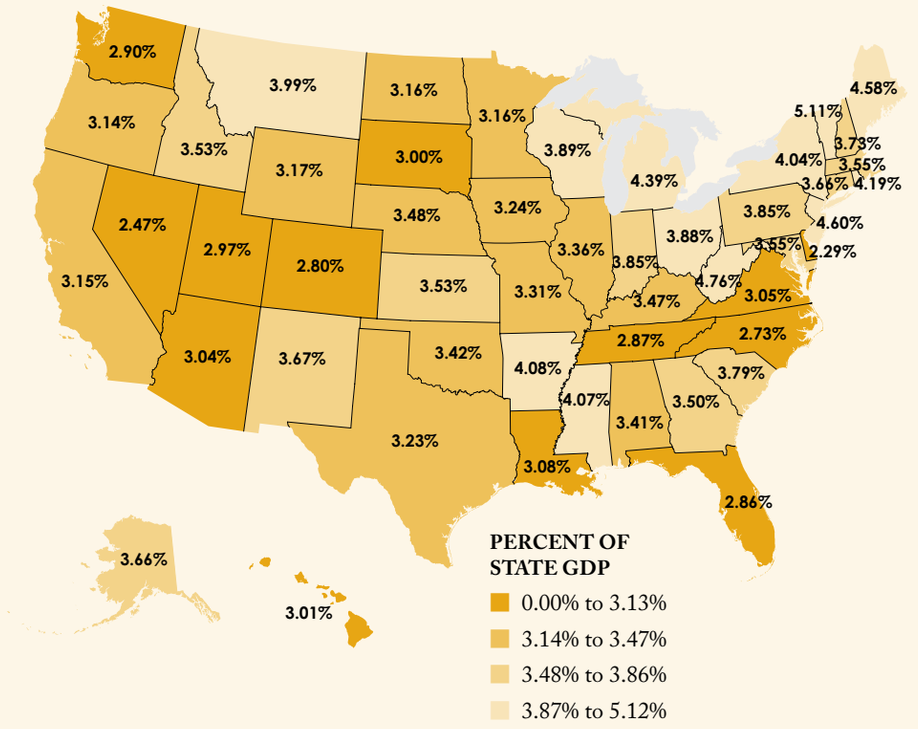


In fact, America's per pupil expenditures hugely overstate what a majority of all US students receive in educational resources. In 2005, when the nation's average per pupil expenditure was $8,701, 69 percent of all students in the United States attended school districts that spent less than that amount. In other words, a majority of all student groups by race and ethnicity, including a majority of White students, were in districts where per pupil expenditures were below the national average.

US Students in Public School Districts According to Level of Per Pupil Expenditure
2004–05



Education Spending as a Percent of State GDP
K-12 EXPENDITURES, 2005



An analysis by the Education Trust on funding gaps within states shows that districts with the highest levels of poverty generally receive less per pupil funding than districts with the lowest levels of poverty. The average difference in funding for the nation was $1,307 per student in 2005. A similar funding gap occurred between districts with the highest percentage of minorities and the lowest percentages of minorities.[24]

State Capacity and Effort for Education Funding

States with local school districts that suffer the largest disparities in education funding often do not have the resources to do a great deal more. This fact is evident in data showing the amount of funds spent in 2007 on education per person in each state. Several low income states with low per pupil expenditures such as New Mexico, Arkansas, Alabama, and West Virginia contributed more tax revenues per capita to public education than did high-income states with high per pupil expenditures such as New York, Massachusetts, and Connecticut.[25]

Perhaps the best method for assessing a state's overall effort to fund education is found in how much a state, including its local school districts, spends on K-12 education as a percentage of its total wealth, i.e., the state's gross domestic product (GDP). A considerable number of low income states are spending a

larger share of their GDP for K-12 education than are states with much higher per pupil expenditures. Some high-income states like Vermont and New Jersey spend generously in comparison to other states, but in 2005, West Virginia, a relatively low income state, spent the nation's second largest share of its state GDP on K-12 education. Other states with both low incomes and low per pupil expenditures, such as Arkansas and Mississippi, spent larger shares of their GDP on K-12 education in 2005 than did New York, Pennsylvania, Illinois, and others.

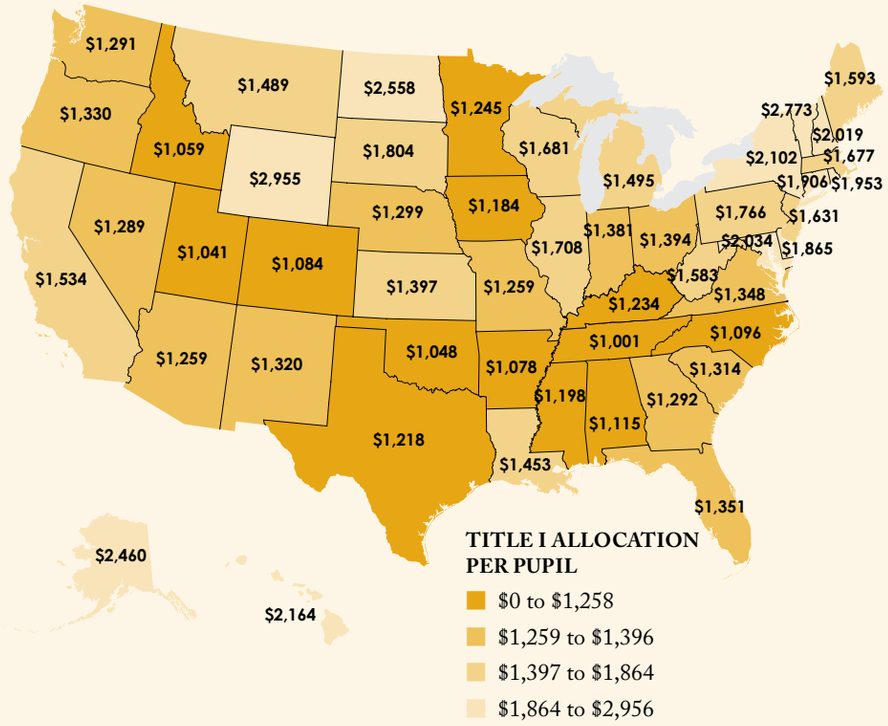
Simply put, states such as Arkansas, Mississippi, and New Mexico spend more per capita, as well as a higher share of their GDP, on education than a majority of affluent states, but the amount of money for students is significantly lower because of the states' smaller economic wealth.

Federal Funding in Title I: Part of the Problem of Funding Disparities

The federal government first began funding K-12 public schools across the nation with the adoption of Title I of the Elementary and Secondary Education Act of 1965, enacted to provide supplementary funds for the education of impoverished children.[26] The law was an important landmark, but in recent years the distribution of Title I federal funds has not helped remedy structural and material inequalities in America's educational system. It has actually worsened the problem.

Because of the statutory formulas governing the distribution of funds, Title I currently widens unequal funding for poor students across the states. For instance, Arizona had 2.5 percent of the nation's impoverished school-age children in 2007, but received only 1.9 percent of Title I funds from the federal government. Texas, home to 11.3 percent of the nation's poor children, received only 3.3 percent. Meanwhile, states such as Wyoming, Vermont, Massachusetts, New Hampshire, and Pennsylvania received Title I federal funding that represented a larger share than their percent of the country's poor schoolchildren.

Federal Title I Allocations Received by States
PER POOR STUDENT, 2007



This mismatch has created vast disparities in federal funding for impoverished children across the states. In 2007, Wyoming ($2,955), Vermont ($2,773), and North Dakota ($2,558) received the largest allocations of Title I funds for each poor child, while states such as Tennessee ($1,001), Utah ($1,041), and Oklahoma ($1,048) received significantly less. The result, as Professor Goodwin Liu has concluded, is that federal funding under Title I "reinforces interstate inequality in educational opportunity."[27]

SIDEBAR

US Funding for Education Flat

EDUCATION SPENDING AS A PERCENT OF GDP

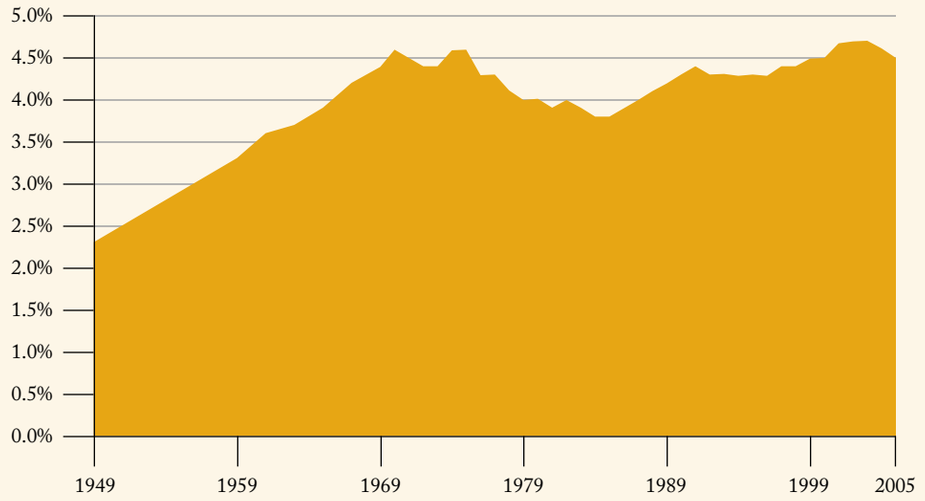
After World War II, public funding of K-12 education as a percentage of the nation's economy—America's gross domestic product (GDP)—grew rapidly, nearly doubling from 1949 to 1969.

Since 1971, however, the United States has had no real growth in the percent of GDP spent on public K-12 education. In fact, K-12 funding as a share of the GDP has slightly declined as often as it has remained flat over the last 4 decades. In other words, as the role of educational attainment for boosting earnings and the overall economy has risen dramatically, the share of the economy spent on K-12 public education has remained static.

As a result, the United States has achieved no more than an average rank among OECD's developed and developing countries for public support of elementary and secondary schooling. Among others, Poland and New Zealand now spend substantially more of their national wealth on public education than the United States.

Public Education Revenues as Share of GDP

K-12 SCHOOLS, 1949–2005



THE IMPACT OF FUNDING DISPARITIES ON THE OPPORTUNITY TO LEARN

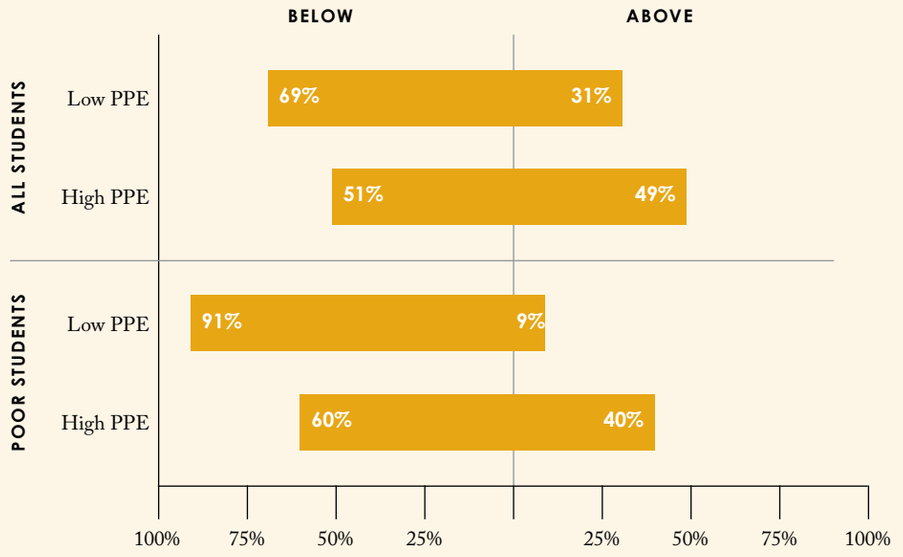
Money and resources matter in education. They are the means for ensuring a real opportunity to learn: safe and adequate facilities, good teachers, small classes, educational technology, student counseling, and other effective instructional support. Some students who don't have access to schools with an enriched opportunity to learn can beat the odds, but they will have predictably better outcomes when they have access to first-rate instruction and support.

The impact of school funding on student outcomes has been a subject of debate, but "statistical analyses of school inputs and outcomes collectively point to a strong positive relationship between school funding and student performance."[28] In addition, recent research on the costs and benefits of an excellent education document that, while effective interventions in education are very good long-term economic investments, they cost money to mount and sustain.[29]

SEF's analysis of 2005 math scores in school districts in three geographically diverse states with significant intrastate disparities in funding illustrates the point. In school districts in South Carolina, Missouri, and Washington, 69 percent of the districts with low per pupil expenditures were below the National Assessment of Education Progress (NAEP) proficient level in 4th grade math, while only 51 percent of the districts with high student expenditures were not proficient. Among districts that were both low-spending and poor (30 percent or more students in poverty), 91 percent failed to establish proficiency in math. In contrast, 40 percent of the poor districts had high levels of proficiency when the districts also had per pupil expenditures above $9,500.[30]

It does not require statistical analysis to understand how gross disparities in funding create crippling educational inequalities that deny students a fair opportunity to learn. Many high schools in California's low income and minority communities, for example, have failed to offer a curriculum necessary for their students' admission to the state's public universities because of lack of adequate funding. In Arizona, some school districts have schoolhouses that are

School Districts NAEP Proficiency in 4th Grade Math
BY PER PUPIL EXPENDITURE (PPE) IN THREE STATES, 2005



unsafe, unhealthy, and in violation of building, fire, and safety codes, and some schools have no libraries, science laboratories, computer rooms, art programs, gymnasiums, or auditoriums.

In Ohio, because of inequalities in school funding, three hundred students were hospitalized after carbon monoxide leaked out of old heaters and furnaces. Other schools using outdated coal heating systems have exposed students to airborne coal dust, which nightly covered students' desks. Band members were forced to use a former, unventilated coal bin for practice sessions, and special education classes were held in a closet space. In another Ohio school, the library has been located in a storage area in the basement, where handicapped students have to be carried for access.

In South Carolina, public schools in the "corridor of shame" expose kindergarten students to raw sewage that backs up into the classroom on rainy days. Many of these same schools house auditoriums that are unusable due to fire hazards, or conduct reading classes in primitive spaces once used as gymnasium showers. In New Jersey, disparities in education funding have resulted in children eating lunch in a small area of a school's old boiler room, or sitting in a former bathroom during remedial classes.[31]

In a lawsuit over unequal school funding in Arizona, the state's Chief Justice outlined just a few of the reasons why increased resources for underfunded schools would improve students' educational performance:

> Logic and experience tell us that children have a better opportunity to learn biology and chemistry, and are more likely to do so, if provided with the laboratory equipment for experiments and demonstrations; that children have a better opportunity to learn English literature if given access to books; that children have a better opportunity to learn computer science if they can use computers . . . . It seems apparent to me, however, that these are inarguable principles. If they are not, then we are wasting an abundance of our taxpayers' money in school districts that maintain libraries and buy textbooks, laboratory equipment and computers.[32]

Education is an iterative, cumulative process. Each year of education builds on preceding years, and the need for increased resources for schools, especially where low income students are concentrated, cannot be measured accurately with short-term metrics. If a student falls behind in reading or mathematics in elementary school, placing that student in a new middle school with added resources is unlikely to yield significant improvements in that year's test scores. Such a student has too much "catching up" to do, even if a teacher or parent helps to ignite the will to do so.

Children are not "widgets." Students need time to grow and sometimes to heal and to regain a sense of capability, encouragement, and nurture. Only when quality public schools are made available to low income students from their earliest public school years through high school graduation can social scientists accurately measure indicators of success or failure due to educational resources.

In the final analysis, statistics, experience, and common sense confirm the "inarguable principle" that money matters in education, especially for the students in schools and school districts with the fewest resources. For this reason, the United States cannot meet its educational challenges in the 21st century if the nation's gross inequalities in educational resources continue to fall most heavily on the students who are fast becoming the country's new majority.

THE CASE FOR AN EDUCATION AMENDMENT TO THE US CONSTITUTION

We must . . . give our children the fairness of a start which will equip them with such an array of facts and such an attitude toward truth that they can have a real chance to judge what the world is and what its greater minds have thought it might be.

–W.E.B. DU BOIS

Background

Since the nation's founding, the federal government has taken a piecemeal approach to setting education policy, practice, funding, and standards among the states. The national government's engagement in these areas has been critically important but inadequate. The gross disparities in resources and funding illuminated in this report won't and can't be solved by the states alone. The country needs a new national strategy and commitment to address these issues. SEF believes that such efforts should begin with serious consideration of an education amendment to the US Constitution.

The US Constitution is the nation's Rosetta Stone, the embodiment of the collective aspirations of its people and the values they cherish. Its virtue is its permanence. The US Constitution provides the essential structure for apportionment of power between government and the governed; among local, state, and national governments; and within the national government itself. As the country's supreme law, the Constitution mediates the interests and aspirations of Americans, both as individuals and as groups. It embodies the collective identity of the people through its articulation of timeless values, rights, protections, and safeguards under whose influence all Americans live.

Often called a "living document," the US Constitution provides a *framework* through which issues and challenges, including those not envisioned or foreseeable by its authors, may be addressed. The US Constitution was not meant to reflect in detail all aspects of life in the nation, but rather, to serve as a distillation of fundamental, guiding principles for use over time.

Given the present and growing importance of public education to national well-being, it is anomalous for the US Constitution to remain silent on education. The Supreme Court of the United States, the ultimate interpreter of the Constitution, has declined to hold that education is a fundamental right guaranteed to the people, due to the absence of an explicit reference to education in the Constitution and the primacy of state government in this area under the nation's extant "federalist" system.

The US Constitution's silence on education has historical roots. First, the Constitution was written at a time when most Americans made their living through manual labor. Education, far from universal, was largely the prerogative of upper class White males and those training for church ministry.

Second, the authors of the US Constitution were primarily concerned with "establishing structures and securing political rights." Social and economic rights, as understood today in international human rights instruments, were not among the prevailing political challenges of the day. The framers created

SIDEBAR

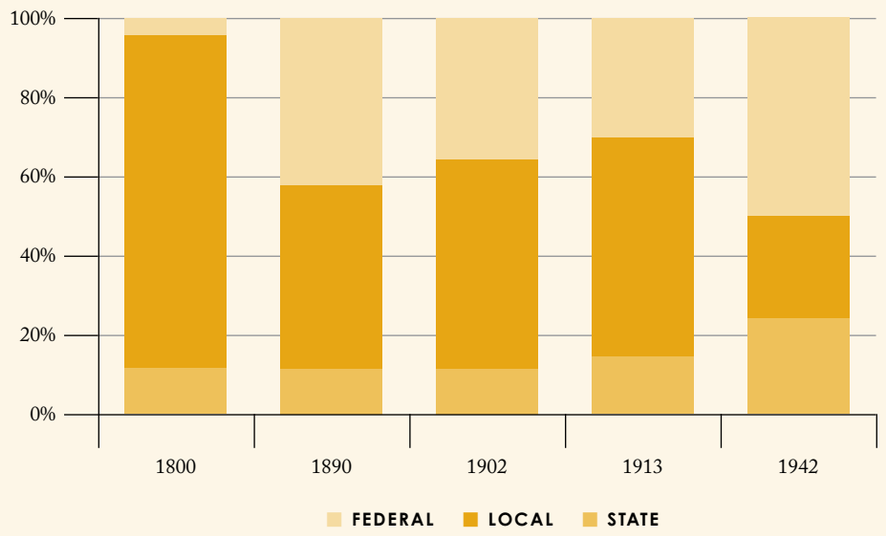
Federal Revenues in the Early Republic

In the early days of the American Republic, a lack of federal support for education reflected not only prevailing political perspectives but also the realities of a limited national government with severe restraints on its revenues. Thirteen years after the adoption of the Constitution, almost 85 percent of all governmental revenues in the nation came from the taxes of local governments. The states produced barely more than 10 percent, and the federal government no more than 3 percent, of total governmental revenues.

America's growing productivity increased exports and imports throughout the 19th century and increased federal revenues. By the 1880s, when Congress considered for the first time providing massive federal funds to improve public schools, federal revenues had grown to more than 40 percent of all government revenues. Sixty years later, after the passage of the constitutional amendment for a national income tax and the arrival of the New Deal, federal revenues represented for the first time more than half of all government revenues in the United States.

Primary Sources of Governmental Revenues

SHIFTS FROM 1800–1942



a document largely focused on restraint rather than use of federal power. As Professor John Vile has noted:

> Although the delegates who assembled in Philadelphia at the Constitutional Convention of 1787 faced many crises and perceived crises, education was not among them. The problems that brought the delegates to Philadelphia were more immediate—the inability of the national government to raise adequate revenues and provide adequate protections to the states, weak executive authority, difficulty in enforcing treaties and negotiating with foreign powers, lack of federal control over interstate commerce, the difficulty of adopting constitutional amendments, and perceived injustices at the state level.[33]

In colonial times, education was conducted mostly in the family or the church. The Massachusetts Bay Colony enacted a law requiring elementary schooling in towns where more than 50 families resided, with the intent of combating "that old deluder, Satan."[34] Very few schools existed in the South, which was predominantly rural. As time wore on, education was increasingly viewed as the means of creating citizens capable of participation in democratic processes, a matter that grew in importance as colonial governments became democratic state governments.[35]

Perhaps the most compelling reason why the US Constitution did not originally address public education issues is that the newly created United States of America—unlike its modern day counterpart—did not have the financial means to develop or support a national system of education.

National Engagement in Public Education

Despite the failure of the US Constitution to mention the word "education," the federal government has a long history of engagement in public education. In 1789, shortly after adoption of the US Constitution, Congress promulgated the Northwest Ordinances, which required the setting aside of lands for schools. Congress enacted the Morrill Act in 1862, initiating the creation of land-grant colleges. In 1867, a US Department of Education was established in clear recognition of the national interest in education.

After the abolition of slavery, the federal Freedman's Bureau established a network of schools for Blacks in the South, often with the help of religious bodies. The rationale for this extension of education by the federal government was that former slaves, now citizens, needed to be able to knowledgeably participate in democracy.

By the late 1860s, there was clear evidence that Southern states were denying full rights of citizenship, including equal public education, to newly freed African American slaves, notwithstanding the intent of the Fourteenth Amendment. In response, Congress conditioned readmission of selected Southern states to the Union by requiring them to provide free public schools and abide by race-blind voting requirements. In 1870, Rep. George Hoar of Massachusetts introduced a bill to "establish a national system" of elementary schools, calling on the federal government to monitor and inspect schools operated by the states in order to determine which states might be delinquent in their obligation. The bill would have authorized the federal government to intervene, possibly even to assess school taxes against residents, as well as to build schools and prescribe textbooks where states failed in their duties to educate.[36] The proposal was defeated, as was a later bill introduced by Senator Charles Sumner calling for integration of all of the nation's schools.

In 1875, President Ulysses S. Grant proposed amending the Constitution to enlarge the federal role in the nation's public schools, arguing that public schools should be free, nonsectarian, and accessible to all children. Four years later, Sen. Ambrose Burnside moved to sell parcels of federal lands to raise funds for public schools, as well as for the new land-grant colleges. Neither President Grant nor Rep. Burnside prevailed in their proposals, in large measure because an enhanced exercise of federal power in education was conflated with racially mixed schools, and because of distrust for a centralized authority in education policy and practice.

> *On the public school largely depends the success or failure of our great experiment in government "by the people, for the people."*
>
> –ELEANOR ROOSEVELT

In one of the final attempts in the 19th century to establish a federal role in K-12 education, Sen. Henry Blair of New Hampshire repeatedly introduced a bill during the 1880s to grant federal appropriations to the states according to their illiteracy rates. The bill included a provision for equal per pupil amounts to both African American and White public schools. Sen. Joseph Brown of Georgia argued in behalf of Blair's unsuccessful act that "if Congress has power to protect the voter in the free exercise of the use of the ballot, it must have power to aid in preparing him for its intelligent use."[37] The bill, if enacted, would have provided massive federal funds to many Southern states, including those that were segregated. Southern resistance to federal intervention, coupled with a desire to maintain segregation, doomed the Blair bill. In a discussion of 19th century attempts to expand the role of the federal government in public education, Professor Goodwin Liu argues that "The constitutional underpinnings of those early proposals are as compelling today as they were then: Congress is duty-bound to secure equal national citizenship by serving as the ultimate guarantor of educational opportunity."[38]

Despite such a persuasive constitutional need for a larger federal role, competing interests and politics have maintained the status quo. As Professor Carl Kaestle writes:

> In the 1880s, as in the 1950s, the proponents of federal school aid found the prospects tantalizing and frustrating, seemingly within reach, but then snatched away. The lesson for us, aside from the imperfect workings of Congressional democracy, is the balance of the contending sides. Each side had its world view, its constitutional theories, its anxieties, and its legislative clout, and had them in similar measure, well-matched for stalemate.[39]

In the 20th century, the US Congress enacted a series of federal statutes for education, thereby augmenting the national government's role in addressing the need for a well-educated citizenry. The Servicemen's Readjustment Act of 1944, inspired by President Franklin D. Roosevelt, was a "GI Bill of Rights" that helped millions of military veterans attain education beyond high school after World War II. The National Science Foundation was created in 1950 to encourage and support research at colleges and universities and, eventually, curriculum development and training of teachers in elementary and secondary schools. The National Defense Education Act (1958), a response to Cold War fears, supported and advanced education in math, science, and foreign languages, and proved to be a harbinger of large-scale federal aid for college students.

In 1965, the federal government launched a new era in K-12 education with the passage of the Elementary and Secondary Education Act (ESEA). Over the course of more than four decades, Title I, the centerpiece of this legislation, has generated tens of billions of dollars in aid to states for the education of economically disadvantaged students. In recent years, however, a flawed formula for distributing funds through Title I (see pages 19-20) has begun "to reinforce, not reduce, the wide disparities in educational resources that exist across states." As Goodwin Liu observes, "Our current politics treat the nation's schoolchildren not as 'citizens of the United States' but foremost as 'citizens of the state wherein they reside.'"[40]

A straight line connects ESEA to the much-debated No Child Left Behind Act (NCLB). Enacted in 2001, NCLB seeks to raise the achievement of all elementary and secondary school students, with special emphasis on students enrolled in low-performing schools. The Act requires the disaggregation of test results for discrete subgroups in order to spotlight those schools that, despite overall achievement levels, fail to make adequate yearly progress in advancing all subgroups. The legislation has measures to promote competition among schools and requires, as a last resort, that the states assume responsibility for underperforming schools that fail to meet prescribed standards over time. It also requires that all public K-12 teachers of core academic subjects be certified as "highly qualified." The Act, though prescriptive, has not provided full funding to ensure implementation and achievement of its goals.

The federal government also deepened its involvement in elementary and secondary schools with the creation and expansion of the National Assessment of Educational Progress (NAEP), which conducts nationally representative assessments of students' knowledge and performance in various subject areas. NAEP results have become the nation's measuring stick for gauging scores on the many different tests that individual states use to calculate NCLB's requirements for yearly progress. NAEP's tests, developed in recognition of America's need to compete in the global economy, have established the nation's own benchmarks for academic achievement at the elementary and secondary school levels. No federal standards exist, however, for establishing a baseline for the necessary funding and resources to provide a high quality public education.

Despite stipulated requirements and objectives, current federal statutes allow states to devise educational goals of widely varying rigor. Some states have high expectations of student achievement, while others have far less ambitious targets. Some state constitutions have been interpreted to set high bars of proficiency; others have set the bar remarkably low. In the current arrangement, the federal government is not obliged to provide monies or resources to enable states to meet their own or voluntary federal NAEP standards of proficiency. As a result, today's taxpaying public is confused by differing reports issued by various education bodies pointing to deficiencies in relation to one set of standards, while other standards are used to demonstrate progress or achievement. It is a condition that at best has produced stalemate instead of national reform.

The Federal Government Should Protect Vulnerable Groups: A Fair Opportunity to Learn Should be National in Scope

One of the most significant turning points in American education was reached after years of test case litigation when the United States Supreme Court outlawed *de jure* racial segregation in public elementary and secondary education in *Brown v. Board of Education*. The High Court said with prescience:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the

> importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[41]

The plaintiffs in *Brown* were fundamentally seeking redress from the unequal and inferior education provided to Black students. They believed that through integration, Blacks would have a fair chance of receiving an education as good as their White counterparts, because Blacks and Whites would attend the same public schools.

Since 1954, many cases have sought to enforce the mandate of *Brown* and undo the system of unequal access to quality education that has unjustly disadvantaged African Americans. Despite progress in desegregation, gains were in many instances transitory, due to changing judicial mandates or racially identifiable housing patterns over ensuing years. Ultimately, the United States Supreme Court set a very high bar for plaintiffs seeking redress for racial segregation and discrimination in public education. The Court also sanctioned mechanisms for jurisdictions long under federal desegregation orders to be released from further compliance obligations. The back door to ensuring that African American students have access to a quality education commensurate to that provided to Whites through use of desegregation was effectively shut by the High Court's decisions in *Meredith v. Jefferson County Board of Education* and *Washington v. Seattle School District*. In those cases, the High Court invalidated voluntary integration efforts undertaken by the school districts which relied upon race as the basis for making school assignments.

De jure segregation in public education is now clearly unlawful. But *de facto* segregation, which may be attributed to class or to school district boundaries and assignment policies, is pervasive and difficult to challenge.

> *Education then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery.*
>
> –HORACE MANN

Education Finance, Equity and Adequacy Litigation: Important but Only "Half-Measures"

As the desegregation door began to close upon integration as a means by which to challenge unequal education opportunity afforded to Blacks, a new line of cases came to the fore. Epitomized by the Texas case *San Antonio Independent School District v. Rodriguez,* described below, these cases sought to establish that the US Constitution provides a cognizable right to equal education opportunity. Plaintiffs in such cases sought to upend state public education finance schemes which, due to reliance on local property taxes by school district, resulted in gross disparities in amounts of funds and resources available for the public education of low income students compared to affluent students. The plaintiffs in these cases relied largely upon the US Constitution and the Equal Protection Clause to argue their claims of deprivation of rights.

The Texas case, initiated by Mexican Americans and filed in 1968, had stark facts. The low income Edgewood Independent School District was comprised of 96 percent minority students. Drawing on locally levied property tax revenues supplemented with state and federal funding, the district was able to raise only $356 per pupil for education, although district residents taxed themselves at a higher rate than residents in the neighboring and more affluent district of Alamo Heights. In Alamo Heights, which had considerably higher property values and fewer school-age children, the school district was able to combine local revenues with state and federal funds to achieve a $594 per pupil expenditure, a disparity of $238 per student that resulted in such inequities as over 40 percent fewer library books per pupil and considerably higher teacher-pupil ratios (1:28 compared to 1:19). The class action suit sought to equalize state funding for public education, arguing that Texas's school-financing system, by relying on local property taxes, was an unconstitutional violation of the Fourteenth Amendment's Equal Protection Clause.

Most Americans would be troubled to learn that, at the dawn of the twenty-first century, education is not a fundamental right protected by the United States Constitution. … There is a profound gap between current constitutional norms and the widely understood importance of education to "the right of every American to an equal start in life."

–GOODWIN LIU

A three-judge panel in federal district court ruled in favor of the plaintiffs, holding that education was a fundamental constitutional right and that Texas' system of wealth-based classifications for education was "constitutionally suspect." The US Supreme Court reversed this decision on appeal in 1973. The High Court held that education is not a fundamental right whose unequal provision requires "strict scrutiny." It declined to hold that there is either an implied or explicit right to education within the US Constitution, or to hold "wealth" as a "suspect classification" requiring the highest level of judicial examination.

Rather, the Court said that the state had a legitimate interest in promoting local control which the judiciary ought not to second-guess. The Court expressed concern that a decision for the low income school district would open up the floodgates to other cases involving public benefits allocation, matters better left to other branches of government.

Though the Court refused to provide any remediation, it acknowledged the impact of reliance on local property taxes as the primary source of public education finance by school districts. The Court said:

> The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity . . . . But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.[42]

Although in a later decision in *Papasan v. Allain* (1986), the High Court said that *Rodriguez* left open the question of whether there might be some "identifiable quantum of education" prerequisite to exercise of speech or voting rights that might in the future be judicially cognizable, it seems at present unlikely that the *Rodriguez* decision will be overturned, especially in light of the prevailing points of view represented on the High Court's bench. The facts at issue in *Papasan* reflected extreme funding disparities for public education, creating justifiable concern that the threshold of disparity in funding would have to be so great as to have little practical precedential value in subsequent cases.

Rebuffed by the High Court, lawyers for low income students and school districts turned to state courts to litigate a series of cases, relying on state constitutional provisions with mixed results. "Equity" cases, for example, sought to secure equal per pupil expenditures as a means by which to reduce large-scale funding and resource disparities by school districts.[43]

Though some of the equity cases were successful and yielded important improvements in public education finance equalization, this line of litigation has now been largely supplanted by "education adequacy cases." Adequacy cases rely heavily on education clauses in state constitutions to challenge the adequacy of school finance systems in districts where the quality of education fails to meet constitutionally mandated standards. As Professor John C. Brittain states:

> Adequacy cases are premised on the theory that the state has a duty grounded in either a state constitution or statute to supply students with an education that allows them to meet certain standards. Once plaintiffs establish these particular educational rights, they can assert that students are not obtaining this education. Then plaintiffs may prove it by demonstrating that students are failing to meet standards as measured by results on standardized tests or other indicators of educational success.[44]

Adequacy cases spotlight issues such as the achievement gap and its causes, inequitable funding between low income and affluent school districts, disparities in coursework, teacher assignments, retention, access to technology, physical plants of schools, and other such concerns. They raise critical questions about the standards by which to measure adequacy and "what it costs" to educate a child to a level deemed appropriate in the state at issue. These

cases seem to be more attractive to courts than cases reliant primarily on challenges to education finance *per se,* because they allow the courts to receive specific evidence documenting the denial of students' state-provided constitutional rights to receive an adequate education.

Such cases often invoke standardized test results to demonstrate noncompliance with state standards. But the use of these test results can also lead, ironically, to unfair consequences for students and teachers in underfinanced, under-resourced schools. As Professor Jack Boger writes:

> If high stakes testing programs are implemented in circumstances where educational resources are inadequate . . . there is potential for serious harm. Policy makers and the public may be misled; students may be placed at increased risk of educational failure and dropping out; [and] teachers may be blamed or punished for inequitable resources over which they have no control.[45]

The absence of money combined with limited resources such as those mentioned above are invariably major factors in the failure to meet given standards as articulated in state constitutions or statutes. Although many state constitutional provisions and statutes set a relatively low standard of "adequacy," such cases have had a generally positive impact on public education financing and resourcing.

To date, at least 45 states have been party to lawsuits initiated by low income groups, often comprised largely of members of minority groups, who argue that public education in the states in which they reside is inadequate to meet specified achievement norms set forth in state constitutions.[46] Depending upon the language of the state constitutional provision at issue, the courts have variously articulated the standard of achievement to be used for purposes of assessing education adequacy.

> The common approaches have been to define adequacy as (1) the spending levels of districts of schools with high levels of performance; (2) the spending necessary for specific resources (qualified teachers, certain pupil:teacher ratios, sufficient textbooks, etc.) that professionals judge to be adequate; or (3) a level of spending sufficient to bring all students to some adequate level of outcomes, which itself needs to be explained.[47]

The results of the litigation have been variable, as have the theories used by experts to evaluate ways to achieve adequacy and methods for determining projected costs.

As documented in voluminous literature, some adequacy lawsuits have resulted in increases in funding and other mandated policy and practice changes for prevailing parties. Others have achieved only partial success and have been unable to realize the full desired impact. Still others have prompted public demands for education improvements even when formal litigation has failed. In most cases, courts have shied away from requiring recalcitrant state executives or legislatures to provide the necessary resources for fulsome implementation of remedies, frustrating the potential transformative impact of such litigation. Many such lawsuits are still pending.

In states with large numbers of low income people and limited tax bases, state defendants have sometimes asserted simple lack of money to provide resources for the achievement of required remedial action. In these cases, geography and inability of states or local subdivisions to comply with state constitutional provisions have become a reality that state courts are loath to address. The absence of a federal obligation or duty to provide a baseline of resources or monies necessary to ensure compliance speaks to the need for a new arrangement, a new relationship between the states and the federal government in relation to public education finance.

Education adequacy cases, moreover, are unable to address a pernicious aspect of disparate financing and resourcing of public education—radical inequality in the capacities of discrete states to raise requisite funds and resources or the disinclination to do so for reasons unrelated to what students need for a quality opportunity to learn. The interstate issues, reflective of demographics, in addition to tax bases of varying dimension and productivity, and diverse political inclinations regarding the role of government and education, can only be addressed through federal leadership. Unless students are to be forever consigned to "geography as destiny," the federal government must be called upon to address these concerns.

An Education Amendment is the Best Way to Reduce Radical Intra- and Interstate Disparities in the Opportunity to Learn

In the preceding sections of this report, data establish that America's many systems of public education constitute a patchwork of radical inequality in resources and finance that yields opportunities to learn of widely variable quality depending on place and class and race. *Within* states, the amount of money and resources allocated for public education also varies greatly. Some students are provided a second-class opportunity to learn, while others are privileged to enjoy a good quality public education. Radical disparities in funding and resources are even greater *between* states. And, as the case study of the South set forth earlier in the report shows, regional disparities exist as well.

Clearly locales and states have dramatically different capacities and inclinations to fund public education improvements. Professor Goodwin Liu sums up the present moment:

> Although interstate inequalities have lessened since Reconstruction, it is unlikely that lingering disparities will become much narrower without a more robust federal role. The overall level of interstate inequality in per-pupil spending has changed little in recent decades despite school finance litigation and policy reforms touting high standards for children. Unfavorable interstate comparisons have spurred improvement in some states but not others and substantial disparities in fiscal capacity constrain the extent of interstate equalization that states can achieve on their own . . . . [T]he constitutionally motivated project of affording all children an adequate education for citizenship remains a work in progress.[48]

The only way to address the gross disparities in education resources and finance within and among states is for the federal government to assume the duty of safeguarding against such disparities. An amendment might impose such a duty upon the federal government to ensure that states provide all students with the opportunity for public education of a quality determined and articulated through legislation, irrespective of place, class, or race. Ultimately, however, for such an amendment to have optimal impact, it would have to oblige the federal government itself to provide resources and guidance to ensure that gross inequality in the opportunity to learn is addressed. This is the case especially in states with large numbers of low income residents and limited tax revenue productivity or availability.

The import of either approach is clear. The federal government would be the guarantor of fairness in the opportunity to learn, irrespective of venue.

This is an area of complexity, to be sure, for which diverse formulas would need to be developed—and implemented through legislation enacted by Congress—to assess what state, local, and federal governments must do to ensure a baseline of equitable finance and resource allocation in public education. A first step in this direction might be to convene a high-level, independent, national commission to assess these complexities and recommend options for the way forward.

By inserting education into the highest law in the land, a permanent framework for recognition of the federal role in education would be created, a framework that would not be subject to rapid or quixotic change for political reasons. An education amendment would codify a commitment to development of the nation's human capital to its utmost potential. It would also position the United States within the global community of nations which acknowledge education as a fundamental and universal human right.

There ought be nothing sacrosanct about the current vesting of primary responsibility for public education in the states, or about the apportionment of governmental obligations for the provision of public education. Rather, it is anomalous to have a federal Constitution that has no safeguards or requirements regarding the national interest in education, while all fifty state constitutions explicitly recognize the importance of education. If America is one nation, there ought to exist an overarching framework for the vetting and making of decisions related to quality public education opportunity.

Only by vesting in the federal government a leadership role in public education can all fifty states work together to improve education in the national interest and gain access to resources necessary to make real change. In the interest of American business, national security, and a basic commitment to equal rights, the federal government should no longer tolerate radical disparities in the quality of education provided by state and local governments, or at best urge piecemeal reform while providing limited incentives for change. What is

needed is *leadership,* combined with resources and money, to forge new partnerships between levels of government so that all American students, especially those who need help the most and are receiving the least, are treated fairly and receive the requisite skills for productive participation in democratic society.[49]

An education amendment could help set the standard of achievement necessary to serve the national interest and provide both the means and methods by which to meet that standard. It would help to ensure that patterns of education opportunity stratification do not become permanently calcified at a time when the nation is becoming more diverse and maintenance of healthy intergroup relations and unity are vitally important to the country's future.

An Education Amendment Would Ratify Existing Public Support for National Leadership in Education

During the 2008 US presidential elections, candidates for the highest office in the nation were repeatedly quizzed about what they would do to address failings in public education. Survey research documented a strong sense among Americans that the federal government ought to involve itself more explicitly and effectively in the search for solutions. In a ranking of major issues facing the next president, one sampling of households during the height of the 2008 primary elections found, on a scale of 0 to 5, that respondents gave K-12 education a 4.03 rating in importance, placing it very close to health care and immigration, and ahead of the environment.[50] Had most Americans understood the critical nexus between education and a strong economy and growth, the ranking would have doubtless been higher. While the ultimate outcome of an education amendment effort would be the best predictor of public sentiment and will, there is little to suggest that such an effort would not be well received by many, if not most, Americans.

An effort to frame an education amendment and secure its enactment would codify what some have called the "popular constitution," that is, the general understanding among Americans of their rights and entitlements. An amendment effort would catalyze development of new approaches to public education cost-sharing and the establishment of a common benchmark, actual and/or aspirational, against which to measure national progress and achievement. Ultimately, if a new framework for delivery, financing, and resourcing of public education were to be developed, it is likely that cost savings attributable to reduction in duplicative processes and jurisdictional overlapping would be realized.

> *Education is the most powerful weapon which you can use to change the world.*
>
> –NELSON MANDELA

An education amendment and concomitant legislation to implement its provisions would establish accountability at the highest level of government. It would call for national leadership to address thorny issues of policy in relation to the national interest. Presidential candidates of both parties often spoke of what they would do to improve American education, conveying the impression to voters that the real power to fund public education, to problem-solve and lead, reposes in federal hands. There is a need to align federal responsibility and authority with public expectations and create a focal point for education improvements that are tangible and in the *national* interest.

At present, efforts to ensure accountability notwithstanding, there are approximately 14,000 school districts in 50 states, with tiered responsibility for public education funding and content decision-making. When everyone is responsible for something, effectively no one is accountable.

State-based efforts that rely on state standards to set appropriate benchmarks for education achievement and attainment are both variable and an uneven means by which to ensure high levels of education for the *entire nation.* Were the federal government clearly responsible for the elimination and/or reduction of radical disparities in public education finance, it would promote effective change and transparency in decision-making.

An Education Amendment Process Would Foster National Consensus and Build Public Will for Change

SEF believes that the American people at every level need to become involved in a searching inquiry about the intrinsic value of quality public education. The best way to ensure this type of national, democratic consensus building is through the laborious constitutional amendment process, state by state. Such a process would ensure that the outcome reflects the collective, *informed* will of the voting public and has the force of public will and consensus behind it.

The process by which the US Constitution may be amended permits changes only after a full, deliberative and broad-based process of engagement of the American people. The US Constitution sets a high but not insuperable bar for passage of amendments. Article V provides:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress. Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.[51]

James Madison, one of the framers of the US Constitution, commented on the language finally approved:

> The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other.[52]

An earnest national debate about the causes and consequences of education inequality in light of changing national demographics is long overdue. A full, democratic, participatory effort is required to effect changes and enhancements in public education finance of the scale necessary to meet national needs.

In fact, the nation has already begun this consensus-building process. There is growing awareness among Americans of the need for binding national standards to provide both an achievement destination for public education in key subject matters, as well as measures by which to assess progress made or lack thereof. This is an important first step toward ensuring that *national* workforce and economic requirements are met.

However, there is not and has not been an equivalent effort to establish national resource and funding benchmarks in order to reduce radical disparities that in many venues result in denial of the opportunity to learn among low income students. Such national resource and funding benchmarks are also necessary.

An Effort to Pass an Education Amendment Would Have Positive Effects Even if the Effort Were Unsuccessful

Even if ultimately unsuccessful, an effort to amend the US Constitution in relation to education would:

- underscore the importance of public schools to the preservation of democratic values and national security
- draw attention to the question of whether the current system of resource allocation for public schools is sufficient to meet the needs of the 21st century
- remind Americans that the quality of education now depends extensively on venue—where a child lives—and that inequality is built into the current system

- lead to consideration of whether the federal government should be obliged to assist schools that serve students in low-resource states or districts to gain access to more funding and resources
- create "space" for intermediate measures to reduce inequality by legislation or the reform of existing practices

One of the lessons of the unsuccessful effort to enact the Equal Rights Amendment is that it mobilized public awareness of the reality of gender-based discrimination, encouraged creative and voluntary responses to it, created a focal point for the development of public policy related to diverse manifestations of gender-based discrimination, and mobilized key constituencies to use political processes to secure redress of grievances. There is general consensus today that though the ERA was unsuccessful, many of the aims to which the amendment was devoted have been achieved, at least to a degree.

Over time, several amendments to the US Constitution related to education have been proposed. None has been successful. These proposals have included amendments to create a national university, restrict aid to parochial schools, authorize prayer in public schools, limit affirmative action in education, define circumstances under which busing to achieve integration cannot be undertaken, and designate English the "official" language of the nation and its public schools.[53] More general education amendments, such as that introduced several times by US Rep. Jesse Jackson Jr. of Illinois, have likewise failed to win sufficient support, despite language that surely reflects a fundamental human right:

> All citizens of the United States shall enjoy the right to a public education of equal high quality.[54]

Time for Change

SEF believes that America is just beginning to come to terms with the new, interconnected, "flat" world of which it is a part. It has gone through a period of appropriate precursors to an amendment effort and, at the very least, has come to understand the limitations of piecemeal efforts in response to problems as large and complex as those presented by nearly 14,000 school districts in 50 states. As skilled jobs are exported and well-educated people imported to fill jobs that Americans have been deprived of the requisite education to handle, a consensus supportive of the need for change is building momentum.

It is beyond the scope of this report to propose or promote particular language for an education amendment to the US Constitution. A measure of such importance should be the product of in-depth deliberation by the American people and their representatives and leaders at all levels. The specific language of such an amendment is best left to those who can invest significant time to frame it with precision.

It is appropriate to note, however, that a federal education amendment could be modeled in several different ways, depending upon its primary aim, and that each approach would have varying potential impacts. Examples which demonstrate the range of choices follow (without regard to order of priority):

Adequacy Model: This type of amendment could vest within the federal government the obligation to ensure that Americans have access to education of a specified type and quality. The constitutions of states offer many examples of language that could provide a point of departure for this approach.

Equitable Finance Model: If written primarily to require the federal government to provide money and resources necessary to ensure access to quality public education, this type of amendment could help ameliorate disparities within and between states.

Intrastate Finance Equalization Model: An amendment could require finance and resource equalization within states. Such an approach would help to address intrastate disparities, but would leave interstate disparities largely intact.

Interstate Finance Equalization Model: If written to ensure that all states have equivalent resources for the public education of students within a range to be delimited by legislation, this approach could address problems experienced by low wealth states and/or school districts.

International Human Rights Model: This type of amendment could declare that all Americans have an equal right to education of a particular type or quality without regard to location, class, or economic status. Were a formulation of this type to be adopted, it would be the first amendment to focus primarily on economic rather than political rights.

Civil Rights Model: This type of amendment might prohibit the states from relying on particular forms of education finance and resource allocation or require provision of a right to education of equally high quality, such as that previously proposed by Congressman Jesse Jackson Jr.

Whatever the form of the amendment, SEF believes that its aim must be to ensure that the fundamental resource and finance disparities documented in this report are addressed and resolved. Without equalized funding and resources across districts, states, and the nation, Americans will continue to be deprived of equal rights in education.

The language of an education amendment should be simple and general, but clear enough in intent so that it can be neither subverted nor ignored. Details of specific strategies to achieve the ends articulated in the amendment would be left to implementing legislation enacted by Congress. Accountability measures would have to be addressed and decisions about enforceability and standing would have to be resolved.

No Time to Lose

The time is nigh for a sustained and substantive examination by the American people of the likely consequences of an education amendment to the US Constitution. While some people will earnestly or reflexively oppose an education amendment on grounds that it would give rise to a new body of litigation or undue federal encroachment into state prerogatives, what is the alternative? To continue to allow state and local education policies to hobble national economic growth and competitiveness? To ignore the very real risk of eroding our country's standing in the world community of nations?

Although the nuances of education reform are many, America's educators know the building blocks of a quality education. A proliferation of studies shows that the following elements, all of which require resources and money, are fundamental:

- early childhood services, including quality pre-kindergarten
- full-day kindergarten
- exposure to aligned curricular offerings so that each segment of an education sequence fits with the next
- classes and schools small enough for students to receive individual attention
- quality standards for content and for performance
- high expectations
- qualified teachers
- principals who are instructional leaders
- flexible approaches to help meet needs of English language learners
- efforts to inculcate an academic work ethic as a precursor of success
- parental involvement and outreach to encourage and facilitate learning

> *The needs of all students in our society are greater than ever before because they must achieve a higher level of education in order to meet the social and economic demands of the 21st century. In addition, the level of need among a large number of students is unprecedented. Increasingly, we must educate students whose native language is not English, students whose poverty has contributed to their marginal readiness to learn, students well behind their grade level in academic achievement, students with serious emotional and physical handicaps who are mainstreamed into regular schools and classrooms, students whose early history of academic failure has sapped their confidence in themselves and their future and seriously weakened their motivation even to finish school.*
>
> *Our society's current educational trajectory, in other words, is unsustainable.*
>
> –MICHAEL ALLEN

If Americans were designing public education *de novo*, it is unlikely anyone would create the current unequal, decentralized patchwork of educational decision-making, finance, and resource distribution. Such a system would be widely recognized as inefficient, inadequate, and unjust.

The day is close at hand when the United States will pass a point of no return. The country will simply have too many uneducated, undereducated, or mis-educated people to generate resources at a level required to effect fundamental change. An education amendment offers the possibility of change before it is too late.

This report has sought to show what is at stake and why it is important to consider how the US Constitution can be instrumental in helping the nation solve one of its most pressing problems. An education amendment to the US Constitution would not constitute an end point of efforts to improve public education. But it would and could be the most powerful point of departure for a national effort to do so.

At the heart of America's commitment to notions of fairness and equality lies a contradiction. Simply stated, it is that equal opportunity in America means little if one cannot develop, through education, the capacity to take advantage of equal opportunity. Without a fair, high quality public education system, America's promise of democracy is a hollow formalism.

SEF believes that the strategy for addressing structural infirmities in American public school education should begin with consideration of the nation's founding document, the US Constitution. The Constitution is the primary and most effective source of redress for issues of magnitude affecting the American people. Daniel Webster said it best:

> We may be tossed upon an ocean where we can see no land—nor, perhaps, the sun and stars. But there is a chart and a compass for us to study, to consult, and to obey. The chart is the Constitution.[55]

America has no time to lose.

APPENDIX 1

THE SOUTH: AMERICA'S LEGACY OF GROSS DISPARITIES IN FUNDING EDUCATION

America's patterns of educational inequality first took root in the American South. The region did not begin in earnest to develop a public education system until after the Civil War, when most Southern states established a constitutional framework for public education during Reconstruction. This proved to be a false start. Due to the rise of Jim Crow, biracial poverty, and Southern elites' reluctance to support universal education, most states in the South made relatively small investments in education throughout the 19th century.

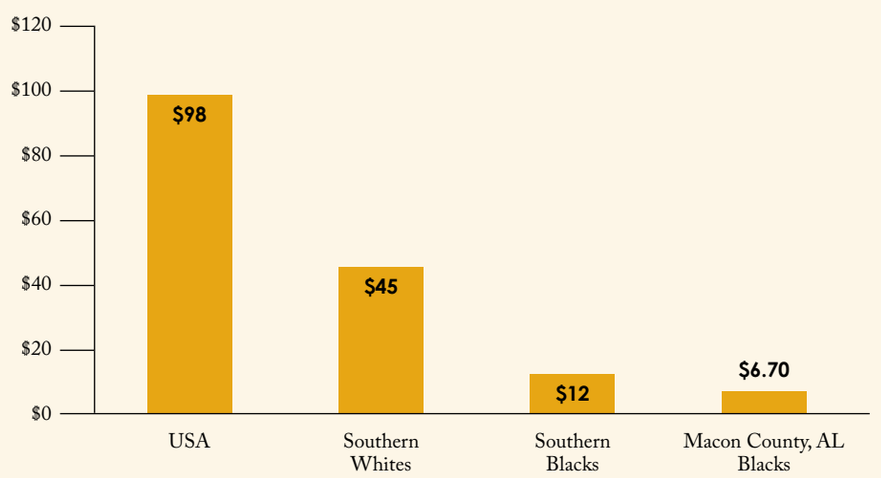
In 1880, just 15 years after the end of the Civil War, nine Southern states spent less per child for schooling—no more than $4 per student—than all other states except New Mexico. In the first three decades of the 20th century, the average per pupil expenditure increased dramatically across most of the United States, especially after 1915, as did per pupil expenses for Southern White students. The growth in expenditures for Black children in the South was far more modest.

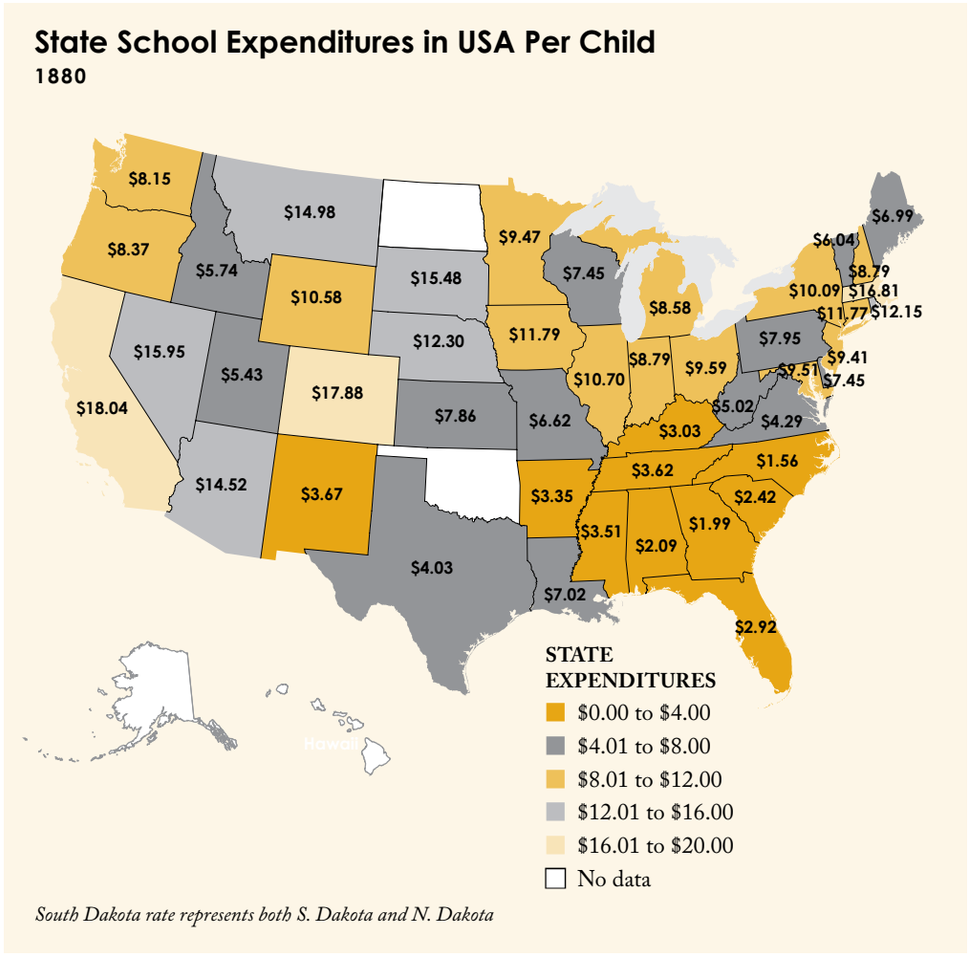
By 1930, the average per pupil expenditure in the United States was $99—a five-fold increase in only three decades. Eight Southern states spent the least per child, $34 or less, while California continued to lead the nation in per child expenditures for education.[56]

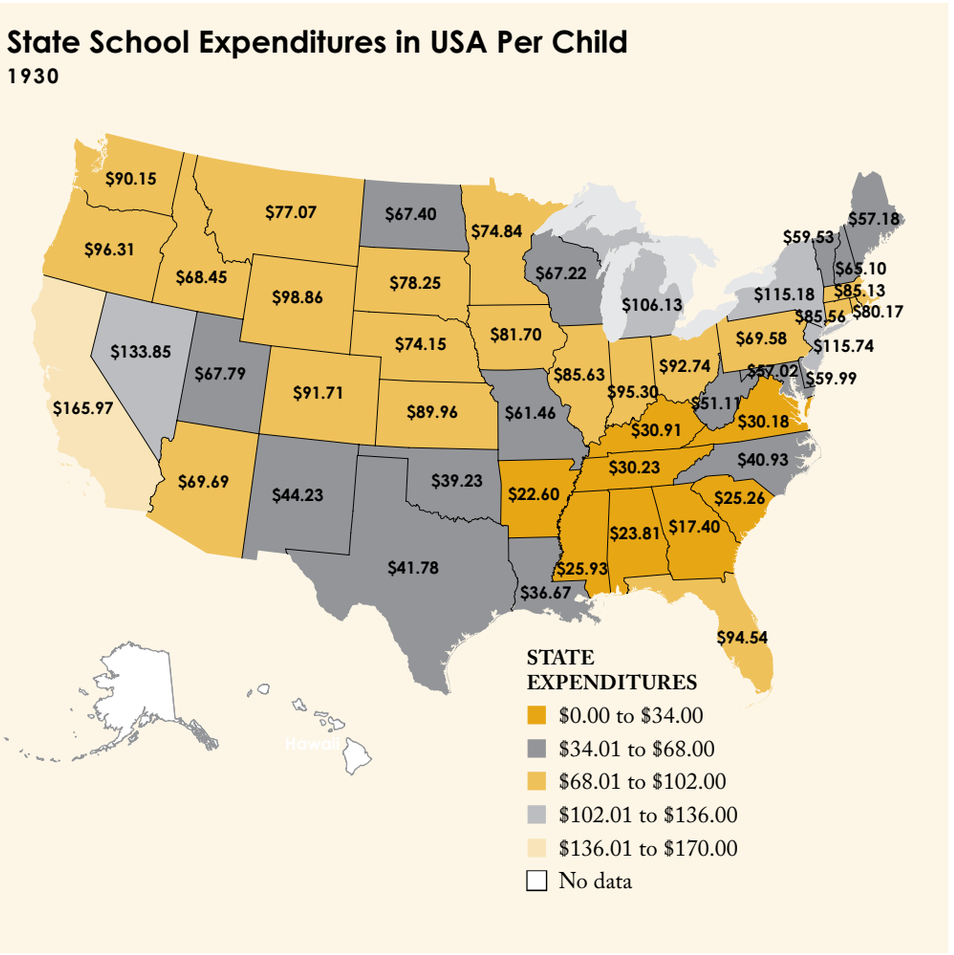
There were enormous differences within Southern states throughout this period. Race explained most of the extreme disparities. In 1930 the Southern states provided an average of $12 in per pupil expenditures for Black students in contrast to an average of $45 for White students. This means that the South's average educational investment in a White student was 275 percent larger than the average expenditure for a Black schoolchild.

But a majority of Southern counties actually allocated less than $10 per Black student for education. Only two Southern counties—less than 1 percent—provided equally small amounts of per pupil expenditures for White students. Similarly, in 1930 virtually all Southern counties had 80 percent or more of their White children (ages 7-13) enrolled in school, while one out of four counties had fewer Black students enrolled.[57]

Per Pupil Expenditure by Location
1930







This racial disparity in Southern education was the product of overt, segregated education, but it understated the actual spending gap that America's Black students suffered in 1930. The real measure of disparities in funding at that time was not the difference in per pupil expenditure between the South's Black and White students, but the gap between what was spent on the South's Black students and average national per pupil expenditures. By that national scale, the average student in the United States annually received 725 percent more educational support than did the average Black student in the South.

Even this gross disparity, by relying on averages, understated the reality of America's profound inequality in funding. For example, in Macon County, Alabama, the public school district spent no more than $6.70 for the education of each of its 8,500 Black school-age children in 1930. In Southern counties such as Macon, the gap in educational funding that separated a local Black child from the average child in the United States—both attending public schools in the same country under the same national Constitution—was astronomical: the nation's average per pupil expenditure was 1,377 percent larger.

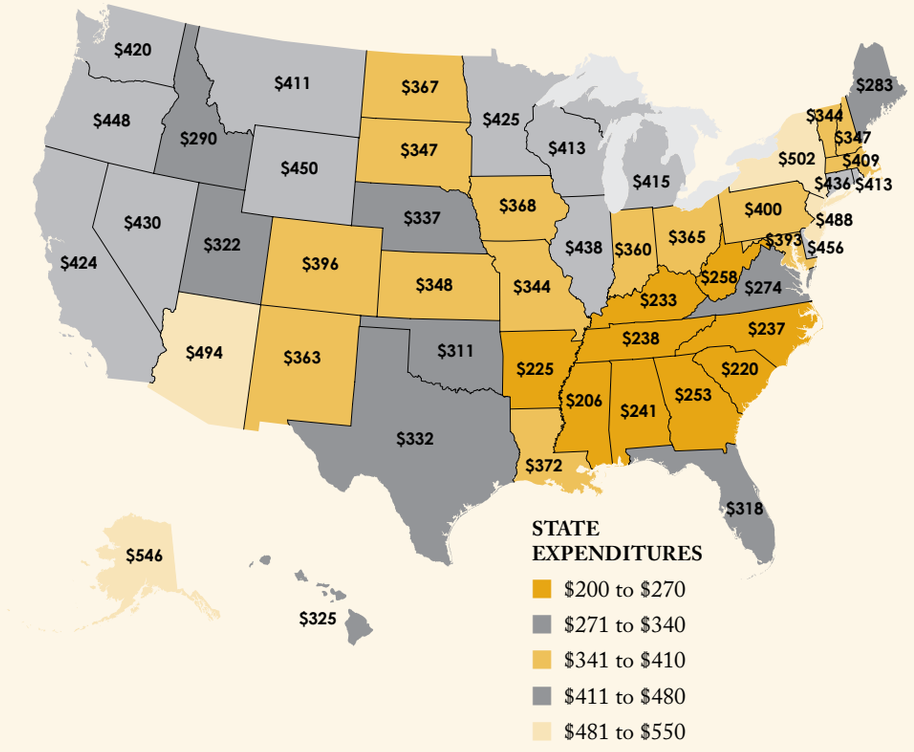
Amid these enormous racial disparities, there also were vast differences in education for White children between wealthy and low income school districts in the same state. In Alabama, for example, land-rich Dallas County spent $51.10 per student in 1930 while the poorer Jackson County spent only $14.10 per pupil. In more than one in five Southern counties, per pupil expenditures for White students were below $20—less than half the average for White pupils across the South and less than one-fourth the national average.

By 1960, the nation's lowest spending states remained primarily in the South, with the exception of Florida, Texas, and Virginia. This pattern persisted throughout the 20th century and largely remains the map of interstate differences in per pupil expenditures into the 21st century.

America's gross inequalities in public education funding began in an earlier era—a time when the economic returns of education were important but far less essential than they are today. The numbers, however, remain more than a historical marker. In early 2009, any 82-year-old African American who grew up in the South and who was lucky enough to attend the first grade in 1930 began his education under the terms of this statistical reality. He has lived with the individual challenges and consequences of these statistics throughout his life as an American citizen.

State School Expenditures in USA Per Child

1960



APPENDIX 2

JUDICIAL FINDINGS: EGREGIOUS CONDITIONS AND DISPARITIES IN PUBLIC SCHOOLS*

Students in many low-wealth and minority communities attend school in crumbling buildings, with no access to qualified teachers, textbooks and supplies, and other basic necessities for a quality education. They face overcrowded classes and schools, non-existent or non-functioning science labs, and curriculums too weak to enable them to get into good colleges. These missing resources deny children the knowledge and experiences they need to become capable, engaged citizens and workers.

Although all 50 state constitutions require the states to honor the right to an education, many do not. It is not surprising, then, that states have faced lawsuits seeking quality educational opportunity for children. A dozen such cases are currently in process.

The evidence in these cases typically reveals severe deprivation of resources in schools in low-wealth urban and rural communities. After a trial on the merits in these cases, the courts report detailed Findings of Fact, which often reveal stunning deficits and disparities. A sampling of court findings follows.

Arkansas

Small, rural, mostly minority school districts charged the state with violating the Arkansas Constitution's education article, in *Lake View School District No. 25 v. Huckabee,* No. 1992-5318 (Pulaski County Chancery Court May 25, 2001). The trial court declared the state's education funding system unconstitutional. "The school funding system now in place . . . is inequitable and inadequate under… the Arkansas constitution," the court wrote. "Too many of our children are leaving school for a life of deprivation, burdening our culture with the corrosive effects of citizens who lack the education to contribute." *Id.*

In its Findings of Fact, the court stated that:

"…some districts cannot afford to build new buildings, complete necessary repairs or buy buses." (¶ 18)

"Facilities, materials, teachers and other resources affect a student's opportunity and ability to learn." (¶ 22)

"Lake View has one uncertified mathematics teacher for all high school mathematics courses: pre-algebra, algebra I and II, geometry and trigonometry… The mathematics teacher is paid $10,000 a year as a substitute teacher which he supplements with $5,000 annually for school bus driving." (¶ 23)

"The mathematics teacher…teaches a trigonometry course [requires] graphing calculators. The calculators are expensive. There are ten students and four calculators. …In his geometry class he does not have compasses. Only one of four chalkboards is useable. His computer lacks hard and software, it has no sound chip, and the printer does not work. Paper is in short supply and the duplicating machine, an addressograph, is generally overworked so that frequently documents, including examinations, have to be handwritten on the chalkboard." (¶ 24)

"Lake View has a basketball team but no uniforms for all of the players. There are no other organized competitive sports teams at the school. The band does not have uniforms." (¶ 25)

** This appendix consists of excerpts from a larger manuscript prepared by Molly A. Hunter, Esq.*

"The starting salary for a Holly Grove [school district] teacher is the State minimum, approximately $21,000.00. Teachers are continually lured away to other districts that pay more." (¶ 27)

"Lee County Schools went two years without a band program due to lack of funds. Lee County does not offer any advanced placement courses. … The science laboratories have little or no equipment. There are approximately 30 computers for 600 students. The bus fleet of 26 buses has only five that meet State requirements, and the buildings need extensive repairs." (¶ 32)

"A single bus in the Rogers School system will run three times in the morning and three times in the afternoon. Students are required to transfer between buses. Some have to transfer twice. The first students get on the bus at 5:50 a.m. and the last one gets off the bus in the evening at 5:00 p.m. Rogers did obtain a grant to work with those middle school students performing below grade level in an after school program. However, half of those students who were identified as needing the program could not attend because they lived too far away from the school and the school could not provide transportation for them due to lack of funds." (¶ 73)

In its final conclusions, the court stated that

> The [better funded] Fort Smith School District curriculum offers a variety of courses, including fashion merchandising and marketing, and has access to courses at a local technical college. By comparison, [plaintiff districts] Holly Grove, Lake View and Lee County are examples of school districts that provide the bare necessities of a curriculum and struggle to do so. …the stark contrast between Ft. Smith and Holly Grove, Lake View and Lee County is a clear example of students being deprived of their rights of equal protection provided by [the] Arkansas Constitution . . . .

Id.

Kansas

In upholding the trial court's ruling against the State, in *Montoy v. State,* 112 P.3d 923, 940 (Kan. 2005), the Kansas Supreme Court concluded that, "we cannot continue to ask current Kansas students to be patient. The time for their education is now." The trial court had found that

> [M]any categories of Kansas students…are failing at alarming rates…: 83.7% of Kansas African American students, 81.1% of Kansas Hispanic students, 64.1% of Kansas Native American students, 79.8% of Kansas disabled students, 87.1% of Kansas limited English proficiency students, and 77.5% of impoverished students are failing 10th grade math, for example.

Montoy v. State, No. 99-C-1738, at ¶ 58 (Shawnee County Dist. Ct. Dec. 2, 2003). An *amicus* brief submitted in this same case argued that "[t]he evidence in the record is overwhelming that disadvantaged students… experience an achievement gap when compared with white students who are not poor, disabled or subject to a language deficiency," and quoted one witness who characterized this achievement gap as something "that would take your breath away." *Amicus* Brief, Kansas Families United for Public Education.

New Jersey

In its 1990 decision in *Abbott v. Burke,* the New Jersey Supreme Court declared the state's school funding system unconstitutional because it failed to provide sufficient educational opportunity for children in the state's low-wealth, urban school districts, where most children are also African American or Latino. The facts determined at trial compared opportunities in the successful suburban school districts with those in the urban districts.

The court found that "the poorer the district and the greater its need, the less the money available, and the worse the education." *Abbott v. Burke,* 575 A.2d 359, 363 (N.J. 1990)*(Abbott II)*. The court also ruled that "Money can make a difference. If effectively used, it can provide the students with an equal educational opportunity, a chance to succeed. They are entitled to that chance, constitutionally entitled. They have the right to the same educational opportunity that money buys for others." *Id.*

Reviewing the facts, the Court declared that

> . . . the level of education offered to students in some of the poorer urban districts is tragically inadequate. Many opportunities offered to students in…suburban districts are denied to them. For instance, exposure to computers is necessary to acquire skills to compete in the workplace. In South Orange/Maplewood school district, kindergarteners are introduced to computers; children learn word processing in elementary school; middle school students are offered beginning computer programming; and high school students are offered advanced courses in several programming languages or project-oriented independent studies. Each South Orange/Maplewood school has a computer lab.
>
> …While Princeton has one computer per eight children, East Orange has one computer per forty-three children, and Camden has one computer per fifty-eight children. Camden can offer formal computer instruction to only 3.4% of its students. In many poorer urban districts, computers are purchased with federal or state categorical funds for use in remedial education programs. [As a result,] Paterson offers no computer education other than computer-assisted basic skills programs. Further, many of these districts do not have sufficient space to accommodate computer labs. In Jersey City, computer classes are being taught in storage closets.

Id. at 394-95.

> Science education is deficient in some poorer urban districts. Princeton has seven laboratories in its high school, each with built-in equipment. South Brunswick elementary and middle schools stress hands-on, investigative science programs. However, many poorer urban districts offer science classes in labs built in the 1920's and 1930's, where sinks do not work, equipment such as microscopes is not available, supplies for chemistry or biology classes are insufficient, and hands-on investigative techniques cannot be taught. In Jersey City and Irvington, middle school science classes are taught without provision for laboratory experience. In East Orange middle schools, teachers wheel a science cart into a three-foot-by-six-foot science area for instruction. The area contains a sink, but no water, gas, or electrical lines.
>
> The disparity in foreign-language programs is dramatic. Montclair's students begin instruction in French or Spanish at the pre-school level. In Princeton's middle school, fifth grade students must take a half-year of French and a half-year of Spanish. Most sixth graders continue with one of these languages. Many begin a second language in the ninth grade, where four-year programs in German, Italian, Russian, and Latin are offered. French and Spanish are offered on two tracks, one for students who began instruction in middle school and the other for those who begin in the ninth grade. Advanced placement [language] courses are available. In contrast, many of the poorer urban schools do not offer upper level foreign language courses, and only begin instruction in high school. Jersey City starts its foreign language program in the ninth grade; Paterson begins it at the tenth grade.

Id. at 396.

> Music programs are vastly superior in…suburban districts. South Brunswick offers music classes starting in kindergarten; Montclair begins with pre-schoolers. Millburn and South Brunswick offer their middle school students a music curriculum that includes courses such as guitar, electronic-piano laboratory, and music composition on synthesizers. Princeton offers several performing groups, including bands, choruses, and small ensembles. However, Camden and Paterson do not offer a music course until the fourth grade; only introductory level music courses are offered in high school. In 1981, Camden eliminated all its elementary school music teachers . . . . Many poorer urban school districts have inadequate space for instrumental music lessons, bands, and choruses. In one elementary school in Jersey City, instrumental music lessons are provided in the back of the lunchroom. At lunchtime, the class moves to an area in the school's basement.
>
> Art programs in some poorer urban districts suffer compared to programs in…suburban districts. In Montclair, the art program begins at the pre-school level; there is an art teacher in every elementary school; every school has at least one art room; and the district has purchased a variety of art equipment, such as a kiln for ceramic artwork. In contrast, art programs in some poorer urban districts are sparse. There are no art classrooms in East Orange elementary schools, and art teachers, who must travel from class to class, are limited in the forms of art they can teach. Jersey City has an excellent art program for gifted children; however, the regular art program can now accommodate only 30% of the district's students.

Physical education programs in some poorer urban districts are deficient. While many…suburban school districts have flourishing gymnastics, swimming, basketball, baseball, soccer, lacrosse, field hockey, tennis, and golf teams, with fields, courts, pools, lockers, showers, and gymnasiums, some poorer urban districts cannot offer students such activities. In East Orange High School there are no such sports facilities; the track team practices in the second floor hallway. All of Irvington's elementary schools have no outdoor play space . . .

A thorough and efficient education also requires adequate physical facilities. … Many poorer urban districts operate schools that, due to their age and lack of maintenance, are crumbling. These facilities do not provide an environment in which children can learn; indeed, the safety of children in these schools is threatened. For example,…in Paterson a gymnasium floor collapsed in one school, and in another school the entire building was sinking. According to East Orange's long-range facility plan there are ten schools in immediate need of roof repair, fifteen schools with heating, ventilation or air conditioning problems; two schools that need total roof replacement; nine with electrical system problems; eight with plumbing system problems; thirteen needing structural repairs; seventeen needing patching, plastering or painting; and thirteen needing asbestos removal or containment.

In an elementary school in Paterson, the children eat lunch in a small area in the boiler room area of the basement; remedial classes are taught in a former bathroom. In one Irvington school, children attend music classes in a storage room and remedial classes in converted closets. At another school in Irvington a coal bin was converted into a classroom. In one elementary school in East Orange, there is no cafeteria, and the children eat lunch in shifts in the first floor corridor. In one school in Jersey City, built in 1900, the library is a converted cloakroom; the nurse's office has no bathroom or waiting room; the lighting is inadequate; the bathrooms have no hot water…; there is water damage inside the building because of cracks in the facade; and the heating system is inadequate.

In contrast, most schools in…suburban districts are newer, cleaner, and safer. They provide an environment conducive to learning. They have sufficient space to accommodate the children's needs now and in the future. …the record in this case demonstrates that deficient facilities are conducive to a deficient education.

Id. at 396-97.

> The students of Newark and Trenton are no less citizens than their friends in Millburn and Princeton. They are entitled to be treated equally, to begin at the same starting line. Today the disadvantaged are doubly mistreated: first, by the accident of their environment and, second, by the disadvantage added by an inadequate education. The State has compounded the wrong and must right it.

Id. at 403.

> These students in poorer urban districts have not been able to participate fully as citizens and workers in our society. They have not been able to achieve any level of equality in that society with their peers from the affluent suburban districts. We find the constitutional failure clear, severe, extensive, and of long duration.

Id. at 408.

> While the constitutional measure of the educational deficiency is its impact on the lives of these students, we are also aware of its potential impact on the entire state and its economy—not only on its social and cultural fabric, but on its material well-being, on its jobs, industry, and business. Economists and business leaders say that our state's economic well-being is dependent on more skilled workers, technically proficient workers, literate and well-educated citizens. And they point to the urban poor as an integral part of our future economic strength. In short, they urge the state to go about the business of substantially improving the education of the very subjects of this litigation, the students in poorer urban districts. *So it is not just that their future depends on the State, the state's future depends on them.* [emphasis added] That part of the constitutional standard requiring an education that will enable the urban poor to compete in the marketplace, to take their fair share of leadership and professional positions, assumes a new significance.

Id. at 411-12.

> This record proves what all suspect: that if the children of poorer districts went to school today in richer ones, educationally they would be a lot better off. Everything in this record confirms what we know: they need that advantage much more than the other children. And what everyone knows is that—as children—the only reason they do not get that advantage is that they were born in a poor district. For while we have

> underlined the impact of the constitutional deficiency on our state, its impact on these children is far more important. They face, through no fault of their own, a life of poverty and isolation that most of us cannot begin to understand or appreciate.
>
> After all the analyses are completed, we are still left with these students and their lives. They are not being educated. Our Constitution says they must be.

Id. at 412.

In its 1998 decision in *Abbott v. Burke,* a ruling that addressed facilities needs, the New Jersey Supreme Court wrote:

> It is undisputed that the school buildings in Abbott districts are crumbling and obsolescent and that this grave state of disrepair not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety. Windows, cracked and off their runners, do not open; broken lighting fixtures dangle precipitously from the ceilings; fire alarms and fire detection systems fail to meet even minimum safety code standards; rooms are heated by boilers that have exceeded their critical life expectancies and are fueled by leaking pumps; electrical connections are frayed; floors are buckled and dotted with falling plaster; sinks are inoperable; toilet partitions are broken and teetering; and water leaks through patchwork roofs into rooms with deteriorating electrical insulation.
>
> Besides facing these decrepit and dangerous conditions, children in Abbott districts must also contend with gross overcrowding. Some class sizes hover around forty. Due to insufficient space, up to three different classes may be conducted simultaneously within the confines of one room. Libraries and hallways have been pressed into service as general classrooms. Some "classrooms" are no more than windowless closets converted by necessity into instructional areas. For children in these huddled spaces, "art" consists of coloring and "music" consists of singing a song.
>
> These deplorable conditions have a direct and deleterious impact on the education available to the at-risk children.

Abbott v. Burke, 710 A.2d 450, 470 (1998)*(Abbott V)*.

North Carolina

The North Carolina Supreme Court found that students in low-wealth rural districts were failing at alarming rates and that it was necessary to "hold[] the State accountable" for the many programs and services not being provided to these students. *Hoke County Board of Education v. North Carolina,* 599 S.E.2d 365, 389 (N.C. 2004). It declared: "The children of North Carolina are our state's most valuable renewable resource." *Id.* at 377. It called for immediate compliance with constitutional requirements, holding that "[w]e cannot . . . imperil even one more class unnecessarily." *Id.*

Ohio

In the Ohio school funding case, *DeRolph v. State,* the Ohio Supreme Court concluded:

> …we find that exhaustive evidence was presented to establish that the [low-wealth] school districts were starved for funds, lacked teachers, buildings, and equipment, and had inferior educational programs, and that their pupils were being deprived of educational opportunity.

DeRolph, 78 Ohio St. 3d 193, 205, 677 N.E.2d 733 (Ohio 1997). Even though the court found "a greater level of tax effort" by local taxpayers in the lower wealth school districts, *id.* at 230, the factual findings from the trial revealed health and safety hazards and conditions not conducive to teaching and learning. For example:

> …[The] Superintendent of Public Instruction averred that his visits to Ohio school buildings demonstrated that some students were "making do in a decayed carcass from an era long passed," and others were educated in "dirty, depressing places."
>
> …In Buckeye Local, Belmont County, three hundred students were hospitalized because carbon monoxide leaked out of heaters and furnaces. In another school district in Wayne County, an elementary school built in 1903 had floors so thin that a teacher's foot went through the floor while she was walking across her classroom.
>
> Another major health and safety hazard is asbestos…

Id. at 206.

> In the Dawson-Bryant school system, where a coal heating system is used, students are subjected to breathing coal dust, which is emitted into the air and actually covers the students' desks after accumulating overnight. Band members are forced to use a former coal bin for practice sessions where there is no ventilation whatsoever, causing students to complain of headaches. Special education classes are also held in a former closet that has one bare light bulb hanging from the ceiling.
>
> Deering Elementary is not handicapped accessible. The library is a former storage area located in the basement. Handicapped students have to be carried there and to other locations in the building. One handicapped third-grader at Deering had never been to the school library because it was inaccessible to someone in a wheelchair.
>
> The Northern Local School District in Perry County has also been plagued with deteriorating facilities, which include bulging bricks and walls which bow out at the now closed Somerset Elementary School, leaking roofs and windows, outdated sewage systems which have actually caused raw sewage to flow onto the baseball field at Sheridan High School, and the presence of arsenic in the drinking water in the Glenford Elementary School buildings.
>
> Equally alarming are the conditions found in the Southern Local School District in Perry County, where buildings are crumbling and chunks of plaster fall from the walls and ceiling. In fact, the problem was so severe that the principal and custodians at Miller Junior High at Shawnee deliberately knocked plaster off the ceilings so that the plaster would not fall on the students during the day.
>
> [One plaintiff] poignantly described his experience growing up in this [Southern Local] school district. While Chris attended [e]lementary [s]chool…, plaster was falling off the walls and cockroaches crawled on the restroom floors. Chris said the building gave him a "dirty feeling" and that he would not use the restroom at school because of the cockroaches. In subsequent years, Chris had to contend with a flooded library and gymnasium, a leaky roof where rainwater dripped from the ceiling like a "waterfall," an inadequate library, a dangerously warped gymnasium floor, poor shower facilities, and inadequate heating. In fact, due to construction and renovation of the heating system, when Chris attended high school, there was no heat from the beginning of the fall of 1992 until the end of November or beginning of December. Students had to wear coats and gloves to classes and were subjected to kerosene fumes from kerosene heaters, which were used when the building became very cold.
>
> Obviously, state funding of school districts cannot be considered adequate if the districts lack sufficient funds to provide their students a safe and healthy learning environment.
>
> In addition to deteriorating buildings and related conditions, … the record [shows] that many of the school districts throughout the state cannot provide the basic resources necessary to educate our youth. For instance, many…school districts have insufficient funds to purchase textbooks and must rely on old, outdated books. For some classes, there were no textbooks at all. For example, at Southern Local during the 1992-1993 school year, none of the students in a Spanish I class had a textbook at the beginning of the year. Later, there was a lottery for books. Students who picked the lucky numbers received a book.
>
> The accessibility of everyday supplies is also a problem, forcing schools to ration such necessities as paper, chalk, art supplies, paper clips and even toilet paper.

Id. at 207-08.

> Additionally, many districts lack sufficient funds to comply with the state law requiring a district-wide average of no more than twenty-five students for each classroom teacher. (citation omitted) Indeed, some schools have more than thirty students per classroom teacher, with one school having as many as thirty-nine students in one sixth-grade class. As the testimony of educators established, it is virtually impossible for students to receive an adequate education with a student-teacher ratio of this magnitude.
>
> The curricula in the appellant school districts are severely limited compared to other school districts and compared to what might be expected of a system designed to educate Ohio's youth and to prepare them for a bright and prosperous future. For example, elementary students at Dawson-Bryant have no opportunity to take foreign language courses, computer courses, or music or art classes other than band. Junior high students in this district have no science lab. In addition,

> Dawson-Bryant offers no honors program and no advanced placement courses, which disqualifies some of the students from even being considered for a scholarship or admittance to some universities. Dawson-Bryant is not alone -- similar problems were being experienced by each of the appellant school districts.
>
> None of the [plaintiff] school districts is financially able to keep up with the technological training needs of the students in the districts. The districts lack sufficient computers, computer labs, hands-on computer training, software, and related supplies to properly serve the students' needs. In this regard, it does not appear likely that the children in the appellant school districts will be able to compete in the job market against those students with sufficient technological training.

Id. at 208-09.

> These school districts, plagued with deteriorating buildings, insufficient supplies, inadequate curricula and technology, and large student-teacher ratios, desperately lack the resources necessary to provide students with a minimally adequate education…despite higher local tax efforts.

Id. at 210 and 230.

South Carolina

During the 101-day trial, in *Abbeville v. State,* 515 S.E.2d 535 (S.C. 1999), plaintiff witnesses described difficulties districts and schools face due to lack of funding, including:

- devastating teacher turnover due to low salaries and meager benefits
- uncertified teachers
- buildings in shoddy condition
- lack of equipment
- overcrowding
- growing numbers of ELL students
- students from poverty backgrounds, and
- graduation rates that vary between 33 and 57 percent.

As reported in *The State* (Columbia, South Carolina's newspaper), the plaintiff districts are 88 percent minority, compared with a state average of 41 percent, and about 86 percent of students in these districts are eligible for free or reduced-price lunch, compared with a state average of 55 percent. Also, a plaintiff school district's superintendent, echoing her fellow plaintiffs' superintendents, testified that a high teacher turnover rate "wrecks professional development programs, and fills the schools with inexperienced teachers."

Although the trial court found a constitutional violation, its ruling recounted very little of this evidence and in the driest of manners. The court did conclude, however, that students in the plaintiff school districts "are denied the opportunity to receive a minimally adequate education because of the lack of effective and adequately funded early childhood intervention programs designed to address the impact of poverty on their educational abilities and achievements." *Abbeville v. State,* No. 93-CP-0169, slip op. at 161-62 (Dec. 29, 2005). The court ordered intervention programs for children from preschool through at least third grade. *Id.* at 161. This ruling is currently on appeal in the South Carolina Supreme Court.

The plaintiff school districts are along the low-wealth, rural I-95 corridor, famously described as the "Corridor of Shame" in a video about the crumbling school buildings in these districts.[58] One of the stories reported in this documentary film shows a first-grade classroom where the ceiling fell in; fortunately, no children were present at the time. During his campaign, President Obama visited schools in the I-95 corridor and commented on the dilapidated state of the school facilities there.

Conclusion

This sample of state court decisions reveals shocking disparities and inadequacies in educational opportunities for low income and minority children. Unfortunately, this summary is not exhaustive. Court rulings from other states recount numerous additional examples of egregious conditions and startling contrasts between the resources found in typical suburban schools and resources in low-wealth urban and rural schools.

ENDNOTES

[1]Michael Allen, "The Promise of Early Returns," (unpublished SEF commissioned report, 2006).

[2]Gary S. Becker. "Human Capital and the Economy," *Proceedings of the American Philosophical Society,* vol. 136 (1992), 91.

[3]Li Yao et al., "Working Paper 13849: The Higher Educational Transformation of China and Its Global Implications," (National Bureau of Economic Research, 2008).

[4]For now, most foreign nationals indicate that they plan to stay in the United States for work but, if and when they return to their home country, their skills and their educational advantages for the United States will be lost to another country.

[5]W. Steven Barnett et al., *The State of Preschool 2008* (National Institute for Early Education Research, 2008); Southern Education Foundation, *Pre-kindergarten in the South: The Region's Comparative Advantage in Education* (2007).

[6]Gary W. Phillips, *Chance Favors the Prepared Mind: Mathematics and Science Indicators for Comparing States and Nations* (American Institute for Research, 2007).

[7]Isabell Sawhill, *Opportunity in America: The Role of Education* (Brookings, 2006); Ben S. Bernanke, "The Level and Distribution of Economic Well-Being," (Remarks delivered before the Greater Omaha Chamber of Commerce, Omaha, Nebraska, February 6, 2007). "Education does not explain everything about the prospects of the American economy or why some Americans have suffered falling earnings or lost jobs. American companies have relocated investments, plants, and jobs outside the country in order to secure lower wages and reduced production costs, and some jobs have disappeared when cheaper or more durable foreign-made products forced American goods off the shelves and shuttered American factories. As developments in the world financial markets showed in 2008, a range of national policies and priorities determine if the American economy will succeed in a changing world."

[8]Students who are eligible for free lunch (37.3 percent in 2008) generally come from families whose income is below the poverty level, and those eligible for reduced lunch (8.5 percent) are in families with incomes that fall between the poverty line and 65 percent above the poverty line.

[9]Jack O'Kelley and Kenny Kurtzman, *The Economic Value of Diversity: A Rigorous Approach to Quantifying and Capturing the Benefit* (Katzenbach Partners, LLC, 2007).

[10]Anthony P. Carnavale and Richard A. Fry, "The Economic Returns of Diversity," in *Crossing the Great Divide: Can We Achieve Equity With Generation Y?* (Educational Testing Service, 2000).

[11]Henry Levin et al., *The Costs and Benefits of an Excellent Education for All of America's Children* (Columbia Teachers College, 2007); Ron Haskins, "Education and Economic Mobility," in *Getting Ahead or Losing Ground: Economic Mobility in America* (Economic Mobility Project, 2008).

[12]National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Educational Reform* (1983).

[13]P.W. Singer, "Wired for War? Robots and Military Doctrine," *Joint Force Quarterly,* Issue 52 (2009).

[14]National Priorities Project, *Military Recruitment in 2008: Significant Gap in Army's Quality and Quantity Goals* (2009); National Priorities Project, *Military Recruiting in 2007: Army Misses Benchmarks by Greater Margin* (2008); Bryan Bender, "Army Recruits with Diplomas Hit 25-Year Low," *Boston Globe,* January 23, 2008.

[15]John Kenneth Galbraith, *The Good Society: The Humane Agenda* (Houghton Mifflin, 1997), 72.

[16]Gay McDougall and Valentine Khaminwa, "A Constitutional Right to Education without Discrimination: Contributions of International Law and Standards," (unpublished SEF commissioned report, 2007).

[17]McDougall and Khaminwa, 7.

[18]Michael Rebell, "Adequacy Litigations: A New Path to Equity," in *Bringing Equity Back: Research for a New Era in American Educational Policy,* ed. Janice Petrovich and Amy Stuart Wells (New York: Teachers College Press, 2005).

[19]This analysis is based on a comparison of revenues and spending between school districts at the 5th percentile (bottom) and the 95th percentile (top). This range for funding gaps is a standard measurement today in statistical studies.

[20]National Center for Education Statistics. *Total and Current Expenditures Per Pupil in Fall Enrollment in Public Elementary and Secondary Education by Function and State of Jurisdiction: 2004-05.* (2006).

[21]Marguerite Roza and Paul Hill, "How Within-District Spending Inequities Help Some Schools to Fail," *Brookings Papers on Education Policy* (2004): 201-218.

[22]This finding may apply primarily to Southern and Western states, where intrastate disparities are among the lowest, in large part because all of these state's school districts spend comparatively less than school districts in other states.

[23]The disparities among states are somewhat muted by differences in the cost of living across the United States, but these difference are often counter-balanced in large part by adjustments in educational costs for special needs students, English-language learners, and large concentrations of low income students. When expenditures are weighted for such differences, the educational disparities remain enormous, and in some case expand. Most of the data in this report have not been adjusted for regional differences in the cost of living or for differential costs of educating students who have the greatest educational challenges. While adjustments along these lines are standard practice in many statistical analyses of education funding, special problems and complexities exist in making adjustments when attempting to analyze education revenues and expenditures between states, within states, and within districts in the same analysis. See the *No Time To Lose* supplemental materials at www.southenreducation.org.

[24]The Education Trust, *Funding Gaps 2006* (2006). The case studies documenting funding inequalities *within* school districts also show that low income and minority students are most often shortchanged by funding inequalities. See Marguerite Roza, "How Districts Shortchange Low-Income and Minority Students," in *Funding Gaps 2006* (The Education Trust, 2006).

[25]Data is available only for a state's education spending per person of education, both K-12 and higher education funding.

[26]Phyllis McClure, "The History of Educational Comparability in Title I of the Elementary and Secondary Education Act of 1965," in *Ensuring Equal Opportunity in Public Education: How Local School District Funding Practices Hurt Disadvantaged Students and What Federal Policy Can Do About It* (Center for American Progress, 2008).

[27]Goodwin Liu, "How the Federal Government Makes Rich States Richer," in *Funding Gaps 2006* (The Education Trust, 2006).

[28]Kevin Carey, *Education Funding and Low-Income Children: A Review of Current Research* (Center on Budget and Policy Priorities, 2002); Rob Greenwald et al., *The Effects of School Resources on Student Achievement* (Review of Educational Research, 1996).

[29]Levin et al., *The Costs and Benefits of an Excellent Education for All of America's Children.*

[30]SEF selected South Carolina, Missouri, and Washington because their statewide 4th grade math tests more closely reflect the rigor of the math tests administered by the National Assessment of Educational Progress (NAEP). This testing characteristic permits a truer measure of differences in student performance because most states have adopted annual subject-matter tests that understate differences in tests scores among student groups. In this analysis, the difference between "Low PPE" (districts with per pupil expenditures of less than $7,000) and "High PPE" (districts spending $9,500 or more) amounted to a discrepancy in PPE of $2,500 or more. In the analysis, a "proficient" district has 50 percent or more students scoring proficient or above, while a "below proficient" district has less than 50 percent of students scoring proficient or above. The sample size for poor districts was small because so few high-poverty districts also have high levels of per pupil expenditures in the three states.

[31]Molly Hunter, "Egregious Conditions in Poorly Financed Schools Contrasted With Conditions in Affluent Schools," (unpublished SEF commissioned report, 2009).

[32]*Roosevelt Elementary School District No. 66 v. Bishop,* 877 P.2nd 806, 822 (1994).

[33]John Vile, "The Constitutional Amending Process and Federal Educational Reform," (unpublished SEF commissioned report, 2006).

[34]Ellwood P. Cubberley, *Public Education in the United States* (Boston: Houghton Mifflin, 1919).

[35]Institute for Educational Equity and Opportunity, *Education in the 50 States: A Deskbook of the History of State Constitutions and Laws About Education* (2008).

[36]Carl F. Kaestle, "Equal Educational Opportunity, the Federal Government, and the United States Constitution: An Interpretive Synthesis," (unpublished SEF commissioned report, 2006), 17-18.

[37]Kaestle, 22.

[38]Goodwin Liu, "Interstate Inequality in Educational Opportunity," 81 NYU L. Rev. 2044 (2006). Support for this view may also be found in *Education in the 50 States: A Deskbook of the History of State Constitutions and Laws About Education,* which makes the case that one reason education was not mentioned in the US Constitution is because it was assumed to be an attribute of the "citizenship" clause. The report says that having "the intellectual skills necessary for meaningful participation in the community's political and economic life" were "a well recognized part of the landscape" and hence the framers found it unnecessary to articulate what was understood to be a right to education.

[39]Kaestle, 23.

[40]Goodwin Liu, "Education, Equality, and National Citizenship," 116 Yale L.J. 330 (2006): 330-411.

[41]*Brown v. Board of Education of Topeka, Kansas,* 347 U.S. 483, Opinion of Chief Justice Earl Warren, (1954).

[42]*San Antonio Independent School District v. Rodriguez,* 411 U.S.1, 56-60 (1973).

[43]Rebell, "Adequacy Litigations: A New Path to Equity."

[44]John C. Brittain and Shonita Black, "Vestiges of a Forgotten Past: The Southern State's Uphill Battle toward Adequacy," (unpublished SEF commissioned report, 2005).

[45]Brittain and Black.

[46]Liu, "Interstate Inequality in Educational Opportunity."

[47]Norton W. Grubb, "What Should be Equalized? Litigation, Equity and the 'Improved' School Finance," (paper presented at the Rethinking *Rodriguez:* Education as a Fundamental Right Symposium, Berkeley, California, April 27-28, 2006).

[48]Liu, "Interstate Inequality in Educational Opportunity."

[49]There are some who argue that public education is fatally flawed and broken and ought to be privatized. Certainly in contemporary times the United States has witnessed considerable experimentation with public-private arrangements and charter schools. SEF does not oppose this experimentation, but believes that education is too important to place into private hands, away from the bright light of public accountability. Nor is there any absorptive capacity now or in the foreseeable future for private entities to provide a quality education for millions of low income students. Moreover, many private schools and charter schools have admissions requirements that low income students would be unable to meet. Vouchers provide in most cases only partial reimbursement for private school education. The solution to the problems described in this report does not repose in these options.

[50]Jeffrey Selingo, "America's Split on Government Control of Tuition," *The Chronicle of Higher Education,* April 4, 2008, 1.

[51]"The Constitution of the United States," Article Five.

[52]Vile, "The Constitutional Amending Process and Federal Educational Reform."

[53]Vile.

[54]US House. 108th Congress. "H.J. Res. 29, Proposing an amendment to the Constitution of the United States regarding the right of all citizens of the United States to a public education of equal high quality." March 2003. While Jesse Jackson Jr. has continued to advocate for this amendment over the last few years, it has languished and died without hearings or further congressional action.

[55]Daniel Webster, "The Mexican War," in *The Writings and Speeches of Daniel Webster in Eighteen Volumes,* Vol. 13 (Boston: Little Brown, 1903), 365. The speech was delivered in Springfield, MA, on September 20, 1847.

[56]In the late 19th and early 20th century, many studies of school expenditures by state were based on the computation of spending per child instead of per student. This method was often preferred because some states and communities refused to provide universal public schooling or to encourage students to enroll in school. This reluctance to establish universal education especially affected Black children in the early 1900s. Also, in the earlier years, consistent data for student enrollment was difficult to obtain.

[57]Charles S. Johnson et. al., *Statistical Atlas of Southern Counties* (Chapel Hill: University of North Carolina Press, 1941), 25-30.

[58]For information on the film by Bud Ferillo, see www.corridorofshame.com.

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