

VIRGINIA LAW REVIEW ONLINE

VOLUME 109

APRIL 2023

35–48

SYMPOSIUM

THE FEDERAL ROLE IN SCHOOL FUNDING EQUITY

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INTRODUCTION

Fifty years after the *San Antonio Independent School District v. Rodriguez* decision, the fundamental reality of school finance inequity remains a central feature of American public schools. Local school funding is still based primarily on local property taxes and reflects large disparities in property values between wealthy and low-income communities.¹ State aid to education is a significant source of additional funding, but it is particularly vulnerable to economic downturns and is not enough in many states to close these funding gaps.² Finally, federal aid is explicitly designed to support low-income students, but its relative size is small: since at least the 1980s, it has remained less than ten percent of the funds that schools receive in most years.³

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¹ See Daphne Kenyon, Bethany Paquin & Semida Munteanu, Public Schools and the Property Tax: A Comparison of Education Funding Models in Three U.S. States, *Land Lines*, Apr. 2022, at 32, 34–35, <https://www.lincolnst.edu/sites/default/files/pubfiles/public-schools-property-tax-lla220406.pdf> [<https://perma.cc/TMY4-QGZA>].

² See, e.g., *id.* at 37.

³ See Nat'l Ctr. for Educ. Stats., NCES 2002-129, Federal Support for Education: Fiscal Years 1980 to 2001, at iii (Nov. 2001), <https://nces.ed.gov/pubs2002/2002129.pdf> [<https://perma.cc/3CBR-D8FE>]; Public School Revenue Sources, Nat'l Ctr. for Educ. Stats.: Condition of Education 1 (May 2022), https://nces.ed.gov/programs/coe/pdf/2022/cma_508.pdf [<https://perma.cc/RN5F-4VFX>]; How is K–12 Education Funded?, Peter G.

The *Rodriguez* decision largely foreclosed the possibility of remedying school funding inequities through federal courts. The majority's core holding was that education is not a fundamental right and therefore judicial scrutiny of these inequities is limited to rational basis.⁴ After the decision, many states faced litigation in state courts around inequities and inadequacies in school funding based on clauses in their state constitutions.⁵ These state court decisions contributed to narrowing the spending disparities within states in many cases, but these gains were difficult to sustain over time and did not address inequities across state lines or within local school districts.⁶ Many decades after the *Rodriguez* decision, fundamental inequities in school financing remain the norm.

Although the federal government's major investments in elementary and secondary education pre-dated the *Rodriguez* decision⁷, in the last two decades those funds have sought to leverage wide-ranging changes in American schooling. While these sometimes controversial interventions seem to have increased state investments in public education, the impact on school funding disparities has been more modest. This Essay will examine the efforts by the federal government to foster greater equity in school financing and assess several alternative approaches that might be more effective. After a brief overview of federal education funding, the Essay will analyze the legacy of the *Rodriguez* decision on school funding and examine the evolution of federal strategies to expand educational equity.

Peterson Found. (Aug. 16, 2022), <https://www.pgpf.org/budget-basics/how-is-k-12-education-funded> [<https://perma.cc/4URP-UABJ>].

⁴ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35, 40 (1973).

⁵ Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez* and Its Aftermath, 94 Va. L. Rev 1963, 1974 (2008) (noting that, "as of June 2008, forty-five States have faced state-constitutional challenges to their systems of funding public schools"). While the first generation of state school finance cases focused primarily on inequality in school funding, the next generation of cases focused increasingly on the adequacy of educational funding levels. *Id.* at 1973.

⁶ Eric A. Houck & Elizabeth DeBray, *The Shift From Adequacy to Equity in Federal Education Policymaking: A Proposal for How ESEA Could Reshape the State Role in Education Finance*, RSF, Dec. 2015, at 148, 150–53, <https://www.rsffournal.org/content/rsfjs/s/1/3/148.full.pdf> [<https://perma.cc/BM5M-7M6P>]; see also Dennis J. Condran, *The Waning Impact of School Finance Litigation on Inequality in Per Student Revenue During the Adequacy Era*, 43 J. Educ. Fin. 1, 18 (2017).

⁷ See Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (codified as amended in scattered sections of 20 U.S.C.).

I. OVERVIEW OF FEDERAL EDUCATION FUNDING

As originally enacted, the Elementary and Secondary Education Act (“ESEA”) of 1965 sought to fill the gaps in funding for low-income students through the creation of the Title I program.⁸ Soon after its launch, growing concern that states were reducing their own commitments to education funding led to explicit provisions that require that Title I funding “supplement, not supplant” existing funding.⁹ Therefore, a central feature of federal funding has long been to respond to and help remedy inequitable state and local investments in schools serving low-income students.

In the two decades since the 2002 reauthorization of ESEA, the share of funding tied to equity increased substantially. The Title I funding formula now explicitly includes state school funding equity as a component.¹⁰ The most recent reauthorization in 2015 required states to provide school funding data down to the school level and included provisions to respond to the teacher quality gap between schools in wealthy and low-income communities.¹¹ Finally, large increases in pandemic funding through the American Rescue Plan Act of 2021 included specific Maintenance of Equity provisions designed to ensure that low-income schools not lose ground in terms of state and local funding.¹²

In contrast with its approach to funding equity, the federal government took a much more aggressive approach to conditioning Title I funding on specific outcomes in the No Child Left Behind Act (“NCLB”). Evidence suggests that the NCLB contributed to an increase in state funding for education, but it did not meaningfully impact school funding disparities.¹³ Critics of the existing Title I program point out that its extremely broad distribution of funds limits its impact on children living in poverty, and

⁸ Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 201, 79 Stat. 27, 27 (repealed 1978).

⁹ Every Student Succeeds Act, Pub. L. No. 114-95, § 1012, 192 Stat. 1802, 1875 (2015) (codified as amended at 20 U.S.C. § 6321(b)(1)).

¹⁰ Rebecca R. Skinner, Cong. Rsch. Serv., RL 45977, *The Elementary and Secondary Education Act (ESEA), as Amended by the Every Student Succeeds Act (ESSA): A Primer* 3 (2022).

¹¹ *Id.*; see also Every Student Succeeds Act § 2001, 129 Stat. at 1914 (codified at 20 U.S.C. § 6601).

¹² American Rescue Plan Act of 2021, § 2004(b), (c), 135 Stat. 4, 25.

¹³ Thomas S. Dee & Brian A. Jacob, *The Impact of No Child Left Behind on Students, Teachers, and Schools*, Brookings Papers on Econ. Activity, Fall 2010, at 149, 176–77.

that its complex formula fails to adequately address inequities in education funding between or within states.¹⁴

A range of alternatives to the current federal formula are possible, and it is likely that many of them would lead to somewhat greater equity in school funding. However, as long as federal funding remains at less than ten percent of total education funding, the more significant impact of federal resources is its capacity to leverage states and localities to expand their own commitment to funding equity. While many scholars are skeptical about the leveraging potential of the relatively small share of federal funding for public education,¹⁵ the impact of these funds on state learning standards was much larger than would be expected from the size of the funding alone.

II. THE LEGACY OF *RODRIGUEZ* ON SCHOOL FUNDING

In the field of education and beyond, *San Antonio Independent School District v. Rodriguez* remains one of the most important and controversial constitutional decisions by the Supreme Court. A narrow 5-4 majority rejected the claim that education was a fundamental right, leaving it to the states and the ordinary political process to determine the future of school funding.¹⁶ While the majority rejected strict scrutiny as the standard of review, the dissenters argued that the system of school finance in Texas violated even the much lower standard of rational basis.¹⁷ Although the United States Supreme Court later suggested that an absolute denial of free public education was unconstitutional, it ultimately reaffirmed that there is no fundamental right to education under the United States Constitution.¹⁸

¹⁴ See, e.g., Nora Gordon & Martin R. West, Memo: Federal School Finance Policy, Brookings: Brown Ctr. Chalkboard (Dec. 8, 2016), www.brookings.edu/blog/brown-center-chalkboard/2016/12/08/memo-federal-school-finance-policy/ [https://perma.cc/L2TS-ETP5].

¹⁵ See, e.g., Goodwin Liu, Interstate Inequality in Educational Opportunity, 81 N.Y.U. L. Rev. 2044, 2114 (2006).

¹⁶ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).

¹⁷ *Id.* at 67–68 (White, J., dissenting).

¹⁸ See *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (“Public education is not a ‘right’ granted to individuals by the Constitution. But neither is it merely some governmental ‘benefit’ indistinguishable from other forms of social welfare legislation. . . . In sum, education has a fundamental role in maintaining the fabric of our society.” (citation omitted)). But in *Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 458 (1988), the Court reaffirmed that education is not a fundamental right under the Equal Protection Clause.

At the heart of the *Rodriguez* case was the striking inequity in funding between low-income and wealthier communities. In affluent Alamo Heights, the spending per student was nearly two times the amount as in low-income Edgewood.¹⁹ The state gave both communities about the same amount of funding, and more federal funds went to Edgewood, but most of the funding came from local property taxes.²⁰ The median property value per student was more than eight times higher in Alamo Heights, and the locality provided just under thirteen times the amount for each student as in Edgewood.²¹ The local tax rate was higher in low-income Edgewood, but the much lower property values still meant much less funding for education.²²

In the wake of the *Rodriguez* decision, Justice William Brennan, a former state Supreme Court justice, wrote in the *Harvard Law Review* arguing that plaintiffs should seek to vindicate constitutional claims like the one in San Antonio through state courts.²³ In the years that followed, nearly every state faced litigation over inequities and inadequacies in their systems of school financing. State Supreme Courts across the country held unconstitutional these systems of school financing, but the impact of judicial remedies was uneven, and without ongoing judicial oversight, the shift in the distribution of resources was often short-lived.²⁴

Despite these shortcomings, state court litigation did contribute to an expansion of state aid to public schools and to a narrowing of the level of inequity in school financing across districts within many states.²⁵ But state courts could not address inequities in the level of education funding across state lines, nor did most remedy inequities in the level of funding within local school districts.²⁶ Moreover, this trajectory toward greater equity

¹⁹ See *Rodriguez*, 411 U.S. at 12–13.

²⁰ *Id.* at 12–14.

²¹ *Id.* at 12–13.

²² *Id.*

²³ William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 *Harv. L. Rev.* 489, 491 (1977) (urging lawyers turn to state supreme courts because the Burger Court was unlikely to be receptive to claims from “politically powerless groups whose members have historically been subjected to purposeful discrimination”).

²⁴ See James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 *Tex. L. Rev.* 1223, 1260 (2008) (“School finance litigation, in other words, does not create a self-sustaining reform. Indeed, there are *no* examples of states where plaintiffs have won a school finance case and legislatures have responded adequately without any further court involvement.”).

²⁵ Condrón, *supra* note 6, at 18.

²⁶ Houck & DeBray, *supra* note 6, at 150–53.

within states in school finance was reversed in the wake of the Great Recession.

In the decade after the Great Recession, public school students lost almost \$600 billion in revenue.²⁷ The decline in funding was most dramatic in terms of state aid, which contributes the most to equalizing funding across local districts, though not enough to close the funding gap.²⁸ On average, per-pupil state spending fell by 7%, while in seven states it fell by more than 10% and in two states it declined by over 20%.²⁹ The state share of education spending fell from about 27% before the Great Recession to about 23% afterward, and it remained at that level through 2015.³⁰

As a result of declining state education funding, the gap in school funding between wealthy and low-income districts grew after the Great Recession.³¹ With growing inequity and shrinking budgets, the five decade increase in student reading and math scores was stopped in its tracks.³² Although wealthy districts lost more than \$500 per student on average, the highest poverty districts in the same state lost over \$1,000 in state education funding.³³ On average, high-poverty districts lost twice as much state funding as low-poverty districts and only kept close to prior funding levels by further increasing the property tax rates on a relatively low tax base.³⁴

²⁷ Danielle Farrie & David G. Sciarra, *Educ. L. Ctr.*, \$600 Billion Lost: State Disinvestment in Education Following the Great Recession 2 (2020), [https://edlawcenter.org/assets/\\$600%20Billion%20Lost.pdf](https://edlawcenter.org/assets/$600%20Billion%20Lost.pdf) [<https://perma.cc/H2TN-6KF3>] (last visited Feb. 24, 2023).

²⁸ Sylvia Allegretto, Emma García & Elaine Weiss, *Public Education Funding in the U.S. Needs an Overhaul: How a Larger Federal Role Would Boost Equity and Shield Children from Disinvestment During Downturns*, *Econ. Pol’y Inst.* 13–15, 21 (July 12, 2022), <https://files.epi.org/uploads/233143.pdf> [<https://perma.cc/JSS5-LMQW>].

²⁹ C. Kirabo Jackson, Cora Wigger & Heyu Xiong, *Do School Spending Cuts Matter? Evidence from the Great Recession*, 13 *Am. Econ. J.* 304, 304 (2021).

³⁰ *Id.* at 312.

³¹ See William N. Evans, Robert M. Schwab & Kathryn L. Wagner, *The Great Recession and Public Education*, 14 *Educ. Fin. and Pol’y* 298, 300, 314–16 (2019); see also David S. Knight, Nail Hassairi, Christopher A. Candelaria, Min Sun & Margaret L. Plecki, *Prioritizing School Finance Equity During an Economic Downturn: Recommendations for State Policy Makers*, 17 *Educ. Fin. & Pol’y* 188, 189–91 (2022) (highlighting the disproportionate funding cuts high-poverty school districts experienced in the aftermath of the Great Recession).

³² Jackson et al., *supra* note 29, at 310.

³³ Knight et al., *supra* note 31, at 191.

³⁴ *Id.* See also Proposed Requirement—American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund, 87 *Fed. Reg.* 57 (proposed Jan. 3, 2022) (to be codified at 34 C.F.R. ch. 2).

III. EVOLUTION OF THE FEDERAL ROLE IN SCHOOL FUNDING EQUITY

In 1965, Congress passed the Elementary and Secondary Education Act. At the heart of the ESEA was Title I, which was designed to bring educational opportunity to students from households living in poverty.³⁵ Title I was intended to be distributed to local school districts with a significant share of low-income students in order to close existing educational funding inequities.³⁶ Congress pledged to increase Title I funding to over \$25 billion by fiscal year 2007,³⁷ but more than a decade later it remained at only approximately \$15.5 billion.³⁸

Overall, federal funding is more progressive than state or local funding within local school districts in its distribution of resources to low-income versus wealthy schools. States themselves vary tremendously in both their level of investment in education per student and their level of progressivity in that investment.³⁹ While most federal funding gets to schools with high levels of poverty, the overall funding is spread thinly across the nation.⁴⁰ Large gaps in teacher quality between low-income and wealthy schools contribute to significant inequities in spending between schools within local school districts that the Title I formula does not adequately address.⁴¹

In 2002 Congress updated the ESEA with the passage of the controversial but impactful No Child Left Behind Act. The NCLB was

³⁵ Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 201, 79 Stat. 27, 27 (repealed 1978).

³⁶ *Id.*

³⁷ Alyson Klein, No Child Left Behind: An Overview, *Educ. Wkly.* (Apr. 10, 2015), <https://www.edweek.org/policy-politics/no-child-left-behind-an-overview/2015/04> [https://perma.cc/2AYA-T9TP].

³⁸ Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A): Funding Status, U.S. Dep't of Educ. (Oct. 24, 2018), <https://www2.ed.gov/programs/titleiparta/funding.html> [https://perma.cc/SV9Q-6BSJ].

³⁹ Michael Hansen, Jon Valant & Nicholas Zerbino, Do School Districts Allocate More Resources to Economically Disadvantaged Students?, *Brookings* (2022), <https://www.brookings.edu/multi-chapter-report/do-school-districts-allocate-more-resources-to-economically-disadvantaged-students> [https://perma.cc/JPV6-SFSU].

⁴⁰ EXPLAINED: What Is Title I and How Is It Used to Fund Our Schools?, *Ed Post* (Aug. 12, 2021), <https://www.edpost.com/explainer/explained-what-is-title-i-and-how-is-it-used-to-fund-our-schools> [https://perma.cc/QL9X-5C2B] (noting that approximately 60% of public schools in the United States receive some Title I funding).

⁴¹ Stephanie Stullich, U.S. Dep't of Educ., The Potential Impact of Revising the Title I Comparability Requirement to Focus on School-Level Expenditures 2 (Nov. 2011), <https://www2.ed.gov/rschstat/eval/title-i/comparability-requirement/comparability-policy-brief.pdf> [https://perma.cc/6NXM-D2BZ].

designed to leverage federal funding to catalyze states to adopt learning standards for math and reading and to implement and report the results of annual testing of students in elementary, middle, and high school.⁴² The NCLB sought to bring all students to proficiency, as defined by the state adopted standard, within just over a decade.⁴³ It also required that all teachers hired with Title I funding had to be highly qualified within a few years and that all paraprofessionals also meet minimum education and licensing criteria.⁴⁴ These “highly qualified” teachers were supposed to be evenly distributed across schools with lower and higher concentrations of poverty.

NCLB threatened states and local school districts with the loss of Title I funding if they failed to implement the standards and testing, or failed to make sufficient progress toward student proficiency.⁴⁵ Recent studies of the impact of NCLB suggest that it contributed to an increase in state spending on schools, but that it did not noticeably lead to greater equity in state school funding.⁴⁶ One estimate looking at states which adopted learning standards after the passage of NCLB found an average increase in spending by school districts of \$570 per student, an increase of 6.8%.⁴⁷ However, this increase in spending reflected state and not federal funding, and the effects were similar in low-income districts and wealthier districts, “suggesting that NCLB did not meaningfully influence distributional equity.”⁴⁸

In 2015, Congress reauthorized the law once again and abandoned many of the sanctions used in NCLB with the Every Student Succeeds Act (“ESSA”).⁴⁹ In terms of equity, ESSA requires districts for the first time to report per pupil spending at the level of the school building, which can reveal intra-district inequities in school funding.⁵⁰ ESSA also updated the “supplement not supplant” requirement of Title I funding, and the proposed rule would expand federal requirements to ensure that federal

⁴² Executive Summary for No Child Left Behind Act, U.S. Dep’t of Educ. (Feb. 10, 2004), www2.ed.gov/nclb/overview/intro/execsumm.html [<https://perma.cc/NA5Y-4CJ6>].

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Dee & Jacob, *supra* note 13, at 154.

⁴⁶ *Id.* at 176–77.

⁴⁷ *Id.* at 176.

⁴⁸ *Id.* at 177.

⁴⁹ Every Student Succeeds Act, Pub. L. No. 114-95, § 1012, 129 Stat. 1802 (2015) (codified as amended at 20 U.S.C. § 6321(b)(1)).

⁵⁰ *Id.* 129 Stat. 1847.

funding does not replace existing state and local funding.⁵¹ Finally, ESSA launched a pilot program to allow certain districts to develop innovative approaches to reducing school funding inequity in exchange for enhanced flexibility.⁵²

While Title I funding has not grown as rapidly as Congress committed to over two decades ago, certain parts of Title I funding have grown over that period. Specifically, the Education Finance Incentive Grants (“EFIG”) program, which is intended to reflect the level of effort and equity in state school financing, grew to nearly \$4.5 billion by 2022.⁵³ EFIG funding is based on the most complex formula of Title I, and the current formula has a number of weaknesses. It does not adequately take into account the different fiscal capacities of states, and its equity formula may not reward the states which do the most for the schools with the most low-income students.⁵⁴ Nonetheless, the growth of EFIG, at least in theory, suggests that intra-state public school equity is growing in importance in terms of the distribution of federal funding.⁵⁵

With the recent COVID-19 stimulus, the U.S. Department of Education sought to ensure that any cuts in state and local funding were not at the expense of schools in low-income communities. The Maintenance of Equity provisions require that districts not cut low-income school funding more than wealthier school funding.⁵⁶ The state maintenance of equity provision mandated that a state “not . . . reduce . . . [per-pupil] funding . . . for any high-need local educational agency . . . by an amount

⁵¹ U.S. Dep’t of Educ., Supplement not Supplant under Title I, Part A of the Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act 8 (2019), <https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf> [<https://perma.cc/LF4X-2D98>].

⁵² 20 U.S.C. § 6337 (2018), amended by Every Student Succeeds Act, 129 Stat. 1878.

⁵³ U.S. Dep’t of Educ., Department of Education’s FY 2022 Congressional Action 1 (2022), <https://www2.ed.gov/about/overview/budget/budget22/22action.pdf> [<https://perma.cc/9S7V-Y646>].

⁵⁴ See Nora Gordon & Sarah Reber, Title I’s Education Finance Incentive Grant Program Is Unlikely to Increase Effort and Equity in State Policy, All4Ed (Jan. 24, 2023), <https://all4ed.org/publication/title-is-education-finance-incentive-grant-program-is-unlikely-to-increase-effort-and-equity-in-state-policy/> [<https://perma.cc/ALV5-5RUN>].

⁵⁵ U.S. Gov’t Accountability Off., GAO-11-258 Elementary and Secondary Education Act: Potential Effects of Changing Comparability Requirements (2011); Erika Chen, U.S. Spending on Public Schools in 2019 Highest Since 2008, U.S. Census Bureau (May 18, 2021), <https://www.census.gov/library/stories/2021/05/united-states-spending-on-public-schools-in-2019-highest-since-2008.html> [<https://perma.cc/3YQD-25CD>].

⁵⁶ American Rescue Plan Act of 2021, § 2004, 135 Stat. 4, 24–27.

that exceeds the overall per-pupil reduction in State funds . . . across all local educational agencies.”⁵⁷

The local maintenance of equity provision also requires that local education agencies (“LEAs”) not “reduce per-pupil funding . . . for any high-poverty school . . . by an amount that exceeds” average per-pupil reduction in the LEA.⁵⁸ The language protected the 25% of schools with the most students in poverty.⁵⁹ One potential weakness of this approach is that it creates a higher burden for more equitable districts and a lower burden for less equitable districts, since the baseline is prior funding rather than equity.

While federal education funding is the most progressive among the different sources of public school finance, its leveraged impact on school funding equity remains limited. In part, this outcome reflects the multiple dimensions of school finance because the level of funding is so unequal across state boundaries. It also reflects the ways in which the current federal formulas fail to adequately capture important sources of inequity, such as teacher salaries, and the ways in which the formulas may not always incentivize equity.

Growing attention to inequities within states and successful state court litigation contributed to reducing the share of intra-state funding differentials in the era after *Rodriguez*. As of 2011, per-pupil spending gaps within states accounted for an estimated twenty-two percent of inequalities in school funding.⁶⁰ However, inequalities in education funding between different states accounted for an estimated seventy-eight percent of these inequities.⁶¹ Some of this differential reflects the cost-of-living variations across different states, but much of it can be traced back to different levels of state spending.

Significantly, this data does not capture the share of inequities within school districts, which are now subject to greater reporting under federal requirements.⁶² Based on recent data, there is growing evidence that disparities in funding within school districts is currently larger than such

⁵⁷ Id. § 2004(b)(1).

⁵⁸ Id. § 2004(c)(1)(A).

⁵⁹ Id. § 2004(d)(4).

⁶⁰ Gordon & West, *supra* note 14, at 2.

⁶¹ Id. at 1–2.

⁶² Tara García Mathewson, *New Data: Even Within the Same District Some Wealthy Schools Get Millions More than Poor Ones*, Hechinger Report 2–3 (2020), <https://hechingerreport.org/new-data-even-within-the-same-district-some-wealthy-schools-get-millions-more-than-poor-ones/> [<https://perma.cc/2BWH-THNZ>].

inequities in spending across districts, in part because the most experienced and best paid teachers work at schools with lower poverty rates.⁶³

A wide range of proposals have been offered to strengthen the impact of federal education funding on inequalities in school funding. These range from increased funding, to distributing a greater share of funding to less affluent states, to incentivizing states to improve funding equity, to changing the Title I formula to better target within-district disparities, to including automatic funding to prevent backsliding in equity during economic downturns.⁶⁴

Over the past two decades, commitments to substantially increase federal education funding and Title I have generally fallen short. Despite a significant temporary boost in funding through pandemic era stimulus legislation, the ongoing level of Title I funding remains far below the commitments of two decades ago.⁶⁵ Therefore, while expanded federal funding could directly contribute to reducing school funding disparities, it is unlikely that federal funding will grow in the near term beyond its historic level of less than ten percent of school finance.

Given this relatively small share of overall public school funding, the next questions revolve around how these federal funds are distributed and the mechanisms by which they might influence the distribution of state and local education funding. There are important issues both around the share of federal funds that each state receives and the allocation of federal funds to schools and districts within a given state. Some scholars have called for a federal foundation program that would match state funding in ways similar to federal funding for Medicaid.⁶⁶ In this system, the matching rate is higher for states with lower per capita income and gradually declines as state per capita income increases.

Other scholars point to the success of the Department of Education's Race to the Top model in encouraging states to adopt learning standards and suggest that a similar approach could transform school finance. Under

⁶³ *Id.*

⁶⁴ Allegretto et al., *supra* note 28, at 2–3, 7–11, 13–20, 30–32.

⁶⁵ Nat'l Educ. Ass'n, *Federal Education-Related Discretionary Programs: Final Appropriations, FY 2023* (2022), <https://www.nea.org/sites/default/files/2023-01/final-fy23-appropriations-for-education-related-discretionary-programs-with-state-tables.pdf> [<https://perma.cc/CK8N-WHY3>].

⁶⁶ Liu, *supra* note 15, at 2120.

this model, states would become eligible for awards based on their commitments to restructure school finance toward greater equity.⁶⁷

Many critics of the current Title I formula argue that modest adjustments could contribute to federal funding leveraging greater equity in school finance. Some suggest including teacher salaries more directly in the comparability analysis of school funding.⁶⁸ Such an approach would capture a significant source of disparity between low-income schools and wealthier schools, but funding alone might not be sufficient to attract the most experienced teachers. However, it would also introduce possible moral hazard, as states might have less incentive to increase their own funding for public education.

Finally, the experience of the Great Recession clearly demonstrated that economic downturns lead states to cut education funding in ways that exacerbate inequalities in school funding. As the possibility of another recession looms, this suggests an important role for the federal government in helping to limit the cuts, especially to high poverty schools. The pandemic education stimulus sought to serve this function on a one-time basis with additional funding and the maintenance of equity requirements. In other fields, such as unemployment insurance, there are automatic stabilizers that provide reserves for increased funding during economic downturns.⁶⁹ A similar approach to education funding could help maintain equity gains when they are at the greatest risk. Federal funding for such an endeavor could also incentivize states to adopt such an approach and incorporate an improved maintenance of equity approach.

CONCLUSION

Fifty years after the *San Antonio Independent School District v. Rodriguez* decision, tremendous inequities in school funding and educational opportunity remain the norm in the United States.⁷⁰ Since the

⁶⁷ Houck & DeBray, *supra* note 6, at 148.

⁶⁸ Marguerite Roza & Paul T. Hill, How Within-District Spending Inequities Help Some Schools to Fail, *in* 7 Brookings Papers on Educ. Pol’y 201, 218 (Diane Ravitch ed., 2004).

⁶⁹ Allegretto et al., *supra* note 28, at 31 (suggesting economic triggers such as the unemployment rate as a threshold to automatically expand federal education funding).

⁷⁰ Ivy Morgan & Ary Amerikaner, Funding Gaps 2018: An Analysis of School Funding Equity Across the U.S. and Within Each State, *Educ. Tr.* 6 (Feb. 2018), <https://s3-us-east-2.amazonaws.com/edtrustmain/wp-content/uploads/2014/09/20180601/Funding-Gaps-2018-Report-UPDATED.pdf> [<https://perma.cc/CRZ5-LXMN>] (observing that, across the United

Supreme Court effectively closed the door to federal litigation based on the idea of a fundamental right to education, plaintiffs turned to state courts and the more explicit provisions of state constitutions for redress. Decades of state litigation have contributed to narrowing funding gaps within states and between different districts. However, these gains in equity have proven to be fragile and contingent both on continued oversight by the courts and the vagaries of the economic cycle. At the same time there has been much less progress on the inequities in school funding across states. Recent school level data also suggests significant gaps in funding within districts across the country, which remain largely unaddressed.⁷¹

Federal funding and the leveraging effect of federal dollars holds a great deal of untapped potential to contribute to more equitable schools. Despite the relatively low overall share of federal funding for education, the response by states to the NCLB reveals the substantial influence of the federal share of education funding. Federal efforts to promote school finance equity have been much less significant. The lack of enforcement of the “supplement not supplant” provisions and the opaqueness of the Title I funding formula limit the impact of federal dollars on school funding equity.

In recent years the federal government has sought to leverage its funding more directly in support of greater equity in school finance. However, like the Title I formula itself, the recent Maintenance of Equity provisions do not necessarily incentivize more progressivity in school finance. Instead, one approach penalizes any deviation from equal funding while failing to consider teacher salaries, while the other approach tries to lock in the relative balance of prior baseline amounts of funding, which lowers the burden on states with greater inequities.

As was true for Edgewood at the time of the *Rodriguez* decision, federal funds were—and are—the most targeted toward schools with a high percentage of students living in poverty. Yet these funds remain a small share of overall funding, even for schools in the most impoverished communities. Unless that balance of funding changes meaningfully, smarter leveraging of federal dollars to foster more equitable state and

States, schools spend approximately 7%, or \$1,000, less per pupil on students in the highest poverty districts as compared to the wealthiest districts).

⁷¹ Mathewson, *supra* note 62.

local allocations is the most promising role for the federal government to promote equal educational opportunity for all students.⁷²

⁷²See C. Kirabo Jackson & Claire Mackevicius, *The Distribution of School Spending Impacts* 50–51 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28517, 2021).