

# Redrawing School District Lines: Reducing the Link Between Educational Inequality and Economic Inequality

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## I. INTRODUCTION

The Supreme Court, in *San Antonio Independent School District v. Rodriguez*, held that school funding disparities that resulted from the supplementation of state aid through local property taxes did not violate the Equal Protection Clause of the

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Fourteenth Amendment.<sup>1</sup> In doing so, the court dismissed the parent association's argument that there is a correlation between district wealth and educational expenditures.<sup>2</sup> Since this 1973 decision, numerous research studies were undertaken to prove that district wealth does, in fact, impact educational expenditures and student outcomes.<sup>3</sup> Moreover, numerous state courts undertook efforts to reduce the reliance on district wealth in financing public schools, substantially altering the way schools are funded today.<sup>4</sup> Despite these efforts, inequity remains in public schools throughout the nation. Differences in social capital, "the ability of individuals to secure benefits through familial and extra-familial networks,"<sup>5</sup> among school districts impact educational outcomes.<sup>6</sup> Additionally, private donations by sophisticated groups, like education support organizations,<sup>7</sup> undermine the equalization of school funding among districts.<sup>8</sup> Given that educational equality has not been achieved through attempts to equalize per-pupil expenditures, more nuanced solutions are necessary.

Part II of this Note discusses *San Antonio Independent School District v. Rodriguez*, the seminal case on school funding, as well as a sampling of state cases post *San Antonio* that have tackled the school funding issue. Part III details the impact of discrepancies in school funding. Part IV explores the most feasible solutions to combat educational inequality. Part V proposes a multi-faceted solution to combat not only intra-state educational inequality, but also inter-state educational inequality.

## II. A BRIEF LEGAL HISTORY OF SCHOOL FUNDING

### A. *San Antonio Independent School District v. Rodriguez*

In *San Antonio Independent School District v. Rodriguez*, the plaintiffs argued that Texas' system of funding schools through local property taxes was

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1. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 46–55 (1973).

2. *Id.* at 23–26.

3. See, e.g., Ronald F. Ferguson, *Paying for Public Education: New Evidence on How and Why Money Matters*, 28 HARV. J. ON LEGIS. 465, 488–90 (1991) (finding a correlation between teacher quality, socioeconomic status, and student achievement); see also Rob Greenwald, Larry V. Hedges & Richard D. Laine, *The Effect of School Resources on Student Achievement*, 66 REV. EDUC. RES. 361, 384–85 (1996) (finding a link between school resources and student achievement); S. EDUC. FOUND., NO TIME TO LOSE: WHY AMERICA NEEDS AN EDUCATION AMENDMENT TO THE CONSTITUTION TO IMPROVE PUBLIC EDUCATION 13, 18 (2009), <http://www.southerneducation.org/getattachment/43e3f5bb-714f-47c3-85ad-ece27529f99f/No-Time-Lose-Why-America-Needs-an-Education-Amendm.aspx> (finding that districts with the most poverty receive less funding).

4. Abigail M. Frisch, *The Class Is Greener on the Other Side: How Private Donations to Public Schools Play into Fair Funding*, 67 DUKE L.J. 427, 443 (2017).

5. Omari S. Simmons, *Lost in Transition: The Implications of Social Capital for Higher Education Access*, 87 NOTRE DAME L. REV. 205, 209 (2011).

6. DAVID GRISSMER ET AL., RAND, IMPROVING STUDENT ACHIEVEMENT: WHAT STATE NAEP TEST SCORES TELL US 97 (2000), [https://www.rand.org/pubs/monograph\\_reports/MR924.html](https://www.rand.org/pubs/monograph_reports/MR924.html).

7. Frisch, *supra* note 4, at 433.

8. *Id.* at 448.

unconstitutional,<sup>9</sup> building on the Supreme Court's rationale in *Brown v. Board of Education*.<sup>10</sup> The plaintiffs alleged that the students in the Edgewood school district, the poorest state district, suffered from wealth-based discrimination in violation of the Fourteenth Amendment Equal Protection Clause because the per-pupil expenditures were much lower in the Edgewood district than in the more affluent Alamo Heights district.<sup>11</sup> Plaintiffs also argued that strict scrutiny should apply because wealth is a suspect category and education is a fundamental right.<sup>12</sup>

A majority of Justices on the Supreme Court, however, disagreed on the grounds that "the Equal Protection Clause does not require absolute equality" and ruled that there was no wealth discrimination because poor students were not completely deprived of an education.<sup>13</sup> Moreover, the Supreme Court dismissed the plaintiffs' claim that there is a correlation between the wealth of families within school districts and school expenditures, but noted that, even if there was a correlation, it would be difficult to find the group a suspect class.<sup>14</sup> The Supreme Court further held that education is not a fundamental right under the Fourteenth Amendment, and even if it was, relative disparities in educational spending would not rise to the level of a deprivation of rights.<sup>15</sup> The Court then recommended that state legislatures should resolve school funding issues.<sup>16</sup>

Justice Thurgood Marshall, one of the attorneys who argued *Brown* almost twenty years prior to *San Antonio*,<sup>17</sup> penned a strong dissent, arguing that the Supreme Court's decision enables states to vary the quality of education that children receive based on their district's wealth.<sup>18</sup> He further argued that children's later educational outcomes should not matter.<sup>19</sup> According to Justice Marshall, discrimination in educational opportunity, not outcomes should be the standard for considering this issue.<sup>20</sup>

### *B. State Cases Post-San Antonio*

Since *San Antonio*, forty-four states have undergone school finance litigation.<sup>21</sup> School funding litigation came in three waves, the first of which predated *San Antonio* and relied on the Fourteenth Amendment's Equal Protection

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9. *San Antonio Indep. Sch. Dist. v. Rodriguez* (*San Antonio*), 411 U.S. 1, 4–6 (1973).

10. In dicta, the Supreme Court stated that education is important to our society, that it "is the very foundation of good citizenship," and that, without an education, it is unlikely that children will succeed. *Brown v. Bd. of Ed.*, 347 U.S. 483, 493 (1954).

11. *San Antonio*, 411 U.S. at 12–15.

12. *Id.* at 19, 35.

13. *Id.* at 23–24.

14. *Id.* at 25–26.

15. *Id.* at 35–36.

16. *Id.* at 58–59.

17. *Brown v. Bd. of Ed.*, 347 U.S. 483, 485 (1954).

18. *See generally* *San Antonio*, 411 U.S. at 70 (Marshall, J., dissenting).

19. *Id.* at 83–84.

20. *Id.* at 84.

21. SCOTT F. JOHNSON & SARAH E. REDFIELD, *EDUCATION LAW: A PROBLEM BASED APPROACH* 69 (2nd ed. 2012).

Clause.<sup>22</sup> After *San Antonio*, arguments in the second and third waves have rested on state constitutional provisions, focusing on equal protection clauses in the second wave of litigation and on education clauses in the third wave.<sup>23</sup>

The second wave began after *San Antonio*'s disappointing decision.<sup>24</sup> This wave shifted the focus of school funding litigation from federal constitutional guarantees to state constitutional law.<sup>25</sup> An example of second wave litigation is *Serrano II*.<sup>26</sup> Soon after the *San Antonio* decision, the Supreme Court of California found that education is a fundamental interest and that the California public school financing system violated the state's constitution.<sup>27</sup> Despite attempts to equalize per-pupil expenditures, the Supreme Court of California found that "substantial disparities in expenditures per pupil resulting from differences in local taxable wealth will continue to exist," as low-wealth districts had a substantially heavier tax burden under the new funding policy than wealthy districts.<sup>28</sup> The court stated that "although an equal expenditure level per pupil in every district is not educationally sound or desirable because of differing educational needs, equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning."<sup>29</sup> The court suggested that alternative funding schemes could include either state-wide property taxes, redrawing district lines to equalize property values across districts, taxing businesses at the state level, or vouchers.<sup>30</sup>

Another example of second wave litigation is *Horton v. Meskill*.<sup>31</sup> In this case, the Supreme Court of Connecticut, like the Supreme Court of California in *Serrano II*, found that education was is a fundamental right under the state's constitution and applied strict scrutiny when it considered the financing of public education.<sup>32</sup> Applying strict scrutiny, the court held that the Connecticut system of financing public education was unconstitutional, as there were "wide disparities . . . in the amount spent on education by the various towns . . . [due to] wide disparities that exist in the taxable wealth of the various towns."<sup>33</sup> The court then left it to the legislature to devise a solution to these school funding disparities.<sup>34</sup>

Unfortunately, not all second-wave litigation was successful. For example, in *Danson v. Casey*, the Supreme Court of Pennsylvania relied on the state's equal protection clause and chose to use rational basis scrutiny.<sup>35</sup> The court in this case

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22. *Id.* at 70–71.

23. *Id.* at 69–72.

24. *Id.* at 71.

25. *Id.*

26. *Serrano v. Priest (Serrano II)*, 557 P.2d 929, 952 (Cal. 1976); JOHNSON & REDFIELD, *supra* note 21, at 72.

27. *Serrano II*, 557 P.2d at 951–52.

28. *Id.* at 938.

29. *Id.* at 939.

30. *Id.* at 938–39.

31. *See generally Horton v. Meskill*, 376 A.2d 359 (Conn. 1977).

32. *Id.* at 373.

33. *Id.* at 367, 374.

34. *Id.* at 375.

35. *Danson v. Casey*, 399 A.2d 360, 370 (Pa. 1979).

found that the state's local funding system was not unconstitutional and that students in Philadelphia were not constitutionally guaranteed an identical educational program to those provided to students in other parts of the state.<sup>36</sup>

The third wave of school funding litigation focused more specifically on the education clauses in many state constitutions, rather than the Equal Protection Clause.<sup>37</sup> These cases argued for a right to an "adequate education."<sup>38</sup> One example is *Roosevelt Elementary School District Number 66 v. Bishop*.<sup>39</sup> In 1994, the Supreme Court of Arizona held that the financing scheme of Arizona's public schools violated the state's constitutional mandate to provide a "general and uniform" public school system.<sup>40</sup> The court noted that there were substantial differences in the quality of Arizona's public school facilities and found that school quality was proportional to the district's property values.<sup>41</sup> The court cautioned, though, that school systems need not be identical or equal.<sup>42</sup> The court had no issue with local districts opting to provide education "better than the general and uniform system created by the state."<sup>43</sup> However, state-created school financing systems that create "gross disparities are not general and uniform."<sup>44</sup> Thus, since Arizona chose a system of school financing based on property value, despite its knowledge of substantial property value disparities across districts, the Arizona's financing system violated the Arizona constitution.<sup>45</sup>

Another example of third wave litigation is *Brigham v. State*.<sup>46</sup> In *Brigham*, the Supreme Court of Vermont held that the state's system of financing public education failed to meet the requirements of the education clause of the state's constitution.<sup>47</sup> More specifically, the court made clear that the state "bears ultimate responsibility" for deciding to fund schools unequally based on local property taxes.<sup>48</sup> The court found that the state's constitution was violated because it could not "fathom a legitimate governmental purpose to justify the gross inequities in educational opportunities. . . ."<sup>49</sup> Moreover, the court noted that local funding is not necessary to preserve local control, as decisions can be made by localities regardless of how the schools are funded.<sup>50</sup> The court cautioned, though, that absolute equality is not required, recognizing differences in district size and educational needs; rather, substantial equality is required.<sup>51</sup>

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36. *Id.* at 365–67.

37. JOHNSON & REDFIELD, *supra* note 21, at 72.

38. *Id.*

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

40. *Id.* at 815–16.

41. *Id.* at 808–09.

42. *Id.* at 814.

43. *Id.* at 815.

44. *Id.* at 814.

45. *Id.* at 815.

46. *See generally* 692 A.2d 384, 395 (Vt. 1997).

47. *Id.* at 395.

48. *Id.*

49. *Id.* at 396.

50. *Id.*

51. *Id.* at 397.

As in the second wave of litigation, the third wave of litigation was not entirely successful. The Supreme Court of Nebraska made a contrary finding to the majority of states on the school funding issue in *Citizens of Decatur for Equal Education v. Lyons-Decatur School District*.<sup>52</sup> Although education is mentioned in the state constitution's free instruction clause, the court held that the state constitution does not provide a right to "equal and adequate funding of schools."<sup>53</sup> The court did stipulate that Nebraska's students are entitled to a free education, but the court refused to intervene into fiscal policy, which it believed was the province of the legislature.<sup>54</sup> Given that the funding decision was "rationally related to a legitimate government purpose"—which in this case was reducing costs—the court found that the state's constitution was not violated.<sup>55</sup>

These three waves of school finance litigation not only reduced the impact of *San Antonio*'s disappointing decision, but also resulted in efforts to reduce the correlation between school funding and district wealth that was dismissed by the Supreme Court in *San Antonio*.<sup>56</sup> However, as will be discussed in Part III of this Note, school funding litigation after *San Antonio* failed to eradicate funding inequality, especially in states where litigation was unsuccessful.<sup>57</sup> The state cases after *San Antonio* represent a good first step toward achieving funding parity, but more is required to eliminate educational inequality.

### III. THE IMPACT OF SCHOOL FUNDING DISPARITIES

#### *A. Unequal School Funding Persists Post-San Antonio Despite State Action*

All states currently delegate authority to local districts to collect school funding through the collection of taxes.<sup>58</sup> For decades, litigation has been undertaken in an attempt to equalize school funding. However, several states, including Alaska and Minnesota, declined to declare unequal school funding unconstitutional.<sup>59</sup> Thus, unequal school funding clearly persists in those states. Even in the states where courts have stepped in to attempt to equalize school

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52. *Citizens of Decatur for Equal Educ. v. Lyons-Decatur Sch. Dist.*, 739 N.W.2d 742, 760 (Neb. 2007).

53. *Id.* at 760–61.

54. *Id.* at 760.

55. *Id.* at 762.

56. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 25–26 (1973); Frisch, *supra* note 4, at 443.

57. Frisch, *supra* note 4, at 443; see John Dayton & Anne Dupre, *School Funding Litigation: Who's Winning the War?*, 57 VAND. L. REV. 2351, 2406 (2004); Laurie Reynolds, *Skybox Schools: Public Education as Private Luxury*, 82 WASH. U. L. Q. 755, 759 (2004).

58. Frisch, *supra* note 4, at 436.

59. *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 402 (Alaska 1997); see *Skeen v. State*, 505 N.W.2d 299, 311–12 (Minn. 1993); Breanne N. Wesche, *Putting the American Education System to the Test: Recognizing Education as a Fundamental Right and Abolishing Unequal School Funding*, 41 T. MARSHALL L. REV. 5, 14 (2015).

funding after *San Antonio Independent School District v. Rodriguez*, unequal school funding remains.<sup>60</sup>

Although state litigation shifted “financial responsibility for education away from local property taxes and toward state and federal funding sources,” inequity remains even in the states where courts struck down unequal funding programs.<sup>61</sup> Most states now use a “‘foundation program,’ whereby the state guarantees a ‘foundation amount’ per student or teacher ‘unit’ and compensates up to that amount if local funding . . . falls short.”<sup>62</sup> Even though states made strides to reduce the correlation between district wealth and school funding, inequality crept back up in different forms, including private donations. For example, twelve billion dollars in school funding nationwide is private in origin and includes gifts.<sup>63</sup> These private donations that richer schools receive exacerbate the link between class and educational quality, as studies show the private organizations that drive these donations are more likely to be located in areas with wealthier and more educated residents.<sup>64</sup>

Another way in which inequity in funding remains is spending above the foundation amount per pupil. As stated above, most states established minimum per-pupil expenditures, but few imposed a ceiling.<sup>65</sup> Thus, increased funding for poor districts has not eliminated the spending gap between poor and rich districts, as rich districts have been on a “spending spree.”<sup>66</sup> Since unequal school funding is still a reality, more nuanced solutions than those already implemented are required to combat educational inequality.

*B. The Relationship Between District Wealth, Per-Pupil Expenditures,  
and Educational Outcomes*

Since the Supreme Court’s decision in *San Antonio*, there has been much research on the relationships between district wealth, educational opportunities, and educational outcomes, which prove that school funding matters.<sup>67</sup> In 1991, Ronald Ferguson, Associate Professor of Public Policy at Harvard University, conducted a study of nine hundred school districts in Texas to examine the relationship between district wealth and student achievement.<sup>68</sup> His study found that “a primary cause of inequity across districts in the quality of education is that

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60. See, e.g. Frisch, *supra* note 4, at 448 (noting wealthier areas receive more private donations for schools).

61. *Id.* at 443.

62. *Id.* at 444.

63. *Id.* at 430 (funding is adjusted based on the special needs of students, such as student disability or special educational needs).

64. *Id.* at 448.

65. Reynolds, *supra* note 57, at 759.

66. *Id.* at 769–70.

67. See, e.g., Ferguson, *supra* note 3, at 565–66 (finding a correlation between teacher quality, socioeconomic status, and student achievement); see also Greenwald et al., *supra* note 3, at 396 (finding a link between school resources and student achievement); see also S. EDUC. FOUND., *supra* note 3, at 18 (finding that districts with the most poverty receive less funding).

68. Ferguson, *supra* note 3, at 465.

districts of higher average socioeconomic status find it easier, with any given salary scale, to attract teachers with strong skills and experience.”<sup>69</sup> Ferguson found the correlation between teacher quality and socioeconomic status was significant, because better teacher quality leads to better student test scores.<sup>70</sup>

In 1996, Rob Greenwald, Larry Hedges, and Richard Laine of the Department of Education at the University of Chicago<sup>71</sup> conducted another study examining the relationship between educational inputs and outputs.<sup>72</sup> Their meta-analysis concluded that “school resources are systematically related to student achievement and that these relations are large enough to be educationally important.”<sup>73</sup> Specifically, this study found that per-pupil expenditures had a “strong and consistent” relationship with student achievement.<sup>74</sup> Moreover, as with the Ferguson study, this study again proved that “teacher ability, teacher education, and teacher experience” have a strong correlation with student achievement.<sup>75</sup> Thus, these studies support the claim, accepted by Justice Marshall in *San Antonio Independent School District v. Rodriguez*, that districts that spend more money on students can afford better educational opportunities for their students, such as improved teacher quality, which in turn, leads to increased student achievement.<sup>76</sup>

Another study was conducted in 2000 by David Grissmer of the RAND Corporation.<sup>77</sup> Grissmer’s study found that variations in test scores attributed to family characteristics are a result of variations in family and social capital.<sup>78</sup> Although family capital is difficult to change, this study found that differences in achievement that result from variations in social capital can be alleviated if families, economic, and social institutions were evenly distributed across states.<sup>79</sup> Given that random distribution has not occurred, Grissmer found that there is greater social capital in communities that have higher income.<sup>80</sup> As a result, “the achievement scores across schools, communities, and states differ . . . partly because families with similar characteristics are grouped in communities or states creating different levels of social capital that can change the average achievement for their children.”<sup>81</sup> Thus, even beyond mere per-pupil expenditures, district wealth impacts educational outcomes. Further, the achievement differences due to social capital get exacerbated by differences in per-pupil expenditures because,

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69. *Id.*

70. *Id.* at 465–66.

71. Greenwald, et al., *supra* note 3, at 396.

72. *Id.* at 362.

73. *Id.* at 384.

74. *Id.*

75. *Id.*

76. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 83–86 (1973).

77. GRISSEMER ET AL., *supra* note 6.

78. *Id.* at 17–18 (Family capital is defined as the “innate characteristics passed from parent to child, the different quality and quantity of resources within families, and the different allocation of these resources toward education and each child.” Social capital is defined as “long-term capacities existing within communities and school districts or states, outside of individual family capital, that affect achievement but are outside of explicit control of the educational system.”).

79. *Id.*

80. *Id.* at 18.

81. *Id.*



according to Grissmer, “communities with higher income and more educated families usually have higher per-pupil spending and smaller class sizes.”<sup>82</sup> Thus, this study again confirmed the previous findings that the “level of per-pupil expenditures and how they are allocated and targeted can make significant differences in student achievement.”<sup>83</sup>

Linda Darling-Hammond, Professor of Education at Stanford University and executive director of the National Commission on Teaching and America’s Future, conducted another study of the issue in 2000,<sup>84</sup> focusing on the relationship between school inputs, including teacher quality, and student achievement.<sup>85</sup> Hammond found that “[s]tudent characteristics such as poverty, non-English language status, and [racial/ethnic] minority status are negatively correlated with student outcomes, and usually significantly so. These student characteristics are also significantly and negatively correlated with the qualifications of teachers.”<sup>86</sup> Furthermore, Hammond also found that characteristics of teacher quality, like certification status, “are very significantly and positively correlated with student outcome[s]”<sup>87</sup> Accordingly, another study confirms that student poverty impacts teacher quality, which, in turn, has an effect on student achievement.

In 2003, Kristen Harknett, now an Associate Professor in the Department of Social and Behavioral Sciences at the University of California, San Francisco, conducted a nationwide study on the impact of school expenditures.<sup>88</sup> This study found that “education expenditures have particularly strong and positive effects on child outcomes, especially test scores and adolescent behavior,” even when controlling for parental expenditures on childrearing and single parent households.<sup>89</sup> Thus, yet another study confirmed that money impacts educational outcomes.

More recent studies also show a correlation between district wealth, per-pupil expenditures, and educational outcomes.<sup>90</sup> In 2009, the Southern Education Foundation found that “districts with the highest levels of poverty generally receive less per pupil funding than districts with the lowest levels of poverty.”<sup>91</sup> For example, “[i]n 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

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82. *Id.*

83. *Id.* at 97.

84. Linda Darling-Hammond, *Teacher Quality and Student Achievement: A Review of State Policy Evidence*, 8 EDUC. POL’Y ANALYSIS ARCHIVES 1, 42 (2000).

85. *Id.* at 2.

86. *Id.* at 23.

87. *Id.*

88. Kristen Harknett et al., *Do Public Expenditures Improve Child Outcomes in the U.S.? A Comparison Across Fifty States* 5 (Ctr. for Policy Research, Working Paper No. 53, 2003), <https://surface.syr.edu/cpr/109>.

89. *Id.* at 17.

90. See, e.g., S. EDUC. FOUND., *supra* note 3, at 18.

91. *Id.*

proficient.”<sup>92</sup> Moreover, among districts that spent little and also had more than thirty percent of its students living in poverty, only one in ten students was proficient in math; however, when these poor districts increased their per-pupil expenditures to over \$9,500, forty percent of these districts were able to achieve high levels of student proficiency.<sup>93</sup> Thus, district wealth does impact the quality of education that students receive.

Furthermore, Anthony Bruno, staff attorney at the United States Court of Appeals for the Second Circuit, conducted a study of one hundred New York school districts in 2011.<sup>94</sup> Anthony Bruno’s found that “socioeconomic variables are generally predictive of student outcomes.”<sup>95</sup> More specifically, Bruno noted that “[t]he percentage of students eligible for free or reduced-price lunch in a district has a strong negative relationship to all student output variables: high school graduation rates, test scores, and the percentage of high school graduates reportedly going to a four-year college.”<sup>96</sup> Thus, more than forty years after *San Antonio Independent School District v. Rodriguez*, a correlation between not only district wealth and educational expenditure,<sup>97</sup> but also district wealth and educational outcomes is now well-established.

### *C. Beyond the Classroom: Impacts of the Use of Disparate Property Taxes to Fund Schools*

Beyond educational inequality resulting in achievement differences for students, educational inequality has broader impacts. For example, school quality impacts property values.<sup>98</sup> In a study of Mecklenburg, North Carolina, a city where homes in the same neighborhood were often assigned to different schools, Thomas Kane of the Harvard Graduate School of Education, Stephanie Riegg of George Washington University, and Douglas Staiger of Dartmouth College, found “significant differences in housing prices along school boundaries.”<sup>99</sup> More specifically, they found “a significant positive relationship between test performance and housing values on the higher performing side of the [school] boundary.”<sup>100</sup> Given the link between school quality and home values, disparate educational quality among school districts perpetuates wealth inequality, as home

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92. *Id.* at 21.

93. *Id.*

94. See generally Anthony Francis Bruno, *Is Achieving Equal Educational Opportunity Possible - An Empirical Study of New York State Public Schools*, 25 J. C.R. & ECON. DEV. 225 (2011).

95. *Id.* at 240.

96. *Id.* at 244.

97. S. EDUC. FOUND., *supra* note 3, at 18.

98. Thomas J. Kane, Stephanie K. Riegg & Douglas O. Staiger, *School Quality, Neighborhoods, and Housing Prices*, 8 AM. L. & ECON. REV. 183, 183–84 (2006) (finding “that a one student-level [standard deviation] difference in a school’s mean test score was associated with a 10% point difference in house value.”).

99. *Id.* at 184.

100. *Id.* at 195 (cautioning that test scores may be a proxy for an unmeasured neighborhood variable).

wealth constitutes sixty percent of all wealth among middle class Americans.<sup>101</sup> Since homes located in areas with better schools are more valuable, in addition to the obvious effect of improving student outcomes,<sup>102</sup> educational inequality also perpetuates economic inequality by giving parents who own homes in better school districts a wealth boost.

In addition to its socioeconomic ties, educational inequality also possesses racial ties. Based on historic discrimination, “African-Americans were pushed into . . . undesirable neighborhoods.”<sup>103</sup> School district lines were then drawn around African Americans, depriving them of “the proper fiscal resources necessary to succeed.”<sup>104</sup> Given the purposeful connection between race and school districts, school funding differences, which leads to school quality differences, perpetuates racial inequality.<sup>105</sup>

Quality education has many tangential benefits beyond improved academic achievement. For example, “[t]he economic benefits of more education are not only vested in higher productivity and earnings, but also in a wide variety of other benefits including health, mobility, improved child-rearing, family planning, and consumption decisions.”<sup>106</sup> The higher earnings realized by a quality education are a result of higher worker productivity, as employers will pay higher salaries to more productive employees.<sup>107</sup> Due to the additional benefits associated with a quality education, unequal education further disadvantages students in poorer districts who receive a worse education. Thus, improving educational quality for all students, no matter their socioeconomic status, is of vital importance.

#### IV. POTENTIAL SOLUTIONS TO REDUCE EDUCATIONAL INEQUALITY

##### *A. Overrule San Antonio*

A few scholars argued that overruling *San Antonio* is necessary to reduce educational inequality, as a ruling that education is a fundamental right would allow for more federal intervention into schools.<sup>108</sup> However, the federal interventions that have occurred thus far failed at improving education,<sup>109</sup> so

101. Thomas M. Shapiro, *Race, Homeownership and Wealth*, 20 WASH. U. J.L. & POL’Y 53, 59 (2006).

102. Kane, Riegg & Staiger, *supra* note 98.

103. Neda N. Brisport, *Racism & Power: The Inaccessibility of Opportunity in the Educational System in the United States*, 70 NAT’L L. GUILD REV. 17, 24–25 (2013).

104. *Id.* at 25. Decades after Brown, racial segregation in schools persists. Taunya Lovell Banks, *Brown at 50: Reconstructing Brown’s Promise*, 44 WASHBURN L.J. 31, 32 (2004).

105. Brisport, *supra* note 103, at 25; Banks, *supra* note 104, at 32.

106. Henry M. Levin, *The Economics of Education*, 4 ALB. GOV’T L. REV. 394, 399 (2011) (citing Robert H. Haveman & Barbara L. Wolfe, *Schooling and Economic Well-Being: The Role of Nonmarket Effects*, 19 J. HUM. RES. 377, 380–81 (1984) (summarizing the benefits of education on economic growth)).

107. *Id.*

108. Shakira N. Mack, *Beyond Brown v. Board of Education: Finding Equal and Adequate Education in the 21st Century*, 5 S. REGION BLACK STUDENTS ASS’N L.J. 51, 67 (2011).

109. The No Child Left Behind Act has not increased student proficiency; rather, it resulted in increased standardized testing and flight to private schools. Darrell D. Jackson, *Teaching Tomorrow’s*

overruling *San Antonio* may not have a huge impact, especially since many state courts already effectively overruled *San Antonio* by relying on their state constitutions.<sup>110</sup> However, given that subsequent research swept away the empirical basis that the decision relied upon when making inferences about the true impact of school funding on education,<sup>111</sup> overruling *San Antonio* is still desirable, as it would, at the very least repudiate flawed precedent. Moreover, a ruling that education is a fundamental right would likely help to make education more of a priority for politicians in terms of increasing the allocation of federal funds to education<sup>112</sup> and would benefit children in the few states that declined to find education a fundamental right under their respective state constitutions.<sup>113</sup> Thus, overruling *San Antonio* is desirable, but, given that inequity remains in the states that overruled *San Antonio* on state law grounds,<sup>114</sup> repudiating this flawed precedent cannot be the only solution.

### B. Preschool for Low-Income Children

There is no known cognitive ability gap by socioeconomic status at birth, but by age four, high income children score far higher on literacy and mathematical exams; accordingly, early intervention is necessary to reduce educational inequality.<sup>115</sup> Studies show that “[c]lose to 40% of the associations between economic disadvantage and young children’s lower academic performance are explained by the lower quality of home learning environments.”<sup>116</sup> Research has also demonstrated that the vocabularies of impoverished three-year-old children were only half that of affluent toddlers and that “differences due to socioeconomic status in vocabulary growth over children’s first 3 years of life were fully accounted for by the quality and quantity of vocabulary used by their mothers.”<sup>117</sup>

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*Citizens: The Law’s Role in Educational Disproportionality*, ALA. C.R. & C.L. L. REV. 215, 246–49 (2014); Ryan Lee, *Federal Government Coerces the Adoption of Common Core: Keeping America’s Youth Common among the World’s Elite*, 49 J. MARSHALL L. REV. 791, 804 (2016). Moreover, early results on Common Core suggest that Common Core has not been successful at improving student reading proficiency. TOM LOVELESS, BROOKINGS INST., *Measuring Effects of the Common Core*, in HOW WELL ARE AMERICAN STUDENTS LEARNING? 18 (2015), [https://www.brookings.edu/wp-content/uploads/2016/06/2015-Brown-Center-Report\\_FINAL-3.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/2015-Brown-Center-Report_FINAL-3.pdf).

110. *See, e.g.*, Horton v. Meskill, 376 A.2d 359, 369 (Conn. 1977) (finding education is a fundamental right under the Connecticut constitution); *see also* Serrano v. Priest (*Serrano II*), 557 P.2d 929, 956 (Cal. 1976) (holding that funding schools based on district wealth violated the Equal Protection Clause of the California constitution).

111. *See supra* Part II.B.

112. Mack, *supra* note 108, at 67.

113. *See, e.g.*, Danson v. Casey, 399 A.2d 360, 365–67 (Pa. 1979) (declining to find the school’s funding system unconstitutional); *see also* Citizens of Decatur for Equal Educ. v. Lyons-Decatur Sch. Dist., 739 N.W.2d 742, 760–61 (Neb. 2007) (holding there is no right to equal school funding).

114. Reynolds, *supra* note 57, at 769–70.

115. Palma Joy Strand, *Education-as-Inheritance Crowds out Education-as-Opportunity*, 59 ST. LOUIS U. L.J. 283, 292 (2015).

116. Katherine A. Magnuson et al., *Inequality in Preschool Education and School Readiness*, 41 AM. EDUC. RES. J. 115, 117 (2004).

117. *Id.*

In order to combat the achievement gap that begins even prior to children entering school, “preschool is [being] recognized as important for providing children—especially those from low- and middle-income families—with the cognitive and socio-emotional foundation that enables them to arrive in kindergarten ready to learn.”<sup>118</sup> Furthermore, studies found that “[c]hildren in center-based preschool programs in the year prior to school entry have better reading and math skills, and this advantage persists to the spring of first grade,”<sup>119</sup> as “[a]ttending a preschool program that provides a cognitively stimulating environment and opportunities for interactions with a responsive caregiver may compensate for a less stimulating home environment” often experienced by low-income children.<sup>120</sup> Moreover, attending preschool programs has the added benefit of reducing childhood delinquency.<sup>121</sup> Unfortunately, preschool is prohibitively expensive for low-income parents and the programs in place to provide preschool to low-income children, like Head Start, are underfunded and unable to reach the number of children who need assistance.<sup>122</sup> Given that preschool has the potential to close the early achievement gap between rich and poor children, providing preschool to all poor children is of utmost importance.

### *C. Improve Teacher Quality*

Some scholars find that teachers value their “work environment” over their salaries,<sup>123</sup> which makes it more difficult for low-income schools to attract teachers. More specifically, teachers consider school safety, the amount of time they will have to devote to classroom management, and parent involvement when considering which school to choose.<sup>124</sup> As a result, low-income schools are more likely to employ teachers who do not hold certifications in the subjects they teach and are more likely to experience teacher absences and high turnover.<sup>125</sup>

Ronald Ferguson studied the effects of teacher quality on student achievement in 1991.<sup>126</sup> As stated previously, he found a link between teacher quality, student achievement, and district wealth.<sup>127</sup> Specifically, he and others have found that teachers were both attracted to districts with higher socioeconomic status and districts that provided higher salaries.<sup>128</sup> Given this finding, Ferguson posited that

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118. Strand, *supra* note 115, at 292 (footnote omitted).

119. Magnuson et al., *supra* note 116, at 141.

120. *Id.* at 143.

121. David P. Farrington & Brandon C. Welsh, *Delinquency Prevention Using Family-Based Interventions*, 13 CHILD. & SOC’Y 287, 293 (1999).

122. *See id.* at 292–93; Magnuson et al., *supra* note 116, at 118–19.

123. Richard D. Kahlenberg, *From All Walks of Life: New Hope for School Integration*, AM. EDUC. 2, 13 (Winter 2012–13), <https://www.aft.org/sites/default/files/periodicals/Kahlenberg.pdf>.

124. Barry Gabay, *Socioeconomic Integration and the Greater Richmond School District: The Feasibility of Interdistrict Consolidation*, 50 U. RICH. L. REV. 397, 409 (2015).

125. *Id.*

126. *See generally* Ferguson, *supra* note 3.

127. *See id.* at 488–90.

128. *See id.*; Greg J. Duncan & Richard J. Murnane, *Growing Income Inequality Threatens American Education*, 95 PHI DELTA KAPPAN 8, 13 (2014).

a possible means to achieve parity in teacher quality across socioeconomically disparate districts would be for the state to enforce a system where teachers would receive “higher pay for teaching in districts that would otherwise be less attractive to teachers—principally, districts where the average socioeconomic status of families is lower.”<sup>129</sup> Ferguson cautions that merely equalizing salaries across school districts will be insufficient to reduce disparities in teacher quality across districts, as teachers will still prefer to work in districts with higher socioeconomic status.<sup>130</sup> A salary increase in poorer districts will be necessary to entice teachers to work in these areas and limit the effect of socioeconomic status on teachers’ employment decisions.

Linda Darling-Hammond also conducted a study of teacher quality.<sup>131</sup> Her study, among other things, compared student achievement in New Jersey and Connecticut, two “demographically and economically similar states.”<sup>132</sup> In Connecticut, a state with higher levels of student poverty than New Jersey, the state raised teacher salaries and “equalized districts’ abilities to pay for qualified teachers, [whereas] New Jersey decreased its requirements for teacher preparation and licensing.”<sup>133</sup> In New Jersey, the majority of the less-qualified teachers were hired to work in low-wealth school districts.<sup>134</sup> Darling-Hammond found that, even though New Jersey was more affluent, fourth grade math scores were lower than those in Connecticut, suggesting that investing in quality teachers can reduce the effects of wealth disparities.<sup>135</sup>

Moreover, when comparing the demographically similar states of Georgia and North Carolina, Darling-Hammond found that North Carolina outperformed Georgia academically, even though salaries were similar, because when Georgia increased teacher salaries, it did not also increase teacher quality standards.<sup>136</sup> North Carolina schools outperformed Georgia’s because North Carolina introduced rigorous teacher examinations and raised academic requirements for teachers.<sup>137</sup> Thus, in order to ensure that the goal of increased student achievement is realized, it is important to impose heightened standards for teachers in addition to increasing their salaries.<sup>138</sup> More specifically, given that Darling-Hammond found that “[t]he most consistent highly significant predictor of student achievement in reading and mathematics in each year tested is the proportion of well-qualified teachers in a state: those with full certification and a major in the field they teach,”<sup>139</sup> it would be wise for states to impose strict certification requirements for teachers.

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129. Ferguson, *supra* note 3, at 466–67.

130. *See id.* at 489.

131. Darling-Hammond, *supra* note 84, at 1.

132. *Id.* at 20.

133. *Id.*

134. *Id.*

135. *See id.*

136. Darling-Hammond, *supra* note 84, at 20.

137. *See id.* at 20–21.

138. *Id.*

139. *Id.* at 23.

### *D. Redistrict*

Residential segregation by income is on the rise.<sup>140</sup> An unfortunate side effect of this phenomenon is that “a child from a poor family is two to four times as likely as a child from an affluent family to have classmates . . . with behavioral problems and low skills,” which then negatively impacts the learning of other students in the class.<sup>141</sup> Moreover, poor children are more likely to attend school districts with high numbers of new students, due to the fact that those in poverty move more frequently, which can lead to greater disruptions in instruction and cause other students in the class to fall behind.<sup>142</sup> Furthermore, high poverty school districts find it hard to attract and retain qualified teachers.<sup>143</sup> Additionally, school district lines have racist origins. District lines were historically drawn around neighborhoods that African Americans were pushed into; these districts were then denied adequate resources.<sup>144</sup>

To remedy these issues, some have argued that redrawing district lines would result in a more even distribution of resources, “thus leading to a more feasible vision of equal educational opportunity.”<sup>145</sup> Redrawing district lines to equalize wealth and socioeconomic status within districts could also help to maintain teacher quality in each district, as once all districts are of equal wealth, there would be no high-income districts for more qualified teachers to prefer.

## V. A MULTI-FACETED APPROACH TO REDUCING EDUCATIONAL INEQUALITY

### *A. Reducing Intra-State Inequality*

Given the wealth of research demonstrating a link between district wealth and educational achievement, even where per-pupil expenditures are similar,<sup>146</sup> eliminating wealth differences among districts through redistricting would be an efficient way to combat educational inequality in a multitude of ways with just one change.<sup>147</sup> Furthermore, since infusions of cash into poor districts have often failed to equalize student achievement between poor and rich districts, eliminating the school district segregation between rich and poor is the only viable option.<sup>148</sup>

Redrawing district lines, so that each district is integrated socioeconomically would have many benefits. For example, social capital would be evenly distributed across districts, reducing the impact of social capital differences on educational

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140. Duncan & Murnane, *supra* note 128, at 9.

141. *See id.* at 12.

142. *Id.* at 13.

143. *Id.*

144. Brisport, *supra* note 103, at 24–27.

145. *Id.* at 27.

146. *See* Ferguson, *supra* note 3, at 467–70.

147. *See* Brisport, *supra* note 103, at 24–27.

148. Gabay, *supra* note 124, at 417–18 (noting that, in Virginia, the poorer Richmond School district receives more funding than the richer Chesterfield or Henrico school districts, but Richmond’s academic environment has not improved).

achievement.<sup>149</sup> Moreover, if districts are made equal socio-economically, teacher quality across districts likely would also equalize, as teachers would no longer be able to gravitate towards high-wealth districts.<sup>150</sup> Furthermore, when districts are equalized socio-economically, districts will be able to generate equal property taxes to put towards schools and have an equal tax burden. Redistricting will also likely lessen the link between school quality and property values, as the districts will be inclusive of low-income and high-income housing, reducing the advantage that parents in wealthy districts have in their property valuations due to better school quality.<sup>151</sup> Lastly, redistricting should reduce the concentration of private donations in wealthy districts, as wealthy parents would be dispersed throughout the districts and, when choosing where to donate, would likely choose their children's schools.

Redistricting to equalize socio-economic status is not just beneficial in theory. For example, in Wake County, North Carolina, the school district passed a rule mandating that no more than forty percent of the students in a school could be eligible for free lunch.<sup>152</sup> After redistricting, "the percentage of third through eighth grade African-American students who scored on grade level on state tests increased from 40 percent to 80 percent."<sup>153</sup> Additionally, more low-income students in Wake County passed the high school exit exam than those in surrounding counties.<sup>154</sup>

It is important to note that, after *Parents Involved in Community Schools v. Seattle School District No. 1*, redistricting must be race-neutral, as the Supreme Court in this case held that the desire for diversity cannot justify the use of race in school assignment plans.<sup>155</sup> Fortunately, socioeconomic status is more determinative of student achievement than race, so redistricting based on wealth is not only a more efficient option, but it also will not pose the same constitutional challenges as redistricting by race.<sup>156</sup> Since wealth is not a suspect class, according to *San Antonio*,<sup>157</sup> legislative plans will only have to face the minimal standard of rational scrutiny, which can be easily satisfied by claiming that educational adequacy and social diversity are the goals for the redistricting plan.<sup>158</sup> Thus, passing a law establishing a school district redistricting plan is legally possible,<sup>159</sup> even if it may face pushback from wealthy voters.

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149. GRISSMER ET AL., *supra* note 6, at 17–18.

150. *See* Ferguson, *supra* note 3, at 488–90.

151. *See supra* Section III.C.

152. Gabay, *supra* note 124, at 423.

153. *Id.* (citing Alan Finder, *As Test Scores Jump, Raleigh Credits Integration by Income*, N.Y. TIMES (Sept. 25, 2005), <http://www.nytimes.com/2005/09/25/education/as-test-scores-jump-raleigh-credits-integration-by-income.html>).

154. *Id.* (citing Taryn Williams, Note, *Outside the Lines: The Case for Socioeconomic Integration in Urban School Districts*, 2010 BYU EDUC. & L.J. 435, 447 (2010)).

155. 551 U.S. 701, 723 (2007).

156. *See* Gabay, *supra* note 124, at 414.

157. 411 U.S. 1, 28 (1973).

158. Gabay, *supra* note 124, at 419.

159. It is worth pointing out that redistricting is common outside the realm of public education. For example, states redraw electoral districts every ten years to comply with the Supreme Court's ruling in



Although people sometimes forget, school districts are not sovereign; rather, they derive power from the state, and the state may alter or take away any delegations of power at will.<sup>160</sup> Moreover, many state courts have held that the state's duty to educate its citizens may "may not be delegated to districts," so states bear the ultimate responsibility for satisfying the education clauses of state constitutions.<sup>161</sup> Furthermore, states have been more willing lately to get involved in education, consolidating districts and reducing the connection between local property taxes and school funding.<sup>162</sup> Redistricting, though, may not be popular "in the court of public opinion," as consolidation efforts have not been favored by the general public; moreover, rich districts will likely fight to retain their benefits.<sup>163</sup> Wealthy people often deliberately choose to live among other wealthy residents in order to reap the benefits of high taxable wealth.<sup>164</sup> These people will likely staunchly oppose the diffusion of their resources. However, a way to limit this pushback would be to frame redistricting as a benefit to the children of wealthy and white parents.

A campaign could be undertaken to share the research that shows that diverse classrooms benefit all students by fostering critical thinking skills and improving the test scores of all students.<sup>165</sup> Moreover, the campaign can debunk myths by sharing that studies show that "[t]here is no evidence that integrated schooling harms any group at any age in any subject area."<sup>166</sup> Furthermore, the campaign can share that teachers at integrated schools are better qualified and "parent involvement is greater."<sup>167</sup> Framing redistricting as a means to improve all children's academic achievement may help to generate enough support to enable the legislature to act without jeopardizing re-election.

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*Reynolds v. Simms*. Aaron J. Saiger, *The School District Boundary Problem*, 42 URB. L. 495, 532 (2010). Such a practice is done to ensure equality between districts in terms of voting population, as following the principle of "one-person-one-vote" is required. *See id.* (citing *Reynolds v. Sims*, 377 U.S. 533, 583 (1964)). However, given the political gerrymandering that arose out of the mandatory voting district redistricting, safeguards would have to be in place to ensure that socioeconomic heterogeneity within districts remained the main goal of a school district redistricting plan. Michael Wines, *Is Partisan Gerrymandering Legal? Why the Courts are Divided*, N.Y. TIMES (Jan. 11, 2018), <https://www.nytimes.com/2018/01/11/us/gerrymander-court-north-carolina-pennsylvania.html>.

160. *See* Saiger, *supra* note 159, at 511–12 (citing *Milliken v. Bradley*, 418 U.S. 717, 794 (1974) (Marshall, J., dissenting)).

161. *See* *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806, 813 (Ariz. 1994) (en banc); *Montoy v. State*, 112 P.3d 923, 937 (Kan. 2005); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 205, 207, 211–12 (Ky. 1989); *McDuffy v. Sec'y*, 615 N.E.2d 516, 548 (Mass. 1993); Saiger, *supra* note 159, at 512.

162. Saiger, *supra* note 159, at 542–43.

163. *See id.* at 516, 545.

164. *Id.* at 503.

165. ROSLYN ARLIN MICKELSON, THE NAT'L COAL. ON SCH. DIVERSITY, RESEARCH BRIEF: SCHOOL INTEGRATION AND K-12 OUTCOMES: AN UPDATED QUICK SYNTHESIS OF THE SOCIAL SCIENCE EVIDENCE (2016), <http://school-diversity.org/pdf/DiversityResearchBriefNo5.pdf>; Philip Tegeler, *Diverse Classrooms Also Benefit White Students*, HUFFINGTON POST (Mar. 5, 2013), [https://www.huffingtonpost.com/philip-tegeler/diverse-classrooms-also-b\\_b\\_2403328.html](https://www.huffingtonpost.com/philip-tegeler/diverse-classrooms-also-b_b_2403328.html).

166. MICKELSON, *supra* note 165, at 2.

167. *Id.* at 3.

However, if the campaign fails to change the minds of wealthy parents, making redistricting politically unfeasible, civil suits are still an option. Suits could be brought under the education clauses of state constitutions and make similar arguments as the third wave of school funding litigation. For example, it could be argued that maintaining school districts that are not socioeconomically diverse fails to provide the general and uniform school system guaranteed in many state constitutions, as research has shown that merely altering the way schools are funded is not enough to create educational equality.<sup>168</sup> Moreover, maintaining socioeconomically homogenous school districts would be a “state-created . . . system[] that create[s] “gross disparities.”<sup>169</sup> Thus, there is a legal basis for litigating to force schools to redistrict.<sup>170</sup> Furthermore, redistricting should be judicially manageable, as courts are used to dealing with redistricting in voting cases.<sup>171</sup> Redistricting is a solution that would not require intense judicial oversight over the implementation of redistricting plans.<sup>172</sup> It is important though, that when implementing a redistricting plan, the redistricting be periodic, so that re-segregation does not occur due to fluctuating property values or new construction.<sup>173</sup>

### *B. Reducing Inter-State Inequality*

Although many federal interventions failed in the past,<sup>174</sup> limited federal involvement is not necessarily unwise. Given that the federal government already provides substantial resources to states to fund public schools and that conditional federal spending is constitutional,<sup>175</sup> Congress can condition the provision of the supplemental federal funds it provides for public education to states on adopting uniform standards for teacher qualifications.<sup>176</sup> To more effectively reduce

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168. *See supra* Part III.B.

169. *See* *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806, 816 (Ariz. 1994) (en banc).

170. It is important to point out that, even if redistricting can be ordered by the court, due to unfavorable precedent, parents cannot be prevented from reacting to the redistricting plan by sending their children to private schools. *See Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925). However, since constitutional law has changed since *Pierce* was decided, it is possible that one day *Pierce* could be overruled on the grounds that it would pass the new rational basis test. *See* Thomas Kleven, *Mandating Public School Attendance: A Proposal for Achieving Racial and Class Integration*, 34 T. MARSHALL L. REV. 109, 124–26 (2008). Overruling *Pierce* and mandating public school attendance, while it may not be politically feasible, would prevent private school flight from being a potential side effect of redistricting.

171. Saiger, *supra* note 159, at 540.

172. *Id.* at 539. Ordering the redistricting of schools to improve socio-economic inequality is not mere fantasy. In 1967, the United States District Court for the District of Columbia ordered the Board of Education for the District of Columbia to devise a “plan for pupil assignment eliminating the racial and economic discrimination found to exist in the operation of the Washington public school system.” *Hobson v. Hansen*, 269 F.Supp. 401, 407 (D.D.C. 1967).

173. *See* Saiger, *supra* note 159, at 533.

174. Jackson, *supra* note 109, at 246–49.

175. *S.D. v. Dole*, 483 U.S. 203, 207–08 (1987); *United States v. Butler*, 297 U.S. 1, 73–75 (1936); Lee, *supra* note 109, at 806.

176. Conditions can be put on spending, provided the condition is not coercive, unambiguous, and relates to the spending. *Dole*, 483 U.S. at 207–08; *Butler*, 297 U.S. at 73–75. Federal funding of schools likely could be linked with requirements that schools adopt uniform teacher qualifications without running

educational inequality, Congress could also expand Head Start, a beneficial preschool program for low-income children that helps lessen the achievement gap that begins in early childhood and is administered entirely by the government.<sup>177</sup>

Federal requirements for teacher qualifications likely will not receive pushback, as No Child Left Behind already requires everyone who teaches core subjects to be “highly qualified.”<sup>178</sup> Moreover, since the definition of “highly qualified” requires teachers to obtain a bachelor’s degree in the subject to be taught and full state teacher certification, a simple change of the statute to require teachers to meet federal certification standards should not be difficult.<sup>179</sup>

Similarly, expanding Head Start should be simple, since it is a federal program that has been in place for over fifty years, although it will be costly.<sup>180</sup> In order to educate all preschool-age children, the government needs to spend \$100 billion per year, rather than the \$30 billion it spent in 2017 on early-childhood education and care.<sup>181</sup> Efforts to expand Head Start have already begun, although none of these efforts come close to satisfying the \$100 billion goal.<sup>182</sup> Since 2008, Head Start funding has been increased in all but two years.<sup>183</sup> Moreover, former President Obama’s 2016 budget included funds to transition Head Start to a full-day program.<sup>184</sup> Furthermore, in Congress’ March 2018 budget proposal, additional funds have been appropriated to Head Start under the budget category “apprenticeships.”<sup>185</sup> Extra money for Head Start is being provided, but not to improve children’s education; rather, it is being promoted as a “workforce development” program that will allow more parents to return to work.<sup>186</sup> This new spending bill is a step in the right direction, but, as mentioned above, even more money is required to expand Head Start to all children. It may be difficult, though, to motivate Congress to approve a three-fold funding increase.

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afoul of the Tenth Amendment. Arguably, the spending is for the general welfare and the condition does not violate any independent constitutional bar. Moreover, arguably, the requirement to adopt standard teacher qualifications is unambiguous and related to the spending.

177. Magnuson et al., *supra* note 116, at 118–19; U.S. CONG. RESEARCH SERV., RL30952, HEAD START: BACKGROUND AND FUNDING (2014) (stating studies show that “providing access to Head Start had positive benefits for both three-year-olds and four-year-olds in cognitive, health, and parenting domains, and for three-year-olds in the social-emotional domain”).

178. See 20 U.S.C. §6319(a)(2); JOHNSON & REDFIELD, *supra* note 21, at 118.

179. JOHNSON & REDFIELD, *supra* note 21, at 118–19.

180. *Why Head Start: Why it Matters*, NAT’L HEAD START ASS’N, <https://www.nhsa.org/why-head-start/why-it-matters> (last visited Dec. 16, 2018).

181. Heather Long, *By Age 3, Inequality is Clear: Rich Kids Attend School. Poor Kids Stay with a Grandparent*, The Washington Post, Sept. 26, 2017.

182. NAT’L HEAD START ASS’N, 115<sup>TH</sup> CONGRESS POLICY AGENDA (2017), [https://www.nhsa.org/files/resources/nhsa-115th-congress-policy-agenda\\_0.pdf](https://www.nhsa.org/files/resources/nhsa-115th-congress-policy-agenda_0.pdf).

183. *Id.*

184. *Why Head Start: Why it Matters*, *supra* note 180.

185. Mike Debonis, Ed. O’Keefe & Erica Werner, *Here’s What Congress is Stuffing into its \$1.3 Trillion Spending Bill*, WASHINGTON POST (Mar. 22, 2018), [https://www.washingtonpost.com/news/powerpost/wp/2018/03/22/heres-what-congress-is-stuffing-into-its-1-3-trillion-spending-bill/?utm\\_term=.e1d361c9d4a1](https://www.washingtonpost.com/news/powerpost/wp/2018/03/22/heres-what-congress-is-stuffing-into-its-1-3-trillion-spending-bill/?utm_term=.e1d361c9d4a1).

186. *Id.*

Federal intervention could also help implement redistricting plans. If states are unwilling to voluntarily redraw school district lines, Congress could condition federal spending for public education on redistricting. Given the history of federal involvement in public schooling through conditional federal spending and the fact that these conditions are for the general welfare, unambiguous, related to the spending, and not independently unconstitutional, this path toward achieving interstate educational equality is promising.<sup>187</sup> Moreover, conditional federal spending would more than likely be effective, as states hardly ever pass up the opportunity to receive federal funds.<sup>188</sup> However, the use of conditional federal spending should be done sparingly and without raising federal taxes or attaching too many conditions to the spending to avoid a challenge in the Supreme Court. This is necessary, as a recent Supreme Court dissenting opinion suggests that the conservative members of the Court would consider the use of this practice to create the full federal financing of schools in exchange for substantially increased federal involvement unconstitutional coercion.<sup>189</sup> Moreover, if state legislators are unwilling to redistrict voluntarily because they are unable to gain the approval of wealthy residents, it is unlikely that congressmen will be brave enough to risk voter reprisal by conditioning federal funds on the adoption of a redistricting plan. Thus, the wisest approach may be to limit federal involvement to expanding Head Start and altering the definition of “highly qualified” teachers, while leaving redistricting and the majority of school financing to the states.<sup>190</sup>

## VI. CONCLUSION

Since the Supreme Court’s disappointing decision in 1973, efforts have been undertaken to lessen the link between economic inequality and educational inequality, but these efforts have not proved successful.<sup>191</sup> A more nuanced approach to reducing educational inequality is necessary, since it is not solely a byproduct of school funding differences.<sup>192</sup> Given that we, as a society, now recognize the important role that education plays in shaping our children’s futures, we cannot settle for mere funding equality. Redrawing school district lines to be socio-economically inclusive and providing preschool to low-income children would help to alleviate the educational inequality that stems from social capital differences between the rich and the poor.<sup>193</sup> These proposed measures are necessary to achieve the lofty, but important goal of educational equality.

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187. *S.D. v. Dole*, 483 U.S. 203, 207–08 (1987); *United States v. Butler*, 297 U.S. 1, 73–75 (1936); Lee, *supra* note 109, at 806.

188. JOHNSON & REDFIELD, *supra* note 21, at 200.

189. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 680–81 (Scalia, J., dissenting) (noting that full federal funding of schools in exchange for “conditions governing such things as school curriculum, the hiring and tenure of teachers, the drawing of school districts, the length and hours of the school day, the school calendar, a dress code for students, and rules for student discipline” would be coercive due to the inevitable double taxation that states would face if they were to refuse the funds).

190. 20 U.S.C. §6319(a)(2); JOHNSON & REDFIELD, *supra* note 21, at 118.

191. *See supra* Part II.

192. *See supra* Part III.A.

193. *See supra* Part V.