

Promoting Economic Mobility Through Adequate Community College Funding

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ABSTRACT

Community colleges have the potential to be a powerful force to alleviate poverty in the United States. However, the persistent underfunding of community colleges inhibits their ability to meet the aspiration of economic mobility for all students as they serve students who have more significant needs with fewer resources than public or private four-year institutions of higher education. The challenges faced by community colleges mirror the circumstances faced by many K-12 schools in low-income communities and communities of color in the United States where limited school funding has contributed to inequitable access to opportunity and inhibited student outcomes. However, unlike the community college context, decades of litigation and strategic advocacy have contributed to improvements in K-12 school funding.

This Note argues that key lessons from the K-12 school funding litigation can be applied to the community college context to both increase funding available to community colleges and improve the funding pipeline so that it better accounts for the unique needs in the community college context. This would be achieved through a dual-pronged strategy. The first prong centers on litigation advancing the argument that states have a constitutional obligation to adequately fund community colleges. The second prong requires political advocacy at the state and federal levels. By taking a multi-pronged approach advancing both litigation and advocacy efforts, those seeking to achieve more adequate community college funding amplify their power and reach. Community colleges have the ability to promote economic mobility and alleviate poverty. Through collective legal and advocacy efforts, this potential can be realized.

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I. INTRODUCTION

Community colleges have the potential to be a powerful force to alleviate poverty in the United States. Research shows that individuals who complete at least some post-secondary education have higher lifetime earnings, lower rates of poverty, and lower reliance on public benefits than their peers who have only earned a high school diploma.¹ Further, community colleges' comparatively low tuition, commitment to serve all students, and geographic proximity to their students eliminate many of the barriers that generally deter individuals from enrolling in four-year institutions.² However, community colleges have failed to reach their potential. Persistent nationwide underfunding has left community colleges seeking to serve students who have more significant needs with fewer resources than public or private four-year institutions of higher education.³ As a result, instructional opportunities, wraparound supports, and, ultimately, student outcomes suffer.

These results mirror the circumstances confronted by many K-12 schools in low-income communities and communities of color in the United States where limited school funding has contributed to inequitable access to opportunity and inhibited student outcomes.⁴ For decades, lawyers, activists, and policy makers have fought to achieve equitable, adequate funding for K-12 schools, making some significant gains through a combination of litigation and strategic policy.⁵ Unlike K-12 school funding, policy and limited litigation efforts have not found

1. Pamela Loprest & Cheryl Hyman, *Stepping on the Gas: Community Colleges as Engines of Economic Mobility*, U.S. P'SHIP ON MOBILITY FROM POVERTY iv (Feb. 2018); Richard D. Kahlenberg et al., *Policy Strategies for Pursuing Adequate Funding of Community Colleges*, in RESTORING THE AMERICAN DREAM: PROVIDING COMMUNITY COLLEGES WITH THE RESOURCES THEY NEED 186–87 (2019); Century Found., *Report of the Working Group*, in RESTORING THE AMERICAN DREAM: PROVIDING COMMUNITY COLLEGES WITH THE RESOURCES THEY NEED 11–13 (2019).

2. Loprest & Hyman, *supra* note 1, at 3; Am. Ass'n of Cmty. Colls., *Fast Facts 2022* (Feb. 8, 2022), <https://www.aacc.nche.edu/2022/02/28/42888/#:~:text=2022%20AACC%20Fast%20Facts%3A%20Nearly,released%202022%20AACC%20Fast%20Facts> [hereinafter AACC Fast Facts 2022].

3. Kahlenberg et al., *supra* note 1, at 179–82.

4. Carmel Martin et al., *A Quality Approach to School Funding: Lessons Learned From School Finance Litigation*, CAP (Nov. 13, 2018), <https://americanprogress.org/article/quality-approach-school-funding/>.

5. Kahlenberg et al., *supra* note 1, at 202 (noting thirty-seven states now recognize that “students with greater needs deserve greater resources” in their K-12 funding formula).

the same success in improving school funding for community colleges.⁶ However, that does not mean such an approach could not be successful.

The persistent underfunding of community colleges inhibits their ability to meet the aspiration of economic mobility for all students. This Note seeks to address that challenge by drawing on key lessons from K-12 school funding lawsuits and suggesting ways that those lessons may support increased funding for community colleges. In Part II, the Note begins by providing an overview of community colleges and their role as engines of economic mobility. Part III continues by providing a broad overview of how community colleges are funded before discussing historic and current funding challenges confronting community colleges. Part IV discusses the impact of those funding inadequacies on student outcomes and evidence supporting the conclusion that increased funding will positively impact students. In Part V, the Note discusses the evolution of K-12 school funding lawsuits with particular attention to adequacy suits alleging that inadequate school funding violates the state's duty under its constitution. It also underscores important lessons from those suits. Part VI applies those lessons in the community college context to argue that states fail to meet their constitutional obligation to provide students with an efficient education when they inadequately fund community colleges. In Part VII, the Note also argues that policy changes must take place, either in response to or in tandem with litigation, to improve community college funding, and provides a series of federal and state policy recommendations. It is through a two-pronged approach relying on litigation and policy that advocates can advance meaningful change for historically under-resourced community colleges. The Note briefly concludes in Part VIII.

II. OVERVIEW OF COMMUNITY COLLEGES & THEIR ROLE IN ECONOMIC MOBILITY

Over 1,000 community colleges currently exist across the country, educating more than ten million students.⁷ Community colleges are public institutions of higher education that provide students with two-year degrees and vocational and technical certificates.⁸ Within the broader higher education space, community colleges are relatively unique in that they operate on an “open access” basis, meaning they do not screen out students in the same way that most four-year institutions do.⁹

6. See generally Tammy Kolbe & Bruce D. Baker, *Fiscal Equity and America's Community Colleges*, 90 J. OF HIGHER EDUC. 111 (2018); see Alicia C. Dowd & John L. Grant, *Equity and Efficiency of Community College Appropriations: The Role of Local Financing*, 29 REV. OF HIGHER EDUC. 167, 168 (2006); Alice Gomstyn, *Oregon Judge Rejects Community-Colleges' Lawsuit Seeking More Money*, CHRON. OF HIGHER EDUC. (Nov. 17, 2003), <https://www.chronicle.com/article/oregon-judge-rejects-community-colleges-lawsuit-seeking-more-state-money/>.

7. AACC Fast Facts 2022, *supra* note 2, at 1.

8. Alexandra Pannoni & Emma Kerr, *Everything You Need to Know About Community Colleges: FAQ*, U.S. NEWS & WORLD REP. (July 14, 2020), <https://www.usnews.com/education/community-colleges/articles/2015/02/06/frequently-asked-questions-community-college#1>.

9. Loprest & Hyman, *supra* note 1, at 3.

Further, the comparatively low cost of attendance¹⁰ and the geographic proximity of the schools to the communities they serve¹¹ help community colleges provide wider access to higher education. As a result, students who may not be able to attend a four-year institution (e.g., due to low high school grades, economic hardship, non-academic obligations, etc.) can enroll in their local community college.¹² In turn, community colleges enroll more students in their certificate and associate degree programs than are enrolled in bachelor's degree programs in the United States.¹³

A. *Who Attends Community Colleges—Demographics of Community College Students*

The relative affordability, proximity, and open access admissions policies, which are unique to community colleges within the broader higher education continuum, significantly influence which students enroll at community colleges. Community colleges enroll a greater proportion of Black and Latino students than four-year institutions.¹⁴ Among individuals enrolled in some post-secondary education, fifty-six percent of Black students are enrolled in community college programs, while forty-four percent are enrolled in four-year colleges.¹⁵ Similarly, sixty-two percent of Latino students enrolled in some post-secondary education are enrolled in community college while thirty-eight percent are enrolled in a four-year institution.¹⁶

Community college students are also more likely to come from a low-income background than students at four-year institutions. Over fifty percent of students enrolled at community colleges come from the two lowest socioeconomic status quartiles.¹⁷ By comparison, only twenty-one percent of students at the most competitive four-year colleges come from the two lowest socioeconomic status quartiles.¹⁸ Further, among all students from the lowest socioeconomic quartile enrolled in post-secondary education, nearly sixty percent attend community college.¹⁹

Students at community colleges also tend to be older than their four-year institution peers. On average, community college students are twenty-seven years old,²⁰ making them over five years older than their four-year college undergraduate

10. AACC Fast Facts 2022, *supra* note 2, at 2 (noting the average cost of attendance at community colleges is \$3,800).

11. Kahlenberg et al., *supra* note 1, at 177.

12. Loprest & Hyman, *supra* note 1, at 3.

13. Anthony P. Carnevale et al., *The Overlooked Value of Certificates and Associate's Degrees: What Students Need to Know Before They Go to College*, GEO. CTR. ON EDUC. & WORKFORCE 5 (2020), <https://cewgeorgetown.wpenginepowered.com/wp-content/uploads/CEW-SubBA.pdf> [hereinafter *Overlooked Value*].

14. *Id.* at 3, 16.

15. *Id.* at 5.

16. *Id.* at 5.

17. Century Found., *supra* note 1, at 13–16.

18. *Id.* at 13–15.

19. *Id.* at 14–15.

20. AACC Fast Facts 2022, *supra* note 2, at 1.

peers.²¹ Twenty-nine percent of community college students are the first in their family to attend any type of post-secondary institution and fifteen percent of community college students are single parents. These combined demographics also show that community college students tend to experience need related to food and housing insecurity, transportation, and child care, all of which are necessary inputs to support student success.²² Community college students are more likely to be working while in school than four-year college students and less likely to be academically prepared for post-secondary education.²³ Taken together, these circumstances indicate that students served by community colleges require additional academic, social, and economic supports to succeed in school.

B. Community College as a Driver of Economic Mobility

Although in the past a high school diploma was sufficient to secure a middle-class life, that is no longer the case.²⁴ Some amount of post-secondary education is necessary.²⁵ “Whereas two out of three entry-level jobs in the industrial [Post-World War II] economy demanded a high school diploma or less, now two out of three jobs demand at least some education or training beyond high school.”²⁶ Further, “growing evidence [shows] that a 13th and 14th year of schooling and the credentials that come with this additional schooling are essential for economic well being.”²⁷ As a result of the significant globalization and automation that occurred over the past sixty years, individuals must have some post-secondary education to obtain a job that pays a median annual salary of \$65,000.²⁸

This growing demand for an increasingly educated workforce has only been exacerbated by the multiple recessions of the past two decades. Following the 2008 recession, ninety-five percent of jobs created as part of the recovery went to workers with post-secondary education or training.²⁹ Although it may be too soon to know for certain, it appears that a similar trend is emerging as part of the economic recovery from the COVID-19 pandemic recession.³⁰ Evidence available to date shows that:

21. Melanie Hanson, *College Enrollment & Student Demographic Statistics*, EDUC. DATA INITIATIVE (July 26, 2022), <https://educationdata.org/college-enrollment-statistics#:~:text=The%20average%20age%20for%20students,are%20aged%2055%20and%20older.>

22. Century Found., *supra* note 1, at 48.

23. Loprest & Hyman, *supra* note 1, at 3.

24. *Id.* at iv.

25. *Id.* (noting post-secondary education includes, but is not limited to, vocational and technical certificates and associate degrees, like those provided by community colleges across the country).

26. Anthony P. Carnevale et al., *Three Educational Pathways to Good Jobs: High School, Middle Skills, and Bachelor's Degree*, GEO. CENTER ON EDUCATION AND THE WORKFORCE 1, 17 (2018), <https://files.eric.ed.gov/fulltext/ED590628.pdf>.

27. Kolbe & Baker, *supra* note 6, at 112.

28. Carnevale et al., *supra* note 26, at 5.

29. Martin et al., *supra* note 4.

30. See JOBS FOR THE FUTURE, ESSENTIAL FOR A POST-COVID ECONOMY: RECOMMENDATIONS FOR A FULLY FUNDED AND TRANSFORMED WORKFORCE DEVELOPMENT SYSTEM 1–2 (Mar. 2021), <https://files.eric.ed.gov/fulltext/ED614776.pdf> (“Even before the COVID-19 crisis, the United States was overdue

[T]he workers who are suffering the greatest economic hardships as a result of the [COVID-19] crisis are low-wage earners and individuals with no postsecondary credentials—many of whom are Black, Latinx, or from other underrepresented populations . . . In today’s economy, this is a serious disconnect, because the majority of jobs in high demand require at least some postsecondary education and training.³¹

As a result, it is highly likely that demand for community college education will increase in the coming years as it did following the 2008 recession.³²

Fortunately, data also show that a degree or certificate from a community college can have a significant, positive influence on economic mobility, particularly for individuals experiencing poverty. Individuals with at least some post-secondary education have higher average earnings than their peers without any post-secondary education.³³ In a lifetime, associate degree holders earn over \$300,000 more than individuals with only a high school diploma.³⁴ Individuals who earn an associate degree earn an average of twenty percent more than their peers, while individuals who earn a post-secondary certificate earn \$6,000 more annually than their peers (although increased income varies significantly by industry).³⁵

Further, the poverty rate for individuals with an associate degree is approximately half that of individuals with no post-secondary education, decreasing from about fifteen percent to about eight percent.³⁶ But the benefits of attaining at least some post-secondary education do not stop with a single generation. Research appears to indicate that at least some post-secondary education also positively influences intergenerational poverty.³⁷ Children of low-income parents who go to two- or four-year colleges are almost four times as likely to move to the top of the income distribution as their peers with no post-secondary education.³⁸ Community college also reduces reliance on public benefit programs. Individuals with an associate degree receive approximately \$22,000 less in lifetime public assistance than individuals with only a high school diploma.³⁹

The myriad benefits both for the individuals gaining additional education and for society at large create a compelling argument for community colleges.

for a transformation of its postsecondary education and workforce development systems to meet the vast skill and employment needs of today’s workers and employers. The pandemic has exponentially increased this need for change, with millions of Americans permanently out of work and in need of reskilling.”)

31. *Id.* at 2.

32. See Jill Barshay, *How the Last Recession Affected Higher Education. Will History Repeat?*, HECHINGER REP. (Apr. 6, 2020), <https://hechingerreport.org/how-the-2008-great-recession-affected-higher-education-will-history-repeat/>.

33. Loprest & Hyman, *supra* note 1.

34. Century Found., *supra* note 1, at 18.

35. Loprest & Hyman, *supra* note 1.

36. Kahlenberg et al., *supra* note 1, at 187.

37. Loprest & Hyman, *supra* note 1.

38. *Id.*

39. Kahlenberg et al., *supra* note 1, at 187.

Students, their families, and their communities experience positive consequences from the additional educational attainment. Expanding access to and improving these educational opportunities could powerfully reduce poverty in the United States.

III. FUNDING CHALLENGES FACED BY COMMUNITY COLLEGES

Community colleges are falling short of their poverty reduction potential in part due to inadequate funding to achieve such outcomes. Students who enroll at community colleges often have the most significant needs, but community colleges are also among the most under-resourced educational institutions.⁴⁰ “Today, higher education tends to shower the greatest resources on wealthy and high-achieving students with the fewest educational needs, and devotes the fewest resources to economically disadvantaged students with the greatest educational needs.”⁴¹ This section seeks to provide context to the community college funding challenges. It begins by providing a brief overview of how community colleges are funded. It then discusses historic and current funding challenges faced by community colleges and their impact on student outcomes.

A. Community College Funding Overview

In general, community college funding comes from the federal, state, and local government in addition to tuition dollars paid by students. Although tuition was not originally part of the funding model for community colleges, relying instead only on state and local government funds, schools shifted toward a tuition-based model after federal financial aid first began with the GI Bill in the 1940s and expanded with the higher education legislation of the 1960s and 1970s.⁴² This shift relieved some of the financial burden from state and local governments by moving it, in part, onto the federal government for low-income students and onto students themselves for those who do not qualify for federal aid.⁴³ Among federal financial aid programs, Pell Grants are the most significant for community colleges.⁴⁴ Pell Grants provide tuition assistance to low-income individuals up to \$6,495; these grants may be used for community colleges or four-year colleges and thus are indiscriminately available to low-income students.⁴⁵

Beyond federal funds, “[n]ationwide, community colleges receive almost half of their revenues from state and local tax appropriations.”⁴⁶ On average,

40. *Id.* at 179.

41. *Id.*

42. *Id.* at 191.

43. *Id.*

44. *Federal Funding, Invest in Higher Education and Workforce Development Programs*, AM. ASS’N. CMTY. COLL., <https://www.aacc.nche.edu/advocacy/federal-funding/> (last visited Feb 23, 2023).

45. *Federal Pell Grant program*, FED. STUDENT AID, <https://studentaid.gov/help-center/answers/article/federal-pell-grant-program> (last visited Feb. 23, 2023); *How much money can I get from a Federal Pell Grant?*, FED. STUDENT AID, <https://studentaid.gov/help-center/answers/article/how-much-money-can-i-get-federal-pell-grant> (last visited Feb. 23, 2023).

46. Kolbe & Baker, *supra* note 6, at 115.

approximately ten percent of funding comes from local appropriations, while the remaining nearly forty percent comes from state appropriations.⁴⁷ Scholars have described state funding as “often haphazardly or poorly” allocated to community colleges noting that many states generally calculate state funding using a prescribed formula based on prior year full time equivalent students and a third of states have no set formula.⁴⁸ Local funds are allocated largely from property taxes and vary greatly between municipalities.⁴⁹

B. Historic and Current Funding Issues and Challenges

The funding processes described in Part III.A. above produce myriad funding issues and challenges. These manifest in multiple forms including:

- Inequities between two-year and four-year institution funding;
- Inequities between funding levels for community colleges in the same state;
- Funding formula failures to account for variation in student need;
- Funding formula failures to account for all enrolled students;
- Lack of predictability in annual funding allocations; and
- Funding vulnerability.

Each of these will be discussed in turn below. Regardless of form, funding issues disproportionately harm individuals from low-income communities and impede institutions’ ability to best serve their students.

1. Funding Inequities Between Two-Year and Four-Year Institutions

Although community colleges educate approximately half of all post-secondary students,⁵⁰ many of whom have more significant academic, social, and economic needs than their four-year institution peers,⁵¹ their funding allocations fail to reflect this reality. Significant and persistent funding inequities exist between allocations to four-year and two-year institutions. Annually, community colleges receive seventy-eight billion dollars less than four-year institutions.⁵² At a per student level, this amounts to \$8,800 less per student.⁵³ “To put it another way, the per-student revenue gap between community colleges and four-year institutions is roughly the same size as the typical annual revenue taken in by a community college—about \$8,800.”⁵⁴ Even after accounting for unique facets of four-year institutions when compared to two-year institutions (e.g., student housing,

47. *Id.*

48. Kahlenberg et al., *supra* note 1, at 194.

49. Kolbe & Baker, *supra* note 6, at 115.

50. *Overlooked Value*, *supra* note 13.

51. See Kolbe & Baker, *supra* note 6, at 116.

52. Victoria Yuen, *The \$78 Billion Community College Funding Shortfall*, CAP (Oct. 7, 2020), <https://www.americanprogress.org/article/78-billion-community-college-funding-shortfall/>.

53. *Id.*

54. *Id.*

research funds, etc.), public research universities spend three times as much per student per year as community colleges, and private research universities spend five times as much per student per year.⁵⁵ Over time, this gap has widened as investments in four-year institutions have far outpaced investments in two-year institutions. Between academic years 2003-04 and 2013-14, public four-year colleges increased their per student spending by sixteen percent.⁵⁶ Over the same ten-year period, public community colleges only experienced a four percent increase in per student spending.⁵⁷

2. Funding Inequities Between Community Colleges Within the Same State

Beyond the disparities between two- and four-year institutions, community colleges within the same state generally operate under very different funding levels. In many states, this variation is so “substantial” that it is “on par with levels that have raised alarm bells when evaluating fiscal equity among K-12 school districts.”⁵⁸ These disparities generally track community income levels, with community colleges in wealthier communities operating with more funding than community colleges in poorer communities.⁵⁹ “In nine states, community colleges in high-income counties spent at least 10% more on instruction compared with institutions in low-income counties.”⁶⁰ In some states, it is even higher.⁶¹ For example, in New Jersey, this number rose to twenty-five percent more for community colleges in wealthy communities.⁶²

Much of this inequity stems from the local funding streams. As with their K-12 counterparts, community colleges’ local funding stream relies heavily on local property taxes as its primary source of funding.⁶³ Also, as with their K-12 counterparts, this drives significant inequity between lower income communities and their wealthier neighbors because of the lower property value within low-income communities.⁶⁴ Although local funding streams create opportunities for local residents to provide input on community college offerings and operations,⁶⁵ the benefits of such local input are marginalized by the inequities created via local funding streams.

55. Kahlenberg et al., *supra* note 1, at 181.

56. *Id.* at 182–83.

57. *Id.*

58. Kahlenberg et al., *supra* note 1, at 183.

59. See Kolbe & Baker, *supra* note 6, at 130; Dowd & Grant, *supra* note 6, at 168.

60. Kolbe & Baker, *supra* note 6, at 130.

61. *Id.*

62. *Id.*

63. Marcella Bombardieri, *Tapping Local Support To Strengthen Community Colleges*, CAP (Oct. 28, 2020), <https://www.americanprogress.org/article/tapping-local-support-strengthen-community-colleges/>.

64. *Id.*; see also Dowd & Grant, *supra* note 6, at 188.

65. Dowd & Grant, *supra* note 6, at 168.

3. Funding Formulas Fail to Account for Student Need

“Community colleges are tasked with serving a broad range of students, including those who come to college underprepared and with challenging personal and financial circumstances.”⁶⁶ Schools serving students from low-income communities generally work with a population of individuals who require more support to succeed because of the systemic inequities they experience.⁶⁷ But, state funding formulas fail to account for these needs.⁶⁸ And as noted above, local funding formulas are unable to adequately fill the funding gap to address the variation in need because the communities with the greatest needs are also generally the communities with the lowest property values.⁶⁹

Varying student needs require differentiated resources to support student outcomes. K-12 schools are aware of this reality, yet post-secondary education has been delayed in catching on.⁷⁰ However, growing research highlights the benefits of targeting additional resources toward the community college students with the most need.⁷¹

4. Funding Formulas Fail to Account for All Enrolled Students

Data indicates that three-quarters of community college students enroll on a part-time basis.⁷² However, in the two-thirds of states with funding formulas, allocations generally rely on prior year data on full-time equivalency (FTE) students.⁷³ As a result, funding formulas drastically underestimate the number of students served by community colleges when appropriating state funds. Low-income communities, which are already disproportionately harmed by the lack of student-need consideration in the funding formula⁷⁴ and the lower levels of local funding due to lower property values,⁷⁵ are again harmed by the failure to consider part-time students in the funding formula as such students are overrepresented in low-income communities.⁷⁶

66. Kolbe & Baker, *supra* note 6, at 114. *See also id.* at 116 (“on average, community college students are more likely to require academic remediation as well as additional supports and services to succeed in college compared with their peers who attend 4-year institutions”).

67. *Id.* at 116.

68. *Id.* at 114.

69. *See supra* Part III.B.2.

70. Kolbe & Baker, *supra* note 6, at 114 (“The assumption that different schools need different resources according to student need is grounded in decades of K–12 education research that highlights the importance of educational resources for students’ opportunities to learn and highlights that more and different types of school-based resources may be required to offset the effects of disadvantage on student learning.”). *See also id.* at 116.

71. *Id.* at 115 (highlighting the success of the City University of New York ASAP Program).

72. Marcella Bombardieri, *A Promising Model to Boost Retention for Part-Time Students*, CAP (July 31, 2018), <https://www.americanprogress.org/article/promising-model-boost-retention-part-time-students/>.

73. *See also* Kolbe & Baker, *supra* note 6, at 115, 135–36.

74. *See supra* Part III.B.3.

75. *See supra* Part III.B.2.

76. Kolbe & Baker, *supra* note 6, at 135–36.

5. Lack of Predictability in Funding Allocations

The remaining third of states that operate without set funding formulas for allocating state dollars to community colleges leave schools operating in a somewhat gray area regarding anticipated future funding levels.⁷⁷ Without a clear formula, schools are left without clear expectations regarding what their funding will be for future years. This lack of clarity makes it challenging to consider and act upon long term investments, such as curriculum upgrades, expanded course offerings, and wraparound supports such as day care centers.

Additionally, even where funding formulas do exist, they often rely on past enrollment data.⁷⁸ As a result, “geographic areas end up being under-served by their community colleges because those colleges are not able to grow commensurate with local needs.”⁷⁹ They are instead forced to constrain their growth to past year enrollment or face even larger funding shortfalls.⁸⁰

6. Vulnerability to Funding Cuts

The 2008 recession demonstrated the vulnerability of community college funding. State education budget cuts led to a significant decrease in funding per student described by some education researchers as “a disaster.”⁸¹ At the same time, community colleges witnessed a nearly seventeen percent increase in course enrollment and a nearly twenty-five percent increase in full time student enrollment, requiring these schools to again do more with less.⁸²

In response to the decrease in funds, community colleges were forced to both raise tuition and cut spending.⁸³ “Nationally, community colleges’ tuition and fees increased by 47%.”⁸⁴ Data also show that the state funding changes that occurred in response to the Great Recession between 2003 and 2015 exacerbated existing inequities between community colleges in lower income and higher income communities.⁸⁵ In 2018, ten years after the start of the recession, state funding for public two- and four-year colleges was still more than \$6.6 billion below its pre-recession levels.⁸⁶

77. Kahlenberg et al., *supra* note 1, at 194–95.

78. *Id.*

79. *Id.* at 195.

80. *Id.*

81. Barshay, *supra* note 32.

82. CHRISTOPHER M. MULLIN & KENT PHILLIPPE, COMMUNITY COLLEGE ENROLLMENT SURGE: AN ANALYSIS OF ESTIMATE FALL 2009 HEADCOUNT ENROLLMENTS AT COMMUNITY COLLEGES, AM. ASS’N CMTY. COLLS. 4 (Dec. 2009), <https://files.eric.ed.gov/fulltext/ED511056.pdf>.

83. Kolbe & Baker, *supra* note 6, at 113.

84. *Id.*

85. *See id.*

86. Michael Mitchell, et al., *State Higher Education Funding Cuts Have Pushed Costs to Students and Worsened Inequality*, CTR. ON BUDGET & POL’Y PRIORITIES (Oct. 24, 2019), <https://www.cbpp.org/research/state-budget-and-tax/state-higher-education-funding-cuts-have-pushed-costs-to-students>.

Higher education experts anticipate that community colleges will continue to be economically harmed coming out of the COVID-19 pandemic. Community colleges can no longer rely on the tools used to support their survival during the Great Recession, namely spending cuts and tuition raises.⁸⁷ Without having reached restoration of pre-recession funding levels, community colleges have already relied on both to the extent they can while still serving their students.⁸⁸ Further, while Congress allocated federal COVID relief funding to community colleges, it “placed institutions that serve large numbers of part-time students at a disadvantage. Specifically, community colleges received only 21%, or \$2.6 billion, of the \$12.5 billion allocated to postsecondary education, even though they enroll over 40% of undergraduates.”⁸⁹ Community colleges are expected to continue to feel the effects of the pandemic and the recession for the foreseeable future.

IV. IMPACTS OF UNDERFUNDING & THE POWER OF ADEQUATE FUNDING

Taken together, the funding challenges confronted by community colleges lead to severe and persistent underfunding, especially at the schools that serve the highest percentage of low-income students. As a result, student outcomes suffer. Currently, community colleges struggle to get students to degree/certificate completion, which in turn diminishes the economic returns on their educational investment.⁹⁰ Fewer than one-quarter of students complete a two-year degree or credential within six years of enrolling in a community college.⁹¹ Further, only thirty percent of students ultimately transfer to a four-year institution even though eighty percent indicate they plan to transfer to a four-year school when they enroll as community college students.⁹² Among the thirty percent who do successfully transfer, over forty percent are unable to transfer their community college credits and fewer than fifteen percent complete a four-year degree within six years of enrolling as a community college student.⁹³ These dismal outcomes have led education experts to call for comprehensive community college change for many years.⁹⁴

87. David Jenkins et al., *More Clues from the Great Recession: How Will COVID-19 Affect Community College Funding?*, CMTY. COLL. RSCH. CTR. (May 19, 2020), <https://csrc.tc.columbia.edu/easyblog/community-college-funding-covid-19.html>.

88. *See id.*

89. *Id.*

90. Loprest & Hyman, *supra* note 1, at 1.

91. Loprest & Hyman, *supra* note 1, at 2. By comparison, sixty percent of students who start college at a four-year institution complete it within six years. *See* Jack Mountjoy, *Community Colleges and Upward Mobility 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 29254, 2022).

92. Chris Lorch, *The Modern Community College: The Underused Asset in Socioeconomic Development*, THE EVOLLUTION: A MOD. CAMPUS ILLUMINATION (Aug. 11, 2021), https://evollution.com/revenue-streams/workforce_development/the-modern-community-college-the-underused-asset-in-socioeconomic-development/.

93. Century Found., *Executive Summary in RESTORING THE AMERICAN DREAM: PROVIDING COMMUNITY COLLEGES WITH THE RESOURCES THEY NEED 3* (2019).

94. Loprest & Hyman, *supra* note 1, at 4 (noting the leadership of the Bill & Melinda Gates Foundation and the Lumina Foundation in initiatives focused on “[c]omprehensive community college

Fortunately, research provides promising evidence that adequate funding is an effective intervention to improve community college outcomes. It is only at such levels of funding that community colleges will be able to achieve the economic mobility outcomes they were established to support.⁹⁵ Higher per student spending supports increased persistence and higher completion rates at community college.⁹⁶ For example, in high spending states like Alaska, North Dakota, and Wyoming, community colleges produce higher than average completion rates.⁹⁷ Conversely, “when state funding for public colleges did not keep pace with growing student enrollment, students were less likely to attain degrees.”⁹⁸ As it is only through actually completing a post-secondary credential that students unlock the full economic benefits of community college,⁹⁹ addressing these funding challenges is critical to supporting stronger student outcomes and achieving increased economic mobility for community college graduates.

V. INCREASING COMMUNITY COLLEGE FUNDING THROUGH LITIGATION: LESSONS FROM K-12 SCHOOL FUNDING LAWSUITS

Although litigation has been used sparingly to address the inadequacy of education funding at the community college level, the same cannot be said for K-12 education. Over the past five decades, education advocates have looked to the courts as an avenue to drive change. Key lessons from these legal efforts can and should inform similar litigation in the community college space. This section seeks to contextualize the K-12 school funding litigation evolution and to identify important lessons. It begins by providing a broad overview of litigation efforts to improve K-12 school funding before continuing on to briefly highlight important cases in the K-12 school funding movement. It will close by underscoring the lessons from these suits relevant to potential similar litigation in the community college context.

A. Background on K-12 School Funding Litigation

K-12 school funding lawsuits have proceeded in three waves.¹⁰⁰ The first two waves centered on arguments that funding equity was mandated by federal and state constitution Equal Protection Clauses.¹⁰¹ However, in the third wave,

reform”). Additionally, the William T. Grant Foundation has funded the Century Foundation Working Group focused on improving the resources available to community colleges. *See generally* CENTURY FOUND., RESTORING THE AMERICAN DREAM: PROVIDING COMMUNITY COLLEGES WITH THE RESOURCES THEY NEED (2019).

95. Kahlenberg et al., *supra* note 1, at 183–84.

96. *Id.*; Kolbe & Baker, *supra* note 6, at 114.

97. Kahlenberg et al., *supra* note 1, at 184.

98. Kolbe & Baker, *supra* note 6, at 114.

99. *See supra* Part II.B.

100. *See* Christopher Roelke et al., *School Finance Litigation: The Promises and Limitations of the Third Wave*, 79 PEABODY J. OF EDUC. 104, 106 (2008).

101. *Id.*

advocates shifted from a focus on equal funding to a focus on adequate funding based on state constitutional guarantees to education.¹⁰²

The shift from equity to adequacy was prompted after equity lawsuits proved relatively less successful at improving educational opportunities for students of color and students from low-income backgrounds.¹⁰³ The adequacy claims differed from their equity counterparts in that they “do[] not complain about disparities in funding among school districts per se, but instead allege[] that one or more districts lack the resources necessary to provide students with adequate educational opportunities.”¹⁰⁴ Further, instead of seeking equitable funding as a remedy, the adequacy suits request that “the state provide complaining school districts with the resources necessary to afford students the opportunity to achieve desired educational outcomes”¹⁰⁵

These adequacy lawsuits were more far-reaching in two respects: (1) they sought not just equal inputs in spending, but a substantive level of educational results for all students (such as numeracy and literacy in order to be good citizens); and (2) they recognized that to reach those results, more money must be devoted to disadvantaged students than to advantaged students.¹⁰⁶

And the adequacy lawsuits succeeded in increasing resources available to students. For example, as the result of mixed legislative and legal efforts, thirty-seven states now recognize that “students with greater needs deserve greater resources” and this understanding has been codified in the state school funding formula.¹⁰⁷

B. Significant Third Wave K-12 School Funding Cases

K-12 school funding lawsuits have been brought on equity or adequacy grounds in nearly every state. However, rather than recap the full spectrum of litigation, this Note highlights several important cases from the adequacy wave of suits that have shaped the national landscape and provides some of the most salient lessons for the community college context.

102. *Id.*

103. Martin R. West & Paul E. Peterson, *The Adequacy Lawsuit: A Critical Appraisal*, in *SCHOOL MONEY TRIALS: THE LEGAL PURSUIT OF EDUCATIONAL ADEQUACY 1-2* (West & Peterson eds., 2007).

104. Paul A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, in *EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 17* (1999).

105. *Id.* at 18.

106. Kahlenberg et al., *supra* note 1, at 202.

107. *Id.* See also West & Peterson, *supra* note 103, at 2.

1. *Rose v. Council for Better Education*¹⁰⁸

In 1988, the Council for Better Education, a powerful coalition of business leaders, parents, and former governors, filed a lawsuit against the Kentucky Governor, the Superintendent of Public Instruction, the State Treasurer, the leaders of the State House and Senate, and the State Board of Education alleging that Kentucky's common school system failed to meet the efficiency requirements set forth in Section 183¹⁰⁹ of the Kentucky State Constitution.¹¹⁰ More specifically, the plaintiffs argued the school funding system resulted in inadequate school funding and resources for the "poor" school districts in the state and was not "efficient" as required by the state's Constitution. The Kentucky Supreme Court agreed with the plaintiffs and held the school funding system unconstitutional.

In reaching this conclusion, the court considered what it meant for a school system to be "efficient." According to the court, "[e]fficient" in the Kentucky constitutional sense was defined as a system which required 'substantial uniformity, substantial equality of financial resources and substantial equal educational opportunity for all students.' Efficient was also interpreted to require that the educational system must be adequate, uniform and unitary.¹¹¹ Relying on evidence of inequality between the poorer and wealthier school districts, the court determined that the system was not efficient and thus did not pass constitutional muster.¹¹²

However, the court went further than just determining that the current school finance system was unconstitutional. It set forth seven capacities that school districts must "provide each and every child" for the school finance system to be efficient.¹¹³ These guidelines substantially contributed to the definition of an adequate and efficient education and provided the legislature with a clear prescription when redesigning the school finance system.¹¹⁴ The guidelines are

108. 790 S.W.2d 186 (Ky. 1989).

109. "General Assembly to provide for school system—The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State." KY. CONST. § 183.

110. *Rose*, 790 S.W.2d at 189, 190; BENJAMIN MICHAEL SUPERFINE, EQUALITY IN EDUCATION LAW AND POLICY, 1954–2010, 121–22 (2013).

111. *Rose*, 790 S.W.2d at 191–92.

112. *Id.* at 196–99 (evaluating the three elements of educational efficiency).

113. *Id.* at 212 ("A child's right to an adequate education is a fundamental one under our Constitution. The General Assembly must protect and advance that right. We concur with the trial court that an efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.").

114. Roelke et al., *supra* note 100, at 120.

particularly notable in that they go beyond specific dollar amounts—instead discussing broader measures of educational adequacy.¹¹⁵ In response to the court's decision, the Kentucky legislature enacted an education reform package that “substantially increased” state per-pupil expenditures, mandated new standards, assessments, and curricula; and changed the school accountability system to include sanctions and rewards for schools based on student outcomes.¹¹⁶

Because of its success, *Rose* became a “model of how adequacy arguments could be effectively employed in subsequent school finance cases.”¹¹⁷ Subsequently, actors in other states followed suit.¹¹⁸

2. *McDuffy v. Secretary of the Executive Office of Education*¹¹⁹

Following the *Rose* model, a coalition of Massachusetts public school students from sixteen different cities sued state education officials arguing that Massachusetts “school-financing system effectively denie[d] them the opportunity to receive an adequate education in the public schools in their communities” as mandated by the Massachusetts Constitution.¹²⁰ The court concluded that the state constitution “imposes a duty on legislatures and magistrates to provide an adequate education to the young people of the State”¹²¹ and that “children in the less affluent communities . . . are not receiving their constitutional entitlement of education as intended and mandated by the framers of the Constitution.”¹²² In determining the remedy, the court explicitly relied upon the seven guidelines set forth in *Rose* to direct the legislature's efforts to reconfigure the school funding model and “fulfill their constitutional duty to educate [the State's] children”¹²³ This case led to the enactment of the Massachusetts Education Reform Act, which altered the school funding formula and closed learning gaps across the state.¹²⁴

3. *Abbott v. Burke*¹²⁵

Like in *Rose* and *McDuffy*, the student-plaintiffs in *Abbott* came from low-income communities and brought suit against various state officials alleging that New Jersey's Public School Education Act of 1975 (the Act) violated the state's

115. *Id.*

116. Minorini & Sugarman, *supra* note 104, at 33.

117. SUPERFINE, *supra* note 110, at 121.

118. *See* Ala. Coal. for Equity v. Hunt, 624 So. 2d 107 (Ala. 1993); *McDuffy v. Sec'y of the Office of Educ.*, 15 N.E.2d 516 (Mass. 1993). *But see* Comm. for Educ. Rts. v. Edgar, 672 N.E.2d 1178 (Ill. 1996) (concluding that “questions relating to the quality of education are solely for the legislative branch to answer”). *See also* Minorini & Sugarman, *supra* note 104, at 33.

119. 615 N.E.2d 516 (Mass. 1993).

120. *Id.* at 517–18.

121. *Id.* at 545.

122. *Id.* at 552.

123. *Id.* at 554–55.

124. Martin et al., *supra* note 4, at 18.

125. 495 A.2d 376 (N.J. 1985); *Abbott ex rel. Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Abbott ex rel. Abbott v. Burke*, 643 A.2d 575 (N.J. 1994); *Abbott ex rel. Abbott v. Burke*, 710 A.2d 450 (N.J. 1998).

constitutional duty to provide students with an efficient education.¹²⁶ Through a series of appeals and remands,¹²⁷ the New Jersey Supreme Court determined that “the Constitution [was] being violated” because “certain poorer urban districts d[id] not provide a thorough and efficient education to their students,” thus preventing students in those communities from being “able to participate fully as citizens and workers . . . [or] achieve any level of equality in that society with their peers from the affluent suburban districts.”¹²⁸

Initially, the court ordered the legislature cure the constitutional violation by amending the Act “to assure that poorer urban districts’ educational funding [would be] substantially equal to that of property-rich districts.”¹²⁹ It noted that such changes were necessary to provide a thorough and efficient education, defined as “one that will equip all of the students of this state to perform their roles as citizens and competitors in the same society.”¹³⁰ However, in subsequent appeals and enforcement actions associated with this order, the court went further. It explicitly rejected the legislature’s suggested remedy, the Quality Education Act, as “fail[ing] to assure substantial equivalence between the [poorer] districts and the richer districts in expenditures per pupil for regular education” in 1994.¹³¹ In 1998, the court mandated that the legislature fund “specific programs that could improve student outcomes and close achievement gaps,” including “full-day kindergarten, half-day preschool, whole-school reform for elementary schools, college-transition programs for secondary schools, and other supplemental programs” in poorer urban districts.¹³² The *Abbott* court’s emphasis on both financial parity and programmatic offerings represents a wider awareness of the need for educational adequacy to extend beyond exclusive financial inputs.

4. Campaign for Fiscal Equity, Inc. v. State¹³³

Campaign for Fiscal Equity, Inc. v. State reflects a similar narrative arc as the school finance cases in other states previously discussed in this Part. In this case, New York students, parents, and educational organizations sued multiple state actors alleging that “the State has violated [its constitutional mandate to “provide for the maintenance and support of a system of free common schools”¹³⁴] by establishing an education financing system that fails to afford New York City’s public school children the opportunity guaranteed by the Constitution.”¹³⁵ The court concluded that the State failed to meet its constitutional duty because it

126. *Abbott v. Burke*, 575 A.2d at 364.

127. See generally *Abbott v. Burke*, 95 A.2d 376; *Abbott v. Burke*, 575 A.2d 359; *Abbott v. Burke*, 643 A.2d 575 (reflecting the series of appeals and remands in the *Abbott* cases).

128. *Abbott v. Burke*, 575 A.2d at 384–85.

129. *Id.* at 385.

130. *Id.* at 389.

131. *Abbott v. Burke*, 643 A.2d 575, 577 (N.J. 1994).

132. Martin et al., *supra* note 4; *Abbott v. Burke*, 710 A.2d 450, 473–74 (N.J. 1998).

133. 801 N.E.2d 326 (N.Y. 2003).

134. N.Y. CONST. art. XI, § 1.

135. *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d 326, 328 (N.Y. 2003).

failed to provide students with a “sound basic education” emphasizing the importance of ensuring that students are prepared for more than menial jobs following graduation. The court noted:

[a] high school education is today as indispensable as a primary education was in 1894. Children in the 21st century need the opportunity for more than a ninth grade education to be productive citizens. Back in the 19th century, a high school education was not needed to obtain a good job. Now, a high school education is a prerequisite to most good jobs.¹³⁶

In doing so, the court recognized that the standard of a “sound basic education” may change over time as the requirements to meaningfully participate in the economy shift.¹³⁷

Additionally, the court explicitly considered both inputs and outputs in measuring when evaluating whether a “sound basic education” was available to all students.¹³⁸ In doing so, the Court concluded that both the inputs and the outputs were inadequate.¹³⁹ As evidence supported a finding that “improved inputs yield better student performance,” the court dismissed the defendant’s arguments asserting that poor student outcomes may stem from other sources such as socioeconomic status.¹⁴⁰ In evaluating both inputs and outputs in detail, emphasizing the importance of economic participation, and rejecting assertions that poor outcomes could be explained by other factors, the court reinforced these elements as meaningful considerations in school finance litigation.

C. Key Lessons from K-12 School Funding Litigation

Across these lawsuits emerge a set of themes that provide valuable insight for potential plaintiffs in community college funding lawsuits and for higher education funding advocates to consider. Several of the most significant lessons are highlighted below.

- 1) Addressing Inadequacy Requires, but Extends Beyond, Just Providing Additional Funding. Although addressing funding discrepancies is an important part of addressing inadequate education, funding is not the only important change that can and should be made to address discrepancies in student outcomes. As noted by several of the courts above, including most significantly in *Abbott v. Burke*, mandating specific programs shown by

136. *Id.* at 351–52 (Smith, J., concurring).

137. *See* Roelke et al., *supra* note 100, at 122 (“Courts have found that an adequate education evolves to take into account the present needs of the students.”).

138. *See Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 332–40 (discussing the inputs and outputs in New York City Public Schools).

139. *Id.* at 340 (“We conclude that the trial court’s assessment . . . supports its conclusion that, whether measured by the outputs or the inputs, New York City schoolchildren are not receiving the constitutionally-mandated opportunity for a sound basic education.”).

140. *Id.* at 340.

research to close achievement and opportunity gaps is also necessary to achieve adequacy.

- 2) Students with Higher Needs Require Additional Funding and Resources to Achieve the Same Outcomes. Building on the theme above, K-12 school funding also generally recognizes that students with higher needs require additional funding and resources to achieve the same outcomes as their more privileged peers. These needs can occur across multiple dimensions, but often correspond with socioeconomic status wherein students from lower-income backgrounds may require different or additional supports to access the same opportunities as their wealthier peers. Courts have considered the need for different or additional resources and supports in developing their remedies for inadequate school funding. For example, *Abbott v. Burke* considered inequities in access to college transition programs in “poorer” school districts. Without such programs, students would likely face additional barriers to accessing academic or work opportunities after school.
- 3) Educational Needs Evolve as Societal Needs Evolve. Many state constitution education provisions were drafted over a century ago at a time when measures of an adequate education varied significantly from today. The cases above recognized that student need changes over time as the world continues to evolve. *Council for Better Education*, the most recent case discussed in the previous section, noted this reality most explicitly, but undertones of this theme were recognized by each of the courts above (and in many additional cases not explicitly outlined in this Note).
- 4) Courts Can Be Powerful Enforcers, but Legislatures are Tasked with Action. In each of the cases above (and in many not mentioned), both the courts and the legislatures played an important role in addressing funding inadequacy. While the courts identified the legal issues in the existing funding schemes, it was up to the legislatures to rectify those shortcomings with varying degrees of direction from the courts. Efforts to reform funding, therefore, likely have increased odds of success when a two-pronged approach is taken focusing on both legal action and advocacy with the legislature.
- 5) Coalitions Carry Power. The plaintiffs in the cases themselves show the power of a coalition. Each case involved a set of plaintiffs that represented wide swaths of the impacted students, former state leaders, and other community members (including advocacy organizations, members of the business community, etc.). Some of these were formal coalitions, as in *Campaign for Fiscal Equity, Inc. v. State* and *Rose v. Council for Better Education*, while others were simply groups of individual plaintiffs coming together to support a common cause, as in *McDuffy v. Secretary of the Executive Office of Education* and *Abbott v. Burke*. Regardless of how the coalition forms, coming forward as a group brings credibility to the claim and undoubtedly elevates the status of the case within the minds of the state legislators responsible for funding formulas.

VI. INCREASING COMMUNITY COLLEGE FUNDING THROUGH LITIGATION: APPLYING KEY LESSONS FROM K-12 ADEQUACY SUITS TO THE COMMUNITY COLLEGE SETTING

Despite decades of advocacy to address the underfunding, community colleges, and especially those located in low-income communities, remain under-resourced. K-12 adequacy lawsuits provide promising lessons to the perpetual funding inadequacy confronted by community colleges via litigation. As with K-12 funding inadequacy, community college underfunding negatively impacts both the education these institutions can provide students and student outcomes. This section sets forth a proposed legal argument articulating that states are failing to meet their constitutional obligation to provide students with a “thorough and efficient education” by inadequately funding community colleges.

A. Accurate Interpretation of State Education Clauses Would Understand Community Colleges to be Part of the State Constitution Educational Obligation

State constitution education clauses generally refer to either “public schools” or “common schools” in discussing what level of education the state has a constitutional obligation to provide.¹⁴¹ The idea of the public or common school reflects the amount and type of education required to achieve an adequate or “sound, basic” education.¹⁴² Courts have described this amount of education as that which leaves graduating students prepared to engage in civic responsibilities (e.g., voting and serving on juries) and to meaningfully contribute to and benefit from the economy.¹⁴³ Historically, courts have interpreted constitutional language regarding “public schools” or “common schools” as referring only to elementary and secondary schools.¹⁴⁴ This interpretation was based on the understanding that a high school education was both necessary and sufficient to secure meaningful employment.¹⁴⁵

141. See MOLLY A. HUNTER, STATE CONSTITUTION EDUCATION CLAUSE LANGUAGE (2011), <https://edlawcenter.org/assets/files/pdfs/State%20Constitution%20Education%20Clause%20Language.pdf> (documenting the language in the education clause of each state’s constitution).

142. See, e.g., *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 326, 330 (“[A] sound basic education conveys not merely skills, but skills fashioned to meet a practical goal: meaningful civil participation in contemporary society. This purposive orientation for schooling has been at the core of the Education Article since its enactment in 1894.”).

143. See, e.g., *McDuffy v. Sec’y of Exec. Off. of Educ.*, 615 N.E.2d 516, 548 (Mass. 1993) (“What emerges [from the court’s review of the state’s education clause] . . . is that the Commonwealth has a duty to provide an education of *all* its children, rich and poor, in every city and town of the Commonwealth at the public school level, and that this duty is designed not only to serve the interests of the children, but, more fundamentally, to prepare them to participate as free citizens of a free State to meet the needs and interests of a republican government, namely the Commonwealth of Massachusetts.”).

144. See, e.g., *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 194 (1989) (“As originally enacted, Section 186 of our Constitution mandated that school funds appropriated by the General Assembly be apportioned to each individual local school district on the basis of a set amount for each child aged 5 through 17 years.”).

145. See, e.g., *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 331 (N.Y. 2003) (“While a sound basic education need only prepare students to compete for jobs and enable them to support themselves, the record establishes that for this purpose a high school level education is now all but indispensable.”).

However, as the economy and labor market demands have shifted, data shows that having only a high school diploma is no longer sufficient to secure meaningful employment.¹⁴⁶ Such realizations support the growing recognition that community college is not just a luxury for individuals who can afford to spend more time in school after completing the twelfth grade, but a necessity to unlock employment opportunities that pay more than a poverty (or below poverty) wage.¹⁴⁷

Courts recognize that educational needs evolve as societal needs evolve.¹⁴⁸ For example, in *Campaign for Fiscal Equity, Inc.*, the court explicitly noted that social and economic changes have altered the level of education needed to “function productively as citizens.”¹⁴⁹ Similarly, in *Rose*, “the Kentucky Supreme Court underscored the importance of economic competitiveness and the skills and knowledge accordingly needed by students.”¹⁵⁰ Such recognitions bolster the argument that what may have constituted an adequate or “sound, basic” education at the time state constitutions were drafted in the eighteenth and nineteenth centuries has since changed.¹⁵¹

Further, similarities between K-12 schools and community colleges strengthen the argument that community colleges fall under states’ constitutional education obligations. Both community colleges and K-12 schools are funded by a mix of federal, state, and local dollars, with funds stemming from local property taxes significantly contributing to intrastate funding discrepancies.¹⁵² Each of these institutions operate under open access policies wherein the school serves any student who wishes to enroll.¹⁵³ Community colleges, like K-12 public schools, serve students predominantly from the community in which they operate, meaning their student populations generally reflect the demographics of the surrounding community. Additionally, community college education is now necessary for full economic participation, much like high school was in prior decades. Finally, states’ efforts to support free community college eliminate a major remaining difference between community colleges and K-12 public schools: tuition.¹⁵⁴

146. See *supra* Part II.B.

147. See *supra* Part II.B. See also *Campaign for Fiscal Equity, Inc.*, 801 N.E.2d at 352 (Smith, J., concurring) (“While it may be true that there will always be menial low-skills jobs, and thus a need for people to fill them, it should not be the purpose of the public schools to prepare students for those jobs, which are limited in number and dwindling.”).

148. See *supra* notes 136–138 and accompanying text (highlighting the way educational needs have changed over time).

149. See 801 N.E.2d at 331 (discussing expert economist witness testimony regarding employer expectations of future hires and educational preparation needed to engage in civil responsibilities including voting and jury service).

150. SUPERFINE, *supra* note 110, at 124.

151. See *McDuffy v. Sec’y of Exec. Off. of Educ.*, 615 N.E.2d 516, 519–45 (Mass. 1993) (discussing the evolution of schools in Massachusetts from the founding era to present).

152. See *supra* Part III.A.

153. See *supra* Part II.A.

154. As of 2020, nearly half of all states operated free community college programs. See Robert Farrington, *These States Offer Tuition-Free Community College*, FORBES (Mar. 25, 2020, 8:50 AM),

In light of the social and economic changes over time and the similarities between community colleges and K-12 schools, community colleges are more closely analogous to the understanding of “public” or “common schools” than other post-secondary institutions, and they should be evaluated as such in school funding litigation.

B. States’ Failures to Adequately Fund Community Colleges Violate Their Constitutional Obligation

K-12 funding lawsuits demonstrate that inadequate funding can give rise to constitutional challenges where evidence shows that clear intrastate disparities in school funding and other resources exist. Such disparities can be measured by both funds and resources,¹⁵⁵ and inputs and outputs.¹⁵⁶ Evaluating community colleges under similar standards, evidence indicates that current funding levels are inadequate.

Currently, “substantial” disparities exist in funds and resources available to community colleges operating in low-income communities and higher income communities in the same state.¹⁵⁷ In some states, funding differences between community colleges range from ten to twenty-five percent.¹⁵⁸ Such gaps parallel the disparities deemed constitutionally problematic in K-12 school funding lawsuits.¹⁵⁹

However, it is important to analyze more than annual dollars allocated; indeed, funding formulas’ failure to account for student need also contributes to the inadequacy. Students with greater need receive fewer resources than those with less need,¹⁶⁰ which runs counter to the logic driving the New Jersey Supreme Court’s opinions in *Abbott III* and *Abbott V*.¹⁶¹ In those cases, the court explicitly recognized that to achieve adequacy, students with greater need required greater resources to reach the same outcomes as their wealthier peers.¹⁶² Similar logic applies in the community college context. In order to be adequate, funding formulas must account for variation in student need.

But it is not only the inputs that are inadequate. The outputs also do not match. Student outcomes suffer as a result of the limited resources. Community

<https://www.forbes.com/sites/robertfarrington/2020/03/25/these-states-offer-tuition-free-community-college/?sh=2f0b62f314cf>.

155. See *Abbott v. Burke*, 643 A.2d 575, 578 (N.J. 1994); *Abbott v. Burke*, 710 A.2d 450, 473–74 (N.J. 1998).

156. See Campaign for Fiscal Equity, Inc., 801 N.E.2d 326, 326, 332 (N.Y. 2003) (discussing the need to evaluate both the inputs and outputs available to students in different public schools in New York City).

157. See *supra* Part III.B.2.

158. Kolbe & Baker, *supra* note 6, at 130; Dowd & Grant, *supra* note 6, at 168.

159. *Id.*

160. Kahlenberg et al., *supra* note 1, at 179.

161. *Abbott v. Burke*, 643 A.2d 575, 577 (N.J. 1994); *Abbott v. Burke*, 710 A.2d 450, 473–74 (N.J. 1998). See also Martin et al., *supra* note 4.

162. *Id.*

college students complete certificates and degrees at lower rates than K-12 or four-year college students graduate.¹⁶³ Additionally, relatively few community college students ever transfer to a four-year degree program.¹⁶⁴ Evidence of poor inputs and outputs suggest significant funding inadequacy.

C. Adequate Funding Would Correct These Disparities and Improve Student Outcomes

A court order mandating the legislature to change existing funding and resource allocations would address both the input and output disparities noted in the prior section. Although an exact measure of “adequate” funding for community college continues to be researched, scholars acknowledge that it must be enough to “provide community colleges the resources necessary to successfully educate the country’s aspiring middle class.”¹⁶⁵ As with K-12 lawsuits, this inherently requires both an inputs and outputs analysis of community college programs to determine the right funding level, with several researchers suggesting that earning outcomes following program completion should be among the factors considered.¹⁶⁶

By addressing the substantial funding disparities and longstanding underfunding of community colleges, states would improve student outcomes and meet their constitutional obligation. Research has repeatedly shown that increased funding and resources will eliminate some of the inequitable outcomes experienced by community college students.¹⁶⁷ It is only through a remedy that provides increased funding and resources for community colleges, such that students can access and complete school in a manner that lets them compete economically, that the state will cure its constitutional violation.

D. Courts Should Conclude That States are Failing to Meet Their Constitutional Education Clause Obligations by Inadequately Funding Community Colleges

The application of K-12 school funding precedent in the community college context breaks new ground legally but, for the reasons noted above, fundamentally follows a reasonable extension of the logic reflected in K-12 funding adequacy lawsuits. Students at community colleges have been promised a chance at

163. See *supra* note 91 and accompanying text. See also NAT’L CTR. FOR EDUC. STATISTICS, PUBLIC HIGH SCHOOL GRADUATION RATES (May 2021), <https://nces.ed.gov/programs/coe/indicator/coi> (last visited Feb. 23, 2023) (noting that in the 2018-19 school year, eighty-six percent of students graduated high school).

164. See *supra* Part IV (discussing the impacts of inadequate funding).

165. Kahlenberg et al., *supra* note 1, at 177.

166. See Anthony P. Carnevale et al., *Educational Adequacy in the Twenty-First Century*, in RESTORING THE AMERICAN DREAM: PROVIDING COMMUNITY COLLEGES THE RESOURCES THEY NEED 117 (2019) (discussing what salary measures and on what time horizons would be indicative of an adequate education).

167. See *supra* Part IV (discussing the ways increased funding could ameliorate the negative impacts of inadequate funding).

economic mobility, but for too many, that promise has fallen short. Community colleges have that potential but must be funded adequately to achieve it. By taking legal action that would require courts to consider the adequacy of community college funding under the K-12 school funding adequacy framework, students and advocates could help make increased funding a reality. Even if legal action is not initially successful, it can still shed light on issues of funding inequity and pressure state legislatures to rectify those problems.

VII. INCREASING COMMUNITY COLLEGE FUNDING THROUGH ADVOCACY: POLICY RECOMMENDATIONS TO DRIVE CHANGE

K-12 school funding litigation underscores that legal action is only one part of the process to achieve more adequate funding. Policy change is also a necessary piece in any funding formula change. This is not unique to the K-12 education context. For K-12 schools and community colleges alike, federal, state, and local governments play important roles in setting policies that influence funding and other resources available to institutions. Thus, policy must be considered as part of any comprehensive effort to end community college underfunding and support increased economic mobility of community college students. This section presents a series of overarching considerations that should inform future community college funding policy advocacy efforts. It builds on lessons from K-12 school funding litigation and the shortfalls of existing community college funding policy recommendations that would address community college funding inadequacy and improve student outcomes at community colleges.

A. State Policy Recommendations

State policy has long played the most significant role in determining community college funding.¹⁶⁸ Policy makers have ignored the funding challenges faced by community colleges, forcing them to do more with less. But state policy inaction (or worse, active community college budget cuts) exacerbates the challenges community colleges face and inhibits their ability to meet the needs of their students. It is only through adequate funding that the benefits of a community college education, most importantly economic mobility, can be realized for all who seek it. Policy makers have the power to enact changes, independent of court mandates to do so, that would meaningfully improve community college funding and resources available to students. Such changes include:

- *Overhauling Existing Formulas.* Current community college funding formulas are broken. As noted above, they generally fail to account for part-time students, rely only on past year data, do not reflect any measure of student need, and ignore known funding discrepancies created by the local property tax disparities in the state. Rectifying these issues is critical to better supporting community colleges; doing so will increase the

168. See *supra* Part III.A.

predictability of funding, ensure that schools serving students with the most significant needs also have the most resources, and address longstanding funding inequities and associated student outcomes. Without addressing community college funding formula issues, it is unlikely that the perpetual funding shortfalls can be meaningfully addressed.

- *Investing in Research on What Amounts to an Adequate Community College Education.* Research on what constitutes an adequate community college education is nascent. In recent years, philanthropies have funded groups of research experts, such as those at the Century Foundation, to evaluate what adequacy means in the community college context.¹⁶⁹ Additional research would provide meaningful state-specific context regarding community college needs, inputs, and outcomes. Gaining a better understanding of how students in particular communities within the state are doing, what labor opportunities are available in the state, and where such opportunities are predominantly located can help inform programming and adequacy definitions for a given state. Such insights would supplement national research and provide unique, local context.
- *Improving Collaboration Between Community Colleges and Local Businesses and Four-Year Universities.* Partnerships between community colleges and local businesses could strengthen students' access to practical hands-on experience while enrolled in school and subsequent employment opportunities upon certificate or degree completion for community college students. Such collaboration would help ensure that students are preparing to work in a field with locally available jobs and with a company seeking employees. Further, the colleges could intentionally choose employers who would pay graduates a living wage with benefits to increase economic mobility after graduation. Additionally, improving collaboration with local/state four-year universities could help address existing low transfer rates and credit transfer issues among community college students.¹⁷⁰ Formalizing articulation agreements as a matter of state policy and developing clear messaging for students about transfer requirements would also help address these issues.
- *Allocating Funds for Wrap-Around Supports.* Students attending community colleges would benefit from additional wrap-around supports that address both academic and non-academic needs. Academically, community colleges could provide academic advising, remedial courses, courses for students learning English, tutoring services, and financial aid advising. Non-academically, community colleges could provide childcare, public benefits enrollment assistance, transportation assistance, financial advising, and career advising to students. By providing both academic and non-academic supports, community colleges would eliminate barriers that prevent students from completing a degree or certificate. Such supports would also set students up for success upon completion by developing skills

169. See Carnevale et al., *supra* note 166, at 117; Kahlenberg et al., *supra* note 1, at 177.

170. See *supra* Part IV (discussing challenges faced by community college students when transferring to a four-year institution).

necessary to be competitive in the workforce and connecting individuals to resources that will remain available after graduation.

B. Federal Policy Recommendations

Historically, the federal government plays a notably limited role in community college funding. However, it does not need to remain that way. There are multiple ways the federal government could support more equitable, predictable, and adequate funding for community colleges. These include:

- *Raising the Pell Grant Cap.* Pell Grant funds are the most significant way that the federal government provides funding to community colleges.¹⁷¹ Yet, the Pell Grant purchasing power has decreased over time because increases in the Pell Grant cap have not kept pace with increases in tuition. Increasing the Pell Grant cap would allow the Pell Grant to fully cover the average community college tuition and fees for institutions in every state.¹⁷² At a time when community college tuitions have been on the rise,¹⁷³ increasing the Pell Grant would improve access to community college for low-income students and support degree completion by eliminating at least one barrier—tuition. It also would remove at least some of the financial burden that may impede low-income students from considering transferring to a four-year college.
- *Establishing a “Title I” Program for Community Colleges.* The federal government recognizes that K-12 schools in communities with dense low-income populations serve students who arrive at schools with greater need and thus require larger budgets. To rectify this inequity, it established the federal Title I program, which “provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards.”¹⁷⁴

In light of the similar funding mechanisms, the same funding inequities recognized by the federal government in the K-12 Title I program manifest in community colleges. Additionally, like K-12 schools, community colleges in low-income communities serve students with greater needs; this need is likely exacerbated at the community college level due to generally poorer school quality in low-income neighborhoods and neighborhoods with predominantly residents of color.¹⁷⁵ Establishing a federal Title I funding

171. See *supra* Part III.A.

172. Michelle Dimino, *How Doubling the Pell Grant Could Be a Down Payment on Free College*, THIRD WAY (May 19, 2021), <https://www.thirdway.org/memo/how-doubling-the-pell-grant-could-be-a-down-payment-on-free-college>.

173. See *supra* Part III.B.6.

174. U.S. DEP’T OF EDUC., IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATION AGENCIES (TITLE I, PART A) (Oct. 24, 2018), <https://www2.ed.gov/programs/titleiparta/index.html>.

175. See Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, THE ATLANTIC (Feb. 29, 2016), <https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414/> (discussing the economic and racial segregation of

program for community colleges would help ensure those institutions get the resources necessary to support the students with the greatest need. In turn, it would help community colleges achieve their potential as engines of economic mobility by driving student success.¹⁷⁶

- *Investing in Research on What Amounts to an Adequate Community College Education.* Different and additional research led by the federal government, such as through the Institute for Education Sciences at the U.S. Department of Education or via a partnership between the U.S. Department of Education, the U.S. Department of Labor, and the U.S. Census Bureau, could provide additional insights to those identified in state-level research. Determining what components of a community college education are most impactful will help ensure that policy seeking to improve student outcomes and relatedly improve economic mobility is data-informed. Further, additional research will help ensure that even limited funding and resources can be allocated wisely.

VIII. CONCLUSION

Community colleges have the potential to be a powerful anti-poverty measure for millions of individuals living in the United States. Data show that students who obtain at least some post-secondary education, including an associate degree or technical certificate, are significantly less likely to rely on public benefits and more likely to obtain an income that propels them to the middle class than individuals with only a high school education. Yet, despite consistent research showing the substantial individual and societal benefits community colleges provide and the ways additional financial and other resources would address existing challenges, community colleges remain persistently underfunded.

The repetitive pattern of requiring community colleges to serve the neediest students with the fewest resources needs to be disrupted. This Note sets forth a proposed strategy to do just that. Engaging in litigation arguing that states' inadequate funding of community colleges is a dereliction of their constitutional obligation to provide students with an "efficient" education would build on existing K-12 school funding precedent and recognize the significant ways that social and economic changes have shifted states' education obligations. But lessons from the K-12 school funding lawsuits indicate that litigation on its own is not enough. Advocacy efforts, too, must be advanced by broad coalitions of students,

public schools and noting that "school poverty turns out to be a good proxy for the quality of a school. [Schools that] are in poorer communities . . . have less local resources, they have fewer parents with college degrees, they have fewer two-parent families where there are parents who can come spend time volunteering in the school, they have a harder time attracting the best teachers. So for a lot of reasons, schools serving poor kids tend to have fewer resources . . ."). See generally Kahlenberg et al., *supra* note 1.

176. See *supra* Part IV (discussing connections between increased spending and improved student outcomes).

communities, higher education leaders, and policy makers. By taking a multi-pronged approach advancing both litigation and advocacy efforts, those seeking to achieve more adequate community college funding amplify their power and reach. Community colleges have the ability to promote economic mobility and alleviate poverty. Through collective legal and advocacy efforts, this potential can be realized.