

11-2004

## School Funding Litigation: Who's Winning the War?

John Dayton

Anne Dupre

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Courts Commons](#), and the [Education Law Commons](#)

---

### Recommended Citation

John Dayton and Anne Dupre, School Funding Litigation: Who's Winning the War?, 57 *Vanderbilt Law Review* 2351 (2004)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol57/iss6/8>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# School Funding Litigation: Who's Winning the War?

---

John Dayton

Anne Dupre

57 Vand. L. Rev. 2351 (2004)

---

*School funding litigation has its roots in Brown v. Board of Education and addresses the unresolved remnant in Brown's attack on the separate but equal doctrine by advocating for greater equity in school funding. Battles over school funding have been waged on many fronts nationwide, including efforts to influence public opinion and attempts to pass remedial federal and state legislation. When these efforts failed to provide adequate remedies, funding equity advocates turned to litigation. Despite a loss by plaintiffs at the United States Supreme Court in San Antonio v. Rodriguez, plaintiffs followed Justice Marshall's cue in Rodriguez and turned to state courts and state constitutions for school funding remedies. The litigation that followed the Supreme Court of California's landmark school funding equity decision in Serrano v. Priest has touched every state to some degree, with most states experiencing full scale legal challenges to their systems of funding public schools. To date, the highest courts in thirty-six states have issued opinions on the merits of funding litigation suits, with nineteen courts upholding state funding systems and seventeen declaring the system unconstitutional.*

*This Article examines how the landscape of school funding litigation has changed over the three decades since Serrano and Rodriguez. The first part of the Article sets forth the history of school funding litigation since Serrano and Rodriguez and unravels the legal theories that have driven the school financing cases, explaining past dispositions and pointing out likely future trends. The second part of the Article examines the role of the courts in school funding litigation and analyzes the extent to which judges in these cases have become involved in matters that are traditionally left to the legislature and local control. This section explores the political issues that arise in school funding cases where, in contrast to federal judges, state judges are subject to direct public opinion and majoritarian pressures, including popular elections, review by the electorate, and recall votes.*

*The Article considers whether the No Child Left Behind (NCLB) Act's "accountability" measures may have opened the door to a powerful new vein of litigation for plaintiffs in the war over school funding. The last part of the Article scrutinizes the efficacy of school funding litigation and considers whether even the most "activist" courts have actually helped plaintiffs achieve the desired reform. With large revenue shortfalls in most states, even the plaintiffs who believed that they had won the school funding litigation battle are still not sure of the outcome of the war.*