


# From Courthouse to Statehouse— and Back Again

THE ROLE OF LITIGATION IN  
SCHOOL FUNDING REFORM





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# Executive Summary

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For decades, inadequate and inequitable public school funding has been recognized as perhaps the most serious and intractable barrier to improving educational opportunities for our nation's children, especially those in school districts segregated by poverty and race.

In nearly every state, legal challenges have been mounted against these inequities. But success in court is not enough to bring about substantive change in the level of state investment in students and schools. While litigation can play a role, in the end real change requires action by the elected executive and legislative branches of state government.

After five decades advocating for school finance reform across the country, Education Law Center sees the urgent need to deepen understanding of how differing strategies—litigation, research, grassroots organizing, and communicating with the public—can combine to achieve successful school funding reform in the states. This report is the first of its kind in the field.

In *From Courthouse to Statehouse—and Back Again*, we profile significant school funding victories in Massachusetts, Kansas, Washington, and New Jersey, to explore the components of a broader political approach to reform. In each of these states, early legal victories

suffered setbacks from economic downturns, shifts in political power, or just plain legislative gridlock. In each case, new campaigns for funding equity were launched, with litigation serving as one among a broader range of strategies and with additional organizations at the table. In each case, the synergy created by these multi-faceted campaigns delivered significant new funding for the state's public schools.



*Pictures from "The Promise of Abbott v. Burke, A Photo Essay," by Randall Hagedorn, Education Testing Service, 2008.*

## A Look Back: Successful School Reform Campaigns in Four States

The profiles in this report explore how broad coalitions of advocates, in close coordination with litigators in four states, built multi-faceted, strategic political campaigns to successfully secure hundreds of millions—in some cases billions—of new dollars for public schools from governors and state legislatures. Each of these profiles begins with a summary of historic legal precedents that brought temporary success but quickly stalled. In each case, a new effort was mounted, sometimes with grassroots activism at the fore and sometimes with state courts holding firm until lawmakers enacted school funding reforms and increased investment in their state’s public schools.

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### MASSACHUSETTS

In November 2019, the Massachusetts Legislature unanimously passed a new law updating the state’s school funding formula and committing an additional \$1.4 billion annually in state aid for public schools, much of it targeted specifically to high-needs districts. The Massachusetts reform campaign relied on sophisticated grassroots organizing across the Commonwealth. In this intentional “bottom up” effort, parents and students took the lead in the fight for well-resourced schools. Litigation was filed at the end of the process, to push reform over the legislative finish line.

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### KANSAS

In Kansas, a landmark legal victory in 2006 promised new funding for schools. But that promise was derailed, first by the Great Recession and then by the Tea Party takeover of the governor’s mansion and state Legislature. Despite orders from the state Supreme Court, the governor and Legislature refused to abandon their anti-tax, anti-government stance. It was only when advocacy organizations decided to take back their

statehouse that lawmakers enacted meaningful school funding reform in 2018 and 2019. When fully phased in, state aid to schools will have increased by \$1.038 billion, or \$2,231 per pupil.

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### WASHINGTON

The fight for school funding reform in Washington State dragged on for decades as legislators commissioned study after study, hoping to learn that public schools did not actually need more money. Litigation filed in 2006, with the backing of the state’s largest teachers union finally forced the Legislature to act, but only after the state Supreme Court found the Legislature in contempt, and lawmakers confronted thousands of angry teachers in their districts and at the statehouse.

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### NEW JERSEY

New Jersey is home to one of the most successful and impactful school funding cases in the nation, *Abbott v. Burke*. The reform campaign profiled here focuses on one aspect of the *Abbott* litigation: funding and implementation of the state Supreme Court’s 1998 order that New Jersey provide high quality preschool for all three- and four-year-olds in the Garden State’s poor and racially isolated urban districts. A unique coalition of public school, childcare, and Head Start organizations and advocates, backed by philanthropy, worked to create the Abbott Preschool Program, a national model for the delivery of effective early education now serving 50,000 children through a \$700 million, state-funded, multi-sector preschool infrastructure.



## Lessons Learned: A Look Ahead

Successful school funding reforms can yield concrete, long-term benefits for children, especially those at-risk from household and community poverty, housing instability, discrimination, and other societal factors. But reform can only be accomplished through a political effort focused squarely on the elected branches of state government. Our profiles look back to examine how organizing, advocacy, research, communications, and litigation combined in powerful political campaigns to win significant new investments in public education in four states.

Next, we look ahead, to explore what can be learned from these exemplars and how they might inform future work. Six key lessons emerge from these stories:

### 1 | Winning a Political Majority

While litigation can be crucial in school finance campaigns, the judiciary does not control the state's purse strings. Securing new resources for schools requires that a majority of elected lawmakers vote for reform and, more critically, *fund* it. Labor, school districts, parents, students, and advocates played a leading role in each of these stories in building political support for reform.

### 2 | Litigation in the *Service* of Campaigns

In each state, when faced with ongoing inaction and/or deep resistance from the elected branches to adequately *fund* public education, advocates asked the courts to step in.

Courts do matter—and in fact they can matter a lot. In our profiles, courts, in response to carefully developed

and timed litigation, applied substantial and often crucial pressure on politicians to act.

### 3 | Courts Are Political Too

Litigating for school finance reform requires a deep understanding of the political landscape, as well as the legal culture, of the state. Judges must not be viewed passively as the arbiters of litigation, but as instrumental actors in school finance reform.

At the same time, litigators should be acutely aware of the opportunity to utilize storytelling in the context of the legal process. Litigation can present the case for reform built on a trial record that enhances the broader political campaign and sets the stage for executive and legislative action.

### 4 | Research—Broadly Defined—Is Crucial

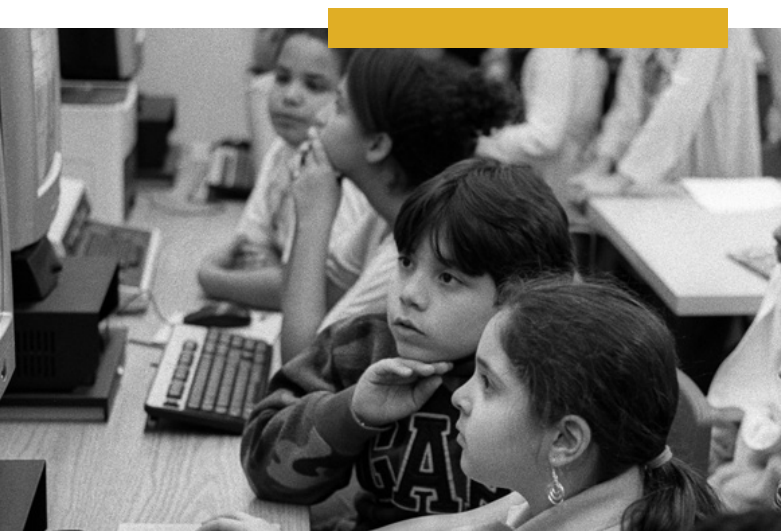
Successful campaigns require research at all stages and for multiple audiences. The state campaigns profiled here utilized research in a variety of ways, from popular education materials that galvanized public support to academic research outlining the need for funding reform. They show how cost studies can provide the benchmark for legislative activism, and how advocates can not only lobby for reform but come together to build the infrastructure for an expansive new statewide program. And importantly, we also highlight research conducted after reform is implemented, demonstrating its positive impact on the educational prospects of vulnerable children.

## 5 | An Aggressive Communications Strategy is Also Critical

Communications and messaging are a crucial, but often overlooked, element of strong political campaigns for school finance reform. To succeed, a campaign must win the hearts and minds of legislators and voters, including parents, teachers, board members, and supporters of public education. Our profiles also show how litigation, as it plays out in the courts, offers another powerful platform to amplify a campaign's message of resource inequity and the compelling need for greater investments in the education of the state's school children.

## Conclusion

Adequate and equitable school funding is a basic building block in the education of the nation's children. Yet, there are many popular misconceptions about school funding. One is that local districts are the governing units responsible for funding their schools. Another is that the lack of funding in schools segregated by race and poverty is caused by the district officials that operate them. Still another is that a lawsuit alone can fix the chronic and stark disparities that are so enduring and pervasive across the U.S. education landscape.



## 6 | Campaigns Need Significant and Sustained Support

School funding reform is a long-term project. On the ground in the states, the political struggle to secure and sustain adequately funded schools is *never* over. Even significant victories like those showcased here are subject to backsliding when economic and political conditions change and shift. This means that it is critical for the advocacy work—in the statehouse, at the courthouse, *and* in the community—to be backed by long-term, stable financial support.

In this report, we attempt to dispel these basic misconceptions. As our success stories show, each state's constitution obligates it to maintain and support a system of free public schools to educate all resident children. This means the amount and distribution of school funding—both state and local revenues—is controlled by elected state legislators and governors. Consequently, improving the way public schools are funded and boosting the investment of tax dollars in those schools can only be accomplished through the year-to-year political process of making laws and passing budgets in state capitols.

In the end, improving the education of all children, especially the most vulnerable, depends on building strong, multi-dimensional political campaigns that can place and sustain the demand for well-funded and well-resourced schools squarely at the feet of state elected representatives and governors. Lawyers, when working in deep connection to those campaigns, can amplify and advance that demand. By doing so, they are answering the call to ensure the right to public education possessed by future generations of children remains “prominent, paramount and fully protected.”



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