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BACKGROUND PAPER

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Appropriation by Litigation: Estimating the Cost of Judicial Mandates for State and Local Education Spending

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I. Introduction

When asked how he responded to charges that he raised taxes as governor of Arkansas, GOP presidential candidate Mike Huckabee partially shifted the blame to the Arkansas Supreme Court: "Do I apologize for complying with a Supreme Court order to improve education in a state that desperately needed it? Of course I don't, because our education system did improve."[1] Huckabee was referring to his 2004 approval of an increase in several taxes to raise over $360 million for education spending in order to comply with the Arkansas Supreme Court's ruling in the case of *Lake View v. Huckabee*.[2]

In May 2006, Texas Governor Rick Perry responded to a similar court order by signing a series of bills to substantially reduce local property taxes and replace that local revenue by pouring billions of new state dollars into public education.[3] The bills also made significant changes to the Texas tax system, including a new business tax applied to a company's gross receipts (called the "margins" tax) and an increase in the excise tax on cigarettes.

These changes—which will affect Arkansas's and Texas's long-term spending, tax burden, and business tax climate—are all part of a larger, and growing, trend. Since 1977 courts in 27 states have held that spending on schools is constitutionally inequitable or inadequate. These decisions often lead to dramatic short-term increases in education spending as lawmakers comply with court mandates. In nine states lawmakers raised taxes by over $13 billion to meet these new spending obligations. Similar cases are currently pending in other states.

Commentators have written many books, articles, and research papers concerning court involvement in the school finance controversy. But few studies have attempted a comprehensive, state-by-state measure of the long-term fiscal impact of court education

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1 *See* Transcript, "Republican Presidential Debate in South Carolina", *New York Times* (5/15/2007), located at http://www.nytimes.com/2007/05/15/us/politics/16repubs-text.html?pagewanted=10&_r=1.

2 91 S.W.3d 472 (2002).

3 *See* House Bills 1-5, 2006 Leg., Special Sess. (Tx. 2006).

Table 1

Legislative Responses to Court Education Mandates Total $34 Billion Annually, Average $976 Per Pupil
2004 Dollars

State	Total Cost of Legislative Compliance with Court Mandate	Total Cost Per Pupil (Enrollment in Year of Compliance)	Rank
New Jersey	$ 8,264,577,894	$ 6,648	1
New York	$ 10,567,5 91,325	$ 3,633	2
Connecticut	$ 1,527,583,067	$ 2,478	3
New Hampshire	$ 422,996,933	$ 2,066	4
Massachusetts	$ 1,437,993,080	$ 1,638	5
Maryland	$ 1,365,036,131	$ 1,575	6
Kansas	$ 720,183,954	$ 1,570	7
New Mexico	$ 426,651,609	$ 1,332	8
Kentucky	$ 722,647,284	$ 1,136	9
Ohio	$ 2,041,282,061	$ 1,109	10
Washington	$ 779,290,429	$ 1,004	11
Wyoming	$ 88,655,521	$ 931	12
Montana	$ 101,268,971	$ 693	13
Texas	$ 2,650,185,411	$ 655	14
Missouri	$ 470,615,917	$ 543	15
Arizona	$ 434,585,890	$ 512	16
Tennessee	$ 355,736,877	$ 451	17
Arkansas	$ 197,270,453	$ 436	18
North Dakota	$ 28,306,048	$ 280	19
Colorado	$ 197,456,446	$ 273	20
Vermont	$ 23,538,941	$ 222	21
Michigan	$ 375,482,209	$ 218	22
California	$ 989,000,000	$ 153	23
Idaho	$ 31,136,653	$ 122	24
Alaska	$ 13,152,701	$ 98	25
Iowa	$ 40,000,000	$ 85	26
North Carolina	$ 21,762,673	$ 16	27
	Total: $ 34,293,988,476	**Average: $ 976** [a]	

a) Weighted average
Source: Tax Foundation calculations based on data from the National Center for Education Statistics and the Bureau of Labor Statistics

Table 2

Nine States Raise Taxes by a Total of Nearly $13 Billion Annually to Finance Court-Mandated Spending

State	Year	Real State Tax Increase (2004 Dollars)
Arkansas	2004	$ 366.3 million
Kentucky	1990	$ 985.7 million
Maryland	2002	$ 106.5 million
Missouri	1993	$ 405.3 million
New Hampshire	1999	$ 423 million
New Jersey	1976	$ 2 billion
New Jersey	1990	$ 4 billion
Tennessee	1992	$ 310 million
Texas	2006	$ 3.9 billion[a]
Vermont	1997	$ 86 million
		Total: $ 12.6 billion

a) The tax increase in Texas was offset by local property tax relief, but this tax relief went beyond what the state Supreme Court required.
Source: National Conference of State Legislatures; National Association of State Budget Officers; Fiscal Notes; Official State Reports

mandates[4] and none have presented a state-by-state estimate of the cost of legislation approved to comply with court education mandates.

How much more are states spending on education as a result of these mandates? Have lawmakers increased taxes to comply with the mandates, and if so, how much? Has compliance with court mandates led to long-term increases in per-pupil spending? This study—the first in a new series called *Appropriation by Litigation*—will answer these questions.

II. Summary

Twenty-seven states have increased school spending or raised taxes to comply with court mandates. Legislative responses to court mandates vary, but they typically provide more funding for recurring expenses (i.e. teacher salaries), capital expenses (i.e. facility construction or repair) or take the form of general grants that seek to equalize funding among school districts. Since 1977, lawmakers have authorized an additional $34 billion in annual spending or taxes to comply with court mandates, which equals an average of $976 per pupil[5] (see Table 1).

The short-term fiscal impact of court mandates varies greatly among the twenty-seven states. Lawmakers in New Jersey complied with court orders by enacting a series of spending plans that were expected to increase recurring and capital funding commitments by over $6,648 per pupil. In New York lawmakers approved a massive new school construction project, with an approved cost of $3,633 per pupil, after courts mandated that the legislature fix school facilities. In Iowa, lawmakers provided a small increase, amounting to $85 per pupil, to settle a case out of court. In North Carolina, seven years after a court mandate, lawmakers provided additional funding of only $16 per pupil.

While many states have financed court-mandated spending increases either by spending surplus funds or cutting spending in other program areas, nine states have explicitly raised taxes. Table 2 contains an overview of specific state tax increases enacted in conjunction with court-mandated spending increases. It shows that lawmakers have approved nearly $13 billion in

4 A recent study by Christopher Berry did estimate the long-term impact of school finance judgments on state education spending. See "Christopher Berry, School Finance Judgments and State Fiscal Policy," in *School Money Trials*, at 213 (Brookings Institution Press 2007). Unlike this study, Berry did not present his findings on a state-by-state basis. Berry also estimated the long-term impact of court mandates on all education spending (federal, state and local), state spending, and local spending. The present study excludes federal spending.

5 Unless otherwise indicated, throughout this study the term "per pupil spending" means real per pupil state and local spending, expressed in terms of 2004 price levels as reported in Consumer Price Index-Urban data.

annual tax increases to fund new education spending required by the courts.

With lawmakers approving an average of $976 per pupil in court-mandated spending increases, one would presume that education spending in these states would be demonstrably higher in years after the court ruling. Curiously, however, this is not the case.

Comparing long-term recurring and capital spending trends in states before and after court mandates on education shows that even a hefty, short-term increase in education spending to comply with a court order does not always translate into permanently higher levels of spending. This is particularly true of states where lawmakers complied with court orders by increasing recurring expenditures; increases in capital expenditures exhibit more longevity.

In eighteen states there is enough data to analyze the long-term fiscal impact of court mandates on recurring spending compared to a baseline measured by spending trends before the court mandate (see Table 3). The results range from a massive $3,084 increase above the baseline in Vermont to a decline of $4,326 below the baseline in New Jersey. Fourteen of the eighteen states showed recurring spending above the baseline, with six states increasing spending more than $1,000 per pupil above it. Four states showed spending below the baseline after a court mandate.

Overall, the results were somewhat surprising: despite increasing recurring spending to comply with court mandates, these eighteen states are spending $284 less per pupil on recurring spending (overall) in 2004 than we would have expected based on growth trends before the court mandates.

The results for capital spending are different. Of the five states where data is available to compare long-term capital spending trends after a court decision, three showed spending above the pre-mandate baseline, while two states showed spending below it (see Table 4). Overall, in 2004 the five states exceeded the pre-mandate capital spending baseline by $164 per pupil.

Courts are clearly having a fiscal impact on state budgets in the short-term, where mandates are forcing lawmakers to immediately increase state spending on education. In the long-term, however, the overall impact on state budgets is questionable. Particularly in states where courts forced lawmakers to increase recurring expenditures, the evidence suggests that appropriation by litigation is not a particularly efficient means of securing permanent funding increases for schools.

III. School Finance Mandates: Brief Background

State courts have wrestled with the issue of education finance for over three decades. In that time, plaintiffs (often parents, teachers, administrators, or some combination of the three) have attempted to convince state courts that state lawmakers have a constitutional duty to provide a higher level of education funding. Plaintiffs have successfully made these claims in twenty-seven states since 1977, with theories that first focused on equitable distribution of school funding but

Table 3

Actual State and Local Recurring Spending Is $284 Per Pupil Less than Projections Based on Growth Before Court Mandates
2004 Dollars

State	Difference Between Actual Recurring Spending and Projected Recurring Spending After Court Decision	Rank
Vermont	$ 3,084	1
North Dakota	$ 2,102	2
Massachusetts	$ 2,050	3
Ohio	$ 1,324	4
Tennessee	$ 1,152	5
Wyoming	$ 1,050	6
New Hampshire	$ 931	7
Maryland	$ 775	8
Alaska	$ 759	9
Arizona	$ 689	10
Missouri	$ 400	11
Michigan	$ 280	12
Arkansas	$ 99	13
North Carolina	$ 89	14
Kentucky	– $ 87	15
Idaho	– $ 234	16
Texas	– $ 1,588	17
New Jersey	– $ 4,326	18
Weighted Average	**– $ 284**	
Weighted Average without N.J.	**$ 72**	

Note: Insufficient data to analyze trends in Connecticut, Iowa, Kansas, Montana, Washington
Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Table 4

Actual State and Local Capital Spending Is $164 Per Pupil Higher Than Projections Based on Growth Before Court Mandates

State	Difference Between Actual Capital Spending and Projected Capital Spending After Court Decision	Rank
Ohio	$ 293	1
New Mexico	$ 280	2
California	$ 202	3
New Jersey	– $ 29	4
Colorado	– $ 166	5
Weighted Average	**$ 164**	

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

have evolved and now argue for higher spending to achieve "adequacy" of school funding.

Court involvement in school finance had its genesis in the civil rights movement of the 1960s, with litigants desiring the noble goal of enhanced educational opportunity for school children regardless of race, wealth, or location. Two academic studies gave litigants the rhetorical ammunition they needed by arguing, among other things, that school finance systems violated due process if they were based on anything other than the wealth of the state as a whole.[6] With the academic groundwork in place, lawsuits started to proliferate.

The first such judicial mandate required higher state spending in order to boost spending in poor school districts. In 1971 the California Supreme Court rendered its decision in *Serrano v. Priest*,[7] a case brought by parents of school children in low-income school districts. The court ruled that a disparity in funding between school districts violated the state constitution's guarantee of equal protection under the law. It did so, in the court's opinion, because wealthier districts had larger tax bases which allowed them to maintain higher levels of per pupil spending at lower tax rates.[8] After making this finding it remanded the case to a district court for trial. Eventually, the case made its way back to the state Supreme Court, which ordered the state legislature to equalize education funding between rich and poor districts.[9]

Serrano concerned educational equity within a state. The central issue was whether California had a constitutional duty to supplement local education spending such that school districts—no matter how wealthy or poor—would spend roughly the same amount per pupil. Equity lawsuits dominated education finance cases from the 1970s through the 1980s, when they were supplanted by a new legal theory that quickly gained prominence.

In 1989, the Kentucky Supreme Court issued its landmark ruling in *Rose v. Council for Better Education*.[10] The source of the litigation was section 183 of the Kentucky Constitution, which says "The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State." In defining what "efficient" meant, the Kentucky Supreme Court (in a 5-2 decision) adopted the following nine factors:

1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.
2) Common schools shall be free to all.
3) Common schools shall be available to all Kentucky children.
4) Common schools shall be substantially uniform throughout the state.
5) Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances.
6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence.
7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education.
8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education.
9) An adequate education is one which has as its goal the development of the seven capacities recited previously.[11]

Applying those factors to the education system in Kentucky, the state Supreme Court ordered the legislature to devise a completely new education system that provided "equitable distribution of funds" as well as an "adequate" level of quality instruction in the schools themselves. The *Rose* decision thus laid the groundwork for plaintiffs in other states to argue that state lawmakers had a constitutional duty to both equalize and increase education funding.

The Kentucky legislature responded by passing the Kentucky Education Reform Act (KERA), one of the most comprehensive state education reforms ever enacted. It completely

6 *See, e.g.* Coons, et al, *Private Wealth and Public Education*, Harvard University Press (1970); Arthur Wise, *Rich Schools: Poor Schools—The Promise of Educational Opportunity*, University of Chicago Press (1968).

7 5 Cal.3d 584 (1971) (*Serrano I*).

8 *See* Peter Schrag, *Final Test: The Battle for Adequacy in America's Schools*, at 76 (The New Press 2003).

9 18 Cal.3d 728 (1976) (*Serrano II*).

10 790 S.W.2d 186 (Ky. 1989).

11 Id.

revamped the state's education system by adding a new testing system to measure progress and providing approximately $500 million per year (or $1,136 per pupil in 2004 dollars) in additional state funds financed by increases in the sales and corporate income tax rates.[12]

According to research conducted by Melissa Burke, KERA achieved mixed results in reforming Kentucky's schools. She found that, while KERA did lead to more equitable spending across districts, there is no evidence that the gaps in test scores among those districts have narrowed.[13]

Surprisingly, as the data in section III show, Kentucky is actually spending less in 2004 than one would have expected based on trends in place before 1989—the year *Rose* was decided.[14] Regardless of the fiscal impact of the *Rose* decision in Kentucky, it certainly set the stage for other state courts to shift focus from equity to adequacy.

IV. Estimating the Costs of School Finance Mandates

A. Overview

Courts rarely mandate that the legislature increase school funding by specific amounts although a few have done exactly that (see sidebar). More typically, as in the Kentucky example above, courts will mandate that the legislature "fix" the system and instruct—or strongly hint—that more money is required.

Courts usually order the legislature to determine the cost of funding an adequate education and then provide the necessary funding. After issuing its ruling, the court will then

Table 5

States Enacted Over $34 Billion in Spending Increases to Comply with Court Rulings on Education Finance
2004 Dollars

	Funds Appropriated in Total				Funds Appropriated Per Pupil (Enrollment in Year of Decision)			
	Per Court Mandate				Per Court Mandate			
State	Recurring Spending	One-Time Spending	Spending per Settlement	Total	Recurring Spending	One-Time Spending	Spending per Settlement	Total
Alaska	$ 13,152,701	n/a	n/a	$ 13,152,701	$ 98	n/a	n/a	$ 98
Arizona	$ 434,585,890	n/a	n/a	$ 434,585,890	$ 512	n/a	n/a	$ 512
Arkansas	$ 125,018,380	$ 72,252,074	n/a	$ 197,270,454	$ 274	$ 161	n/a	$ 436
California	n/a	n/a	$ 989,000,000	$ 989,000,000	n/a	n/a	$ 153	$ 153
Colorado	n/a	n/a	$ 197,456,446	$ 197,456,446	n/a	n/a	$ 273	$ 273
Connecticut	$ 1,527,583,067	n/a	n/a	$ 1,527,583,067	$ 2,478	n/a	n/a	$ 2,478
Idaho	$ 7,548,280	$ 23,588,373	n/a	$ 31,136,653	$ 29	$ 92	n/a	$ 122
Iowa	n/a	n/a	$ 40,000,000	$ 40,000,000	n/a	n/a	$ 85	$ 85
Kansas	$ 720,183,954	n/a	n/a	$ 720,183,954	$ 1,570	n/a	n/a	$ 1,570
Kentucky	$ 722,647,284	n/a	n/a	$ 722,647,284	$ 1,136	n/a	n/a	$ 1,136
Maryland	$ 1,365,036,131	n/a	n/a	$ 1,365,036,131	$ 1,575	n/a	n/a	$ 1,575
Massachusetts	$ 1,437,993,080	n/a	n/a	$ 1,437,993,080	$ 1,638	n/a	n/a	$ 1,638
Michigan	$ 83,440,491	$ 292,041,718	n/a	$ 375,482,209	$ 49	$ 170	n/a	$ 218
Missouri	$ 470,615,917	n/a	n/a	$ 470,615,917	$ 543	n/a	n/a	$ 543
Montana	$ 67,899,539	$ 33,369,432	n/a	$ 101,268,971	$ 465	$ 228	n/a	$ 693
New Hampshire	$ 422,996,933	n/a	n/a	$ 422,996,933	$ 2,066	n/a	n/a	$ 2,066
New Jersey	$ 1,214,480,671	$ 7,050,097,223	n/a	$ 8,264,577,894	$ 1,077	$ 5,571	n/a	$ 6,648
New Mexico	n/a	$ 426,651,609	n/a	$ 426,651,609	n/a	$ 1,332	n/a	$ 1,332
New York	n/a	$ 10,567,591,325	n/a	$ 10,567,591,325	n/a	$ 3,633	n/a	$ 3,633
North Carolina	$ 21,762,673	n/a	n/a	$ 21,762,673	$ 16	n/a	n/a	$ 16
North Dakota	n/a	n/a	$ 28,306,048	$ 28,306,048	n/a	n/a	$ 280	$ 280
Ohio	$ 746,640,316	$ 1,294,641,745	n/a	$ 2,041,282,061	$ 408	$ 701	n/a	$ 1,109
Tennessee	$ 355,736,877	n/a	n/a	$ 355,736,877	$ 451	n/a	n/a	$ 451
Texas	$ 2,650,185,411	n/a	n/a	$ 2,650,185,411	$ 655	n/a	n/a	$ 655
Vermont	$ 23,538,941	n/a	n/a	$ 23,538,941	$ 222	n/a	n/a	$ 222
Washington	$ 779,290,429	n/a	n/a	$ 779,290,429	$ 1,004	n/a	n/a	$ 1,004
Wyoming	$ 88,655,521	n/a	n/a	$ 88,655,521	$ 931	n/a	n/a	$ 931
Total	$ 13,278,992,484	$ 19,760,233,499	$ 1,254,762,494	$ 34,293,988,476	n/a	n/a	n/a	n/a
Weighted Average	n/a	n/a	n/a	n/a	$ 550	$ 2,216	$ 162	$ 976

Note: States with n/a in recurring, one-time and settlement per pupil columns are not included in average calculations; see Appendix for methodology.
Source: Tax Foundation calculations based on data from National Center for Education Statistics and Bureau of Labor Statistics

12 Schrag, supra note 8 at 70-71; Carr and Fuhrman, *The Politics of School Finances in the 1990s*, at 156, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES, National Research Council (1999)

13 *See* Melissa Burke, *Education Reform, Redistribution, and Student Achievement: Evidence from the Kentucky Education Reform Act*, manuscript (October 2003), located at http://www.princeton.edu/~maclark/kera.pdf/.

14 An alternative method of projecting per pupil spending in Kentucky, presented in the Appendix, estimates that Kentucky is actually spending $479 more in 2004 due to the decision.

sometimes act as referee over the subsequent legislative proceedings, giving its approval when legislatures comply and ordering lawmakers back to the drawing board when they do not.

Accordingly, we cannot measure the fiscal impact of school finance litigation merely by looking at court opinions. Rather, we have to look to the legislative response and the long-term impact on per-pupil spending. Since courts often closely monitor the legislative proceedings to ensure compliance, it is reasonable to measure court impact on education funding by estimating how much lawmakers increased spending to comply and how much per-pupil spending increased after the decision.

Select Courts Have Mandated Specific Education Funding Levels

While most courts refrain from mandating specific funding levels in education finance rulings, courts in a few states have done so. For example:

In Arizona, a lower court judge ordered the state to restore $90 million in funding to the budget. This ruling (known as *Roosevelt II*) was later reversed on appeal.

In the case of *Montoy v. State,* the Kansas Supreme Court ordered the state to increase education spending by at least $285 million.

After the New York legislature failed to comply with the state Supreme Court's ruling in *Campaign for Fiscal Equity v. State,* special masters appointed by the court found that the state needed to spend over $14 billion on school facilities in order to meet its constitutional mandate (lawmakers later provided approximately $10.6 billion, less than the court demanded).

B. What Lawmakers Authorized in the Short Term

How much increased spending did lawmakers authorize to comply with court mandates? Table 5 presents the findings based on estimates of the projected cost of court compliance legislation when it was enacted.

Table 6

Nine States Raised Taxes by $13 Billion to Fully or Partially Finance Court-Mandated Spending

State	Year	Tax Increases[a]	Nominal Revenue Raised	Real Revenue Raised (2004 Dollars)	Real Revenue Per Pupil (Enrollment in Year of Enactment)
Arkansas	2004	-Increased sales tax rate (5.125 to 6 percent) -Increased corporate franchise tax rate (.27 to .3 percent) -Increased wholesale vending tax rate (4.5 to 6 percent)	$ 366.3 million	$ 366.3 million	$ 818
Kentucky	1990	-Increased sales tax rate (5 to 6 percent) -increased corporate income tax rates	$ 682 million	$ 985.7 million	$ 1,549
Maryland	2002	-Increased cigarette tax rate (from 66 cents to $1 per pack)	$ 101.4 million	$ 106.5 million	$ 123
Missouri	1993	-Increased corporate income tax rate (from 5 to 6.25 percent) -Limited federal tax deduction for wealthy taxpayers	$ 310 million	$ 405.3 million	$ 468
New Hampshire	1999	-Imposed new statewide property tax -Increased business profits tax (from 7 to 8 percent) -Increased business enterprise tax (from .25 to .50 percent) -Imposed new 8 percent tax on car rentals -Increased the real estate transfer tax (from .50 to .75 cents per $100) -Permanently adopted the 5.5 percent tax on communications -Permanently adopted the 8 percent tax on meals and rooms	$ 365 million	$ 423 million	$ 2,066
New Jersey	1976	-Imposed personal income tax	~$ 600 million	~$ 2 billion	$ 1,396
	1990[b]	-Income and sales tax increases associated with passage of New Jersey's Quality Education Act	$ 2.8 billion	$ 4 billion	$ 3,714
Tennessee	1992	-Increased sales tax rate from 5.5 to 6.0 percent	~$ 230 million	~$ 310 million	$ 362
Texas	2006[c]	-Imposed new gross receipts tax at rates of 1 percent or 0.5 percent, depending on business structure -Phased out old franchise tax -Increased cigarette excise tax from 41 cents to $1.41 per pack -Expanded sales tax on motor vehicles	~$ 4.1 billion	~$ 3.9 billion	$ 881
Vermont	1997	-Raised taxes on rooms and meals, gasoline, corporations and telecommunications	~$ 73 million	~$ 86 million	$ 811
Total				**$ 12.6 billion**	
Weighted Average					**$ 1,155**

a) Unless indicated, these measures only increased state-level taxes.
b) This tax increase was later scaled back after significant public opposition.
c) The Texas state tax increases were more than offset by expected local property tax relief provided by the state, but not all the local tax relief was mandated by the state's Supreme Court.
Source: National Conference of State Legislatures; National Association of State Budget Officers; Fiscal Notes; Official State Reports

Table 5 segments the data into three categories: recurring increases, one-time increases, and increases used to settle a case out of court. Recurring increases are funds spent solely for operation expenses i.e. salaries, etc. One-time increases are funds spent for recurring or capital expenses, but solely on a one-time basis. Settlement increases also include recurring or capital increases, but were separated out since they are increases that are meant to stop a court from issuing a mandate. These three estimates are then converted into per pupil numbers and aggregated into one total estimate.

The total amount spent by states to comply with court mandates exceeds $34 billion. The top five states in total real dollar amounts are New York ($10.6 billion), New Jersey ($8.3 billion), Texas ($2.7 billion), Ohio ($2.0 billion), and Connecticut ($1.5 billion). Adjusting for enrollment (using data from the year of the court mandate), the biggest increases were enacted in New Jersey ($6,648 per pupil), New York ($3,633), Connecticut ($2,478), New Hampshire ($2,066), and Massachusetts ($1,638).

The New York increase ($10.6 billion total or $3,633 per pupil) is the total price tag of a capital school construction program that the New York General Assembly approved in its 2006 session to comply with the New York Court of Appeals mandate in *Campaign for Fiscal Equity v. State*.[15] The New Jersey increases represent an assortment of funding adjustments approved by New Jersey lawmakers in response to the *Abbott* mandates which began in 1990 and continued thereafter. The Appendix contains details about the court compliance legislation passed in each state.

Amounts approved by lawmakers to comply with court mandates for recurring educational expenses account for more than one-third ($13.2 billion) of the $34 billion total. Connecticut is the state that was forced to authorize the most recurring spending on a per-pupil basis ($2,478). This figure represents the total cost in 2006 of the Education Cost Sharing (ECS) program that provides a base level of funding in all localities. The ECS system was enacted to comply with the Connecticut Supreme Court's decision in *Horton v. Meskill*.[16]

Despite this massive investment of state dollars to assuage the Connecticut Supreme Court, Connecticut finds itself entangled in new litigation over school finance issues.[17] This undoubtedly prompted Governor Jodi Rell to undercut the lawsuit by proposing an additional $3.4 billion in new spending over five years financed by an increase in the rates of tax on income and cigarettes.[18]

This trend—compliance with court mandates followed by more lawsuits and mandates—is typical in most states under court order to improve school finance systems. Indeed, of the twenty-seven states where courts have mandated

Table 7

Recurring Spending Per Pupil, Adjusted for Inflation, Grew Faster in 14 States, Slower in 4 States After Court Mandate
1977 – 2004

State	Decision/ Settlement Year	Growth Rate Before Decision/ Settlement (1977 to the Year of Decision)	Growth Rate After Decision/ Settlement (Year of Decision to 2004)	Change in Growth Rate	Percentage Increase in Growth Rate	Rank
Alaska	1999	– 0.05%	1.50%	1.55%	n/a	n/a
Arizona	1998	0.66%	2.74%	2.09%	317%	2
Arkansas	2001	3.08%	3.59%	0.51%	16%	12
California	2000	n/a	n/a	n/a	n/a	n/a
Colorado	2000	n/a	n/a	n/a	n/a	n/a
Connecticut	1977	n/a	n/a	n/a	n/a	n/a
Idaho	1998	2.47%	1.83%	– 0.65%	– 26%	15
Iowa	2004	n/a	n/a	n/a	n/a	n/a
Kansas	2005	n/a	n/a	n/a	n/a	n/a
Kentucky	1989	2.55%	2.45%	– 0.09%	– 4%	14
Maryland	1996	1.33%	2.51%	1.18%	89%	7
Massachusetts	1993	1.01%	3.12%	2.11%	210%	4
Michigan	1997	1.69%	2.13%	0.44%	26%	11
Missouri	1994	2.05%	2.61%	0.56%	27%	10
Montana	2005	n/a	n/a	n/a	n/a	n/a
New Hampshire	1997	2.77%	4.35%	1.58%	57%	9
New Jersey	1990	4.05%	1.90%	– 2.16%	– 53%	17
New Mexico	1999	n/a	n/a	n/a	n/a	n/a
New York	1995	n/a	n/a	n/a	n/a	n/a
North Carolina	1997	2.14%	2.33%	0.19%	9%	13
North Dakota	1994	0.82%	3.94%	3.12%	381%	1
Ohio	1997	1.90%	4.20%	2.30%	121%	5
Tennessee	1993	1.88%	3.68%	1.80%	95%	6
Texas	1989	3.32%	1.90%	– 1.42%	– 43%	16
Vermont	1997	2.27%	7.05%	4.78%	211%	3
Washington	1977	n/a	n/a	n/a	n/a	n/a
Wyoming	1995	2.16%	3.46%	1.30%	60%	8

Notes: New Jersey, Tennessee, and Texas have had multiple decisions. These growth estimates are based only on the first decisions (1990, 1993, and 1989, respectively). New Hampshire has also had multiple decisions. The New Hampshire estimate here is based on the first decision to hold the state's school financing system unconstitutional (1997). North Dakota has had one decision and one case that led to a settlement. Table 4 uses the earlier N.D. decision (1994) as the baseline for analysis, since legislative reports show that lawmakers responded to it as if it were a mandate. Some states were excluded due to paucity of data or because the court mandate involved capital spending.
Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

15 86 N.Y.2d 307, 631 N.Y.S.2d 565 (1995).

16 172 Conn. 615, 376 A.2d 359 (Conn. 1977).

17 A group of plaintiffs has filed another suit against the state of Connecticut, titled *Connecticut Coalition for Justice in Education Funding, Inc. (CCJEF) v. Rell,* which alleges that the state has failed to provide sufficient resources to ensure quality educational outcomes. See Molly Hunter, *Connecticut Plaintiffs File School Funding Lawsuit,* National Access Network (November 29, 2005), located at http://www.schoolfunding.info/news/litigation/11-29-05ctcomplt.php3.

more state money for schools, sixteen are still presently embroiled in litigation.

Legislation passed pursuant to court order to improve capital facilities or otherwise make one-time investments accounts for almost two-thirds ($19.8 billion) of the total. New York ($10.6 billion) and New Jersey ($7.1 billion) account for most of this amount.

Four states settled cases out of court, adding almost $1.3 billion to total education costs. The largest settlement was in California, where the state agreed to a one-time allocation of $989 million to settle the case of *Williams v. State*.[19] The costliest settlements were in North Dakota ($280 per pupil) and Colorado ($273 per pupil).

Whether financing additional recurring dollars or one-time investments in capital construction, lawmakers in twenty-seven states have approved, on average, the annual equivalent of an additional $976 per pupil (in 2004 dollars) to comply with court mandates on school financing.

Table 8

In Most States, Recurring Spending Per Pupil Lower in 2004 Than It Would Have Been If Pre-Litigation Growth Trend Had Continued

State	Decision/ Settlement Year	Actual Recurring Spending Per Pupil	Projected Recurring Spending If No Litigation	Total Difference	Rank	Percentage Difference[a]
Alaska	1999	$ 10,271	$ 9,513	$ 759	9	8.00%
Arizona	1998	$ 5,954	$ 5,265	$ 689	10	13.10%
Arkansas	2001	$ 6,820	$ 6,720	$ 99	13	1.50%
California	2000	n/a	n/a	n/a	n/a	n/a
Colorado	2000	n/a	n/a	n/a	n/a	n/a
Connecticut	1977	n/a	n/a	n/a	n/a	n/a
Idaho	1998	$ 6,046	$ 6,279	– $ 234	16	– 3.70%
Iowa	2004	n/a	n/a	n/a	n/a	n/a
Kansas	2005	n/a	n/a	n/a	n/a	n/a
Kentucky	1989	$ 6,291	$ 6,378	– $ 87	15	– 1.40%
Maryland	1996	$ 8,757	$ 7,982	$ 775	8	9.70%
Massachusetts	1993	$ 10,064	$ 8,013	$ 2,050	3	25.60%
Michigan	1997	$ 9,416	$ 9,136	$ 280	12	– 0.60%
Missouri	1994	$ 7,520	$ 7,121	$ 400	11	5.60%
Montana	2005	n/a	n/a	n/a	n/a	n/a
New Hampshire	1997	$ 9,148	$ 8,217	$ 931	7	11.30%
New Jersey	1990	$ 12,706	$ 17,031	– $ 4,326	18	– 25.40%
New Mexico	1999	n/a	n/a	n/a	n/a	n/a
New York	1995	n/a	n/a	n/a	n/a	n/a
North Carolina	1997	$ 6,748	$ 6,659	$ 89	14	1.30%
North Dakota	1994	$ 7,993	$ 5,891	$ 2,102	2	35.70%
Ohio	1997	$ 9,158	$ 7,834	$ 1,324	4	16.90%
Tennessee	1993	$ 6,583	$ 5,431	$ 1,152	5	21.20%
Texas	1989	$ 6,905	$ 8,492	– $ 1,588	17	– 18.70%
Vermont	1997	$ 11,270	$ 8,186	$ 3,084	1	37.70%
Washington	1977	n/a	n/a	n/a	n/a	n/a
Wyoming	1995	$ 9,732	$ 8,682	$ 1,050	6	12.10%
Weighted Average		$ 8,116	$ 8,400	– $ 284		– 3.30%
Weighted Average without N.J.		$ 7,713	$ 7,641	$ 72		1.00%

a) Calculated by using the formula (X-Y)/Y, where X = 2004 recurring per pupil spending and Y = 2004 projected recurring per pupil spending using straight-line method
Notes: See notes for Table 7.
Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

C. State Tax Increases Enacted to Fund Court Compliance

Lawmakers in some states, of course, had to raise taxes to fully or partially finance court-mandated spending. Some tax increases were designed to raise state funds to equalize spending between districts, others were raised to increase overall spending, and others were increased to offset local property taxes. States that did not raise taxes had to cut spending in other areas or use reserve funds.

Our analysis indicates that nine states have raised a variety of state taxes to comply with court orders (see Table 6). These tax increases shifted just under $13 billion from taxpayers to state government, enough revenue to add $1,155 dollars per pupil in education spending in these states.

D. What Happened to Long-Term Spending?

While it is useful to catalogue the estimated costs of court-mandated school finance legislation as lawmakers approved it, it is not the only proper way to calculate the impact courts are having on education funding. It is also important to see whether this legislation (and the court rulings that spawned it) has had a lasting impact on school funding. In other words, did funding continue at a higher level after the court mandates or did it eventually fall to pre-litigation levels?

To answer this question this section analyzes per pupil spending before and after the court mandates in the states for which sufficient data is available. The analysis separates per pupil funding into amounts spent for recurring (operational) and capital (facilities) due to the fact that some court mandates dealt with overall spending levels while others dealt with school facilities. Tables 7-9 present the results of this methodology (which is explained in more detail in the Appendix) for recurring and capital funds, respectively.

Table 7 compares average annual growth rates in recurring per pupil spending in states before and after litigation. The data shows that fourteen states had higher growth in per pupil spending after a court mandate than before, with six of these states seeing per pupil spending growth rates double after litigation. Only four states had less growth after litigation than before, and only one

18 *See* Christopher Keating, *Legislators Find Some Snags in Education Proposal*, Hartford Courant (March 26, 2007).

19 Case No. 312236, (Superior Court of San Francisco County, May 2000).

state (New Jersey) saw growth drop by more than half.

The states with the biggest jump in recurring per pupil spending growth after litigation are Alaska (negative to positive), followed by North Dakota (381 percent increase), California (333 percent), Arizona (317 percent) and Vermont (211 percent). Four states did experience decreases in their growth rate after litigation, including New Jersey (53 percent drop in growth), Texas (43 percent drop), Idaho (26 percent drop) and Kentucky (4 percent drop).

Table 8 projects 2004 recurring per pupil spending in eighteen states based on the trend in pre-litigation growth presented in Table 7. The projections were generated using a simple, straight-line growth projection. In the Appendix we present an alternative calculation based on per pupil spending growth trends in other states.

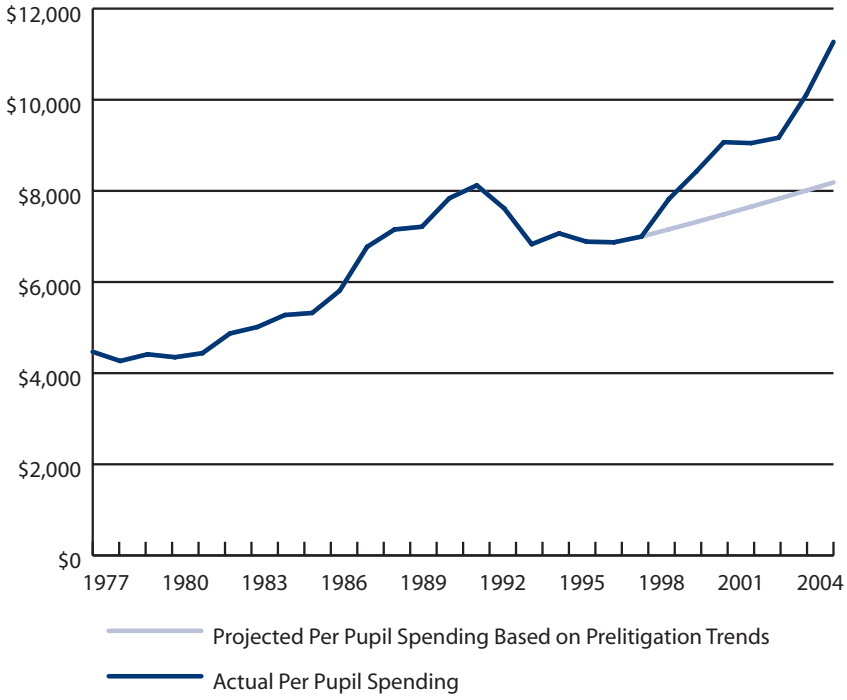
As Table 8 reveals, 14 of the 18 states had higher actual recurring per pupil spending in 2004 than we would have expected based on trends prior to school finance court mandates. Six states (Vermont, North Dakota, Massachusetts, Ohio, Tennessee and Wyoming) each had differences of at least $1,000 between actual recurring spending per pupil in 2004 and projected spending. Eight states have spending differences that exceed 10 percent of projected spending. Only four states had actual spending less than projected spending. Two of those states, Idaho and Kentucky, showed small differences, less than 4 percent, and two had larger negative differences.

The overall results depend largely on whether New Jersey is included in the data set. With New Jersey included, average recurring per pupil spending in these eighteen states is $284 less than the baseline. This represents a percentage decrease of 3.3 percent below projections. Since New Jersey is the clear outlier in Table 8 (for reasons which are explored later) it is useful to look at the numbers with that state excluded. Without New Jersey, average recurring per pupil spending in these 20 states is $72 higher than projections, an overall difference of over $350 per pupil.

Courts in some states mandated that lawmakers improve school facilities. Some of these court mandates have occurred too recently to perform a comprehensive analysis of post-mandate growth, but Table 9 presents the impact these rulings had on per pupil capital spending in five states. Once again, we use pre-litigation growth to create a baseline to which actual spending is compared.

Figure 1

***Vermont Per Pupil Spending Sharply Higher After Ruling in* Brigham v. State of Vermont**



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Table 9

Court Mandates Increased Capital Spending by $164 Per Pupil in Five States

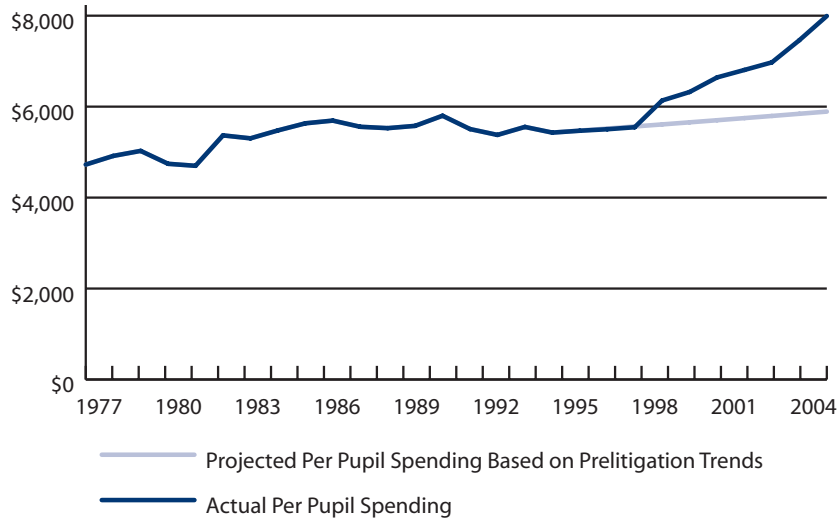
State	Decision/ Settlement Year	Real Growth in Capital Spending Per Pupil Before Litigation	Real Growth in Capital Spending Per Pupil After Litigation	Difference in Growth Rate Before and After Decision or Settlement	2004 Capital Spending Per Pupil	Projected 2004 Capital Spending Per Pupil	Difference	Percentage Difference
California	2000	4.42%	8.47%	4.05%	$ 1,433	$ 1,231	$ 202	16.4%
Colorado	2000	2.21%	– 1.24%	– 3.45%	$ 1,128	$ 1,294	– $ 166	– 12.8%
New Jersey	1998	7.26%	6.89%	– 0.37%	$ 1,416	$ 1,445	– $ 29	– 2.0%
New Mexico	1999	3.00%	7.70%	4.70%	$ 1,401	$ 1,121	$ 280	25.0%
Ohio	1997	3.89%	8.22%	4.33%	$ 1,180	$ 887	$ 293	33.0%
Weighted Averages					**$ 1,366**	**$ 1,202**	**$ 164**	**13.6%**

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Real capital spending growth per pupil increased following court mandates in three of the five states (California, New Mexico, and Ohio)

Figure 2

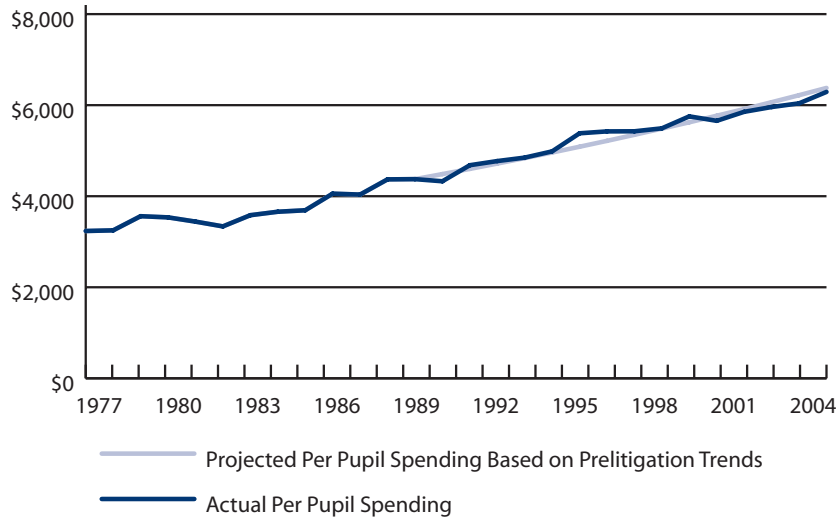
***North Dakota Per Pupil Spending Rises Sharply After Decision in* Bismarck Public School District #1 v. State**



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Figure 3

***Kentucky Per Pupil Spending Flat After Decision in* Rose v. Council for Better Education**



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

but declined in two (Colorado and New Jersey). In New Mexico, where a trial court in 1999 ordered the state to create a new capital funding system in the case of *Zuni School District v. State*,[20] lawmakers responded by increasing capital funding by $400 million. By 2004 this translated into an increase of $280 in real capital per pupil spending.

In Ohio the state Supreme Court ordered the state to revise its funding system in the 1997 case of *DeRolph v. State*.[21] Later that year lawmakers approved S.102 which injected at least $1 billion in new capital spending into the state budget, with promises to inject as much as $10 billion more.[22] As a result Ohio spending on capital facilities spiked and in 2004 reached levels that were at least $293 higher per pupil than we otherwise would have expected.

The New Jersey Supreme Court mandated a change in facilities funding in *Abbott V*.[23] In response New Jersey lawmakers approved the Education Facilities Construction and Financing Act,[24] which promised $6 billion in capital spending for the plaintiffs in the case (certain school districts) and $2.6 billion for non-plaintiff school districts. Curiously, however, New Jersey's per pupil capital spending was higher before 1998 (the year *Abbott V* was decided) than after. This anomaly is discussed more below.

The overall impact of court mandates appears greater when the mandate requires increases in capital as opposed to recurring spending. Not only is the total difference ($164 per pupil) between actual spending and the projected baseline greater than the total difference in the recurring states in Table 8, but since capital per pupil spending is typically less than recurring per pupil spending, the magnitude of the difference is larger as well. The gap (13.6 percent) between overall actual capital spending in 2004 and the projected baseline is much larger than either gap calculated in Table 8 (-3.3 percent with New Jersey included, 1.0 percent with New Jersey excluded).

E. A Look at State-Specific Trends in Per-Pupil Spending

Several states, including Vermont and North Dakota, had large positive differences between actual per pupil spending and the projected

20 CV-98-14-II (Dist. Ct., McKinley County Oct. 14, 1999).

21 78 Ohio St.3d 193, 677 N.E.2d 733 (1997).

22 *See* David Sciarra, Koren Bell and Susan Kenyon, *Safe and Adequate: Using Litigation to Address Inadequate K-12 School Facilities*, 1, 13 (July 2006), located at http://www.edlawcenter.org/ELCPublic/Publications/PDF/Safe_and_Adequate.pdf.

23 *Abbott v. Burke,* 153 N.J. 480, 710 A.2d 450 (1998).

24 S. 200, 209th Leg. (N.J. 1998).

baseline after a court mandate. Others, like Kentucky, had slightly negative differences despite hefty spending increases to comply with a court mandate. New Jersey is in a class by itself, approving the highest amount of per pupil spending to comply with court mandates but seeing a large, negative difference between actual spending and the projected baseline. This section will examine these states more closely and then explore the reasons why some states had per pupil spending lower than the baseline projections.

Figures 1 and 2 are graphic illustrations of the recurring per pupil spending trends in Vermont and North Dakota from 1977 to 2004. They show dramatic differences in recurring per pupil spending before and after court mandates.

In Vermont (see Figure 1), recurring per pupil spending grew by an average annual rate of 2.27 percent from 1977 until 1997, the year the Vermont Supreme Court declared the state school financing scheme unconstitutional in the case of *Brigham v. State of Vermont*.[25] That year, the legislature approved a package that would increase education spending by $20 million per year (the equivalent of over $1,000 per pupil in 2004) and raise taxes by approximately $73 million.[26] From 1997 until 2004, per pupil spending grew much faster—7.05 percent—than during the previous 20 years. In 2004, this translated into a difference of $3,084 per pupil between actual recurring spending and the projected baseline.

North Dakota is a good example of the impact a court ruling can have on education spending even in the absence of an immediate legislative response (see Chart 2). In 1994, the North Dakota Supreme Court ruled, in *Bismarck Public School District #1 v. State*,[27] that the state's school finance system violated the state constitution. However, at the time North Dakota required the vote of 4 out of 5 justices to hold a statute unconstitutional, and only 3 signed on to the majority opinion.[28]

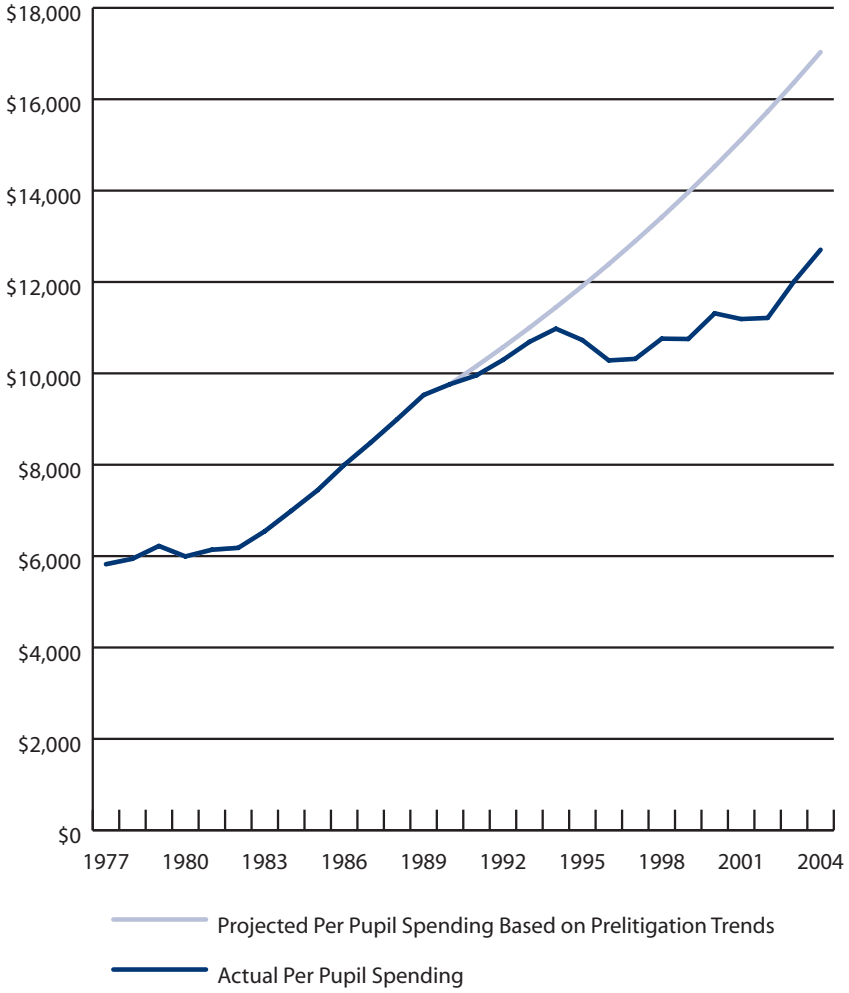
Thus, there was no immediate pressure for lawmakers to increase education spending or raise taxes to pay for such spending. Nevertheless, North Dakota lawmakers made a conscious effort to increase education spending above the levels that existed prior to the *Bismarck* decision.[29]

As a result of the legislature's actions recurring per pupil spending growth in North Dakota after the *Bismarck* decision was sharply higher from 1994 to 2004 (3.94 percent) than from 1977 to 1994 (.82 percent). In 2004, this translated into a difference of $2,102 per pupil between actual and projected spending.

In 2003, a new lawsuit against the state was filed but settled out of court after North Dakota lawmakers agreed to increase education spending by $30 million per year starting in 2006.[30]

Figure 4

New Jersey Per Pupil Spending Lower After Decision in* Abbott II *(1990)



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

25 166 Vt. 246, 692 A.2d 384 (1997).

26 Act 60, 16 V.S.A. §§ 4000 *et seq.* (2001).

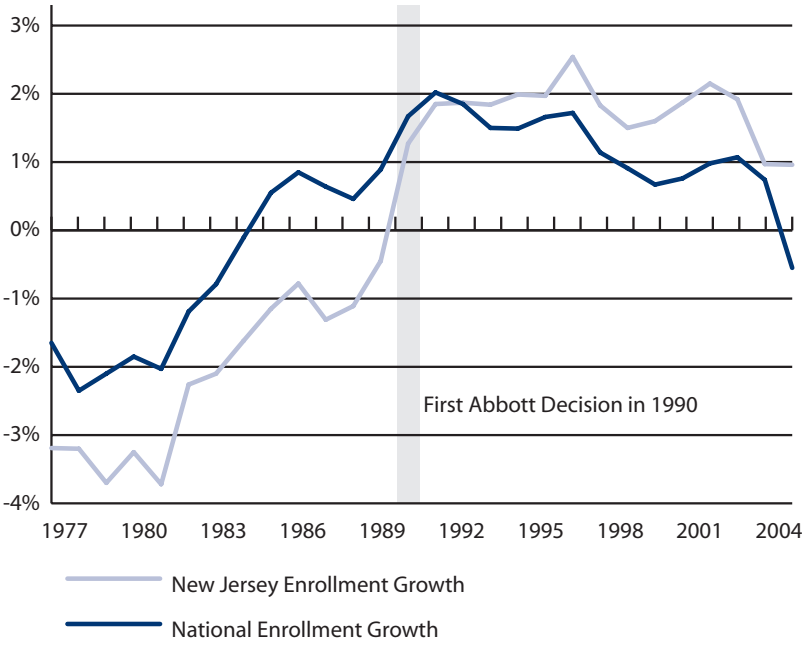
27 511 N.W.2d 247 (N.D. 1994).

28 N.D. Const. art. 6, § 4.

29 *See* North Dakota 2007 Legislative Council Report at 174, located at http://www.legis.nd.gov/assembly/59-2005/interim-info/final-reports/edfinal.pdf. ("Each session since the (*Bismarck*) decision, the Legislative Assembly has increased funding for elementary and secondary education and changed the manner in which that funding was to be distributed.").

Figure 5

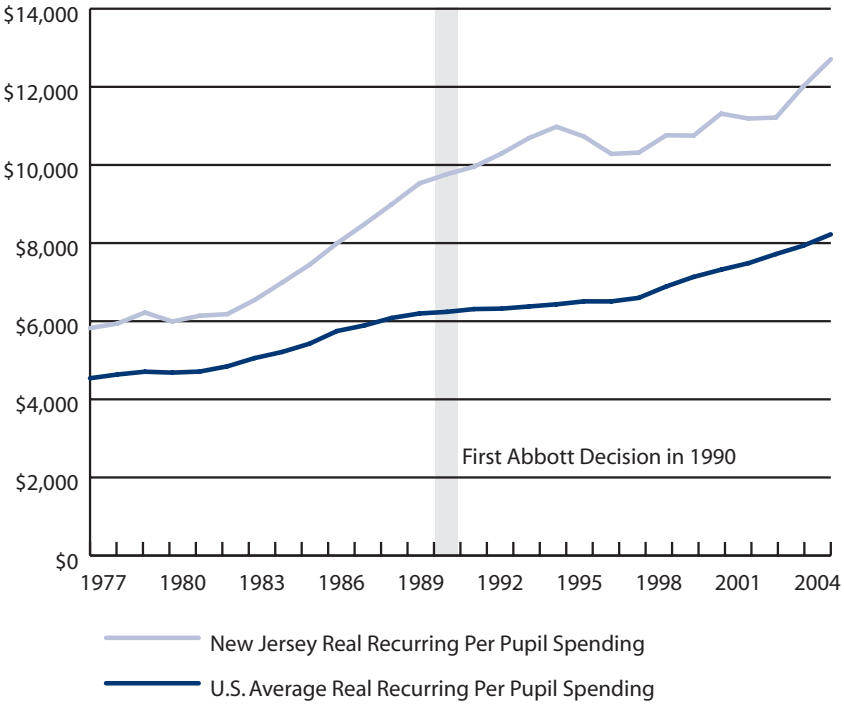
New Jersey Enrollment Growth Compared With National Trends



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Figure 6

Slow Enrollment Growth Pushed Up New Jersey's Per Pupil Spending Before Abbott Decisions; Rapid Growth Depressed It Afterward



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

A few states do show flat or even lower recurring per pupil spending growth after court mandates. In each case this is due to one or more of the following factors: a response that increased spending by a relatively small amount; a response that came many years after the court mandate; a response that represented a one-time increase in recurring spending; swings in enrollment in the late 1970s and early 1980s that distort recurring per pupil spending growth before the court decisions, or; gradual, long-term erosion in the initial investment required by the court mandate.[31]

North Carolina (difference of $89 per pupil) is one of the states that complied with a court ruling by approving a relatively small increase in spending. After the North Carolina Supreme Court ruled, in *Leandro v. State*,[32] that the current funding scheme violated the state constitution, the legislature responded in 2004 by approving a modest $22.5 million ($16 per pupil) increase for a pilot program to remedy the alleged constitutional defect.[33] This increase came seven years after the *Leandro* decision.

Idaho (difference of –$234 per pupil) is one of the states that passed a relatively small, largely one-time court compliance package. The response by Idaho lawmakers to the *ISSEO* mandate was an increase of only $122 per pupil overall (which was mostly an investment in facilities) and was not enacted until 2006—eight years after the decision.

The two biggest surprises in the data are Kentucky and New Jersey. In Kentucky, home of the landmark *Rose* ruling, spending appears

30 *See* Id. at 175 ("The terms and conditions required that the Governor, by executive order, create the North Dakota Commission on Education Improvement and submit to the Legislative Assembly in 2007 an executive budget that includes at least $60 million more in funding for elementary and secondary education than the amount appropriated by the Legislative Assembly in 2005. In return, the plaintiffs agreed to stay the litigation until the close of the 2007 legislative session and at that time to dismiss the action without prejudice if the Legislative Assembly appropriated at least the additional $60 million.").

31 *See* Scharg, supra note 8, at 94, where he theorizes that Kentucky started "backsliding" on its fiscal commitment in KERA when it cut the state sales tax in 1995.

32 346 N.C. 336, 488 S.E.2d 249 (1997).

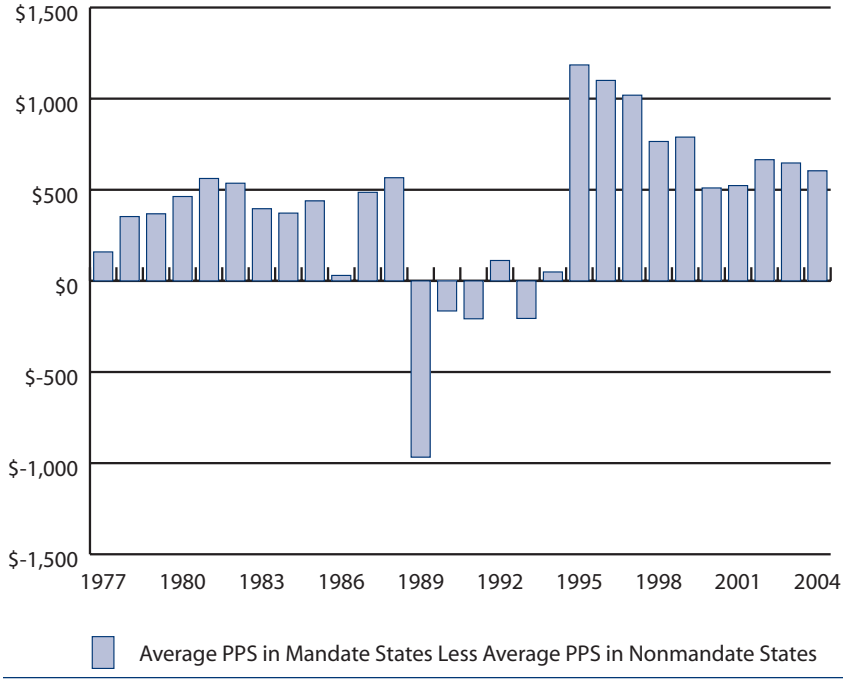
33 *See* North Carolina Justice Center, *Ignoring the Constitution*, 3 NC Policy Brief 14 at 1 (June 1, 2005) located at http://www.ncjustice.org/media/library/365_ncpbv3n14.pdf ("Last year, just as the Court was reaffirming the *Leandro* decision, North Carolina finally began to take some modest 'baby steps' toward compliance with the *Leandro* mandate.").

virtually unchanged after lawmakers passed the Kentucky Education Reform Act (KERA) to comply with the court mandate. Even though KERA pumped over $1,136 per pupil into education (Table 1), recurring spending per pupil increased only about $350 from 1990 to 1991. Thereafter, per pupil spending continued to grow at about the same rate after the decision as before, with increases in the mid-1990s and a slight decrease around the year 2000 (see Figure 3).

The biggest apparent anomaly in our recurring per pupil data is New Jersey. Lawmakers in that state increased spending nearly $7 billion ($6,648 per pupil) in the wake of court mandates. This ranks first on an inflation-adjusted per pupil basis (see Table 1). Looking at recurring per pupil spending before and after the decisions in New Jersey, however, we see that projected per pupil spending was actually greater than actual per pupil spending (see Table 7 and Figure 4). We see the same trend in New Jersey (though not as pronounced) in the capital per pupil spending data (see Table 8). The discrepancy in both cases is likely due to anomalies in New Jersey per pupil spending growth before the decision.

Figure 7

Proliferation of Court Mandates Leads to Expanding Per Pupil Funding Gap Between Mandate, Nonmandate States



Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Table 10

Comparing Recurring Per Pupil Spending Growth in Mandate and Non–mandate States

Year	Plaintiff Victories in Education Finance Cases	States Added to Mandate State Pool	Average Recurring Per Pupil Spending in Mandate States	Spending Growth in Mandate States	Average Recurring Per Pupil Spending in Non-Mandate States	Spending Growth in Non-Mandate States	Total Difference	Growth Difference
1977	2	WA, CT	$ 4,859		$ 4,701		$ 159	
1978	2		$ 5,171	6.42%	$ 4,818	2.49%	$ 353	3.93%
1979	2		$ 5,162	–0.16%	$ 4,794	–0.48%	$ 368	0.32%
1980	2		$ 5,242	1.53%	$ 4,779	–0.32%	$ 463	1.85%
1981	2		$ 5,371	2.48%	$ 4,810	0.64%	$ 562	1.83%
1982	2		$ 5,408	0.69%	$ 4,873	1.31%	$ 536	–0.62%
1983	2		$ 5,489	1.49%	$ 5,093	4.51%	$ 396	–3.03%
1984	2		$ 5,625	2.47%	$ 5,253	3.15%	$ 372	–0.68%
1985	2		$ 5,927	5.38%	$ 5,488	4.47%	$ 439	0.90%
1986	2		$ 5,883	–0.75%	$ 5,852	6.64%	$ 30	–7.39%
1987	2		$ 6,516	10.77%	$ 6,030	3.03%	$ 486	7.74%
1988	2		$ 6,817	4.61%	$ 6,251	3.66%	$ 566	0.95%
1989	4	KY, TX	$ 5,561	–18.41%	$ 6,529	4.45%	–$ 967	–22.86%
1990	5	NJ	$ 6,304	13.36%	$ 6,470	–0.90%	–$ 165	14.26%
1991	5		$ 6,342	0.60%	$ 6,550	1.25%	–$ 208	–0.65%
1992	5		$ 6,561	3.45%	$ 6,449	–1.55%	$ 112	5.01%
1993	7	MA, TN	$ 6,392	–2.57%	$ 6,598	2.32%	–$ 206	–4.89%
1994	9	MO, ND	$ 6,600	3.25%	$ 6,551	–0.72%	$ 49	3.97%
1995	11	NY, WY	$ 7,460	13.02%	$ 6,275	–4.21%	$ 1,185	17.23%
1996	12	MD	$ 7,374	–1.15%	$ 6,274	–0.02%	$ 1,100	–1.13%
1997	17	MI, NH, NC, OH, VT	$ 7,272	–1.38%	$ 6,254	–0.32%	$ 1,019	–1.06%
1998	19	AZ, ID	$ 7,445	2.37%	$ 6,679	6.81%	$ 765	–4.44%
1999	21	AK, NM	$ 7,669	3.01%	$ 6,880	3.01%	$ 789	0.00%
2000	23	CA, CO	$ 7,637	–0.42%	$ 7,127	3.59%	$ 510	–4.00%
2001	24	AR	$ 7,756	1.56%	$ 7,233	1.48%	$ 523	0.08%
2002	24		$ 8,053	3.83%	$ 7,388	2.15%	$ 665	1.69%
2003	24		$ 8,251	2.45%	$ 7,603	2.92%	$ 647	–0.46%
2004	25	IA	$ 8,488	2.88%	$ 7,885	3.70%	$ 604	–0.82%
Average Annual Growth:				**2.09%**		**1.93%**		

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Enrollment growth in New Jersey was almost never equal to the national trend from 1977 to 2004. During the late 1970s and into the early 1990s enrollment growth in the Garden State lagged behind the national average (see Figure 5) which pushed per pupil spending up compared to the national average (see Figure 6). The opposite happened from the early 1990s to 2004, with enrollment growth consistently above the national average, which put downward pressure on per pupil spending. Thus, the trend in the first half of the data set a high baseline that is tough to eclipse even for a state under court order to increase education spending.

The New Jersey anomaly is confirmed by the findings of Frederick Hess from the American Enterprise Institute.[34] In looking at trends before and after the New Jersey Abbott rulings, Hess found that teacher compensation actually increased prior to the legislature's response to Abbott and then declined in the decade following.[35] Hess also found that per pupil spending as a percentage of the national average grew from 1980 to 1994 but declined from 1994 to 2003.[36]

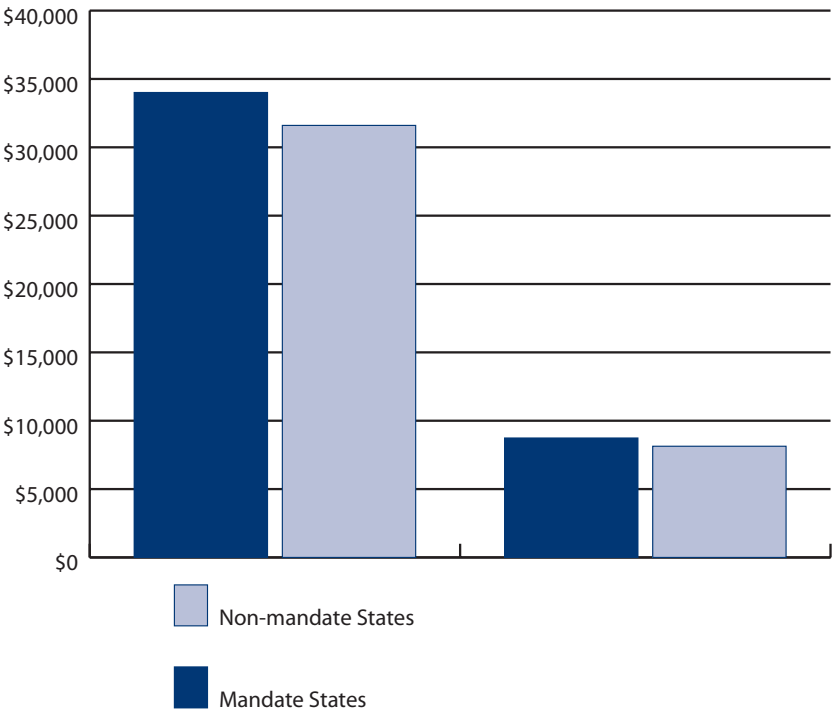
One final note on per pupil spending in New Jersey: the districts that compose the plaintiffs in the *Abbott* cases—the so-called *Abbott* districts—have higher per pupil spending than other school districts in New Jersey. According to one study, *Abbott* districts average per pupil expenditures of $14,796 while the overall New Jersey average per pupil expenditure is just under $12,000.[37]

F. A Look at General Trends in States With and Without Court Mandates

Beyond focusing on the impact of court mandates in particular states, it is also useful to examine per pupil spending trends in states with and without court mandates. This data reveals two interesting trends: first, the states with court mandates spend, on average, $600 more on recurring spending per pupil in 2004 than states without court mandates; secondly, the states with court mandates have higher personal income that states without, and consequently are more likely to spend more on education even in the absence of court mandates. Overall, this makes it impossible to say with

Figure 8

Mandate States Have Higher Personal Income, Higher Per Pupil Spending



Source: Tax Foundation calculations based on data from the Census Bureau, National Center for Education Statistics, and Bureau of Economic Analysis

Table 11

Relationship between Personal Income and Education Spending

Region	2004 Personal Income ($thousands)	2004 Population	2004 Per Capita Personal Income	2004 Direct Education Spending ($thousands)	Direct Education Spending as a Percentage of Personal Income	2004 Enrollment	2004 Per Pupil Spending
United States	$9,687,225,896	293,058,438	$33,056	$397,932,125	4.11%	48,195,800	$8,257
Mandate States	$6,017,514,750	176,936,701	$34,009	$252,069,241	4.19%	29,696,100	$8,488
Non-Mandate States	$3,669,711,146	116,121,737	$31,602	$145,862,884	3.97%	18,499,700	$7,885

Source: Tax Foundation calculations based on data from the Census Bureau, National Center for Education Statistics, and Bureau of Economic Analysis

34 *See* Frederick Hess, "Adequacy Judgments and School Reform," in *School Money Trials* (Martin West, ed.) (Brookings Institution Press 2007).

35 *See* Id. at 181.

36 *See* Id. at 182 (Table 7-1).

37 *See* News Release, *High Degree of Equity in NJ Schools, Spending Data Show*, Education Law Center (March 26, 2007), located at http://www.edlawcenter.org/ELCPublic/elcnews_070326_SpendingDataShowsEquity.htm.

certainty that the court mandates account for the differences in per pupil spending between the two groups of states, and casts further doubt on the idea that court mandates have led to long-term increases in education spending.

Table 10 tracks average per pupil spending in the mandate and non-mandate states from 1977 to 2004. A state is not included as a msandate state until the year in which a court orders lawmakers to equalize and/or increase school spending. Since only two mandates took place in the first half of the data set it is most useful to focus on the latter half (1988 to 2004) since the total number of mandates grew from two to twenty-four during this period.

From 1989 to 1994, the difference in per pupil spending between mandate and non-mandate states changed dramatically. When Kentucky and Texas were added to the pool of mandate states in 1989, spending in the mandate states was nearly $1,000 less per pupil than in the non-mandate states (see Figure 7 for a graphical representation). As the number of states in the mandate pool grew from four in 1989 to eleven in 1995, the spending difference between mandate and non-mandate states quickly went from $1,000 less to $1,000 more per pupil. Between 1995 and 2004 this difference eventually settled and equaled $604 per pupil in 2004, with 25 states in the mandate pool and the remaining 25 states in the non-mandate pool.

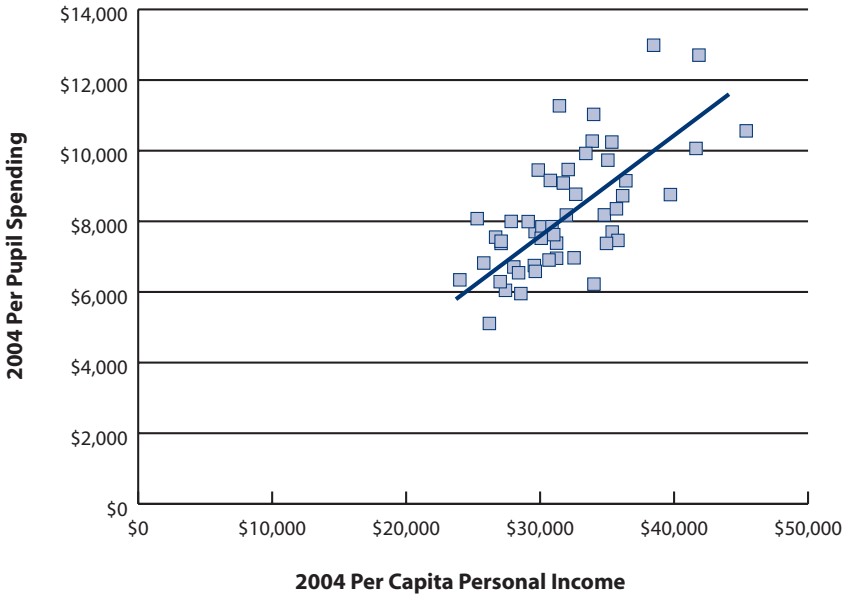
Do court mandates explain the difference in per pupil spending between the two groups of states, or are there other differences that might account for the discrepancy? One possible explanation is that the states where mandates occurred were more likely to spend more on education even in the absence of court involvement. Thus, as more states were added to the mandate pool starting in 1989, the difference spiked because the states added to the mandate pool were more likely to have higher spending. The data in Table 11 lends some credence to this theory by comparing education spending to personal income in the mandate and non-mandate states.

Overall, the mandate states had higher per pupil spending and higher per capita personal income in 2004 (see Figure 8). In 2004 the mandate states also spent more on education as a percentage of income (4.19 percent) than the non-mandate states (3.97 percent).

Looking at 2004 data on a state-by-state basis the relationship between education spending and personal income becomes more pronounced.

Figure 9

2004 Per Pupil Spending v. 2004 Per Capita Personal Income



Source: Tax Foundation calculations based on data from the Census Bureau, National Center for Education Statistics, and Bureau of Economic Analysis

Figure 9 plots per pupil spending for each state against per capita personal income (see Appendix for a state-by-state breakdown of personal income and education spending) and shows a strong relationship between them. In fact, there was a 67 percent correlation between per pupil spending and per capita personal income in 2004.

This means that states with high personal income tend to have higher education spending, but they also tend to be states where courts issue mandates for lawmakers to spend more on education. A conclusion one could draw from this is that, in the long run, court mandates in high-income states are just part of a larger political process that is bound to produce higher levels of education spending.

V. Conclusion

Those who pursue education appropriation through litigation have succeeded in using the courts to secure increased funding commitments of over $34 billion, or $976 per pupil, from state lawmakers in 27 states. In the long run, however, overall spending trends in these states suggest that recurring spending is stagnant after court mandates, while capital spending is permanently higher.

Table 12

Comparison of Census Bureau and Tax Foundation State and Local Per Pupil Spending Estimates

State	Census Bureau 2004 Recurring State and Local Per Pupil Spending Estimate	Tax Foundation 2004 Recurring State and Local Per Pupil Spending Estimate
Alabama	$ 6,553	$ 6,707
Alaska	$ 10,114	$ 10,271
Arizona	$ 6,036	$ 5,954
Arkansas	$ 6,740	$ 6,820
California	$ 7,748	$ 7,697
Colorado	$ 7,412	$ 7,460
Connecticut	$ 10,788	$ 10,561
Delaware	$ 10,228	$ 10,245
Florida	$ 6,784	$ 6,967
Georgia	$ 7,733	$ 7,709
Hawaii	$ 8,533	$ 8,767
Idaho	$ 6,028	$ 6,046
Illinois	$ 8,656	$ 8,182
Indiana	$ 8,280	$ 7,844
Iowa	$ 7,631	$ 7,849
Kansas	$ 7,518	$ 7,383
Kentucky	$ 6,888	$ 6,291
Louisiana	$ 7,209	$ 7,374
Maine	$ 9,534	$ 9,452
Maryland	$ 9,212	$ 8,757
Massachusetts	$ 10,693	$ 10,064
Michigan	$ 9,072	$ 9,084
Minnesota	$ 8,359	$ 8,725
Mississippi	$ 6,237	$ 6,343
Missouri	$ 7,331	$ 7,520
Montana	$ 7,763	$ 7,997
Nebraska	$ 8,032	$ 8,179
Nevada	$ 6,399	$ 6,222
New Hampshire	$ 8,860	$ 9,148
New Jersey	$ 12,981	$ 12,706
New Mexico	$ 7,331	$ 7,553
New York	$ 12,930	$ 12,986
North Carolina	$ 6,702	$ 6,748
North Dakota	$ 7,727	$ 7,993
Ohio	$ 8,963	$ 9,158
Oklahoma	$ 6,176	$ 6,544
Oregon	$ 7,619	$ 7,623
Pennsylvania	$ 9,979	$ 9,922
Rhode Island	$ 9,903	$ 11,028
South Carolina	$ 7,184	$ 7,437
South Dakota	$ 6,949	$ 6,955
Tennessee	$ 6,504	$ 6,583
Texas	$ 7,104	$ 6,905
Utah	$ 5,008	$ 5,108
Vermont	$ 11,128	$ 11,270
Virginia	$ 8,225	$ 8,355
Washington	$ 7,243	$ 7,375
West Virginia	$ 8,475	$ 8,076
Wisconsin	$ 9,226	$ 9,467
Wyoming	$ 9,363	$ 9,732
Weighted Average	**$ 8,452**	**$ 8,257**

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

This suggests that appropriation through litigation is not a particularly efficient long-term solution to perceived funding inequities or inadequacies in school finance,[38] particularly for those who seek higher levels of recurring spending. This conclusion was also reached by Matthew Springer and James Guthrie in their analysis of the impact of adequacy lawsuits on school finance litigation.[39] Peter Schrag, in his seminal volume on education finance lawsuits, *Final Test*, generally affirms this finding by stating that "...the courts are rarely great places to make educational policy."[40]

VI. Methodology

Few courts actually order state lawmakers to raise taxes or spending by specific sums. Some courts issue general orders requiring lawmakers to reform the system, leaving most of the details up to legislative discretion. Others have ordered specific actions or required specific funding levels. This means that we cannot know the cost of the mandates merely by looking at the rulings themselves.

No matter how the court words its ruling, however, most state legislatures enact some type of legislation to comply. This legislation typically provides new state money above and beyond what is presently budgeted for education, either in the form of state equalization grants or increases in the overall funding level.

Given this background, in our quest to gauge the fiscal impact of court-imposed education funding mandates we settled on two different methods to estimate the cost:

- The "price tag" of legislation passed by lawmakers to comply with a court mandate
- A comparison of per pupil spending before and after the court mandate

Both methods have their strengths and weaknesses. The first method is useful for those concerned with separation of powers since it estimates how much lawmakers thought they were increasing spending when they decided to comply

38 Frederick Hess describes inquiries into the spending outcomes that plaintiffs have achieved through school finance lawsuits as the "most interesting questions" in this area of study. *See* Frederick Hess, "Adequacy Judgments and School Reform," in *School Money Trials* (Martin West, ed.) at 159 (Brookings Institution Press 2007). He also finds that "...successful adequacy efforts modestly boosted total spending but had no discernable effect on teacher pay or class size." Id. at 185.

39 *See* Matthew G. Springer and James W. Guthrie, "Adequacy's Politicization of the School Finance Legal Process," in *School Money Trials* (Martin West, ed.) at 121 (Brookings Institution Press 2007) ("Legislative and executive branch deliberations are better adapted to accommodating uncertainty, deconstructing complexity, and considering trade-offs since their operational arrangements permit a far wider opportunity for constructive criticism and successive approximation to take place.").

40 Schrag, supra note 8, at 233. In the same paragraph quoted, Schrag goes on to say that courts do contribute "clout" to the education finance process.

with the court mandate. Another strength of the first method is that we know for certain that every dollar of increased spending was intended to comply with the court mandate. Its major weakness, however, is that it really tells us nothing about the long-term impact of court mandates on education spending since it is a static estimate that takes no account of future developments.

While many states have financed court-mandated spending increases either by spending surplus funds or cutting spending in other program areas, nine states have explicitly raised taxes.

The second method's major strength is that it gives us a long-term view of the impact of court mandates on education spending. It does so because it is based on a 27-year data set that allows us to look at the trends in per pupil spending before and after the court mandate. Its major weakness is that it cannot tell us, for certain, how much of the subsequent increase in education spending is due to the court mandate and how much is due to other factors such as a growing economy, higher levels of personal income, increase in available revenues, political pressures, etc.

Taken together, both methods give a good overall picture of the impact courts are having on education spending. Thus, we decided to present them both, but in separate sections of the paper. The methodology used for both methods is discussed in more detail below.

Cost of Legislation Method

This method seeks to gauge the projected annual cost of legislation enacted to comply with court mandates on school finance at the time such legislation was enacted.

We estimated this cost by the following method: first, we identified any legislation that was passed to comply with a court mandate on the constitutionality of a state's school finance system; second, we sought to obtain a fiscal note for the legislation; and third, if a fiscal note was not available, we looked to other official state documents, scholarly articles, news reports, or policy reports.

After we obtained initial number estimates in 27 states we separated them into three categories: recurring, one-time, and settlement. We did this because not all court mandates required the same response from lawmakers. Some required one-time increases in capital spending while others required recurring increases in operational expenses. In other states, more money was provided pursuant to an out-of-court settlement.

Once we had obtained an estimate, we wanted to allow for comparisons between states. We did this by adjusting for inflation (using consumer price index-urban data from the Bureau of Labor Statistics) and by adjusting for enrollment (using data from the National Center for Education Statistics). We used 2004 price levels because the data on school spending was only available through 2004. Since the enrollment numbers were only available through 2003, we grew them up to 2004 using simple, straight-line growth projections based on previous years.

Finally, once we had adjusted the estimates for enrollment and inflation we totaled all recurring, one-time and settlement payments into a single number allowing an overall comparison between states on legislation enacted pursuant to court mandates on education finance.

State and Local Per Pupil Spending Projection Method

This method seeks to gauge whether a state experienced higher levels of state and local per pupil spending growth after a court mandate on education finance.

We did this by comparing actual state and local per pupil spending in each state to projected per pupil spending using growth rates before the decision. Since education finance decisions go back at least to the 1970s, we needed per pupil spending which covered that range. While the Census Bureau only provides state and local per pupil spending data back to 1992, it does readily provide total state and local education expenditures for years ranging from 1977 to 2004. We used enrollment data from the National Center for Education Statistics to calculate state and local per pupil spending estimates (for recurring and capital expenses) back to 1977.

In most cases the estimation of state and local per pupil spending using this method (raw Census spending data and NCES enrollment data) matched nicely with the Census estimates of state and local per pupil spending. Table 12 shows that, in 2004, the difference between the overall per

pupil spending estimates of the Tax Foundation and the Census Bureau was less than $200 per pupil.

Finally, we adjusted state and local per pupil spending for inflation using CPI-U data from the Bureau of Labor Statistics. This gave us real state and local per pupil spending data that could be compared accurately across 27 years and between states.

Comparing long-term recurring and capital spending trends in states before and after court mandates on education shows that even a hefty, short-term increase in education spending to comply with a court order does not always translate into permanently higher levels of spending.

Table 13

Explanation of Both Projection Methods (Using Alaska as an Example)

Straight-Line Projection Method	
1. Real recurring per pupil spending in year of court mandate (1999)	$ 9,536
2. Average annual growth in real recurring per pupil spending in the 5 years after court mandate (1999–2004)	1.50%
3. Average annual growth in real recurring per pupil spending in 22 years before court mandate (1977–1999)	–0.05%
4. 2004 projection based on pre-mandate trends (-.05 percent average annual growth)	$ 9,513
5. 2004 actual real recurring per pupil spending	$ 10,271
Difference	**$ 759**

Relative Projection Method	
1. Real recurring per pupil spending in year of court mandate (1999)	$ 9,536
2. Average annual growth in real recurring per pupil spending in 22 years before court mandate (1977–1999)	–0.05%
3. Average annual growth in real recurring per pupil spending in all non-mandate states before Alaska decision (1977-1999)	2.30%
4. Relative growth difference in years before Alaska decision (step 2 minus step 3)	–2.35%
5. Average annual growth in real recurring per pupil spending in all non-mandate states after Alaska decision (1999-2004)	2.75%
6. Projected relative Alaska growth rate (step 4 plus step 5)	0.39%
7. 2004 projection based on relative growth rate	$ 9,724
8. 2004 actual real recurring per pupil spending	$ 10,271
Difference	**$ 547**

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

After securing estimates of real state and local per pupil spending back to 1977, we needed methods to compare spending before and after court mandates. The first decision we needed to make was what year we would use for each state as a swivel point in before/after comparisons. Our options were to use the year of the court decision or the year in which compliance legislation was passed. Since some states passed compliance measures on multiple occasions, for simplicity's sake we decided to use the year of decision as the swivel point.[41]

With a swivel point year selected we now had to determine how we were going to compare state and local per pupil spending before and after the mandate. We decided that the best way to estimate the impact would be to compare actual spending to projected spending based on growth trends before the decision.

Of course, there are a host of protocols available to project spending from years past, including average annual growth in the state before the decision, average annual growth in all states after the decision, average annual growth in mandate versus non-mandate states, and average annual growth adjusted for relative position vis-a-vis other states.

We decided to use two methods (both are explained step by step in Table 13):

- A simple, straight-line projection using per pupil spending in the year of the court mandate and a growth rate equal to average annual growth from 1977 to that year. This method is presented in the main body of the paper.
- A relative, straight-line projection using per pupil spending in the year of the court mandate and a growth rate equal to the average non-mandate state plus the difference between the particular state's growth rate and all non-mandate state growth rates before the year of decision. This method is presented solely in the Appendix, and the results for recurring and capital spending can be found in Tables 14 and 16, respectively.

After estimating our projections under both methods, we compared our projections to actual per pupil spending and then calculated the difference. Table 13 shows an example of how we calculated these projections for recurring per pupil spending in Alaska.

We used virtually the same methodology to calculate projections with the capital (as opposed to recurring) state and local per pupil data. The only significant difference is that, under the

41 For swivel points in states with multiple decisions (e.g. New Jersey) we used the year of the first decision to mandate changes to the education finance system.

relative method, we used the growth rate in all states (as opposed to non-mandate states) before and after the decision to calculate the relative growth rate. We did this simply because there were 45 states in the non-mandate pool in the capital data as opposed to 23 in the non-mandate pool in the recurring spending data.

Of course, in both cases there were states that we left out of the analysis. In the recurring and capital projections we left out any state for which we did not have at least three years of data before or after the decision. We also did not estimate projections for recurring spending in those states where the mandate dealt only with capital spending, and vice versa.

Table 14 presents the results of the projections of 2004 per pupil recurring spending in court mandate states using the relative projection method. Using this method, we estimated that actual per pupil spending in 18 of the mandate states was $214 less than projected spending. Without New Jersey, actual per pupil spending was $79 more than projected spending. The states with the highest differences, and presumably where court mandates had the largest fiscal impact, were Vermont, Massachusetts, North Dakota, Tennessee, and Ohio. While a few states show results that are qualitatively different under both methods, the overall projections produced by the two methods do not appear to be significantly different (see Table 15).

Table 16 presents the results of the projections of 2004 per pupil capital spending in court mandate states using the relative projection method. The results under the relative method are mostly consistent with the straight-line method with the exception of New Mexico, where the relative method yields a projection lower ($1,040) than that of the straight-line method ($1,121).

Table 14

Projections of Recurring Spending Per Pupil Using Relative Method of Comparison
2004

State	Actual 2004 Per Pupil Spending	Projected 2004 Per Pupil Recurring Spending (Relative Method)	Total Difference	Rank	Percent Difference	Projection Using Straight-Line Method
Alaska	$ 10,271	$ 9,724	$ 547	7	5.60%	$ 9,513
Arizona	$ 5,954	$ 5,451	$ 503	8	9.20%	$ 5,265
Arkansas	$ 6,820	$ 6,796	$ 24	13	0.30%	$ 6,720
California	n/a	n/a	n/a	n/a	n/a	n/a
Colorado	n/a	n/a	n/a	n/a	n/a	n/a
Connecticut	n/a	n/a	n/a	n/a	n/a	n/a
Idaho	$ 6,046	$ 6,498	– $ 452	15	– 7.00%	$ 6,279
Iowa	n/a	n/a	n/a	n/a	n/a	n/a
Kansas	n/a	n/a	n/a	n/a	n/a	n/a
Kentucky	$ 6,291	$ 5,811	$ 479	9	8.30%	$ 6,378
Maryland	$ 8,757	$ 8,470	$ 287	11	3.40%	$ 7,982
Massachusetts	$ 10,064	$ 7,970	$ 2,093	2	26.30%	$ 8,013
Michigan	$ 9,416	$ 9,792	– $ 376	16	– 7.20%	$ 9,136
Missouri	$ 7,520	$ 7,284	$ 236	12	3.20%	$ 7,121
Montana	n/a	n/a	n/a	n/a	n/a	n/a
New Hampshire	$ 9,148	$ 8,746	$ 402	10	4.60%	$ 8,217
New Jersey	$ 12,706	$ 15,992	– $ 3,286	18	– 20.60%	$ 17,031
New Mexico	n/a	n/a	n/a	n/a	n/a	n/a
New York	n/a	n/a	n/a	n/a	n/a	n/a
North Carolina	$ 6,748	$ 7,135	– $ 387	14	– 5.40%	$ 6,659
North Dakota	$ 7,993	$ 6,027	$ 1,966	3	32.60%	$ 5,891
Ohio	$ 9,158	$ 8,395	$ 763	5	9.10%	$ 7,834
Tennessee	$ 6,583	$ 5,402	$ 1,181	4	21.90%	$ 5,431
Texas	$ 6,905	$ 7,744	– $ 839	17	– 10.80%	$ 8,492
Vermont	$ 11,270	$ 8,770	$ 2,500	1	28.50%	$ 8,186
Washington	n/a	n/a	n/a	n/a	n/a	n/a
Wyoming	$ 9,732	$ 9,044	$ 687	6	7.60%	$ 8,682
Weighted Average	$ 8,116	$ 8,330	– $ 214			$ 8,400
Weighted Average without N.J.	$ 7,713	$ 7,656	$ 79			$ 7,641

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Table 15

Comparing Results of 2004 Per Pupil Spending Projection Methods

Projection Method	Overall 2004 Per Pupil Spending Projection (with N.J.)	Overall 2004 Per Pupil Spending Projection (w/o N.J.)
Straight-line method	$ 8,400	$ 7,641
Relative method	$ 8,330	$ 7,656
Total Difference	$ 70	–$ 15
Percentage Difference	Negligible	Negligible

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Table 16

2004 Capital Per Pupil Spending Projections Using Relative Method of Comparison

State	Actual 2004 Capital Per Pupil Spending	Projected 2004 Capital Per Pupil Spending (Relative Method)	Difference	Projection Using Straight-Line Method
California	$ 1,433	$ 1,169	$2 64	$ 1,231
Colorado	$ 1,128	$ 1,227	–$ 99	$ 1,294
New Jersey	$ 1,416	$ 1,469	–$ 52	$ 1,445
New Mexico	$ 1,401	$ 1,040	$ 361	$ 1,121
Ohio	$ 1,180	$ 899	$ 281	$ 887
	$ 1,366	**$ 1,163**	**$203**	**$1,202**

Source: Tax Foundation calculations based on data from Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

VII. Appendix: Background Data on Litigation and Education Spending

The following tables in the Appendix contain a list of the states with court mandates, the name of the case in which the mandate occurred, whether additional litigation is currently pending, a description of the legislation enacted to comply with the rulings, per pupil spending in each state compared to personal income, a breakdown of total education spending in the mandate states by year from 1988 to 2004, and a summary of total education spending and nominal and real per pupil spending in all states, mandate states, and non-mandate states from 1988 to 2004.

Table 17

Details on Legislative Compliance with Court Mandates

State	Description of Recurring Dollars Provided	Year	Description of Capital or One-Time Dollars Provided	Year	Description of Settlement Dollars Provided	Year
Alaska	Debt service in HB 281 which provided for new school construction	1999	n/a		n/a	
Arizona	FIRST legislation approved in 1998	1998	n/a		n/a	
Arkansas	Spending approved in 2006 special session	2006	$34.7 million approved by Facilities Commission in 2005; $50 million in building debt approved by legislature in 2005	2005	n/a	
California	n/a		n/a		$800 for school repairs in some schools, $138.7 million for instructional materials, $50 million for assessment of facilities	2004
Colorado	n/a		n/a		In settlement state committed $180million dollars to fund school repair and construction in the neediest school districts over more than a decade	2000
Connecticut	Total cost in 2006 of Education Cost Sharing (ECS)	1977	n/a		n/a	
Idaho	Recurring maintenance expenses associated with one-time capital expenses	2006	Transfer from the General Fund to the Public School Facilities Cooperative Fund	2006	n/a	
Iowa	n/a		n/a		$40 million securitized from tobacco settlement fund to settle case	2004
Kansas	$290 million in additional money provided by legislature in 2005 session; $466 in additional money provided by 2006 legislature (phased in over three-year period)	2005 2006	n/a n/a		n/a n/a	
Kentucky	Additional money appropriated in Kentucky Education Reform Act of 1990	1990	n/a		n/a	
Maryland	Additional money appropriated starting in 2002 when state adopted findings of Thornton Commission	2002	n/a		n/a	
Massachusetts	Increase in funds following Education Reform Act of 1993	1993	n/a		n/a	
Michigan	School aid changes occurred as the result of the Durant decision. Three major bills were enacted on 11/19/97 that impacted school aid for 1997-98 and 1998-99. The bills are S.B. 178, S.B. 719 and H.B. 5083.	1998	One time payment to plaintiffs and non-plaintiffs in 1998	1998	n/a	
Missouri	New spending for education as a result of the Outstanding Schools Act of 1993	1993	n/a		n/a	

Table 17 (continued)

Details on Legislative Compliance with Court Mandates

State	Description of Recurring Dollars Provided	Year	Description of Capital or One-Time Dollars Provided	Year	Description of Settlement Dollars Provided	Year
Montana	$33.1 million in additional recurring funds appropriated in 2005 regular session; $37.1 in additional recurring funds appropriated in 2005 special session	2005	Additional capital funding provided in 2005 special session	2005	n/a	
New Hampshire[a]	Total increase in state and local taxes caused by state imposition of statewide property tax and other tax increases (contained in HB 117 (1999)) and local property tax cuts in some areas	1999	n/a		n/a	
New Jersey	$640 million provided in 1990 in response to Abbott II and $249.8 million provided in 1998 in response to Abbott IV	1990, 1998	S. 200 (Education Facilities Construction and Financing Act) passed to comply with Abbott decisions -- $6 billion of $8.5 billion earmarked for plaintiff districts; FY 05 budget provided additional $100 million in school construction money for Abbott districts.	1998	n/a	
New Mexico	n/a	n/a	Additional capital funding provided in 2001 legislative session	2001	n/a	
New York	n/a	n/a	Capital funding provided in 2006 legislative session	2006	n/a	
North Carolina	Seed money for Disadvantaged Student Supplemental Funding (DSSF)	2005	n/a		n/a	
North Dakota	n/a	n/a	n/a		Plaintiffs dropped claims in exchange for $60 million biennial increase	2006
Ohio	Increase in H.B. 94 (2001)	2001	Capital funding estimated as a result of passage of S. 102 in 1997	1997	n/a	
Tennessee	$280 million increase in Education Improvement Act of 1992; $7 million increase in Teacher Salary Equity Act of 1995	1992 1995	n/a n/a		n/a n/a	
Texas	Increased state support by $528 million in 1990 plan; Property tax relief provided in 2006 HB 1	1990 2006	n/a n/a		n/a n/a	
Vermont	Additional grants contained in Act 60 passed in 1997	1997	n/a		n/a	
Washington	Basic Education Act of 1977; Appropriations Act of 1977	1977	n/a		n/a	
Wyoming	New school district funding approved in 1998	1998	n/a		n/a	

a) The New Hampshire response to *Claremont* originally involved $825 million in new state taxes, which was offset by local property taxes decreasing in some areas due to the new property tax system. To calculate the overall impact we offset the $825 million state increase by the reduction in local property tax collections from 1999 to 2000 which, according to Census, was approximately $460 million.
Source: Tax Foundation; Fiscal Notes; Official State Reports; Media Reports; Policy Reports

Table 18

State Education Spending and Personal Income in 2004

State	2004 Personal Income ($thousands) (BEA)	2004 Population (Census)	2004 Per Capita Personal Income	2004 Direct Education Spending ($thousands) (Census)	2004 Enrollment (NCES)	2004 Per Pupil Spending	Direct Education Spending as a Percentage of Personal Income
United States	$ 9,687,225,896	293,058,438	$ 33,056	$ 397,932,125	48,195,800	$ 8,257	4.11%
Mandate States	6,017,514,750	176,936,701	34,009	252,069,241	29,696,100	8,488	4.19
Non-Mandate States	3,669,711,146	116,121,737	31,602	145,862,884	18,499,700	7,885	3.97
Alabama	$ 126,654,900	4,517,442	$ 28,037	$ 4,889,854	729,100	$ 6,707	3.86%
Alaska	22,259,283	656,834	33,889	1,369,167	133,300	10,271	6.15
Arizona	164,122,222	5,745,674	28,564	5,700,099	957,300	5,954	3.47
Arkansas	70,852,806	2,746,823	25,794	3,055,157	448,000	6,820	4.31
California	1,268,049,043	35,841,254	35,380	49,693,128	6,456,300	7,697	3.92
Colorado	$ 164,673,261	4,598,507	$ 35,810	$ 5,681,933	761,700	$ 7,460	3.45%
Connecticut	158,567,087	3,493,893	45,384	6,008,046	568,900	10,561	3.79
Delaware	29,300,334	828,762	35,354	1,190,474	116,200	10,245	4.06
Florida	564,997,468	17,366,593	32,534	18,026,663	2,587,400	6,967	3.19
Georgia	264,728,035	8,935,151	29,628	11,713,397	1,519,500	7,709	4.42
Hawaii	$ 41,129,018	1,259,299	$ 32,660	$ 1,597,413	182,200	$ 8,767	3.88%
Idaho	38,229,084	1,394,524	27,414	1,522,295	251,800	6,046	3.98
Illinois	442,349,163	12,713,548	34,794	17,074,320	2,086,700	8,182	3.86
Indiana	187,532,764	6,223,329	30,134	7,936,873	1,011,900	7,844	4.23
Iowa	91,229,998	2,953,679	30,887	3,692,933	470,500	7,849	4.05
Kansas	$ 85,520,120	2,738,356	$ 31,230	$ 3,408,157	461,600	$ 7,383	3.99%
Kentucky	111,873,024	4,140,427	27,020	4,061,844	645,700	6,291	3.63
Louisiana	121,780,899	4,495,706	27,088	5,262,330	713,600	7,374	4.32
Maine	39,235,543	1,313,921	29,861	1,850,733	195,800	9,452	4.72
Maryland	220,603,188	5,553,249	39,725	7,574,262	864,900	8,757	3.43
Massachusetts	$ 267,972,288	6,435,995	$ 41,636	$ 9,783,840	972,200	$ 10,064	3.65%
Michigan	320,260,846	10,093,398	31,730	16,248,806	1,788,800	9,084	5.07
Minnesota	184,225,108	5,094,304	36,163	7,220,511	827,600	8,725	3.92
Mississippi	69,449,644	2,892,668	24,009	3,084,040	486,200	6,343	4.44
Missouri	173,054,401	5,752,861	30,081	6,869,062	913,400	7,520	3.97
Montana	$ 25,790,606	926,345	$ 27,841	$ 1,157,900	144,800	$ 7,997	4.49%
Nebraska	55,828,485	1,746,980	31,957	2,294,934	280,600	8,179	4.11
Nevada	79,353,276	2,332,484	34,021	2,483,851	399,200	6,222	3.13
New Hampshire	47,247,757	1,297,961	36,402	1,859,775	203,300	9,148	3.94
New Jersey	363,157,566	8,675,879	41,858	17,711,495	1,394,000	12,706	4.88
New Mexico	$ 50,707,317	1,900,620	$ 26,679	$ 2,394,394	317,000	$ 7,553	4.72%
New York	742,208,973	19,291,526	38,473	37,119,898	2,858,500	12,986	5.00
North Carolina	252,253,409	8,531,040	29,569	9,103,819	1,349,200	6,748	3.61
North Dakota	18,508,637	635,848	29,109	793,700	99,300	7,993	4.29
Ohio	352,588,485	11,461,347	30,763	16,602,525	1,812,900	9,158	4.71
Oklahoma	$ 100,026,970	3,522,827	$ 28,394	$ 3,995,922	610,600	$ 6,544	3.99%
Oregon	111,324,974	3,589,168	31,017	4,224,892	554,200	7,623	3.80
Pennsylvania	413,589,148	12,377,381	33,415	17,846,036	1,798,600	9,922	4.31
Rhode Island	36,678,824	1,078,930	33,996	1,765,533	160,100	11,028	4.81
South Carolina	113,632,187	4,194,694	27,090	5,116,439	688,000	7,437	4.50
South Dakota	$ 24,053,419	770,188	$ 31,231	$ 861,762	123,900	$ 6,955	3.58%
Tennessee	174,452,481	5,885,597	29,641	6,079,580	923,500	6,583	3.48
Texas	690,480,232	22,517,901	30,664	29,811,512	4,317,600	6,905	4.32
Utah	63,477,769	2,421,500	26,214	2,516,642	492,700	5,108	3.96
Vermont	19,519,312	620,795	31,442	1,077,401	95,600	11,270	5.52
Virginia	$ 266,751,115	7,472,448	$ 35,698	$ 9,942,193	1,189,900	$ 8,355	3.73%
Washington	216,921,198	6,205,535	34,956	7,435,169	1,008,200	7,375	3.43
West Virginia	45,819,047	1,810,906	25,302	2,226,537	275,700	8,076	4.86
Wisconsin	176,482,330	5,498,807	32,095	8,175,478	863,600	9,467	4.63
Wyoming	17,722,852	505,534	35,058	819,401	84,200	9,732	4.62

Source: Bureau of Economic Analysis; Census Bureau; National Center for Education Statistics

Table 19

Total Recurring Education Spending in the Mandate States, 1988-2004 (Millions of Dollars)

State	Year of Decision	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Connecticut	1977	$ 2,396	$ 2,714	$ 3,016	$ 3,206	$ 3,582	$ 3,539	$ 3,706	$ 3,854	$ 4,038	$ 4,082	$ 3,989	$ 4,524	$ 4,790	$ 5,115	$ 5,440	$ 5,724	$ 6,008
Washington	1977	2,947	3,196	3,512	3,964	4,327	4,647	4,844	5,070	5,319	5,535	5,932	6,140	6,457	6,729	7,001	7,218	7,435
Kentucky	1989	0	1,811	1,906	2,180	2,321	2,430	2,572	2,865	2,956	3,086	3,107	3,289	3,433	3,592	3,750	3,906	4,062
Texas	1989	0	11,376	12,200	12,727	13,834	14,131	15,912	16,488	17,643	18,769	20,185	21,434	23,691	25,194	26,698	28,255	29,812
New Jersey	1990	0	0	7,361	7,968	8,644	9,414	10,113	10,365	10,487	10,960	11,782	12,226	13,546	14,075	14,603	16,157	17,711
Massachusetts	1993	0	0	0	0	0	4,819	5,342	5,658	5,900	6,148	6,790	7,289	7,865	8,469	9,073	9,429	9,784
Tennessee	1993	0	0	0	0	0	2,932	3,366	3,546	3,789	4,134	4,420	4,662	4,989	5,218	5,447	5,764	6,080
Missouri	1994	0	0	0	0	0	0	4,005	4,263	4,525	4,785	5,080	5,402	5,718	6,139	6,559	6,714	6,869
North Dakota	1994	0	0	0	0	0	0	508	526	549	559	608	629	661	677	692	743	794
New York	1995	0	0	0	0	0	0	0	23,887	24,065	24,556	25,943	27,543	29,983	31,725	33,468	35,294	37,120
Wyoming	1995	0	0	0	0	0	0	0	577	581	593	605	653	685	725	764	792	819
Maryland	1996	0	0	0	0	0	0	0	0	4,882	5,094	5,292	5,647	5,928	6,473	7,018	7,296	7,574
Michigan	1997	0	0	0	0	0	0	0	0	0	11,069	11,981	12,590	13,289	13,467	13,645	14,947	16,249
New Hampshire	1997	0	0	0	0	0	0	0	0	0	1,163	1,231	1,288	1,398	1,510	1,622	1,741	1,860
North Carolina	1997	0	0	0	0	0	0	0	0	0	6,031	6,519	7,001	7,720	8,098	8,476	8,790	9,104
Ohio	1997	0	0	0	0	0	0	0	0	0	10,776	11,657	12,356	13,116	13,750	14,383	15,493	16,603
Vermont	1997	0	0	0	0	0	0	0	0	0	630	709	777	844	858	873	975	1,077
Arizona	1998	0	0	0	0	0	0	0	0	0	0	3,705	4,002	4,346	4,575	4,803	5,252	5,700
Idaho	1998	0	0	0	0	0	0	0	0	0	0	1,145	1,229	1,254	1,358	1,463	1,492	1,522
Alaska	1999	0	0	0	0	0	0	0	0	0	0	0	1,130	1,169	1,226	1,283	1,326	1,369
New Mexico	1999	0	0	0	0	0	0	0	0	0	0	0	1,773	1,878	2,006	2,134	2,264	2,394
California	2000	0	0	0	0	0	0	0	0	0	0	0	0	37,340	41,761	46,181	47,937	49,693
Colorado	2000	0	0	0	0	0	0	0	0	0	0	0	0	4,400	4,751	5,102	5,392	5,682
Arkansas	2001	0	0	0	0	0	0	0	0	0	0	0	0	0	1,358	2,716	2,886	3,055
Iowa	2004	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3,693
Mandate States Total		5,343	19,097	27,994	30,046	32,709	41,912	50,369	77,099	84,735	117,969	130,680	141,584	194,501	208,848	223,196	235,786	252,069

Source: Tax Foundation calculations based on date from the Census Bureau

Table 20

Total and Per Pupil Education Spending in All States, Mandate States, and Non-Mandate States (1988-2004)

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
All States Spending (Millions)	$ 157,433	$ 170,084	$ 183,410	$ 197,219	$ 205,276	$ 217,626	$ 226,677	$ 238,850	$ 249,911	$ 261,206	$ 281,243	$ 298,416	$ 319,214	$ 338,064	$ 356,914	$ 377,423	$ 397,932
All States Spending Real (2004 Dollars)	$ 251,388	$ 259,104	$ 265,081	$ 273,530	$ 276,383	$ 284,495	$ 288,929	$ 296,054	$ 300,881	$ 307,426	$ 325,931	$ 338,360	$ 350,172	$ 360,589	$ 374,770	$ 387,474	$ 397,932
All States Enrollment (Thousands)	40,104	40,461	41,136	41,966	42,742	43,384	44,031	44,761	45,532	46,050	46,467	46,780	47,135	47,596	48,107	48,463	48,196
All States Real Per Pupil Spending	$ 4,706	$ 4,829	$ 4,806	$ 4,794	$ 4,827	$ 4,889	$ 5,105	$ 5,264	$ 5,502	$ 5,853	$ 6,045	$ 6,268	$ 6,404	$ 6,444	$ 6,518	$ 6,466	$ 6,558
Mandate States Spending (Millions)	$ 5,343	$ 19,097	$ 27,994	$ 30,046	$ 32,709	$ 41,912	$ 50,369	$ 77,099	$ 84,735	$ 117,969	$ 130,680	$ 141,584	$ 194,501	$ 208,848	$ 223,196	$ 235,786	$ 252,069
Real Mandate States Spending (2004 Dollars)	$ 8,531	$ 29,092	$ 40,460	$ 41,671	$ 44,039	$ 54,790	$ 64,201	$ 95,564	$ 102,016	$ 138,843	$ 151,445	$ 160,536	$ 213,364	$ 222,764	$ 234,362	$ 242,065	$ 252,069
Mandate States Enrollment (Thousands)	1,252	5,231	6,418	6,571	6,712	8,571	9,727	12,811	13,835	19,092	20,343	20,934	27,939	28,722	29,102	29,339	29,696
Mandate States Real Per Pupil Spending	$ 6,817	$ 5,561	$ 6,304	$ 6,342	$ 6,561	$ 6,392	$ 6,600	$ 7,460	$ 7,374	$ 7,272	$ 7,445	$ 7,669	$ 7,637	$ 7,756	$ 8,053	$ 8,251	$ 8,488
Growth in Per Pupil Spending	4.61%	-18.41%	13.36%	0.60%	3.45%	-2.57%	3.25%	13.02%	-1.15%	-1.38%	2.37%	3.01%	-0.42%	1.56%	3.83%	2.45%	2.88%
Non-Mandate States Spending (Millions)	$ 152,091	$ 150,987	$ 155,415	$ 167,174	$ 172,567	$ 175,715	$ 176,308	$ 161,751	$ 165,177	$ 143,237	$ 150,562	$ 156,832	$ 124,713	$ 127,987	$ 133,718	$ 141,637	$ 145,863
Real Non-Mandate States Spending (2004 Dollars)	$ 242,856	$ 230,012	$ 224,621	$ 231,858	$ 232,344	$ 229,706	$ 224,728	$ 200,490	$ 198,865	$ 168,583	$ 174,486	$ 177,824	$ 136,808	$ 136,514	$ 140,408	$ 145,409	$ 145,863
Non-Mandate States Enrollment (Thousands)	38,852	35,230	34,718	35,396	36,030	34,813	34,304	31,950	31,698	26,957	26,124	25,846	19,196	18,875	19,005	19,124	18,500
Non-Mandate States Real Per Pupil Spending	$ 6,251	$ 6,529	$ 6,470	$ 6,550	$ 6,449	$ 6,598	$ 6,551	$ 6,275	$ 6,274	$ 6,254	$ 6,679	$ 6,880	$ 7,127	$ 7,233	$ 7,388	$ 7,603	$ 7,885
Growth in Per Pupil Spending	3.66%	4.45%	-0.90%	1.25%	-1.55%	2.32%	-0.72%	-4.21%	-0.02%	-0.32%	6.81%	3.01%	3.59%	1.48%	2.15%	2.92%	3.70%
Difference in Per Pupil Spending between Mandate and Non-Mandate States	$ 566	($ 967)	($ 165)	($ 208)	$ 112	($ 206)	$ 49	$ 1,185	$ 1,100	$ 1,019	$ 765	$ 789	$ 510	$ 523	$ 665	$ 647	$ 604

Source: Tax Foundation calculations based on data from the Census Bureau, National Center for Education Statistics, and Bureau of Labor Statistics

Table 21

Court Mandates and Pending Litigation

State	Court Mandate Case	Year of Court Mandate Case	Pending Litigation?
Alaska	*Kasayulie v. State*	1999	Yes
Arizona	*Hull v Albrecht*	1998	Yes
Arkansas	*Lake View v. Huckabee*	2001	Yes
California	*Williams v. State*	2000	No
Colorado	*Giardino v. Colorado State Board of Education*	2000	Yes
Connecticut	*Horton v. Meskill*	1977	Yes
Idaho	*ISEEO v. State*	1998	Yes
Iowa	*Coalition for a Common Cents Solution vs. State*	2004	No
Kansas	*Montoy v. State*	2005	No
Kentucky	*Rose v. Council for Better Education*	1989	Yes
Maryland	*Bradford v. State Board of Education*	1996	No
Massachusetts	*McDuffy v. Secretary of the Executive Office of Education*	1993	No
Michigan	*Durant v. State Bd. of Education*	1997	No
Missouri	*Committee for Educational Equality v. State of Missouri*	1993	Yes
Montana	*Columbia Falls Elem. Sch. Dist. No. 6 v. State*	2005	Yes
New Hampshire[a]	*Opinion of the Justices*	1997	Yes
New Jersey	*Abbott v. Burke*	1990	Yes
New Mexico	*Zuni School District v. State*	1999	No
New York	*Campaign for Fiscal Equity v State*	1995	No
North Carolina	*Leandro v. State of North Carolina*	1997	Yes
North Dakota	*Williston Public School District No. 1 v. State*	1994	Yes
Ohio	*DeRolph v. State*	1997	No
Tennessee	*Tennessee Small School Systems v. McWherter*	1993	No
Texas	*Edgewood Independent School District v. Kirby;*	1989	No
Texas	*Neely v. West Orange-Cove*	2006	No
Vermont	*Brigham v. State of Vermont*	1997	Yes
Washington	*Seattle School District No. 1 v. State*	1977	Yes
Wyoming	*Campbell County School District v. State*	1995	Yes

Source: Tax Foundation

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