

2015

# The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity

Kimberly J. Robinson

*University of Richmond*, [krobins2@richmond.edu](mailto:krobins2@richmond.edu)

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>



Part of the [Education Law Commons](#)

---

## Recommended Citation

The Enduring Legacy of Rodriguez: Creating New Pathways to Equal Educational Opportunity (Charles J. Ogletree, Jr. & Kimberly J. Robinson eds., 2015).

This Book is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact [scholarshiprepository@richmond.edu](mailto:scholarshiprepository@richmond.edu).

THE  
ENDURING  
LEGACY OF  
*Rodriguez*

---

Creating New Pathways to  
Equal Educational Opportunity

---

CHARLES J. OGLETREE, JR.  
KIMBERLY JENKINS ROBINSON  
*Editors*

Harvard Education Press  
Cambridge, Massachusetts

Copyright © 2015 by the President and Fellows of Harvard College

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval systems, without permission in writing from the publisher.

Library of Congress Control Number 2015937066

Paperback ISBN 978-1-61250-831-3

Library Edition ISBN 978-1-61250-832-0

Published by Harvard Education Press,  
an imprint of the Harvard Education Publishing Group

Harvard Education Press  
8 Story Street  
Cambridge, MA 02138

Cover Design: Ciano Design

Cover Image: Donovan Reese/Getty Images

The typefaces used in this book are Adobe Garamond Pro and ITC Legacy Sans

## CONTENTS

	<b>Foreword</b>	<b>ix</b>
	<i>James E. Ryan</i>	
<b>ONE</b>	<b>Introduction</b>	<b>1</b>
	The Enduring Legacy of <i>San Antonio Independent School District v. Rodriguez</i>	
	<i>Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson</i>	
<b>PART I</b>	<b>UNDERSTANDING RODRIGUEZ AND EDUCATIONAL OPPORTUNITY IN THE UNITED STATES</b>	
<b>TWO</b>	<b><i>Rodriguez v. San Antonio Independent School District</i></b>	<b>23</b>
	Forty Years and Counting	
	<i>David G. Hinojosa</i>	
<b>THREE</b>	<b><i>Rodriguez in the Court</i></b>	<b>45</b>
	Contingency and Context	
	<i>Camille Walsh</i>	
<b>FOUR</b>	<b><i>Rodriguez Past, Present, and Future</i></b>	<b>65</b>
	<i>Michael A. Rebell</i>	
<b>FIVE</b>	<b>Still Separate, Still Unequal in a Post-Milliken Era</b>	<b>87</b>
	Why <i>Rodriguez</i> Would Have Been Good but Not Enough	
	<i>Amy Stuart Wells, Lauren Fox, and Alana Miles</i>	
<b>PART II</b>	<b>EXPLORING NOVEL STATE REFORMS THAT SUPPORT EQUAL EDUCATIONAL OPPORTUNITY</b>	
<b>SIX</b>	<b>From <i>Rodriguez</i> to <i>Abbott</i></b>	<b>119</b>
	New Jersey's Standards-Linked School Funding Reform	
	<i>David G. Sciarra and Danielle Farrie</i>	

SEVEN	<b>Bridging the Teacher Quality Gap</b> Notes from California on the Potential and Pitfalls of Litigating Teacher Quality <i>William S. Koski</i>	143
EIGHT	<b>It Takes a Federalist Village</b> A Revitalized Property Tax as a Linchpin for Stable, Effective K-12 Public Education Funding <i>Mildred Wigfall Robinson</i>	167
NINE	<b>Tearing Down Fences</b> School Boundary Lines and Equal Educational Opportunity in the Twenty-First Century <i>Genevieve Siegel-Hawley</i>	183
PART III	CREATING INNOVATIVE FEDERAL AVENUES FOR PROMOTING EQUAL ACCESS TO AN EXCELLENT EDUCATION	
TEN	<b>How Reconstructing Education Federalism Could Fulfill the Aims of <i>Rodriguez</i></b> <i>Kimberly Jenkins Robinson</i>	203
ELEVEN	<b>Leveraging Federal Funding for Equity and Integration</b> <i>Derek W. Black</i>	227
TWELVE	<b>Remedying Separate and Unequal</b> Is It Possible to Create Equal Educational Opportunity? <i>Erwin Chemerinsky</i>	249
CONCLUSION	<b>Creating New Pathways to Equal Educational Opportunity</b> <i>Charles J. Ogletree, Jr. and Kimberly Jenkins Robinson</i>	263
	<i>Appendix: School Finance Litigation Cases</i>	275
	<i>Notes</i>	281
	<i>Acknowledgments</i>	329
	<i>About the Editors</i>	331
	<i>About the Contributors</i>	333
	<i>Index</i>	339

THE SUPRE  
*trict v. Roa*  
 challenge t  
 school dist  
 promise it  
 In 1954  
*Brown v. L*  
 sonably be  
 education.  
 it, is a rig  
 who had s  
 regation, V  
 seemed to  
 ucational i  
 the promi  
 But the  
 jority in A  
 important  
 gory of rig  
 By denyin  
 tem of un  
 Supreme C  
 Now, i  
 tunity rer  
 live in po  
 high-pove  
 consistent

## Introduction

### The Enduring Legacy of *San Antonio Independent School District v. Rodriguez*

CHARLES J. OGLETREE, JR.  
AND KIMBERLY JENKINS ROBINSON

IN 1973, THE UNITED STATES Supreme Court held in *San Antonio Independent School District v. Rodriguez* that the federal Constitution does not protect children in school districts with a low property tax base from receiving substantially less funding for their education than peers in districts with a high property tax base. The Court rejected the application of the most searching level of constitutional inquiry—strict scrutiny—to the plaintiffs’ challenge of the Texas school finance system because the wealth discrimination within the system did not infringe on the rights of a suspect class and because education was not a fundamental right protected by the Constitution. The Court ruled the system constitutional on the grounds that the system responded to the legitimate interest of Texas in fostering local control of education.<sup>1</sup>

The *Rodriguez* decision dealt a considerable blow to the advocates for civil rights and school finance who viewed the case as an important vehicle for fulfilling the Court’s promise in *Brown v. Board of Education* in 1954 that education “is a right which must be made available to all on equal terms.” Federal courthouses had served as one of the primary vehicles for civil rights

reformers to advance equal educational opportunity through school desegregation litigation. In addition, enforcement actions by the Department of Justice and by the Department of Health, Education, and Welfare under Title VI of the Civil Rights Act of 1964 also provided important support for school desegregation through lawsuits in federal court and administrative enforcement actions.<sup>2</sup>

Yet, the aim of the plaintiffs in *Rodriguez*—equal educational opportunity—remains a central goal for many policy makers, education reform organizations, school finance advocates, and civil rights groups. Many parents also embrace this aim as essential for the U.S. education system given the country's historical reliance on public schools to mitigate the adverse effects of disadvantage and to provide access to the American Dream.<sup>3</sup> Although *Rodriguez* essentially closed the courthouse door to federal constitutional challenges to school finance disparities, many litigants and reformers have continued the battle cry of *Rodriguez* through state court school finance litigation, state legislative reform, local equity efforts, and federal legislative and executive action. These efforts reveal how the legacy of *Rodriguez* endures today. It endures as policy makers, advocates, and reformers strive to break the link between a child's zip code and her destiny, between parents' wealth and the wealth of educational opportunity their child receives.

We undertook this volume to advance two primary goals: to encourage analysis of the enduring legacy of the *Rodriguez* decision and to promote the development of new ideas on how to realize the unfinished work of the *Rodriguez* plaintiffs. In pursuing these goals, we sought to move beyond the debates over whether the *Rodriguez* majority reached the right decision and whether money influences educational outcomes to generate innovative proposals for the legal and policy reforms needed to make equal access to an excellent education a reality for the nation's schoolchildren.

As we planned this volume, we invited some of the nation's leading school finance attorneys and education law and policy scholars to contribute. With the support of the University of Richmond School of Law and the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, we hosted a conference at the University of Richmond School of Law on March 8, 2013, to debate these important issues.<sup>4</sup> Most of the speakers in the conference have contributed to this volume.

In our brief introduction we describe the *Rodriguez* lower court decision, the Supreme Court's majority decision by Justice Lewis F. Powell, Jr., and the

dissenting d  
White, and  
veals that th  
summarize t  
educational  
justices had  
occurred in  
avenues that  
clude with a

SAN ANTONIO

Demetrio R  
War II and  
School Dist  
Concerned  
Edgewood  
test, among  
Although th  
about schoo  
ing for their  
to schools in  
contacted a  
a legal reme  
litigation in  
tiff due to th  
David Hinc  
in Edgewoo

A Federal  
Texas Scho

The Mexica  
brought a c  
on behalf o  
tricts with l  
in the Texa  
Constitutio

al opportunity through school desegregation actions by the Department of Health, Education, and Welfare under Title VI. The federal government also provided important support for desegregation suits in federal court and administrative

*Rodriguez*—equal educational opportunity policy makers, education reform organizations, and civil rights groups. Many parents and advocates in the U.S. education system given the challenges facing schools to mitigate the adverse effects of segregation on the American Dream.<sup>3</sup> Although the case opened the door to federal constitutional challenges, many litigants and reformers have pursued change through state court school finance litigation, equity efforts, and federal legislative and executive action. Now the legacy of *Rodriguez* endures to educate, and reformers strive to break the cycle of poverty, between parents' wealth and the quality of education their child receives.

To achieve two primary goals: to encourage the implementation of the *Rodriguez* decision and to promote the realization of the unfinished work of the past, we sought to move beyond the goals of the past. The majority reached the right decision and the outcomes to generate innovative programs needed to make equal access to an excellent education for all children's schoolchildren.

Invited some of the nation's leading school finance and policy scholars to contribute. With the assistance of the Richmond School of Law and the Charles Evans Hughes Institute and Justice at Harvard Law School, we organized a symposium at the Richmond School of Law on March 15, 2008.<sup>4</sup> Most of the speakers in the conference.

Describe the *Rodriguez* lower court decision, the Supreme Court decision by Justice Lewis F. Powell, Jr., and the

dissenting decisions by Supreme Court Justices Thurgood Marshall, Byron White, and William J. Brennan, Jr. The 5-4 vote for the majority opinion reveals that the Court was deeply divided over the case. Therefore, we concisely summarize the dissenting opinions as a window into the path toward equal educational opportunity that would have been created if the four dissenting justices had prevailed. We then consider some of the developments that have occurred in the wake of *Rodriguez*, highlighting both the federal and state avenues that advocates have used for school finance reform. Finally, we conclude with a brief summary of each of the chapters in the book.

#### *SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. RODRIGUEZ*

Demetrio Rodriguez was a Mexican American military veteran of World War II and the Korean War. As a parent who resided in the Edgewood School District in 1968, Rodriguez helped form the Edgewood District Concerned Parents Association after approximately four hundred students at Edgewood High School walked out of school in the spring of 1968 to protest, among other issues, the substandard educational facilities at the school. Although the parents in the association did not have substantial knowledge about school finance, they understood that they had voted in favor of spending for their schools and that despite this support their schools were inferior to schools in other districts in San Antonio. The Mexican American parents contacted a local attorney, Arthur Gochman, to see whether the law provided a legal remedy for these disparities. Gochman ultimately decided to file the litigation in federal court and selected Rodriguez to serve as the named plaintiff due to the fact that his name sounded Mexican American.<sup>5</sup> In chapter 2, David Hinojosa provides additional details on the school finance litigation in Edgewood, Texas.

#### **A Federal District Court Strikes Down the Texas School Finance System**

The Mexican American parents who initiated the action that led to *Rodriguez* brought a class action on behalf of themselves and their children as well as on behalf of all other children throughout Texas who reside "in school districts with low property valuations." They challenged the funding disparities in the Texas school finance system under the Fourteenth Amendment to the Constitution. At the time of the litigation, as well as today, Texas funded the

public schools with state, local, and federal funds. With the federal government providing approximately 10 percent of the funds, the state and local contributions represented the lion's share of funding. Districts raised all local funds by taxing property within the district. State funding was provided partly on a per capita basis and partly based on each district's relative ability to tax. Despite some state efforts at equalization, significant funding disparities between school districts persisted.<sup>6</sup>

The U.S. District Court for the Western District of Texas struck down the Texas school funding system as a violation of the plaintiffs' equal protection rights under the Fourteenth Amendment. The court noted that in Edgewood the per-pupil value of taxable property was \$5,429, and in Alamo Heights it was \$45,095. Although Edgewood taxed at a high rate, Edgewood yielded \$21 per pupil. In contrast, Alamo Heights taxed at a lower rate and yielded \$307 per pupil. State funding failed to equalize the substantial disparities in the local yield.<sup>7</sup>

The district court relied on prior Fifth Circuit and Supreme Court decisions to determine that the funding system must satisfy strict scrutiny on the grounds that the system was based on wealth and adversely affected a "fundamental interest." The district court noted that the plaintiffs had not requested equal funding for each child but, rather, had requested the application of "fiscal neutrality," which "requires that the quality of public education may not be a function of wealth, other than the wealth of the state as a whole." The court found the state's response to this request "insubstantial" and explained that "not only are defendants unable to demonstrate compelling state interests for their classification based upon wealth, they fail even to establish a reasonable basis for these classifications." The court concluded that the Texas system failed to advance local control given that some districts were able to raise high amounts for their schools while using a low tax rate while others were left to raise significantly smaller amounts even though they imposed a higher tax rate.<sup>8</sup> The state appealed to the U.S. Supreme Court, which agreed to hear the case.

### Justice Powell's Majority Opinion

The Supreme Court reversed the lower court's decision. Writing for the Court, Justice Lewis Powell began his analysis by summarizing how the Texas school finance system functioned and how it had changed over time.

By the 1970 state contrib percent, and disparate ab tion through trict, with E African Am "Anglo" stu than 1 perc ing for educ interdistrict

The Cou wealth. Just to discrimi crimination persons who might be ch: relatively po, personal inc concluded th ing that pri characteristi they suffere fit. He found show that th people or th

Justice P fundamenta concluded t education a that the clos tected right: although th "never presu to the citize choice." Pov

eral funds. With the federal govern-  
ment of the funds, the state and local  
government of funding. Districts raised all lo-  
cal district. State funding was provided  
based on each district's relative ability  
to equalize, significant funding dispar-

ern District of Texas struck down the  
violation of the plaintiffs' equal protection  
clause. The court noted that in Edgewood  
district was \$5,429, and in Alamo Heights it  
was taxed at a high rate, Edgewood yielded  
less than Alamo Heights taxed at a lower rate and yielded  
less than Alamo Heights to equalize the substantial disparities in

fifth Circuit and Supreme Court de-  
cision. The system must satisfy strict scrutiny on  
the basis of wealth and adversely affected a  
class of individuals. The court noted that the plaintiffs had not  
shown that the quality of public educa-  
tion was lower, but, rather, had requested the appli-  
cants to show that the quality of public educa-  
tion was lower than the wealth of the state as a  
response to this request "insubstantial"  
because the plaintiffs were unable to demonstrate compen-  
sation based upon wealth, they fail even  
to show that the classifications are "unreasonable."  
The court concluded that the plaintiffs' request for  
local control given that some districts  
use higher tax rates for their schools while using a low tax rate  
for other districts, and that they received  
substantially smaller amounts even though they  
had appealed to the U.S. Supreme Court,

lower court's decision. Writing for the  
majority, Justice Powell's analysis by summarizing how the  
situation had changed and how it had changed over time.

By the 1970-1971 school year, three years after the litigation had begun, the  
state contributed 48 percent of education funds, the local governments 41.1  
percent, and the federal government 10.9 percent. Powell acknowledged the  
disparate abilities of Edgewood and Alamo Heights to raise funds for educa-  
tion through the property tax as well as the racial composition of each dis-  
trict, with Edgewood educating 90 percent Mexican American and 6 percent  
African American students and Alamo Heights educating predominantly  
"Anglo" students and only 18 percent Mexican American students and less  
than 1 percent African American students. Despite increases in state fund-  
ing for education and state efforts to reduce funding disparities, significant  
interdistrict disparities in per-pupil spending remained.<sup>9</sup>

The Court held that the Texas system did not discriminate on the basis of  
wealth. Justice Powell noted the ambiguity in the class of individuals subject  
to discrimination and then considered whether Texas had engaged in dis-  
crimination against three possible classes of individuals: "(1) against 'poor'  
persons whose incomes fall below some identifiable level of poverty or who  
might be characterized as functionally 'indigent,' or (2) against those who are  
relatively poorer than others, or (3) against all those who, irrespective of their  
personal incomes, happen to reside in relatively poorer school districts." He  
concluded that Texas had not discriminated against any of these classes, not-  
ing that prior cases that had found wealth discrimination held two common  
characteristics: the individuals were wholly unable to pay for a benefit, and  
they suffered a complete deprivation of the possibility to obtain this bene-  
fit. He found these characteristics missing because the plaintiffs had failed to  
show that the "system discriminates against any definable category of 'poor'  
people or that it results in the absolute deprivation of education."

Justice Powell then rejected plaintiffs' arguments that education was a  
fundamental right. After acknowledging the importance of education, he  
concluded that the Constitution neither explicitly nor implicitly protected  
education as a constitutional right. He dismissed the plaintiffs' arguments  
that the close relationship between education and other constitutionally pro-  
tected rights should render education a constitutional right by stating that  
although the Court vigorously protects the right to vote and speak, it had  
"never presumed to possess either the ability or the authority to guarantee  
to the citizenry the most effective speech or the most informed electoral  
choice." Powell further noted that even if the Court acknowledged that the

Constitution afforded protection to a minimum education as a protection for the ability to exercise an individual's right to speak or vote, he had no indication that the education provided in Texas fell below that level. He also contended that the potential reach of the plaintiffs' argument seemed limitless and would appear to grant rights to food, clothing, and housing.

Offering several additional reasons for the Court's conclusions, Powell noted that the request to condemn the Texas system would require the Court to intervene in an area that had traditionally been delegated to state lawmakers. He contended that the justices did not possess the familiarity or expertise on school finance that they needed to reach a wise decision. Instead, state and local officials possessed superior knowledge of the complex education policy decisions that underlie the case, including whether a correlation exists between the quality of education and expenditures. He similarly highlighted the ongoing debates regarding the proper aims of an education system and the optimal relationship between state and local education boards and explained that he wished to avoid imposing "inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions." Furthermore, he maintained, a ruling for the plaintiffs effectively would invalidate the school finance systems in every state, and, as a result, he could not fathom a case with a greater ability to upset the existing balance of power between the national and state governments. For these reasons, rational basis review was the appropriate level of scrutiny.

The Court held that the Texas school funding system "abundantly satisfies" the rational basis standard. Justice Powell explained that the system encourages local control of education while providing a basic education for every child, highlighting recent Supreme Court decisions that had reaffirmed the importance of local control for education. He affirmed the ability of Texas to conclude that alternative approaches to school finance which increased state responsibility also might decrease local control. He ended his rational basis analysis by stating that "to the extent that the Texas system of school financing results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory."

Justice Powell cautioned that the Court's opinion should not be cited as an endorsement of the Texas funding system. Indeed, he acknowledged that

funding system  
property tax  
constitution  
must be left

Justice Marshall  
Justice Thurgood  
majority opinion  
educational  
leading lawyer  
of *Brown* was  
should not be  
while, in the  
educations that  
be undone?  
system, because  
much more  
top of their  
arguing that  
school quality  
had already  
Equal Protection  
by drawing  
he helped to  
*State Regem*

Justice Marshall  
a suspect class  
challenged  
discrimination  
denial of an  
wealth disc  
that past ca  
individual's w  
property wh  
discrimination  
reflect the c  
puted the r

imum education as a protection for  
t to speak or vote, he had no indica-  
s fell below that level. He also con-  
aintiffs' argument seemed limitless  
, clothing, and housing.

or the Court's conclusions, Powell  
exas system would require the Court  
ally been delegated to state lawmak-  
not possess the familiarity or exper-  
to reach a wise decision. Instead, state  
nowledge of the complex education  
cluding whether a correlation exists  
penditures. He similarly highlighted  
er aims of an education system and  
and local education boards and ex-  
g "inflexible constitutional restraints  
e continued research and experimen-  
olutions to educational problems and  
onditions." Furthermore, he main-  
ively would invalidate the school fi-  
result, he could not fathom a case with  
alance of power between the national  
ns, rational basis review was the ap-

ool funding system "abundantly sat-  
ice Powell explained that the system  
while providing a basic education for  
e Court decisions that had reaffirmed  
education. He affirmed the ability of  
roaches to school finance which in-  
decrease local control. He ended his  
to the extent that the Texas system of  
penditures between children who hap-  
cannot say that such disparities are the  
l as to be invidiously discriminatory."  
Court's opinion should not be cited as  
system. Indeed, he acknowledged that

funding systems "may well have relied too long and too heavily on the local property tax." However, he opined that this concern did not influence the constitutional decisions before the Court. Instead, scholars and legislators must be left to reach the final decisions on these issues.<sup>10</sup>

### Justice Marshall's Dissent

Justice Thurgood Marshall penned an eloquent dissent that criticized the majority opinion for retreating from its prior commitment to ensuring that educational opportunity is distributed on equal terms. As one of the winning lawyers in *Brown*, he reminded the Court of the unfinished work of *Brown* when he quoted that decision for his contention that the Court should not settle for a "political" solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that "may affect their hearts and minds in a way unlikely ever to be undone." He also criticized the majority's analysis of the Texas finance system, because "what the Court fails to emphasize is the cruel irony of how much more state aid is being given to property-rich Texas school districts on top of their already substantial local property tax revenues." After acknowledging that some question the relationship between school funding and school quality, Marshall responded to this debate by noting that the Court had already recognized that disparities in educational facilities violated the Equal Protection Clause even before it had invalidated school segregation by drawing on desegregation litigation victories in higher education that he helped to secure in 1950—*Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents of Higher Education*.<sup>11</sup>

Justice Marshall then disagreed with the majority's rejection of wealth as a suspect class and its refusal to render education a constitutional right. He challenged the majority's contention that past cases recognizing wealth discrimination required an absolute inability to pay for a benefit or a complete denial of an opportunity to acquire a benefit by citing cases that recognized wealth discrimination without requiring such prerequisites. He recognized that past cases had only invalidated wealth discrimination based on an individual's wealth but argued that discrimination on the basis of the taxable property where an individual lives represents a more egregious form of discrimination because the individual cannot control it and because it does not reflect the characteristics or abilities of an individual. Marshall similarly disputed the majority's conclusion that fundamental interests are only found

“explicitly or implicitly” in the constitutional text by noting that the Court had provided protection against state interference with the right to appeal when one is convicted of a crime, the right to procreate, and the right to cast a vote in state electoral contests, even though these interests cannot be found within the Constitution. Given the Court’s protection of these interests against state discrimination “because they are, to some extent, interrelated with constitutional guarantees,” Marshall insisted that education also should be treated as a fundamental right in light of numerous Court decisions that had recognized the essential importance of education as well as the close relationship between education and the ability to exercise the right to free speech, the right of association, and the right to vote.

Justice Marshall concluded that the Texas system violated the Equal Protection Clause because Texas had not provided a legitimate state interest for the system. After noting a state interest in local control of education, he found that “local control is a myth for many of the local school districts in Texas” given that the state’s reliance on property taxes resulted in some districts having very little to spend on education even though they taxed at a high rate while other districts could tax at a low rate and spend at a high rate. Given the state’s selection of a financing scheme that did not advance its interests, and the many possible alternatives for advancing local control for all districts, the Texas system denied the plaintiffs equal protection of the laws.

#### Justice White’s Dissent

Justice Byron White’s dissent also vigorously challenged the majority’s conclusion that the Texas school finance system rationally advanced the interest of local control of schools. He critiqued this argument by examining the practical and legal ability of districts such as Edgewood to raise funds for education. He noted that the per-pupil value of taxable property in Alamo Heights was \$49,078, while it was \$5,960 in Edgewood. Given the disparities in the tax base, Edgewood was unable to yield the same revenues as Alamo Heights at the same tax rate. The record revealed that when Alamo Heights applied a tax rate of \$.85 per \$100 of assessed property value, Alamo Heights yielded \$330 per pupil, while Edgewood applied a \$1.05 tax rate and yielded only \$26 despite applying a higher rate. Furthermore, if Edgewood attempted to raise the same amount as the highest yield in the district and was willing to raise its tax rate to the \$5.76 per \$100 needed to

do this, state  
was preclude  
came close to

In light of  
had failed to  
property tax  
portunity to  
majority’s an  
unequal treat  
quiring the S  
tionally relate  
than an emp  
Equal Protec  
ents and sche  
numerous alt

#### Justice Brennan

Justice William  
that the Texa  
dorsed the ar  
or implicitly  
tal right; rath  
in terms of th  
guaranteed.”  
education and  
jected the Tex

#### The *Rodriguez*

Demetrio Ro  
he lived when  
of a 2006 boo  
well-financed  
for access to  
from complic  
catalysts for E  
lingual teache

ditional text by noting that the Court interference with the right to appeal right to procreate, and the right to even though these interests cannot be the Court's protection of these interests they are, to some extent, interrelated. Marshall insisted that education also right in light of numerous Court decisions importance of education as well as the and the ability to exercise the right to d the right to vote.

The Texas system violated the Equal Protection Clause. In order to provide a legitimate state interest for investment in local control of education, he argued that many of the local school districts in the state with high property taxes resulted in some discrimination even though they taxed at a low rate and spend at a high rate. The funding scheme that did not advance its investment in local control for all plaintiffs equal protection of the laws.

Plaintiffs challenged the majority's conclusion that the Texas system rationally advanced the interest in local control by examining the case of Alamo as such as Edgewood to raise funds for the same value of taxable property in Alamo as Edgewood. Given the disparity in property values, it was unreasonable to yield the same revenues as Alamo. The record revealed that when Alamo assessed property value, Alamo applied a \$1.05 tax rate while Edgewood applied a \$1.05 tax rate, applying a higher rate. Furthermore, if Alamo received the same amount as the highest yield in the state, Alamo would have to pay a rate to the \$5.76 per \$100 needed to

do this, state law capped the tax rate at \$1.50 per \$100. Therefore, Edgewood was precluded by law and in fact from yielding the tax revenues that even came close to the revenues raised in other districts within the same county.<sup>12</sup>

In light of this factual and legal landscape, Justice White found the state had failed to advance local control and initiative for districts with such low property tax bases that the parents within the district have little to no opportunity to increase their funding for schools. In fact, White criticized the majority's analysis by stating that "requiring the State to establish only that unequal treatment is in furtherance of a permissible goal, without also requiring the State to show that the means chosen to effectuate that goal are rationally related to its achievement, makes equal protection analysis no more than an empty gesture." Therefore, he argued, the Texas system violated the Equal Protection Clause because it invidiously discriminated against the parents and schoolchildren in Edgewood, Texas, particularly given the state's numerous alternatives for advancing local control of education.

### Justice Brennan's Dissent

Justice William Brennan's dissent noted his agreement with Justice White that the Texas school funding scheme lacked a rational basis. He also endorsed the analysis of Justice Marshall that a right need not be "explicitly or implicitly guaranteed by the Constitution" to be deemed a fundamental right; rather, the analysis turns on "a function of the right's importance in terms of the effectuation of those rights which are in fact constitutionally guaranteed." Brennan maintained that given the indisputable nexus between education and the rights to vote and free speech, the Court should have subjected the Texas funding system to strict scrutiny and found it lacking.<sup>13</sup>

### The *Rodriguez* Litigants Today

Demetrio Rodriguez continued to live in the same poor neighborhood where he lived when the case was first litigated, according to Paul Sracic, the author of a 2006 book dedicated to the case. After the case, he continued to fight for well-financed schools and was recognized for his contributions to the fight for access to quality education. On April 22, 2013, Rodriguez passed away from complications of Parkinson's disease. His daughter Patricia, one of the catalysts for Rodriguez's decision to take part in the suit, is a third-grade bilingual teacher in the Edgewood School District.<sup>14</sup>

## IN THE WAKE OF *RODRIGUEZ*

After *Rodriguez*, advocates have remained committed to litigation as an important tool for school finance reform. Numerous lawsuits have been filed that sought to advance the aims of *Rodriguez*. The analysis below examines the trends in federal and state court litigation that followed the decision and acknowledges that, despite ongoing litigation and reform, additional legal and policy reforms are needed to close the educational opportunity gap.

### Federal Litigation Regarding School Finance Reform After *Rodriguez*

*Rodriguez* appears to leave open the possibility of a federal constitutional claim for an inadequate education. In rejecting the plaintiffs' argument that education must be guaranteed as a fundamental right to protect the rights to speak and to vote, the Court opined that "even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of either right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short." This was because the plaintiffs only alleged relative spending differences.<sup>15</sup> Although some scholars have interpreted this language to indicate that a federal adequacy claim might prove more successful, what would be required to prove such an extreme deprivation in federal court remains unanswered.<sup>16</sup>

However, the Court in *Plyler v. Doe* in 1982 did prohibit the complete denial of an education to schoolchildren. The Supreme Court established in *Plyler* that schoolchildren whose parents illegally entered the United States are "persons" under the Fourteenth Amendment and are entitled to the equal protection of the laws. Even though the Court noted that public education is not a fundamental right and cited *Rodriguez* to support this proposition, it also stated that the denial of education to some groups of children conflicted with one of the goals of the Equal Protection Clause: "the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit." The Court then explained that denying undocumented children an education would force them to remain illiterate for the rest of their lives, prevent them from functioning in civic society, and foreclose even modest contributions to the nation's progress. Taking these factors into account, the Court held that a state could not deny undocumented children a primary or secondary education unless it furthered a substantial goal of the state, which Texas had failed to provide.<sup>17</sup>

The only entire state. *Powell v. R.* Philadelphia education officials alleged that discriminatory disparities in the plaintiff's districting to distribute high proportions of students in districts with fewer children. The plaintiffs have VI of the Constitution for violation of the regulation.

However, short-lived. Supreme Court regulations under the U.S. Department possesses the funding system. In 2014, the Court directs that plaintiffs that the district's impact on the regulations. renewed attention.

State School. When it comes, challenges to school solutions to the public. How

ned committed to litigation as an im-  
n. Numerous lawsuits have been filed  
*Rodriguez*. The analysis below examines  
igation that followed the decision and  
itigation and reform, additional legal  
the educational opportunity gap.

### School Finance Reform After *Rodriguez*

possibility of a federal constitutional  
rejecting the plaintiffs' argument that  
fundamental right to protect the rights  
ed that "even if it were conceded that  
on is a constitutionally protected pre-  
of either right, we have no indication  
expenditures in Texas provide an edu-  
nse the plaintiffs only alleged relative  
e scholars have interpreted this lan-  
acy claim might prove more success-  
nch an extreme deprivation in federal

oe in 1982 did prohibit the complete  
en. The Supreme Court established in  
nts illegally entered the United States  
endment and are entitled to the equal  
he Court noted that public education  
*Rodriguez* to support this proposition, it  
to some groups of children conflicted  
rotection Clause: "the abolition of gov-  
nable obstacles to advancement on the  
then explained that denying undocu-  
force them to remain illiterate for the  
functioning in civic society, and fore-  
nation's progress. Taking these factors  
te could not deny undocumented chil-  
n unless it furthered a substantial goal  
provide.<sup>17</sup>

The only federal court litigation to gain any success in challenging an entire state school finance system due to disparities in funding occurred in *Powell v. Ridge* in 1999. In that case, parents of schoolchildren who lived in Philadelphia sued Pennsylvania governor Thomas Ridge and other state education officials under Title VI of the Civil Rights Act of 1964. Plaintiffs alleged that the Pennsylvania school finance system had a racially discriminatory disparate impact on the schoolchildren in Philadelphia. For instance, the plaintiffs alleged that the system provided on average greater state funding to districts with high proportions of white students than to districts with high proportions of nonwhite students and that these disparities harmed the students in underfunded districts by relegating them to larger classes, providing fewer curricular offerings, and resulting in other educational disadvantages. The United States Court of Appeals for the Third Circuit held that the plaintiffs had stated a claim under the disparate impact regulations for Title VI of the Civil Rights Act and under Section 1983, which provides a remedy for violation of federal law. The court further held that a private right of action existed to enforce the Title VI disparate impact regulations and that these regulations also could be enforced through 42 U.S.C. § 1983.<sup>18</sup>

However, this new avenue for federal school finance litigation proved short-lived. Just two years later, in *Alexander v. Sandoval* in 2001, the Supreme Court held that plaintiffs could not enforce the disparate impact regulations under Title VI through a private right of action in court. Currently, the U.S. Department of Education's Office for Civil Rights (OCR) alone possesses the authority to bring an action against a state or district whose funding system has a racially discriminatory disparate impact. In the fall of 2014, the OCR released a "Dear Colleague" letter to states and school districts that provided clear guidance on the nature of their obligation to ensure that the distribution of educational resources does not have an adverse impact on the basis of race, color, or national origin in violation of the Title VI regulations.<sup>19</sup> This new guidance and possible enforcement action may bring renewed attention to resource disparities from states and school districts.

### State School Finance Litigation and Reform

When it closed the federal courthouse door to federal constitutional challenges to school funding disparities, the *Rodriguez* majority noted that the solutions to these disparities were best left to state and local officials and the public. However, Justice Powell was careful to note the importance of school

finance reform: "The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity." Therefore, Powell's majority opinion invited state-level reforms that promoted greater equality of educational opportunity.<sup>20</sup>

Substantial state litigation and state reform of school finance litigation followed the *Rodriguez* decision. For this reason, some credit *Rodriguez* as indirectly leading to school funding reform. During the time of *Rodriguez* and in the years since, most state legislatures have passed wealth-equalization formulas for funding their public schools, and every state has enacted some type of school financing equalization scheme. School funding litigation has proliferated since 1973 and has focused on ensuring greater equity in school funding, adequacy of school funding, or both.<sup>21</sup>

Equity litigation claims focus on equal per-pupil funding or an equal opportunity to offer equal funding, while adequacy claims seek to ensure that students have the funding that they need to receive an adequate education as defined by specific objectives often included in state standards. In reality, these two theories often coalesce around what James Ryan has labeled "rough comparability," because equity cases typically focus on ensuring "substantial equality" rather than perfect equity, while adequacy cases also seek to reduce disparities in educational resources as they aim to ensure students receive an adequate education.<sup>22</sup>

The states' highest courts have ruled on the constitutionality of school funding systems in forty-two of the fifty states. The appendix captures this litigation by identifying plaintiff victories and losses with an emphasis on litigation at the highest court in the state. In twenty-three states, plaintiffs have prevailed in the state's highest court at least once. Plaintiffs have lost and never prevailed at the state's highest court in nineteen states.

When plaintiffs' claims have failed, these decisions sometimes echo the concerns of Justice Powell in *Rodriguez*. For example, in 2009 the Indiana Supreme Court rejected a challenge to its school finance system because the judiciary was not the appropriate branch to assess the constitutionality of the education system given the state constitution's delegation of education to the discretion of the legislature.<sup>23</sup> The highest courts in Oklahoma and Illinois rejected school finance claims for similar reasons.<sup>24</sup> Other courts expressed

doubts about educational

However, stance, in ch  
sive assessme  
New Jersey,  
the course of  
handed dow  
disparities be

In additio  
important vi  
he and other  
fine the "sou  
one that equ  
and serving  
secure empla  
ror jobs" tha  
Rebell highl  
complex sch  
ity that the  
that at least  
and found th  
Powell cited  
system in *R*

Most rec  
ruled that te  
for educatio  
teachers pro  
petent teach  
court held th  
requirement  
effects on pe  
serves as pla  
discusses in  
equal access  
ways that la'

for reform in tax systems which may rely on the local property tax. And certainly education, its methods, and its fundamental level of quality and greater uniformity. A majority opinion invited state-level reform of educational opportunity.<sup>20</sup>

Reform of school finance litigation follows the same reason, some credit *Rodriguez* as indispensable. During the time of *Rodriguez* and thereafter, many states have passed wealth-equalization measures, and every state has enacted some form of equalization scheme. School funding litigation has focused on ensuring greater equity in school funding for both.<sup>21</sup>

Equal per-pupil funding or an equal opportunity adequacy claims seek to ensure that all students need to receive an adequate education. These claims are included in state standards. In reality, the focus is what James Ryan has labeled “roughly equal” and typically focus on ensuring “substantial” equity. While adequacy cases also seek to reduce disparities, they aim to ensure students receive an

education based on the constitutionality of school finance in twenty states. The appendix captures this history of victories and losses with an emphasis on litigation. In twenty-three states, plaintiffs have won at least once. Plaintiffs have lost and won the case in nineteen states.

Often, these decisions sometimes echo the reasoning in *Rodriguez*. For example, in 2009 the Indiana Supreme Court struck down its school finance system because the state failed to assess the constitutionality of the state’s delegation of education to the local level. The highest courts in Oklahoma and Illinois have also struck down their systems for similar reasons.<sup>24</sup> Other courts expressed

doubts about the connection between funding disparities and disparities in educational opportunity.<sup>25</sup>

However, plaintiffs also have secured some important victories. For instance, in chapter 6, David Sciarra and Danielle Farrie provide a comprehensive assessment of the long-running *Abbott v. Burke* education litigation in New Jersey, which Sciarra and others have led. As their chapter details, over the course of more than thirty-five years the New Jersey Supreme Court has handed down decisions that have supported continued decreases in funding disparities between rich districts and poor districts.<sup>26</sup>

In addition, Michael Rebell led the New York City Public Schools to an important victory in *Campaign for Fiscal Equity v. State (CFE)* in 1995 when he and others convinced the highest court in the state of New York to define the “sound basic education” that the state’s constitution guarantees as one that equips all students to perform their civic duties, including voting and serving on a jury in a knowledgeable and capable fashion, as well as to secure employment in an economy increasingly dominated by “service sector jobs” that demand greater skills than manufacturing jobs.<sup>27</sup> In chapter 4, Rebell highlights how courts have demonstrated a ready capacity to address complex school funding issues despite the contention of the *Rodriguez* majority that the Court lacked the capacity to do so. More importantly, he notes that at least twenty-nine courts have reviewed the social science evidence and found that money spent well matters for education, a debate that Justice Powell cited as one that discouraged the Court from invalidating the Texas system in *Rodriguez*.

Most recently, in 2014, in *Vergara v. State*, a superior court in California ruled that teacher tenure laws violated the state constitutional requirements for education. The court noted that all of the parties agreed that competent teachers provide a critical element for an effective education and that incompetent teachers significantly undermine successful educational outcomes. The court held that the California teacher employment statute, the last-in first-out requirement, and the teacher dismissal statutes had disproportionate adverse effects on poor and minority students in the state.<sup>28</sup> As William Koski, who serves as plaintiffs’ counsel in other school finance litigation in California, discusses in chapter 7, litigation aimed at ensuring that all students receive equal access to effective teachers represents one of the new and innovative ways that lawyers are challenging disparities in educational resources.

While recognizing these important victories, it is worthwhile to acknowledge that school finance victories often encounter significant setbacks. A school finance victory typically requires multiple trips to court. For instance, the important wins in New Jersey required no fewer than fifteen decisions from the state's highest court.<sup>29</sup> Furthermore, legislatures do not consistently follow through with promised funding increases. After the *CFE* victory, for example, the New York legislature passed legislation that would increase the state appropriation over four years by \$5.5 billion in additional operating aid to schools throughout the state. However, after two years, increases in foundation aid statewide were halted once 37.5 percent of the four-year goal was met. By 2014, the state had failed to pay close to \$4 billion of its past obligations to schools. Unfortunately, disappointments such as these are not unusual.<sup>30</sup>

Despite these frequent setbacks, much, but not all, of the research indicates that school funding litigation has resulted in some increased funding for schools, particularly for poor districts, and has reduced funding disparities.<sup>31</sup> Debate remains over the size of the reduction in spending disparities or the influence of school finance litigation.<sup>32</sup> One positive trend in school funding has been increased funding for students with unique needs, including students from low-income homes and those with special educational needs.<sup>33</sup>

Although we acknowledge that some progress on school finance reform has occurred since *Rodriguez*, we undertook this volume because we agree with the many scholars who have contended that reforms to school funding systems to date have been inadequate, given evidence that several decades of school funding litigation and state-level reforms have proven that school funding systems are quite resistant to comprehensive and long-term reform and that substantial additional reform is needed to close the educational opportunity gap.<sup>34</sup> A 2013 report from President Obama's Commission on Equity and Excellence confirmed the inadequacy of past reforms: "These initiatives have not addressed the fundamental sources of inequities and so have not generated the educational gains desired. Despite these efforts and proclamations, large achievement gaps remain, and local finance and governance systems continue to allow for, and in many ways encourage, inequitable and inadequate funding systems and inefficient and ineffective resource utilization."<sup>35</sup>

Similarly, James Ryan commented that "not a single suit has done much to alter the basic structure of school finance schemes" and that "school finance

litigation h  
opportunit  
ever, and s  
resistance  
ing that th  
on propert  
venues cam  
mately 35  
distributio  
an excellen  
The per  
nity dema  
law and pe

## CHAPTER

The chapte  
an emphas  
reform. In  
Forty Year  
equal fund  
dent walkc  
recent Tex  
pact of *Ro*  
a brief dis  
school fun

In chap  
Camille W  
der to unc  
Court's ru  
cussed in t  
ing that th  
at every st  
cesses of th  
impulse ru  
and notes l  
a Cold Wa

ories, it is worthwhile to acknowledge significant setbacks. A multiple trips to court. For instance, led no fewer than fifteen decisions. Moreover, legislatures do not consistently increase. After the *CFE* victory, forced legislation that would increase by \$5.5 billion in additional operating. However, after two years, increases once 37.5 percent of the four-year. Led to pay close to \$4 billion of its. Only, disappointments such as these

, but not all, of the research indicated in some increased funding for. It has reduced funding disparities.<sup>31</sup> on in spending disparities or the in-positive trend in school funding has a unique needs, including students' special educational needs.<sup>33</sup>

progress on school finance reform. We took this volume because we agreed that reforms to school funding, given evidence that several state-level reforms have proven that not to comprehensive and long-term reform is needed to close the education. From President Obama's Commission on the inadequacy of past reforms: fundamental sources of inequities and gains desired. Despite these efforts, gaps remain, and local finance law for, and in many ways encourage, systems and inefficient and ineffective

not a single suit has done much to reform schemes" and that "school finance

litigation has done as much to entrench the current structure of educational opportunity as it has to challenge it. District lines remain as important as ever, and segregation remains widespread and increasing."<sup>36</sup> Evidence of the resistance of school finance systems to reform may be found in part by recalling that the *Rodriguez* majority noted the need for reform of state reliance on property taxes, yet in the 2010–2011 school year, 81 percent of local revenues came from local property taxes and local funding provided approximately 35 percent of school funding.<sup>37</sup> We believe that further reform in the distribution of educational opportunity is necessary to ensure equal access to an excellent education.

The persistence of deeply entrenched disparities in educational opportunity demands the development of novel reforms to federal, state, and local law and policy that determine the landscape of educational opportunity.

## CHAPTER SUMMARIES

The chapters in Part I explore past and ongoing school finance litigation with an emphasis on the *Rodriguez* litigation as well as the potential for future reform. In chapter 2, "*Rodriguez v. San Antonio Independent School District, Forty Years and Counting*," David Hinojosa examines the march to fair and equal funding in Texas public schools, from the Edgewood High School student walkout in San Antonio and the filing of *Rodriguez* in 1968 to the most recent Texas school finance decision in 2014. Hinojosa also surveys the impact of *Rodriguez* on school funding across the country and concludes with a brief discussion of the controversy surrounding the role of the courts in school funding cases.

In chapter 3, "*Rodriguez in the Court: Contingency and Context*," Camille Walsh analyzes the legal and historical contexts of *Rodriguez* in order to understand the explicit and implicit factors that contributed to the Court's ruling. She analyzes the way in which race and poverty were discussed in the lower court opinions, amicus briefs, and oral arguments, arguing that the multiple identity positions claimed by the students and families at every stage of the case were largely rendered invisible by the formal processes of the courts. In addition, she traces the context of the anticommunist impulse running through many of the briefs and the internal memos, drafts, and notes leading up to the majority opinion and identifies *Rodriguez* within a Cold War discourse of anxiety around expansion of educational access and

resources. Finally, she locates *Rodriguez* as a key moment of contingency in the development of equal protection analysis in the early 1970s, pointing to its importance in foreclosing alternative visions for the application of equal protection and the judicial scrutiny of inequality.

In chapter 4, "*Rodriguez* Past, Present, and Future," Michael Rebell analyzes the decision and argues that the Court incorrectly concluded that holding education to be a fundamental interest under the federal constitution would require similar rulings regarding other social services. He further notes the overwhelming evidence of the failure of large numbers of schools throughout the country to provide the basic level of educational opportunity that students need to become capable voters and to exercise their First Amendment rights. Rebell then contends that *Rodriguez* does not need to be reversed at this point; instead, the Supreme Court needs to reconsider the core issue that was left open in the 1973 decision: whether there is a federal right to a basic level of education that will prepare students to function effectively as civic participants. He argues that a positive outcome of such a hypothetical case is plausible even with today's conservatively oriented court and concludes by positing that a failure by the Court to uphold a federal right to education might well galvanize a national movement to enact a constitutional amendment that would do so.

In chapter 5, "Still Separate, Still Unequal in a Post-*Milliken* Era: Why *Rodriguez* Would Have Been Good but Not Enough," Amy Stuart Wells, Lauren Fox, and Alana Miles argue that even if the Supreme Court had upheld the challenge in *Rodriguez*, the intersection of migration patterns and school district boundaries would continue to encourage racial and class isolation and inequality within public schools. They conducted a five-year study of migration patterns within a hypersegregated suburban county in the New York City metro area, Nassau County. The chapter identifies how a school's or district's reputation or prestige deteriorates as it changes from an almost all white to a more diverse student body, which influences peoples' choices about where to live, where to send their children to school, and with whom they will associate. Given these findings, they conclude that although a different ruling in *Rodriguez* would have helped low-income communities, it also would have required a different ruling in the 1974 U.S. Supreme Court decision *Milliken v. Bradley*, a case that typically prevented courts from requiring interdistrict school district desegregation, in order to overcome the racial isolation and separation accomplished through school district boundaries and migration patterns.<sup>38</sup>

Part II of  
tional oppo  
Standards-L  
Farrie argue  
the centralit  
a handful o  
finance equi  
and Farrie's  
systems desi  
educational  
their family  
ical step of l  
sure that all  
offers a thori  
to progressi  
legislature i  
school finan  
achieve thos  
students, an  
gue that th  
the actual c  
a particular  
munities—  
funding sys  
federal gove

In chapt  
on the Pote  
contends th  
room teach  
apparent th  
children. D  
that school  
African Am  
enced teach  
laid off for  
federal poli  
tain high-q

z as a key moment of contingency in analysis in the early 1970s, pointing to ve visions for the application of equal inequity.

ent, and Future,” Michael Rebell an- the Court incorrectly concluded that al interest under the federal constitu- rding other social services. He further ne failure of large numbers of schools e basic level of educational opportu- able voters and to exercise their First ads that *Rodriguez* does not need to be preme Court needs to reconsider the 73 decision: whether there is a federal ill prepare students to function effec- hat a positive outcome of such a hypo- ay’s conservatively oriented court and y the Court to uphold a federal right ational movement to enact a constitu-

Unequal in a Post-*Milliken* Era: Why Not Enough,” Amy Stuart Wells, Lau- ven if the Supreme Court had upheld ction of migration patterns and school encourage racial and class isolation and conducted a five-year study of migra- suburban county in the New York City er identifies how a school’s or district’s changes from an almost all white to a uences peoples’ choices about where to ool, and with whom they will associate. at although a different ruling in *Rodri-* mmunities, it also would have required e Court decision *Milliken v. Bradley*, from requiring interdistrict school dis- ne the racial isolation and separation ac- andaries and migration patterns.<sup>38</sup>

Part II offers new ideas for state-level reforms that advance equal educa- tional opportunity. In chapter 6, “From *Rodriguez* to *Abbott*: New Jersey’s Standards-Linked School Funding Reform,” David G. Sciarra and Danielle Farrie argue that the legacy of the landmark *Rodriguez* case was to solidify the centrality of the state’s role and responsibility for public education. In a handful of states, litigation and legislative efforts to improve state school finance equity have yielded much-needed improvements. However, Sciarra and Farrie’s research demonstrates that few states have progressive funding systems designed to provide the extra resources required to deliver an equal educational opportunity for all students, regardless of their background, their family income, or where they live. Most states also fail to take the critical step of linking their finance systems to their curricular standards to ensure that all students have the resources needed to be successful. The chapter offers a thorough analysis of the recent successful transition from regressive to progressive school funding in New Jersey, highlighting the role of the legislature in linking content, performance, and accountability standards to school finance reform, which provides the resources needed by students to achieve those standards, particularly English language learners, low-income students, and students in concentrated school poverty. Sciarra and Farrie argue that this standards-linked funding reform—wherein states determine the actual costs of meeting state educational standards for all students, with a particular focus on the needs of students in high-poverty, low-wealth communities—is a necessity for the successful implementation of a fair school funding system. They also explore the potential for an increased role for the federal government in encouraging and sustaining school finance reform.

In chapter 7, “Bridging the Teacher Quality Gap: Notes from California on the Potential and Pitfalls of Litigating Teacher Quality,” William S. Koski contends that it is nearly beyond dispute that the quality of a child’s class- room teacher affects her performance and that it is becoming increasingly apparent that good teachers matter more for economically disadvantaged children. Despite this widespread consensus, it is also common knowledge that schools with concentrations of economically disadvantaged children and African American and Latino children tend to be staffed by the least experi- enced teachers, the lowest paid teachers, and those who are most likely to be laid off for budgetary reasons. To begin to address this issue, recent state and federal policy has been designed to enable school districts to attract and re- tain high-quality teachers, fairly distribute those teachers among all schools,

and, most recently, remove barriers that prevent administrators from dismissing poor teachers or eliminate obstacles to assigning teachers to the classroom in which they are needed most. In addition, some advocates have begun to turn to the courts in an attempt to ensure that all children have access to high-quality teachers. In this chapter, Koski considers several recent lawsuits and litigation strategies designed, at least in part, to close the "teacher quality gap" in California; identifies the potential pitfalls of each of the strategies; and discusses the potential of a comprehensive, yet modest, "all of the above" litigation approach to ensuring equality of educational opportunity by providing economically disadvantaged children high-quality teachers.

In chapter 8, "It Takes a Federalist Village: A Revitalized Property Tax as a Linchpin for Stable, Effective K-12 Public Education Funding," Mildred Wigfall Robinson explains that after *Rodriguez*, state supreme courts became the fora for litigating challenges to school finance systems, with both notable successes and equally notable failures. She examines the extent to which sources of revenue other than property taxes, retail sales taxes, and income taxes are being tapped as funding sources and analyzes the financial viability and economic implications of the described shifts. She also reexamines the direct role of the federal government (demonstrably quite minor compared with that of state and local governments) in supporting public education and concludes by arguing that a reconceived federal deduction for property taxes paid to support public education might prove a useful way of indirectly providing increased federal support.

In chapter 9, "Tearing Down Fences: School Boundary Lines and Equal Educational Opportunity in the Twenty-First Century," Genevieve Siegel-Hawley acknowledges that our public schools, charged with advancing opportunity, are today more balkanized than ever and that racially isolated schools serving high proportions of students in poverty still do not systematically set students on a path toward upward social mobility. This largely holds true regardless of the system of school funding. Thus, she asserts, school integration deserves a renewed and determined focus alongside important efforts to equalize funding. Such attention must recognize that patterns of segregation in schools are heavily driven by jurisdictional boundaries which separate multiple school districts in the same metro area, just as they are also influenced by attendance zone boundaries within a single district. Siegel-Hawley revisits and analyzes policies designed to integrate students across broad metropolitan communities in the South and presents new research to indicate

that compel  
linked to low  
innovative a  
tional equity

The chap  
eral avenues  
ter 10, "Hov  
of *Rodriguez*  
ism—the ba  
education—  
tion as the N  
of Education  
tion's decisio  
reforms prov  
eralism shou  
tunity to rec  
United State  
son proposes  
ism so that i  
that all stud  
requires the  
making as it  
excellent edu  
opportunity,  
lent educatio  
localities tha

In chapte  
Derek Black  
*guez*, the fed  
ing equity. I  
for poor stuc  
morphed int  
ignores obvi  
however, ren  
the pressing  
funds shoul  
that the exa

to prevent administrators from dismissing or assigning teachers to the classroom. In addition, some advocates have begun to ensure that all children have access to education. Koski considers several recent lawsuits, in part, to close the "teacher quality" potential pitfalls of each of the strategies; comprehensive, yet modest, "all of the above" strategy of educational opportunity by providing children high-quality teachers.

*Village: A Revitalized Property Tax as a Model for Public Education Funding,* Mildred Rodriguez, state supreme courts became school finance systems, with both notaries. She examines the extent to which property taxes, retail sales taxes, and income taxes and analyzes the financial viability of these shifts. She also reexamines the effects (demonstrably quite minor compared to other shifts) in supporting public education and the federal deduction for property taxes that prove a useful way of indirectly providing

*School Boundary Lines and Equal Opportunity in the Twenty-First Century,* Genevieve Siegel-Hawley, schools, charged with advancing opportunity and that racially isolated students in poverty still do not systematically improve their social mobility. This largely holds true for school funding. Thus, she asserts, school funding must focus alongside important efforts to recognize that patterns of segregation are often jurisdictional boundaries which separate metro areas, just as they are also influential within a single district. Siegel-Hawley presents new research to indicate

that comprehensive city-suburban school desegregation plans continue to be linked to lower levels of both school and housing segregation. She closes with innovative and specific policy options for a more regional pursuit of educational equity and integration.

The chapters in Part III provide novel ideas for creating innovative federal avenues for promoting equal access to an excellent education. In chapter 10, "How Reconstructing Education Federalism Could Fulfill the Aims of *Rodriguez*," Kimberly Jenkins Robinson recognizes that education federalism—the balance of power among federal, state, and local governments over education—recently has undergone substantial revisions through such legislation as the No Child Left Behind Act of 2001 (NCLB), the U.S. Department of Education's Race to the Top competitions, and the Department of Education's decision to grant states waivers from NCLB compliance. These recent reforms provide the nation an opportune time to examine how education federalism should be structured to ensure that all students have an equal opportunity to receive an excellent education. After offering several reasons why the United States should reexamine its approach to education federalism, Robinson proposes an alternative framework for reconstructing education federalism so that it can support—rather than impede—reforms that seek to ensure that all students obtain equal access to an excellent education. Her approach requires the federal government to build on the strengths of federal policy making as it engages in education reform, including setting equal access to an excellent education as a national priority, establishing a floor of educational opportunity, investing in research on how states could best provide an excellent education to all schoolchildren, and reallocating resources to states and localities that lack the capacity to offer such an education.

In chapter 11, "Leveraging Federal Funding for Equity and Integration," Derek Black contends that following the Supreme Court's holding in *Rodriguez*, the federal government has largely been ignored as a catalyst for funding equity. In fact, the federal initiative originally designed to ensure equity for poor students, the Elementary and Secondary Education Act (ESEA), has morphed into a general education and entitlement program that routinely ignores obvious inequalities and sometimes makes them worse. The ESEA, however, remains a huge leveraging tool that Congress could use to address the pressing problems of poverty and segregation. Black contends that ESEA funds should be targeted at schools and districts with high levels of poverty, that the exact amounts of the grants should be based on how much fiscal

effort a state is exerting on behalf of its schools and the extent to which a state progressively funds high-need districts, and that Congress should attach strict conditions to those funds, mandating funding and resource equity both within and between districts for high-need schools. He maintains that these measures could drastically increase the ability of schools to meet students' needs, though targeting funds at high-poverty districts could create perverse incentives to further segregate some schools and districts. Thus, he contends that the ESEA must also monitor changes in student enrollment and incentivize integrative changes while penalizing segregative changes.

In chapter 12, "Remedying Separate and Unequal: Is It Possible to Create Equal Educational Opportunity?" Erwin Chemerinsky recognizes that just after the sixtieth anniversary of *Brown* American public schools are increasingly separate and unequal. He notes how American education is characterized by suburban schools that are predominately white and spend far more on education than city schools, which are almost entirely students of color (with private schools, overwhelmingly white). He highlights how Supreme Court decisions over the last several decades have contributed enormously to this problem. Chemerinsky contends that the key to a solution is to make sure that all children in each metropolitan area are attending the same school system so that there is truly a unitary and equal system of education. He then considers whether this would be possible or constitutional.

*The Enduring Legacy of Rodriguez* offers a collection of insights regarding one of the most important and enduring challenges confronting our nation: the educational opportunity gap. Although our nation proclaims itself the land of opportunity, in truth each year the educational opportunity of millions of schoolchildren is hindered by their socioeconomic status, race, immigration status, and zip code. The long-standing disparities in educational opportunity betray our national identity, shackle our economic future, and mock the nation's professed commitment to justice and fairness.

This volume also advances the ongoing reform efforts aimed at ensuring equal educational opportunity. It proposes an array of pioneering ways to move the United States toward a more excellent and equitable education system and, in so doing, offers not only powerful tools for reformers but also hope and encouragement that the elusive goal of equal educational opportunity remains within the nation's grasp.

an