

Stanford Law School

The California Constitution, the Courtroom, and the Classroom

William S. Koski

Eric & Nancy Wright Professor of Clinical Education, Professor of Law, and Professor of Education (by courtesy)

Overview

- The California Constitution and education
- Educational access, educational inequality, and the California Constitution
- Can systemic inequality and failure be addressed through the Constitution?
 - Educational failure in California
 - Defining the “problem” in California: school finance
 - The national context
- The fundamental right to an education and school finance reform in California (*Robles-Wong v. Cal.*)
- Then what?

The California Constitution: Opportunities

Article IX

Section 1. Legislative policy. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Section 5. Common school system. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year

Article XVI, Section 8

[F]rom all state revenues there shall first be set apart the monies to be applied by the State for support of the public school system”

Equal Protection of the Laws

The California Constitution: Revenues and Budgeting for Education

- Proposition 13
 - Limitation on local property taxation
 - Caps rates and assessments
 - Supermajorities for parcel taxes
 - Centralization of educational funding
- Proposition 98: General Fund Set-Aside
 - Three tests
 - Generally about 40% of state budget
 - Floor or ceiling?

Educational access and the California Constitution: The courts and Article IX

- *Ward v. Flood (1874)*: Art. IX provides a “legal right” for children “to be educated at public expense”
- *Piper v. Big Pine Sch. Dist. (1924)*: re-affirmed right to access education
- *Hartzell v. Connell (1984)*:
 - Banning fees that deny access to extracurriculars
 - Broadens the definition of education

Educational inequality and the California Constitution: Equal Protection of the laws

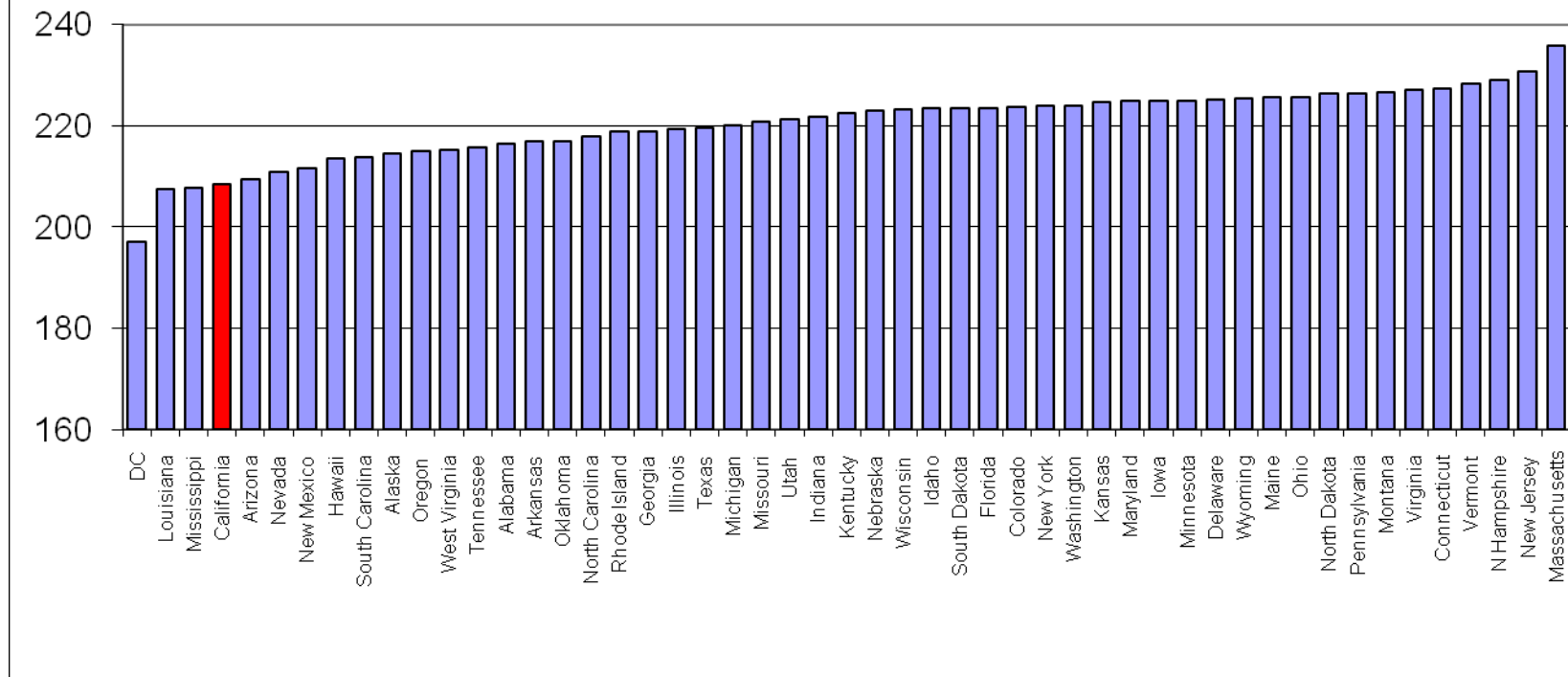
- *Serrano v. Priest (1971 and 1976)*
 - Challenged constitutionality of property tax based school funding scheme
 - Education as fundamental right
 - Fiscal neutrality
 - Per pupil spending
- *Butt v. California (1992)*
 - Closure of schools 6 weeks early
 - State has responsibility to provide “basic educational equality”

Denial of educational resources: equal protection and the fundamental right to an education

- Access to advanced placement courses
- Access to qualified teacher, clean and safe schools, and instructional materials
- Access to an education that will prepare students to pass the High School Exit Exam
- Equitable distribution of teacher layoffs
- Access to free instructional materials

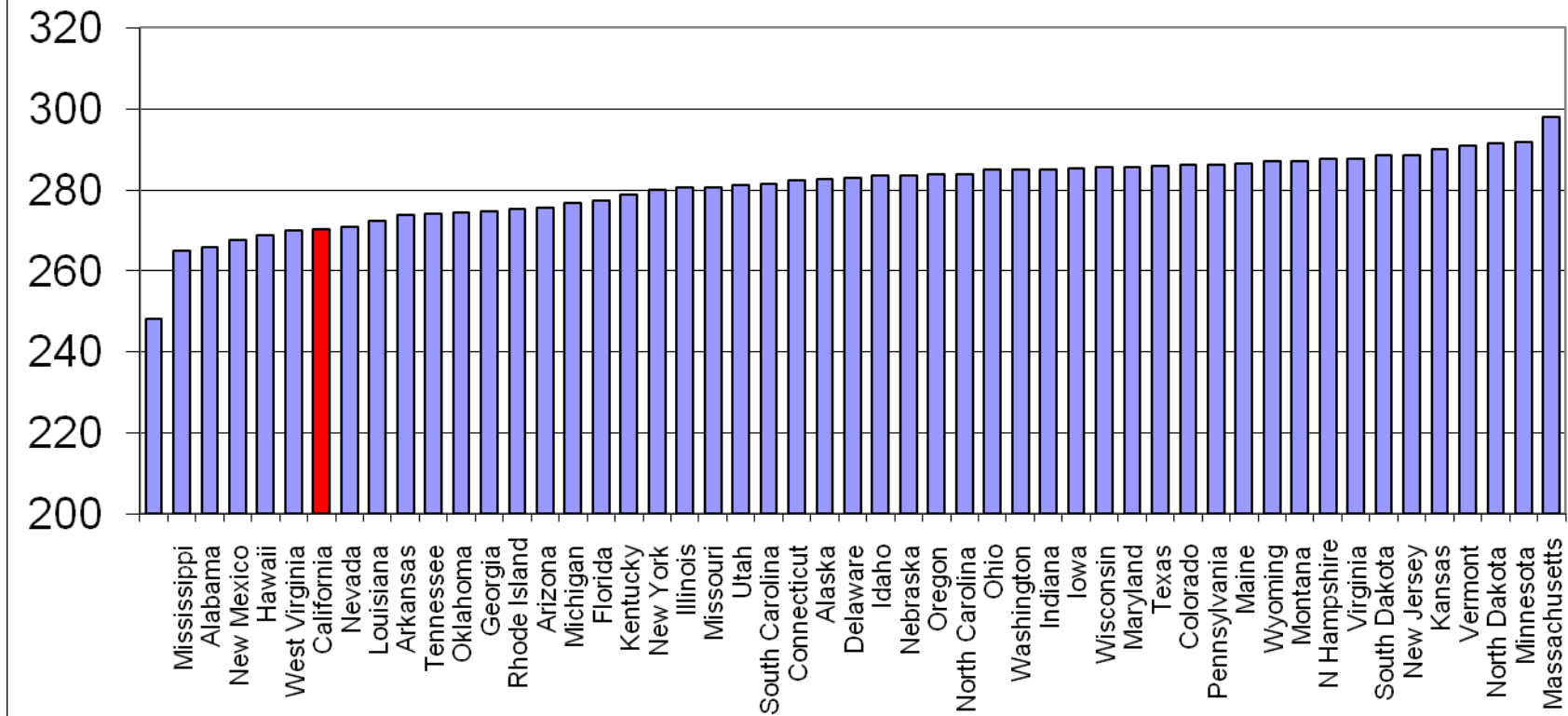
Educational failure in California

In 2007, the average California 4th grader read at the 38th percentile of the nation and the 20th percentile of Massachusetts.



Source: Eric Hanushek

In 2007, the average California 8th grader did math at the 38th percentile of the nation and the 21st percentile of Massachusetts.



Source: Eric Hanushek

California Performance by Subgroups

8th grade math, 2007

	Ranking	Percentile of average CA student	
		in US	in best state
all students	45 of 51	38.1%	21.3%

Source: Eric Hanushek

California Performance by Subgroups

8th grade math, 2007

	Ranking	Percentile of average CA student	
		in US	in best state
all students	45 of 51	38.1%	21.3%
white	35 of 50	45.2%	28.8%
black	38 of 50	41.6%	29.8%
Hispanic	37 of 43	39.8%	24.0%

Source: Eric Hanushek

California Performance by Subgroups

8th grade math, 2007

	Ranking	Percentile of average CA student	
		in US	in best state
all students	45 of 51	38.1%	21.3%
white	35 of 50	45.2%	28.8%
black	38 of 50	41.6%	29.8%
Hispanic	37 of 43	39.8%	24.0%
college educated	38 of 50	44.1%	27.1%

Source: Eric Hanushek

California Performance by Subgroups

8th grade math (advanced level), 2007

	<u>Comparison countries (entire population)</u>
all students	Israel, Italy, Portugal, Turkey
white	Slovakia, Ireland, Lithuania, Poland
college educated	Denmark, Estonia, France, U.K., Hungary, Iceland, Luxembourg, Poland, Slovakia, Swe

Source: Eric Hanushek

Diagnosing the problem

California's Pupil-Staff Ratios are Among the Highest in the Nation

	Students per Teacher	Rank	Students per Counselor	Rank	Students per Librarian	Rank	Students per School Administrator	Rank
California	20.8	49	809.2	49	5,038.5	50	433.1	47
Florida	15.8	37	433.3	30	912	36	333.3	37
New York	13.1	9	463.1	37	876.8	32	294.6	28
Texas	14.5	26	249.7	29	922.8	37	231.7	9
All other states	15.1		440.0		782.8		312.3	


Source: National Center for Education Statistics, Common Core Data, 2007-08

Note: Rankings based on all 50 states. The "all other states" category includes all states except California, Florida, New York, and Texas. The District of Columbia is excluded.

Diagnosing the problem: educational resources

- California spends \$2,131 less per pupil than the national average, ranking the State 44th in the country. (National Education Association [NEA], 2008-09)
- When adjusted for regional cost differences of providing education services (using a national wage index), California spends \$2,856 less per pupil than the national average, or 47th among all states. (NEA, 2008-09, and National Center for Education Statistics)
- California spends less per pupil than each of the largest 10 states in the nation -- almost \$6,000 less per pupil than New York. (NEA, 2008-09)

Diagnosing the problem: the school finance “system”

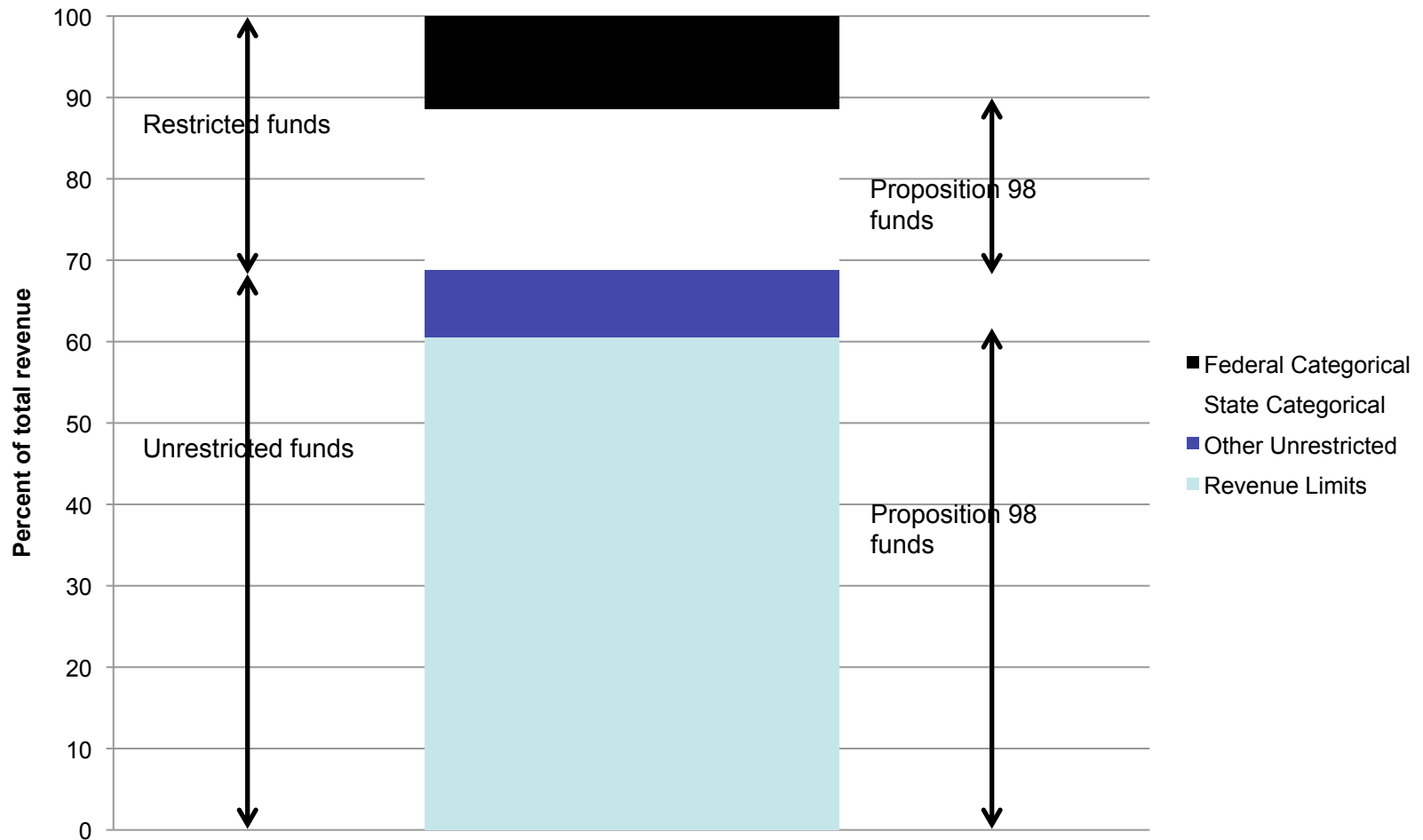


Revenue limit funding
+Proposition
13+Categorical aid
proliferation+Proposition
98

Standards based reform
(standards, accountability,
teacher preparation,
curriculum and
instructional materials)

California's system is complex

Average district revenues (\$9,855 per pupil, 2009-10)



Expenditures also vary

	Total funding (\$)	Salaries and benefits (%)	Books and Supplies (%)	Services and Other (%)	Average teacher salary (\$)	Pupil-Teacher Ratio
San Francisco	10,828	85	4	12	60,641	16.5
Oakland	11,263	77	5	19	53,964	17.9
Palo Alto	14,076	87	4	9	85,360	17.0
LAUSD	10,766	87	4	12	66,584	20.6
Pasadena	9,759	81	3	16	64,163	20.0
Beverly Hills	11,218	81	3	17	73,301	17.9
Statewide Average	8,801	85	4	11	67,932	21.3

Source: www.ed-data.k12.ca.us

Source: Margaret Weston, PPIC

What to do?

- The national context

The three “waves” of litigation

- The First Wave (~1971-1973)
 - Federal Equal Protection
 - The “equity” standard
- The Second Wave (1973-1989)
 - State Equality Provisions and Educ. Articles
 - The “equity” standard
- The Third Wave (1989-present)
 - State Education Articles
 - The “adequacy” standard

Modern adequacy litigation(1989-Present)

- Rose v. Council for Better Education (Ky.)
- The Adequacy Standard
 - Vague and broad: civic and economic
 - Specific, though abstract capacities
 - Educational content standards
- The evidence of inadequacy
 - Outcomes: achievement (proficiency, state comparisons)
 - Meeting state-established standards
 - Equity
- The educational policy climate: standards-based reform and accountability

To sum up:

(1) Right to go to school for free

(2) Right to basic educational equality

(comparative right)

(3) Right to equal access to certain

resources

But is there a right to some qualitative level of education in California?

The California Supreme Court has held that education is essential for the “preservation of other basic civil and political rights,” (*Serrano I*, 5 Cal. 3d at 608), and that education “forms the basis of self-government and constitutes the very cornerstone of republic institutions.” (*Hartzell*, 35 Cal. 3d at 906). Because “education is a major determinant of an individual’s chances for economic and social success in our competitive society” and “is a unique influence on a child’s development as a citizen and his participation in political and community life,” education is a fundamental right of each child in California. (*Serrano I*, 5 Cal. 3d at 605.)

Is the school finance system unconstitutional?

Robles-Wong v. California (CQE v. Cal.)

- The plaintiffs
- The evidence
- The legal theories
 - Qualitative right to an education
 - Equal protection of the laws
- The content of the qualitative right
- The current status

Isn't it dangerous to have the courts involved with educational policy?

- Separation of powers doctrine
- Design and implementation constraints
- A modest role
 - Deference regarding the definition of the right
 - Deference regarding the remedial design
 - Catalyst for reform=proper and necessary role

The current status of the case

- January 14, 2011 Order: Dismissed Article IX (Qualitative Right to an Education) Claim
- July 26, 2011 Order: Dismissed Equal Protection Claim
- Appeal

The trial court on Article IX

- “Plaintiffs argue that sections one and five [of Article IX] should be read together.”
- “If the Court were writing on a clean slate, plaintiffs’ reliance on the provisions that a free school shall be kept up and supported in each district . . .” might carry the day. However, the seminal decision . . . In *Serrano I* considered and rejected the argument that section 5 of article IX included any particular financing requirement.”
- Given the [Supreme] Court’s determination in *Serrano I*, this Court may not find a constitutional right to a particular level of funding in section 5, even when read in combination with section 1”

The trial court on equal protection

- “Plaintiffs here argue that they have pleaded that their educational opportunities are, or are at risk of being, fundamentally below prevailing statewide standards because they allege that they are not receiving the resources they need to achieve the CSTs and CAHSEE, which plaintiffs contend constitute ‘prevailing statewide standards’ for equal protection purposes.”
- “The question . . . Is whether plaintiffs have pleaded facts showing that plaintiff districts and students in plaintiff districts are receiving fewer educational resources compared to *most* other students and/or students in *most* other districts.”
- We did not plead that theory of equal protection.

What's the fix?

- Finance reform
 - Governor's Committee on Educational Excellence
 - Getting Down to Facts
 - Bersin, Kirst, & Liu
 - Ballot initiatives
- Governance reform
- Regulatory reform

Key features of and questions regarding the Brown weighted student formula proposal

- Key element of proposal is to consolidate funding into three programs
 - Base funding for all students
 - Targeted funds for disadvantaged students
 - Special education
- Remaining questions
 - Ensure funds go to targeted students
 - Regional cost adjustments
 - Sufficient funding