

A low-angle, upward-looking photograph of the Pennsylvania State Capitol dome. The dome is a light cream color with intricate architectural details, including a series of arched windows and a decorative cornice. The top of the dome is topped with a dark green, ornate finial. The background is a clear, deep blue sky.

# MAKING CHANGE:

FAVORABLE CONDITIONS FOR EDUCATION  
FINANCE REFORM

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# INTRODUCTION

## Education Funding: A Shared Responsibility

Public education in America—its governance and its funding—is a balancing act between local and state governments. As a matter of law, states bear primary responsibility for schooling; public education is discussed in every state constitution.<sup>i</sup> This does not mean, however, that state legislatures take full charge of their public education systems. Generally, states set broad rules for education, including things like mandating school attendance, setting grade-level standards, and specifying statewide tests.<sup>ii</sup> But state statutes also create local school districts, which are charged with day-to-day administration of schools.<sup>iii</sup>

One thing that varies from state to state is the division of the funding burden between state and local revenues. Nationally, state and local governments each supply slightly less than half of education dollars, with the federal government filling in a small portion.<sup>iv</sup> The bulk of local dollars are raised through local property taxes.<sup>v</sup> This approach naturally burdens property-poor communities, which struggle to raise sufficient revenue for their schools.<sup>vi</sup> States have different ways of compensating for differences in local tax bases, including providing special aid to low-wealth districts, funding a specified share of district budgets out of the state general fund, and imposing state-level property taxes for education.<sup>vii</sup>

## The Challenge of Increasing Equity

Every policy that increases interdistrict funding equity, though it improves the overall picture, leaves some voters worse off. When property tax revenues are kept for the districts in which they are raised, wealthier neighborhoods can amply fund their schools at lower tax rates. When the state moves to equalize funding for districts of different wealth levels, it must either raise more state money or order the sharing of local revenues. Either course inevitably increases tax bills in those more affluent areas. The increases create a challenge for policymakers and place political and economic constraints on the process of increasing the equity of the school finance system.

This report explores the stories of three states that beat the odds. In each instance, the state took on a larger role in school funding and decreased the amount of interdistrict variation permitted in the system.

- In Vermont, Act 60 of 1997 (as adjusted by its successor law, Act 68 of 2003) instituted a state property tax to pay for education almost entirely at the state level. The law also limited high-wealth districts' ability to raise additional local funds for themselves without also providing extra support for less affluent school communities.
- In Michigan, Proposal A of 1994 raised more state education dollars through a new property tax and an increase to the state sales tax, while lowering permissible local property tax rates. The ballot initiative also narrowed the gap between per-pupil funding amounts in different districts.
- In Wyoming, the funding reforms of 1983 and 1997 added tight controls to the property tax system. Not only did the state increase its state property tax for education, taking on greater responsibility for school funding at the state level, but it also ordered the recapture of all extra local revenue from property-rich districts so that these dollars could be shared with lower-wealth school systems.

Each of these policies were enacted within a particular economic and political context. Some of the factors surrounding these changes, such as the dynamic between players in the Michigan governor's race, were local and idiosyncratic. Others, though, were more generalizable. This report draws six lessons from these stories that can inform efforts to advance school funding equity in other states:

### **1. Policy change in the arena of school funding is iterative and may take several years.**

Before successfully changing their policies, the states studied here spent multiple years attempting to reform their funding systems.

## **2. It may be pragmatic to offer some moderate concessions to the preferences of affluent communities and taxpayers.**

Equity-advancing policies may have a greater chance at both initial passage and longevity when some concession is made to the preferences of upper-income and property-rich communities, which will generally pay more than before as systems change to provide more support for low-wealth school districts.

## **3. Consolidation of one-party control can clear the way for reform after failed attempts.**

In two of the three states discussed, the governor's party gained power in the legislature after several failed attempts at reform, and policy change was achieved shortly afterward.

## **4. Equity-advancing policies are aided when the state constitution enshrines education as a fundamental right.**

In two of the three states discussed, the state supreme court issued very strong rulings finding education to be a fundamental right under the state constitution. This holding was key in motivating policy change.

## **5. It may be easier to correct interdistrict inequities that lack a racial dimension.**

Each of the three state policy changes studied is notable for the lack of a racial component in the inequalities addressed by the reform. The policy changes were focused on technocratic finance issues and did not force lawmakers or voters to engage with sensitive issues of race. This may have simplified the process of passing equity-advancing policies.

## **6. It may be easier to enact redistributive policies when wealth is concentrated in the hands of a few.**

In two of the three states discussed, wealth was highly concentrated in just a handful of communities, and, equity-advancing reforms leaned heavily on contributions from a small number of taxpayers.



# VERMONT'S ACT 60

## Introduction

In 1997, the landmark Vermont Supreme Court decision *Brigham v. State of Vermont* spurred immediate legislative action, resulting in the passage of the Equal Educational Opportunity Act (Act 60) that same year.<sup>viii</sup> This bill represented a fundamental shift in thinking related to the state's responsibility to provide quality public education for all Vermont students. Under Act 60, the state took a newly active role in collecting and distributing property tax revenues for education.<sup>ix</sup> This centralization was necessary to overcome the systemic funding inequity created by town-to-town property wealth disparities, but it represented a significant break in tradition from a long history of hyperlocal control of education in the state.<sup>x</sup> Eventually, some of the controversy and criticism incited by Act 60's redistributive policies boiled over, leading to revisions with the passage of Act 68 in 2003.<sup>xi</sup> Nevertheless, the state's commitment to equitable education funding remained steadfast, and the new law upheld the priorities of the previous bill.<sup>xii</sup> Acts 60 and 68 marked a new era of state-level intervention aimed at equalizing the amount of funding across school districts, regardless of its town's property values.<sup>xiii</sup> This achievement was the result of a unique combination of political, legal, and economic factors that came together to create a window of opportunity for sweeping, progressive reform.

## Background

### History of Reform

The right to public education in Vermont goes back to the 1777 state constitution.<sup>xiv</sup> Its Education Clause instructed the legislature to establish schools in every town to educate the children living there, at a time when the state-mandated public schools were uncommon.<sup>xv</sup> However, the clause did not provide any guidance or requirements for execution. Municipalities were left to figure out how to operate, staff, and fund schools themselves, and they typically did so with local property tax revenues.<sup>xvi</sup> When towns struggled to provide quality public education on their own, the legislature responded by passing Vermont's first statewide property tax in 1890<sup>xvii</sup>—an unusual step that prefigured Act 60 over one hundred years later. Since property-rich towns paid more in state taxes than less wealthy ones, the statute had the effect of redistributing funds to towns with low property values.<sup>xviii</sup> However, the distribution system was poorly structured, and inequalities remained.<sup>xix</sup>

Efforts to reform education finance through varying levels of state aid continued well into the twentieth century, but multiple reforms failed to overcome the disparities in communities' abilities to raise funds.<sup>xx</sup> In 1988, the state passed the Foundation Aid formula, which established the idea of a foundation cost—a minimally adequate amount of spending per pupil needed to meet state education standards.<sup>xxi</sup> State aid was meant to cover the difference between the foundation cost and tax revenues that each town could generate at a given base tax rate.<sup>xxii</sup> However, the state's contributions fell short when tax receipts were negatively impacted by the fiscal crisis of the 1990s.<sup>xxiii</sup> Local property taxes were left to pick up the slack, recreating the inequities that the formula was intended to resolve.<sup>xxiv</sup> Within five years of the law's passage, citizens again began clamoring for reform.<sup>xxv</sup> The frustration was felt from the local level all the way up to the legislature.<sup>xxvi</sup> An informal poll of the Democratic caucus conducted after the 1992 legislative elections revealed that about 90% of Democratic legislators considered education finance reform their number one priority.<sup>xxvii</sup>

The failure of this formula was just the last in a series: In the latter half of the twentieth century, the state tried a number of new formulas, hoping that increases in state aid would balance out local funding discrepancies.<sup>xxviii</sup> Pressure to change the formula arose every time state aid levels dropped and local property taxes were forced to compensate for lost funding, and the policies proved unsustainable.<sup>xxix</sup>

### Political Context

By the time the Foundation Aid formula was scrapped, Vermont had proposed, passed, implemented, and repealed three separate funding formulas since 1969.<sup>xxx</sup> This series of ill-fated attempts to reform education funding had an unlikely upside: The years spent developing and transitioning to new formulas proved informative and helped set the stage for 1997's Act 60, the state's most important shift in school funding policy. Education funding had

historically been primarily a local responsibility, but with successive attempts at funding reform, school district budgets became increasingly intertwined with state aid.<sup>xxxii</sup> This cemented the role of the state in discussions of education finance.

For the four years immediately prior to 1997, Vermont's state government was comprised of a Democratic-controlled House of Representatives, Republican-controlled Senate, and a Democratic governor.<sup>xxxiii</sup> There were several attempts to pass an education finance law after the foundation formula failed to solve for the disparities in funding, but no bill could overcome the partisan split in the legislature.<sup>xxxiii</sup> In the 1996 election, however, things took a turn: The Democrats took control of the state Senate.<sup>xxxiv</sup> They also retained the House majority and, with the reelection of Howard Dean, kept the governorship, creating a unified government.<sup>xxxv</sup> Throughout his governorship, Dean was focused on education finance, and he had responded to the collapse of the Foundation Aid formula by appointing a commission to explore possibilities for reform.<sup>xxxvi</sup> With one-party control and a committed executive, the Vermont legislature was ready to put its knowledge of education funding policy into practice with a sweeping new law.

## Instigating Events

### Demographic Factors

The problem of how to fairly fund public education in Vermont has grown more challenging over time. In the nineteenth century, Vermonters generally lived, worked, and shopped all in a single town, which necessitated a wide range of businesses and properties—and a strong property tax base—in each town.<sup>xxxvii</sup> However, with the advent of the automobile,<sup>xxxviii</sup> many Vermonters began to work away from home.<sup>xxxix</sup> Cities like Burlington and Montpelier emerged as economic hubs, and once-bustling towns were reduced to “bedroom communities.”<sup>xli</sup> In some cases, residential areas that were home to many schoolchildren, were left to suffer from diminishing tax bases, while cities with fewer resident children had larger tax bases.<sup>xlii</sup>

The twentieth century also brought about other factors that exacerbated tax base inequalities between towns. The rise of ski towns amidst the commercialization of winter sports created a profitable tourism industry—and consequently a robust tax base—in select towns like Stowe, Burke, and Killington.<sup>xliii</sup> Additionally, declining birth rates and a ‘brain drain’ effect caused by talented young people moving away from small towns for work or school severely altered tax bases from which property tax revenues could be drawn, exacerbating disparities in education funding from town to town.<sup>xliii</sup>

It is also worth noting that throughout these demographic and economic changes, Vermont's population remained largely white.<sup>xliii</sup> This racial homogeneity has meant that race-based equality is not a live concern in the state, allowing the policy conversation to focus solely on the problem of economic equality without animating a debate about racial justice.<sup>xliii</sup>

### ***Brigham v. State of Vermont***

On March 10th, 1995, after investigating funding inequities within Vermont's education system, the American Civil Liberties Union (ACLU) of Vermont filed *Brigham v. State of Vermont*.<sup>xlvii</sup> The ACLU decided to bring three separate claims—one each on behalf of schoolchildren, taxpayers, and the school districts themselves.<sup>xlviii</sup> The lawyers took a two-pronged approach.<sup>xlix</sup> Using the Common Benefits Clause of the state constitution, Vermont's equivalent to the federal Equal Protection Clause, the ACLU argued that the state failed to provide equitable access to education.<sup>l</sup> However, the lawyers also relied upon the Vermont Constitution's Education Clause to argue that public schools are a fundamental government service.<sup>li</sup> Typically, it is difficult to successfully win access to government services based on equal protection guarantees, because such arguments force the court to consider and define the extent of such protections for each individual government function.<sup>lii</sup> It is a slippery slope, and courts are cautious about the consequences of finding a constitutional violation in the differential provision of every government service.<sup>liii</sup> The ACLU maneuvered around this issue by arguing that public education was unlike other government functions, because it was specifically guaranteed by the state constitution's Education Clause and should therefore be viewed as a fundamental right.<sup>liv</sup> As a result, the ACLU maintained that the state's provision of schooling should be evaluated in light of a quite strict interpretation of the Common Benefits Clause.<sup>lv</sup>

The case reached the Vermont Supreme Court, which unanimously agreed with the plaintiffs in February 1997.<sup>lvi</sup> The *Brigham* decision affirmed that the right to education was fundamental, and in light of that, found the gross inequities throughout the current education system to be completely unconstitutional.<sup>lvii</sup> The ruling was a surprise, and it spurred lawmakers to action.<sup>lviii</sup> Just four months later, in June 1997, the legislature passed the Equal Educational Opportunity Act by a generous margin of 81-62 in the House and 21-9 in the Senate. The law fundamentally reimagined education finance in Vermont.<sup>lix</sup>

## Act 60

### A New Funding System

Passage of the Equal Educational Opportunity Act (Act 60) in June 1997 represented a landmark attempt to sever the linkage between local property wealth and education funding.<sup>lxx</sup> The act introduced a two-tiered revenue system comprised of state and local property taxes, starting in 1998 and phased in over four years.<sup>lxxi</sup> In a move that decreased reliance on local levies, state aid was to be funded out of the proceeds from a uniform state-level property tax, which was levied on both homesteads (residential properties occupied by their owners) and non-homestead property.<sup>lxxii</sup> Low-income property owners benefitted from some state tax relief through an income-adjustment feature.<sup>lxxiii</sup>

The amount of state aid to which each school district was entitled was determined through a formula. First, the act set a basic dollar amount per pupil.<sup>lxxiv</sup> That amount was then multiplied by the district's student count. However, to account for differences in the cost of educating students in various groups, the count of students in each group (including primary grade and secondary grade students, students learning English as a second language, and economically disadvantaged students) was inflated through the application of a multiplier.<sup>lxxv</sup> Each district's adjusted count was used to determine the total aid amount.<sup>lxxvi</sup>

Districts were not limited to spending only this sum. However, if a school district voted to spend more than the state-specified amount on its students, the additional cost had to be financed out of local property taxes.<sup>lxxvii</sup> Based on the amount districts agreed to spend, the state would set local tax rates to ensure that all towns planning to spend the same amount also paid the same local property tax rate for it, regardless of property wealth.<sup>lxxviii</sup> In property-rich districts, this tax rate would produce more revenue than the approved budget called for, and this excess was directed to a "sharing pool" from which property-poor districts could draw.<sup>lxxix</sup>

With the state collecting state-share tax revenues to fund primary education expenditures and recapturing excess local-share revenues, the provisions of Act 60 created a far more equitable top-down distribution of funds.<sup>lxxx</sup> A new era of state oversight of education finance had begun with Vermont's state government taking on new responsibility to provide equal educational opportunity in the wake of the *Brigham* decision.

### Impact and Response

In the first year of the Act 60 system, 89% of Vermont's residents saw a decrease in their total property tax bills, including both the reduced local levies and the new state taxes.<sup>lxxxi</sup> At the municipal level, property tax rates increased in 17% of towns, decreased in 32% of towns, and did not change in 51% of towns.<sup>lxxxii</sup> Despite the reductions in individual tax bills, education funding did not decline generally; because a relatively small number of high-wealth towns contributed so much more, 229 districts received more funding for education than before, while only 23 districts received less.<sup>lxxxiii</sup>

The towns that benefitted from Act 60 sang its praises.<sup>lxxxiv</sup> Schools that had been in dire need of new textbooks, more teachers, computers, renovations, or important afterschool programs were able to afford more of what was needed to provide a better education for their students.<sup>lxxxv</sup>

However, there was also a furious backlash to Act 60. Some of the most vocal critics were the wealthy ski towns of Vermont, often called "gold towns," where property taxes spiked under the new funding system.<sup>lxxxvi</sup> Previously, ski towns with high property values could easily fund high per-pupil spending at relatively low tax rates.<sup>lxxxvii</sup> The

introduction of the sharing pool dealt a devastating blow to those towns, because the revenue from their local property taxes no longer went exclusively to their own schools, but was shared with other districts across the state.<sup>lxxxix</sup>

There were additional objections to Act 60. Opponents maintained that the sharing pool created little incentive for property-poor towns to curb spending, because they stood to benefit the most from the redistributions.<sup>lxxx</sup> Additionally, in ski-resort towns, much of the residential property was owned by second-home owners who lived out-of-state and therefore could not vote on policies that affected their tax rates; they resented the increased taxes on their vacation properties.<sup>lxxxix</sup> Farmers who were not wealthy but owned many acres of land in close proximity to wealthier towns also suffered as a result of the tax rate changes.<sup>lxxxii</sup> And more broadly, many Vermonters felt Act 60 was passed too quickly by an overeager Democratic-controlled government, without proper time to evaluate the law's merits, consider other ideas, or assess the range of implications for all affected communities.<sup>lxxxiii</sup> Similarly, Republicans voiced discontent with how aggressively the bill was moved through the House and Senate without true negotiation between the parties.<sup>lxxxiv</sup>

Those disadvantaged by Act 60 began to organize against it. Gold-town residents filed eleven lawsuits and began to campaign against Act 60.<sup>lxxxv</sup> The ski town of Stowe created the Stowe Education Fund to circumvent the sharing pool; rather than raise extra education dollars through local taxes subject to the new system, the Fund raised \$1 million in private, tax-deductible contributions to maintain pre-Act 60 per-pupil expenditures.<sup>lxxxvi</sup> In addition, the Freeman Foundation, a Stowe-based fund with ties to the town, created a matching program in 1998 that eventually contributed approximately "\$19 million [in private funding] over two years to 57 Vermont communities."<sup>lxxxvii</sup> This tactic allowed gold towns to achieve their desired per-pupil spending levels without contributing to the sharing pool, causing the state to lose \$30 million in potential sharing pool revenue and harming low-wealth towns that depended on the pool for equalized educational funding.<sup>lxxxviii</sup> The affluent towns of Dover, Searsburg, and Whitingham rebelled by withholding state property taxes from the pool altogether, forcing the state to sue for taxes owed.<sup>lxxxix</sup>

## Act 68

Undermined by private fundraising efforts and fierce opposition, Act 60 fell short of its goals. In 2003, the legislature acted to soften the more controversial aspects of the law with the passage of Act 68.<sup>xc</sup> The new law raised the per-pupil amount at the heart of the formula, and it eliminated the local property tax requirement, aiming instead to fund the entire formula with statewide property taxes.<sup>xcii</sup> It also made two significant modifications to the state property taxes.<sup>xciii</sup> The first was to make a distinction between the property tax rates for homesteads and other property, so non-homestead rates would be uniform across the state and would not vary with local spending decisions.<sup>xciii</sup> The second change was to determine tax rates on homestead property in two tiers: First, a base homestead property tax rate that was the same in all districts, and second, a town-specific rate increase over the base in proportion to the amount each town's residents were willing to spend on education over and above the formula amount.<sup>xciv</sup> Like the local taxes that had been included in Act 60, the rates of these additional state-collected taxes on homesteads were tied to spending choices rather than local property wealth, and the proceeds were pooled and redistributed to address disparities in tax base value.<sup>xcv</sup> Unlike under Act 60, though, the taxes paid to support extra local spending under Act 68 were not levied on non-homesteads, so these discretionary budget increases did not affect non-local owners of second homes.<sup>xcvi</sup> They also did not increase taxes on the non-residential properties, like farms and ski areas—owners of those properties paid only the regular statewide rate.<sup>xcvii</sup> These changes reduced the incentive for wealthy districts to resort to private fundraising outside the tax system.

Act 68 contained another mechanism for reducing inequality between school districts. To discourage property-wealthy towns from approving budgets far higher than those of other towns, Act 68 levied a surtax on towns spending more than a certain percentage above the previous year's per-pupil average.<sup>xcviii</sup> (Specifically, any spending locally approved above the threshold is double-counted by the state when the second-tier tax rate on non-homesteads is set for the town.<sup>xcix</sup>) This penalty made especially high spending less attractive to local school districts.

Altogether, Act 68 cemented the increasingly important role of the state in education finance. By effectively

removing local share property taxes and creating one pool for all revenues managed and distributed by the state, a higher degree of state power was established over towns historically accustomed to hyperlocal control of education. Moreover, Act 68 improved upon Act 60 by balancing local concerns with the state's priority of increasing interdistrict funding equity.

## Summary

The years leading up to *Brigham v. State of Vermont* represented a boiling over of frustrations related to how public education was funded. Widening discrepancies between the experiences of gold towns and poorer towns further intensified the discontent with each funding formula's general ineffectiveness. The state attempted to provide relief to parents, students, and school districts at the local level through new legislation, each bill involving progressively more state intervention and aid, but as time would reveal, there was simply never enough money to address systemic inequity. Whenever state aid waned due to unavoidable economic or budgetary factors, the problems of a funding system that was rooted in unequal local tax bases reemerged. It became clear that the connection of education finance to property taxes needed to be completely reevaluated.

The path to Act 60 was smoothed by a perfect storm of political and legal events. Vermont's experience transitioning through multiple funding formulas proved quite beneficial because it kept education finance at the forefront of the legislature's agenda. The state's history of debate and research on new ways to approach funding meant that when the *Brigham v. State of Vermont* decision came down from the courts, the legislature was able to hit the ground running. The mandate from the Supreme Court after years of stagnation motivated the legislature to pass a sweeping reform bill. Furthermore, the consolidation of Democratic control in the executive and legislative branches of government in 1997 made it easier to swiftly pass Act 60. Years of struggle to raise funds for school districts without heavy individual taxpayer burdens also created a unique scenario in which a state typically defined by intensely local control of education was willing to stomach greater state intervention.

Though Act 60 faced significant pushback from towns and taxpayers that were disadvantaged by the new structure, the state was able to address objections in Act 68 without abandoning the main goals of reform. Ultimately, Vermont's funding structure continues to pool nearly all education dollars at the state level and redistributes them primarily on the basis of pupil need. This system is near-unique in the United States for its decoupling of education funding levels from local property wealth.



# MICHIGAN'S PROPOSAL A

## Introduction

On March 15, 1994, Michigan voters approved Proposal A, radically changing the existing education funding system. Proposal A, through a combination of changes to tax rates and rules, shifted the funding burden for education away from local property taxes and towards state revenues. This achievement marked the end of two decades of failed attempts at reforming school funding—one that included 12 unsuccessful ballot measures. The new system increased spending in low-budget school districts, reduced interdistrict funding inequality, and lessened districts' dependency on the willingness of local voters to raise school taxes.

## Background

### The Prior Funding System

Before the changes to Michigan's education funding system brought about through Proposal A, schools in the state were financed in the manner set out in the 1973 Gilbert E. Bursley School District Equalization Act.<sup>c</sup> The key aim of that system was to support property-poor communities by guaranteeing a certain amount of school funding per pupil for each mill of taxes paid. (A "mill" of property taxes is one tenth of one percent, or one thousandth of the value of the tax base.) In fiscal year 1994, the last year that the formula was in place, the guarantee was that each mill of taxes imposed would yield at least \$102.50 per pupil, so when a district's tax base was not sufficiently valuable to generate that amount, the state would make up the difference.<sup>ci</sup> The premise was for the state to support districts at their chosen level of local tax effort.<sup>cii</sup> If a district where a mill would raise \$50 per pupil chose to tax itself at a rate of 20 mills (equivalent to 2%), then the state would provide the other \$52.50 per pupil, 20 times over.<sup>ciii</sup> To the same lower-wealth districts receiving aid as a result of the tax yield guarantee, the state provided an additional, flat grant of \$400 per pupil, while districts with higher-value tax bases saw this grant reduced, often down to zero.<sup>civ</sup>

### Growing Dissatisfaction with School Finance

During the 1980s and early 1990s, dissatisfaction with Michigan's school finance system began to build. A key reason for the discontent was the high local property tax burden across the state: Between 1978 and 1991, Michigan property taxes rose from 4.3% of payers' personal income to 5%, and by 1993, the state had a greater property tax burden than 43 other states.<sup>cv,cvi</sup> That year, the average school district tax rate was just under 34 mills.<sup>cvi</sup> Governor John Engler was elected in 1990 with a mandate to reduce property taxes, and he made a number of unsuccessful attempts to do so in the first years of his term.<sup>cvi</sup>

Individual school districts had more specific objections to the school funding formula. During this period, the state saw an increase in the number of districts that were too property-rich to collect state education dollars, and they resented seeing their per-pupil grants reduced to fund distributions to other districts.<sup>cix</sup> This was especially true because many of these high-tax-base districts were not especially high-income; home values in Michigan rose faster in the late 1980s than personal incomes did, leaving local taxpayers squeezed as districts dealt with the loss of state revenue.<sup>cx,cxi</sup> Rural school districts suffered particularly.<sup>cxii</sup> Under the tax-base-equalizing system in place at the time, a district composed largely of high-value agricultural property would receive little in state aid even if taxpayers lacked disposable income.

In addition, the state's progressives pointed out that the state was falling far short of its aim of equalizing funding.<sup>cxiii</sup> In the 1993-1994 school year, per-pupil funding amounts ranged from under \$4,000 to over \$11,000, and higher funding was closely tied to greater wealth.<sup>cxiv,cxv</sup>

### History of Attempts at Reform

Proposal A was far from the first ballot measure aimed at reducing the school property tax burden in Michigan. Between 1972 and 1993, Michiganders voted down 12 proposed constitutional amendments that sought to lessen the reliance of school finance on local property taxes.<sup>cxvi</sup> While one successful 1978 initiative did amend the state constitution to restrain increases in the local property tax burden, the issue remained a live one, and measures

continued to be placed on the ballot.<sup>cxvii</sup> These failed initiatives proposed a variety of steps, including a lower cap on local tax rates, tweaks to local taxes on particular kinds of property, generally requiring the state to make additional contributions to education, and instituting a new state income tax or higher sales tax for schools.<sup>cxviii,cxix,cxx,cxxi</sup>

The final failed ballot initiative was a 1993 proposal called the STAR plan.<sup>cxvii</sup> The STAR plan shared some of the aims of the successful 1994 bid: It would have set a cap on local property tax rates for education and raised state sales taxes to generate extra revenue for state education aid.<sup>cxviii</sup> To guarantee a certain baseline level of funding, the plan also set a minimum dollar amount per pupil, which was to be funded jointly out of state and local dollars.<sup>cxvii</sup> Because the plan would reduce taxes on all kinds of property, not just homes, the plan had the backing of business leaders.<sup>cxv</sup> The state's agricultural sector also supported the plan: Less than two months before the vote, the president of the Michigan Farm Bureau applauded the plan as "a significant growth opportunity for Michigan agriculture" because it would reduce farmers' property taxes.<sup>cxvi</sup> He also and commended the per-pupil guarantee because it would amount to a funding increase for schools in rural communities.<sup>cxvii</sup>

The proposal ultimately failed, though it received 46% of the vote—more support than the previous attempt at funding reform had garnered.<sup>cxviii</sup> Education finance researchers Paul Courant and Susannah Loeb later concluded in a study of Michigan finance reforms that the failure of the proposal, despite its popularity, matches "the 'conventional wisdom' regarding referenda on complicated matters," according to which people are initially supportive of proposals that would change an unpopular policy, but eventually vote to retain the status quo rather than instate a new system that they do not fully comprehend.<sup>cxix</sup>

Ultimately, school finance reform remained a stubborn problem despite widespread agreement that the inequity in the system needed to be addressed. As Doug Roberts, State Treasurer during much of the 1990s, later told a researcher, the state was caught between two unpalatable options: "One solution is, you raise a lot of taxes, and you raise the bottom. We don't have the votes for that. The other solution is, you take the high-spending school districts, and you cut them down. We don't have the votes for that. So we stared at each other for 20 years."<sup>cxix</sup>

## Achieving Policy Change Instigating Events

For the bulk of the time that this push for tax reform was occurring, future Republican Governor John Engler had a front-row seat from his place in the state Legislature (first the Michigan House, and then in the Senate, ultimately as majority leader).<sup>cxvii</sup> Engler hailed from, and represented in the legislature, a rural part of the state that was especially hard hit by property taxes.<sup>cxvii</sup> In the 1990 gubernatorial election, Engler won by an extremely narrow margin—less than a single percentage point separated his vote share from that of his nearest competitor—on a platform that promised a substantial property tax cut.<sup>cxviii,cxxiv</sup> Twice in 1992 (both before and after the state's legislative elections, which moved the legislature further toward Republican control), he tried and failed to pass legislation that would have cut property taxes by a striking 20%.<sup>cxv</sup>

The issue took on additional salience when, in March 1993, the closure of the Kalkaska School District garnered national attention.<sup>cxvii,cxxvii</sup> Kalkaska—a rural district that fell within Governor Engler's old legislative district—ended the 1993 school year in late March after the failure of three attempts to raise local taxes to close the \$1.5 million gap in its \$8.5 million budget.<sup>cxviii,cxxix</sup> The increase would have imposed an additional tax burden of \$200 to \$400 per person in a town with an average income of about \$22,000.<sup>cxl,cxli</sup> While the district could have cut programs and services, it chose to close its doors instead;<sup>cxlii</sup> it emerged later that the state teachers union pushed for the shutdown to demonstrate what could happen in districts where voters failed to approve tax hikes.<sup>cxliii</sup> For the governor, though, the incident carried the opposite lesson: The state should ensure that school budgets were not held hostage to local voters.<sup>cxliii</sup>

## Passing a Bill and Forcing a Crisis

When the STAR plan failed at the ballot box shortly after the Kalkaska crisis in June 1993, state lawmakers finally took a different tack.<sup>cxliv</sup> The next month, rather than begin a push for a new constitutional amendment referendum, the Senate took up the governor's proposal to lower property taxes by ratcheting back assessment ratios.<sup>cxlvi</sup> (An assessment ratio is the percentage of a property's actual value that is subject to a given tax rate; by reducing assessment ratios, the state

could have effectively reduced the tax burden without lowering the tax rates themselves.<sup>cxlvii</sup>) During the debate, State Senator Debbie Stabenow, a declared Democratic gubernatorial hopeful, wished to draw attention to the fact that Engler’s plan hadn’t identified any funds to replace the local property tax revenues that would be lost.<sup>cxlviii</sup> In a bit of legislative hyperbole, she proposed an amendment that cut local education taxes to zero.<sup>cxlix</sup> The Republican Senate called Stabenow’s bluff, passing the bill, and the next day, the House did as well.<sup>cl</sup> Unless something more was done, public schools in Michigan were now set to be \$6.5 billion poorer in the next school year.<sup>clii</sup> For the first time in over 20 years of failed reform attempts, Michigan lawmakers had finally changed the status quo—and so drastically that voters would have to seriously consider new alternatives.

## Proposal A and the Statutory Plan

After five months of negotiations and wrangling, the legislature passed a second bill in December 1993.<sup>cliii</sup> The bill put in place a new allocation system for state education dollars, setting a per-pupil “foundation grant” that would aim at a dollar amount for each student rather than for each mill of taxes levied.<sup>cliv</sup> On the revenue side, the bill placed two options before Michigan voters: either approve Proposal A, a constitutional amendment that would be on the ballot in 1994, or accept an alternative outlined in the law called the Statutory Plan.<sup>clv</sup>

Proposal A sought to amend the state constitution to allow sales tax increases, cap future growth in property assessment, and allow the state to tax various kinds of property for education at different rates.<sup>clvi</sup> If the amendments were approved, they would trigger an associated set of legislated tax rate changes, including an increase to the state sales and use tax rates from 4% to 6%; a reduction in the state income tax rate from 4.6% to 4.4%; a rise in the cigarette tax from 25 cents to 75 cents per pack; and the creation of a new, six-mill (.6%) state property tax on both homestead and non-homestead property.<sup>clvii</sup> (As noted above, for tax purposes, “homesteads” are generally residential properties occupied by their owners.) At the district level, only non-homesteads would be subject to an 18-mill (1.8%) property tax, while homesteads would be exempt from this local tax.<sup>clviii</sup> Proposal A did not seek to increase the business tax rate.<sup>clix</sup>

If the Proposal was not approved, the Statutory Plan—which would have been a legislated change to the system that did not involve a constitutional amendment—would have raised the state income tax to 6% from 4.6% (though it would also have increased the personal income tax exemption); raised the cigarette tax from 25 cents to 40 cents per pack; increased the tax rate on businesses by .4 percentage points, to 2.75%; and imposed a new, 12-mill (1.2%) state-level property tax on non-homestead property.<sup>clx</sup> Meanwhile, both homestead and non-homestead property would be subject to a standard, district-level 12-mill property tax.<sup>clxi</sup> Under the Statutory Plan, the sales tax rate would not increase.<sup>clxii</sup>

From the perspective of the state legislature, either option would have addressed many of the issues in the existing school funding system. The foundation grant would increase budgets in lower-spending districts, reducing inequality, and the vast majority of taxpayers would see a cut in property tax rates. Additionally, the state would take on a much larger role in funding schools, with new state revenues to match. Though voters would still have to ratify Proposal A if the solution was to be enshrined in the state constitution, the Statutory Plan could serve these purposes as well.

It is worthy of note that the foundation grant was not a one-size-fits-all policy. A single per-pupil amount would have committed the state to a significant new contribution to previously low-spending districts and would have required high-spending districts to make radical cuts—exactly the set of challenges that the legislature had long sought to avoid. Instead, the plan established a tiered system of foundation amounts, including a minimum (to which low-budget districts would immediately be raised); a basic amount (which would serve as a target and to which all districts would be raised over time); and a maximum (above which no state aid would be provided).<sup>clxiii</sup> Districts were assigned initial foundation amounts based on their amount of spending per pupil in the 1993-94 school year.<sup>clxiv</sup> Districts already spending more than the maximum level could continue to do so, but without the help of the state.<sup>clxv</sup> Instead, they would have to raise the money through supplemental “hold harmless” taxes, mostly applied to homestead property.<sup>clxvi</sup>

## The Proposal A Referendum

Under the bill that was passed, voters would have a choice, but a limited one: In either case, there would be a new state property tax and an increase in some other state-level tax. It is true that Proposal A raised the state sales tax while lowering the income tax slightly, while the Statutory Plan raised both income and business taxes. But the most obvious difference was on the property tax side. Taking into account both state and local taxes, would voters rather have

homesteads taxed at six mills and non-homesteads taxed at 24 mills (under Proposal A) or have homesteads taxed at 12 mills and non-homesteads taxed at 24 mills (under the Statutory Plan)? Presented this way, the choice would have been clear for property owners: Proposal A clearly constituted the larger tax cut.

For one key constituency, though, there was an important clarification yet to be made. The agricultural community wanted to know how farmland would fare in the state's new distinction between homestead and non-homestead property.<sup>clxvii</sup> The bill had left the definition unclear, and farmers sought to include farms—including even unoccupied agricultural property—in the homestead category.<sup>clxviii</sup> On the eve of the vote, the Michigan Farm Bureau negotiated an agreement with the governor and prominent lawmakers to treat farms like homesteads under Proposal A (though the bill formalizing the change did not pass until the following month).<sup>clxix,clxx</sup> With confirmation that its interests would be protected, the Farm Bureau strongly endorsed Proposal A and urged rural voters to turn out.<sup>clxxi</sup>

On election day, 69% of voters—and a majority in all 81 of the state's counties—approved Proposal A, remaking education funding in the state after two decades of abortive attempts.<sup>clxxii,clxxiii</sup> Although Proposal A had much in common with 1993's failed STAR plan, it beat that proposal's vote share by half and notched an overwhelming victory. Ultimately, as the state Office of Revenue and Tax Analysis later concluded, "This time, voters could not reject major reform because a vote for the status quo was not an option. The only decision left to voters was which of two new funding options would replace K-12 school operating revenues that had been eliminated."<sup>clxxiv</sup> Between the two available options, voters chose to increase the sales tax rather than the income tax, and opted for higher cigarette taxes, but first and foremost, they selected the plan that offered lower property taxes.<sup>clxxv</sup>

## Impact of the Change

In the years since Proposal A was passed, property taxes have indeed declined, and homestead taxes—including taxes on farmland—have dropped the most.<sup>clxxvi</sup> In the year following Proposal A, property tax revenues, across all tax levels, fell \$2.99 billion, while the drop in income tax rates reduced those receipts by \$293 million.<sup>clxxvii</sup> Meanwhile, the increases in sales and use taxes netted an additional \$2.04 billion, with other, smaller tax increases yielding \$498 million together.<sup>clxxviii</sup> All told, Proposal A brought about a drop in education revenues by \$747 million in the first year.<sup>clxxix</sup>

However, the drop was driven almost entirely by reductions in local taxes. While local education dollars dropped by \$4.10 billion, state funds for education increased by \$3.35 billion.<sup>clxxx</sup> The new state education taxes shifted a great deal of the responsibility for school funding to the state and away from local taxes. This reduced school districts' dependency on local voters' willingness to pay extra local taxes—what might be called the Kalkaska problem.

This shift towards the state also weakened the link between local wealth and district budgets, bringing about greater interdistrict equity. It is true that top-spending districts did not generally have to bring their budgets down, because of the different foundation-amount tiers and the permissibility of districts using hold-harmless taxes to maintain high spending levels. Still, Proposal A significantly lifted the per-pupil funding floor, with the lowest-spending district in 1994 at less than \$3,700 per pupil and in 1997 at over \$4,800 per pupil.<sup>clxxxi</sup> (Rural districts, which had previously been able to spend less on education, especially benefitted.<sup>clxxxii</sup> On the other hand, urban districts, which were often already fairly high-spending despite serving low-income communities, did not see their budgets rise under the new system.<sup>clxxxiii</sup>) In the years since Proposal A was enacted, the state has steadily lifted the minimum per-pupil amount, and in the 2016-2017 school year it was more than \$7,500.<sup>clxxxiv</sup> As a result, the gap between the state's bottom- and top-spending districts, which was \$6,254 per pupil in 1994, narrowed by about \$1,000.<sup>clxxxv</sup> In this way, Michigan has succeeded to a degree in leveling its school funding upward.

## Summary

Despite the intentions of Michigan lawmakers, the 1973 School District Equalization Act failed to produce funding equality across school districts of different local wealth levels. In the face of steadily rising property taxes (which fell especially hard on low-income areas with large tax bases, including rural communities), Michiganders pushed

for a new school finance solution. For twenty years, though, voters, suspicious of complicated changes to the status quo, rejected specific constitutional amendments aimed at addressing the problem.

Republican Governor John Engler was elected in 1990 on a promise of property tax cuts. His efforts were initially unsuccessful. However, the 1992 election solidified Republican power in the legislature, strengthening his position. Then, in 1993, Kalkaska school district closed its doors three months early for lack of sufficient local funding, and the story drew national attention. The governor saw a mandate to finally address schools' excessive dependency on local property tax revenues. The Republican-controlled Senate took up a new kind of solution, a bill that would have reduced local property tax bills without a constitutional amendment. Democratic gubernatorial candidate Debbie Stabenow sought to poke fun at the bill for cutting taxes without identifying any replacement revenue, and she proposed an amendment to the bill that would outlaw local property taxes entirely. The amendment failed to sink the bill. Instead, the legislature passed it, forcing a fiscal crisis and sending lawmakers to the negotiating table to develop a new funding system.

They produced a bill that gave voters two options, both of which reduced local property taxes and shifted the responsibility for funding schools heavily towards the state. Neither was the system with which voters were already familiar. Without the option of retaining the status quo, voters were forced to chart a course for change. With the support of key constituencies, including the state's farming community, Michiganders chose Proposal A, a ballot measure that raised the state sales tax, reduced the income tax, and, most important for its success, yielded the greater reduction in property taxes.

The new funding system achieved several of its aims: It offered tax relief, raised the level of spending in the lowest school districts, increased interdistrict funding equity (though less than it might have if top-spending districts had been made to cut budgets), and made school districts less dependent on the decisions of local voters. It accomplished these changes in large part by moving a significant portion of the school funding responsibility from local school districts to the state, centralizing education finance to a much greater degree.



# WYOMING RECAPTURE

## Introduction

Wyoming has garnered national attention as an unlikely model for generous school funding policies.<sup>clxxxvi</sup> The spotlight is deserved: Once figures are adjusted for regional differences in cost, Wyoming had \$17,000 in education revenue per student in the 2013-14 school year, placing them in the top five of states.<sup>clxxxvii,clxxxviii</sup> Though education funding in the state isn't progressive, strictly speaking—higher-poverty districts in the state do have less revenue than lower-poverty districts—it is still the case that the state's most impoverished areas, like school districts in rural Fremont County, nevertheless receive more funding than the wealthiest areas in many other states.<sup>clxxxix,cxc</sup>

In one sense, the explanation for the largesse is simple: For decades, Wyoming has benefitted from the presence of the energy industry in the state—and, consequently, from the education revenues that come from property taxes on industry property and from royalties for mineral production on federally owned lands. In 2012, Wyoming received \$1 billion in federal mineral royalties from mineral production on federally owned lands, and much of this revenue was distributed through the state's funding formula.<sup>cxc</sup> But long before Wyoming's energy industry reached such profitable heights, the state had begun putting in place aggressive measures to narrow education funding gaps across the state. Wyoming sets strict limitations on the property tax rates that school districts may levy for maintenance and operations, allowing very little in the way of discretion for local school districts. Even more notably, its strong "recapture" provision collects from property-wealthy districts any local revenue that exceeds the amount that the state deems necessary for operational purposes and redistributes those dollars to property-poor districts through the state educational funding formula.<sup>cxcii</sup>

Wyoming implemented and continually expanded these equity provisions as a result of a combination of court rulings and voter support for greater equity in education funding, beginning in earnest in the 1980s. As the rapid growth of the energy industry in the state produced wide disparities in property wealth, the Wyoming Supreme Court stepped in with a pair of decisions that pushed the legislature to equalize education revenues between property-wealthy, energy-producing regions and the remainder of the state. When Wyoming saw economic good fortune in the late 1990s and 2000s, the state's voters continued to expand equity provisions like recapture. Throughout three decades and two major state supreme court rulings, the fruits of Wyoming's energy industry provided both the reason and the ability to enact robust measures to equalize education spending.

## Background

### Education Funding and the Energy Industry

Wyoming relies heavily on its energy industry to raise funds for public education.<sup>cxciii</sup> The industry generates education revenue through several streams.<sup>cxciv</sup> It pays both local and state property taxes and makes up a large part of the state's tax base, particularly in sparse, rural areas.<sup>cxcv</sup> Wyoming also generates considerable revenue from federal mineral royalties and coal lease bonus payments from energy production on federal lands. Nearly half of land in Wyoming is federally owned, and in 2012, Wyoming received nearly \$1 billion in federal mineral royalties, the most of any state and nearly 47% of all such payments.<sup>cxcvi</sup> Much of this revenue supports the state's public education system: Revenue from federal mineral royalties are distributed through the state's funding formula and portions of both federal mineral royalties and coal lease bonuses fund school construction.<sup>cxcvii</sup> In 2016, the Wyoming state legislature estimated that, altogether, taxes paid by the energy industry and federal mineral royalties make up 65% of K-12 operations funding in Wyoming.<sup>cxcviii</sup>

However, while revenues from the state's energy industry have helped to generate additional funding for education, the presence of the industry has also widened interdistrict school funding disparities. In 1971, when educational equity first came before the state supreme court, the court noted that one mill of taxes (equivalent to a .1% property tax) in the school district serving Bairoil district, home to the Lost Soldier oil field, would generate \$351 per pupil.<sup>cxcix</sup> By contrast, the same tax rate in the state's largest districts, School District #1 in Cheyenne and Casper School District, would bring in only \$6.53 and \$10.29 per pupil, respectively.<sup>cc</sup>

As the mineral industry continued to grow during the years that followed, increasing local wealth in a few select areas intensified these wealth disparities. This concentration of education resources in the hands of a few communities ultimately spurred the state's aggressive attempts to equalize educational revenue.

## Initial Attempts at Reform

### The Impetus: *Washakie v. Herschler*

In the 1980 case *Washakie County School District v. Herschler*, the Wyoming Supreme Court found the state's school funding system, with its widely disparate local revenues, to be unconstitutional.<sup>cci</sup> The court drew on strong constitutional language to apply an unusually high legal standard for equity in school funding policies. In contrast to states with more lenient constitutional language (like those that merely require states to "maintain a system of free public schools"), Wyoming's Constitution mandates that the state provide a "complete and uniform" system of public schools—one of the strongest possible formulations, according to an analysis by the National Conference of State Legislatures.<sup>ccii</sup> The state constitution also calls specifically for an "equitable allocation" of resources between districts.<sup>cciii</sup> Together, these provisions led the court to set a high legal bar for school funding fairness.

In *Washakie*, the state supreme court found that the state's school funding disparities violated the state's equal protection clause.<sup>cciv</sup> In order to do so, the court first determined that because Wyoming's Constitution deemed education a matter of "fundamental interest," the state school funding system would be subject to the "strict scrutiny" test.<sup>ccv</sup> In contrast to the "rational basis" threshold used in most school finance cases, a strict scrutiny threshold places the burden on the state to show that a system producing funding disparities serves a compelling state interest, and that the system is the most narrow means possible of achieving that interest.<sup>ccvi</sup> Applying this test, the court found the existing system wanting, and concluded that "whatever system is adopted by the legislature, it must not create a level of spending which is a function of wealth other than the wealth of the state as a whole."<sup>ccvii</sup>

### Legislative Response

The state's laws already mandated a degree of education-resource pooling at the state level: In 1947, the constitution was amended to create a statewide property tax for education funding, separate from local property taxes.<sup>ccviii</sup> In fact, in an earlier case, the court had singled out this statewide property tax as a useful policy for advancing education finance equity.<sup>ccix</sup> Even with this foundation on which to build, though, the legislature's response to *Washakie* was not immediate. It took voters signaling their support for greater equalization of education revenues across the state to spur the state legislature to action. In 1982, voters approved a two-part constitutional amendment aimed at equalizing school funding.<sup>ccx,ccxi</sup> The first change reduced the county-level property tax by six mills (equivalent to .6 percentage points) and increased the statewide property tax by the same amount, transferring a block of existing revenue to be redistributed across the state.<sup>ccxii</sup> The second permitted the state to recapture a portion of local revenue in districts where a given school tax rate raised more than the state average.<sup>ccxiii</sup>

Despite strong voter support for the 1982 amendment, the recapture provision was not uniformly popular.<sup>ccxiv</sup> It faced opposition from school officials and legislators from some of the districts most disadvantaged by it: smaller districts that generated excess revenue from agricultural and mineral-rich land.<sup>ccxv</sup>

After the passage of the amendment in 1982, the legislature implemented reforms of the school funding system in the following year's legislative session.<sup>ccxvi</sup> Most notably, it instituted the first iteration of the state's recapture provision.<sup>ccxvii</sup> Districts generating more than 1.5 times the average statewide revenue per average daily membership at a given tax rate would rebate to the Department of Education a percentage of the excess revenue, with the share to be recaptured increasing depending on the degree by which the district's local education revenue exceeded the state average.<sup>ccxviii</sup> Meanwhile, districts generating less than the state average would receive enough in recaptured funds to bring them up to the state average.<sup>ccxix</sup>

At the same time, the legislature began requiring a higher and more uniform level of tax effort. Previously, state law had capped the maximum tax rate at 16.8 mills for elementary school districts and up to five mills more for

unified districts.<sup>ccxx</sup> The 1983 law set a minimum tax rate instead, requiring that each K-12 district levy at least 25 mills and that each elementary district levy 20 mills.<sup>ccxxi</sup> This ensured more consistent tax effort across districts and provided a stable source of local revenue from which to draw recapture funds.

Over the course of the 1980s, the recapture provision was revised. Eventually, instead of subjecting districts to recapture if they raised more local funds than the state average, the state tied the recapture threshold to the amount of each district's necessary funding amount, as calculated by the state's funding formula.<sup>ccxxii</sup> The provision was also expanded to collect a greater share of excess revenue from property wealthy districts.<sup>ccxxiii</sup> By 1987, the legislature recaptured all revenue exceeding 109% of the district's allocation under the funding formula.<sup>ccxxiv</sup>

## Equity Pitfalls

In addition to their more progressive elements, the 1983 policy changes also included provisions that undermined funding equity—and paved the way for future litigation.

Unrelated to the recapture provision, the 1983 legislation also created a divisor system that allocated funding based on the size of the district.<sup>ccxxv</sup> At the time, Wyoming allocated state funding to districts in the form of resource units and determined the number of classrooms presumed to be in each district by dividing its student enrollment by an assigned divisor.<sup>ccxxvi</sup> But this divisor varied depending on the total enrollment of the district, with smaller districts receiving more money per student because they were assumed to have fewer students per classroom.<sup>ccxxvii</sup> Divisors ranged from just eight for the smallest districts to 23 for large districts, advantaging low-enrollment districts nearly by a factor of three.<sup>ccxxviii</sup> It is not uncommon for state funding systems to support sparse or small districts with extra funding to address diseconomies of scale.<sup>ccxxix</sup> But in Wyoming, unlike in most states, many small and rural districts are also mineral-rich and property-wealthy, so the divisor system often had the effect of increasing support for the districts that needed it least. And although this system was intended to be transitional, to be replaced by a more cost-based formula, the state legislature failed to enact more permanent reforms.<sup>ccxxx</sup>

In the realm of tax effort, though the recapture provision redistributed some of what was raised from the required tax rate, it did not fully cap what districts could raise and keep in local revenue.<sup>ccxxxi</sup> Districts were still allowed to raise an additional six mills (equivalent to a .6% tax), and the revenue from this supplemental tax was exempt from the recapture provision.<sup>ccxxxii</sup> The state did make some effort to equalize revenue from some of this optional taxation, by supplementing the revenue raised in property-poor districts to ensure that, for up to two mills approved by their voters, they would receive funding as though they had tax bases on par with the state average property valuation per pupil.<sup>ccxxxiii</sup> Nevertheless, the extra support could not fully close the gap between what different districts could raise through optional taxes.

Finally, nearly as soon as the recapture provision was put in place, an exception was, too. Since 1984, recapture districts could retain a portion of their recapture payment in order to pay down their bonded debt.<sup>ccxxxiv</sup> In later decades, the Department of Education would find that this exception was not always used for that purpose.<sup>ccxxxv</sup>

## Refining Policies

### The Impetus: *Campbell County School District v. State*

Within a decade of the 1983 reforms, Wyoming school funding system again faced a legal challenge in *Campbell County School District v. State*. Several large school districts and the Wyoming Education Association brought suit against the state in 1992, challenging the divisor system, the optional mills, and the recapture provision, as well as some provisions related to capital construction funding.<sup>ccxxxvi</sup> The resulting ruling, handed down in 1995 by the Wyoming Supreme Court, found the state's school finance system unconstitutional, this time on both adequacy grounds (finding that there were not sufficient resources overall) and equity grounds (because the existing resources were inequitably shared).<sup>ccxxxvii</sup>

In the area of equity specifically, applying the strict scrutiny standard established in *Washakie*, the court ordered a number of changes.<sup>ccxxxviii</sup> The decision struck down the state's optional local property tax, which had not been subject to recapture, even with the state's policy of providing extra support to those low-wealth districts that

chose to levy this tax.<sup>ccxxxix</sup> (The decision noted that the districts with the most property wealth were more likely to make use of the optional mills, while some property-poor districts viewed the optional mills as futile because levying them would raise so little.<sup>ccxi</sup>) It also found that the divisor system, which provided substantially more aid to small districts, was unconstitutional.<sup>ccxli</sup> Finally, and quite aggressively, the court held that the 109% threshold for recapture was arbitrary, and that districts should not be permitted to retain 9% more funding than they need simply because they had greater local wealth levels.<sup>ccxliii</sup> In its reasoning, the court built on *Washakie* by wholly rejecting the idea that local school districts should have the taxing authority to augment state funding, noting, “Historical analysis reveals that local control is not a constitutionally recognized interest and cannot be the basis for disparity in equal educational opportunity.”<sup>ccxliii</sup>

The court set a deadline of July 1997 for the legislature to develop a new funding system that would meet all of its requirements.<sup>ccxliv</sup>

## A New Funding Approach

The *Campbell* ruling kicked off a lengthy process that involved six legislative committees, recommendations from outside consulting firms, and a series of town meetings around the state with the governor and state superintendent of education.<sup>ccxliv</sup> In a 1997 special session just ahead of the court’s July deadline, the state legislature passed a new funding system.<sup>ccxlv</sup> The final allocation formula met the court’s adequacy specifications, and did not include the divisor system that had advantaged small districts.<sup>cxlvii</sup> The system eliminated the option for states to collect extra taxes that would not be subject to recapture.<sup>ccxlviii</sup> It also got rid of the 109% threshold for recapture, which had allowed the state to collect and redirect only those local funds exceeding 109% of a district’s formula amount; instead, the state would recapture all revenue raised by a district at the required tax rate in excess of its formula amount. The resulting structure could be said to limit local discretion over education spending more tightly than any other state in the country.

## The Fate of the Reforms in Subsequent Years

When the *Campbell* ruling came down in 1995, observers may not have guessed that Wyoming would double its state investment in education in the two decades that followed.<sup>ccxlix</sup> Wyoming’s economy had struggled throughout the 1980s. Even in the 1990s, job growth hovered around 1.3%, lagging far behind its neighbors Idaho, Montana, and Colorado, which enjoyed at least 6% job growth.<sup>cc</sup> It would have been difficult to predict that so much additional funding would be available in the future.

The success of Wyoming’s school funding reform— and in particular, the longevity of the state’s recapture provision—owes a great deal to the state’s burgeoning energy industry in the late 1990s and early 2000s. In 1997, months before state legislators convened for a special session to overhaul school funding, a large boost in revenue was projected, driven in large part by revenue from the state’s natural gas industry.<sup>cccli</sup> As Governor Jim Geringer noted in his 1997 State of the State, “America’s deep freeze has warmed Wyoming’s pocketbook.”<sup>ccclii</sup> The governor’s series of Education Town Halls after the *Campbell* decision found that there was a public appetite for increasing investment in education, and the state’s improved economic forecast made doing so more plausible.<sup>cccliii</sup>

In addition, much of the state’s revenues from federal mineral royalties and coal lease bonuses go toward education: Federal mineral royalties contribute to the state’s funding formula and both revenue streams add to the School Capital Construction fund.<sup>cccliv</sup> Because the state’s coffers saw such a huge influx of federal payments, the state’s system of recapturing funds from property-wealthy districts for education funding never loomed large enough to become too controversial an issue. Although disagreements persisted within the legislature, and within the Republican Party (which had unified control of the state government at the time of the 1997 reforms), about the extent to which the state’s tax base should leverage energy industry profits, the legislature was spared difficult decisions that could have opened up these political divisions.

However, well into the 2000s, recapture districts withheld some of their excess funding, because a loophole remained that enabled them to keep some share in order to pay off bonded debt.<sup>ccclv</sup> This provision was often abused: In 2014, the Wyoming Department of Education found that between 2005 and 2014, a total of \$2.7 million had been reduced from recapture payments under this rule, but only 43% of that had gone towards reducing bonded

debt.<sup>cclvi</sup> In 2015, the legislature repealed the loophole, opening up still more funds for recapture.<sup>cclvii</sup>

Wyoming's revenue streams are no longer in such excellent condition: Coal production has declined, along with federal disbursements, a figure that is projected to fall from \$701 million in 2016 to \$487 million by 2022.<sup>cclviii</sup> Having relied on energy revenues for so long, the state has failed to develop more stable sources of funding for education. The combined shortfall for the state's funding formula and for its school construction fund totaled \$380 million this year, a figure that could reach \$1.8 billion by 2022, according to a report to the legislature's Joint Interim Education Committee.<sup>cclix</sup> Because Wyoming's funding formula is recalibrated every five years, in accordance with a later state supreme court ruling, these shortfalls could prompt changes to the formula when the recalibration committee issues recommendations later this year.<sup>cclx</sup>

## Summary

Wyoming's unusual provisions around school funding equity are in part a reflection of the state's unique economic and political situation. Robust revenues from the energy industry provided plenty of public education dollars, and the concentration of these dollars in relatively few, sparse communities made redistribution politically popular. In Wyoming, the electorate has tended to feel that revenue collected from property-wealthy, mineral-rich regions in the state belonged not to those regions in particular, but to the state as a whole. The fact that dramatic school funding inequities were driven specifically by the growth of the energy industry may have helped to popularize strong equity measures like the state's recapture provision.

But the strongest push for funding reform in Wyoming came from the state's supreme court, which applied an unusually high legal standard to the state's policies and permitted little local control over taxation for education funding. By finding that education is a fundamental right in Wyoming, the court opened the door to much more aggressive rulings capping local funding and severing the link between local wealth and school budgets.

Wyoming's experience suggests that strong equity provisions may enjoy greater voter support when funding as a whole is sufficiently generous. In Wyoming, the strength of the energy industry and the increasing stream of federal disbursements meant that the state could afford to increase overall investment in education as the state implemented its new formula and strengthened its equity measures. This does not mean, however, that the process was simple. Though Wyoming's recapture provision was first enacted in 1983, the legislature was still in the process of closing loopholes in 2014. Even with an insistent state supreme court and strong voter support, the process of reducing local authority over taxation and increasing the share of excess revenue recaptured from property-wealthy areas in the state spanned four decades.



# LESSONS FOR EDUCATION FINANCE REFORM

The successful policy changes in Vermont, Michigan, and Wyoming carry lessons for those seeking to advance education finance equity in other states. These include:

## **1. Policy change in the arena of school funding is iterative and may take several years.**

As an area of policy that is complex, even byzantine, education funding is difficult to get right. And because any change in the methods for raising and distributing revenue will always advantage some constituencies over others, every modification to the system will arouse opposition. As a result, all three states studied here spent multiple years attempting to reform their funding systems, refining policy proposals, and submitting a succession of bills and ballot initiatives.

Vermont passed, implemented, and replaced three funding formulas between 1969 and 1997, and even Act 60, which was largely a successful reform, required modification six years after its passage through Act 68. Starting in 1972, Michigan voters rejected a dozen constitutional amendments that would have addressed property taxes for education before approving Proposal A in 1994. Wyoming's current policy has its roots in a 1947 constitutional amendment that established a statewide property tax, a 1980 court ruling, and a 1982 amendment that created the state's first recapture provision. It was only after a return to court and a 1997 reform law, though, that the state fully addressed the link between local wealth and school funding, and the final loophole in the reform was only closed in 2014.

In all of these lengthy processes, policymakers may have felt discouraged. Each stage was undoubtedly difficult in its own right, and it's likely that repeated recurrences of the same issues seemed like failures at the time. In the end, though, these many attempts at change allowed the three states profiled here to refine their proposals, educate voters, and achieve incremental change on the way to the more progressive policies they have today.

## **2. Even in the context of an equity-advancing policy, it may be pragmatic to offer some moderate concessions to the preferences of affluent communities and taxpayers.**

Every policy that seeks to increase the amount of funding for low-wealth communities must raise the revenue from somewhere. Such policies will generally be structured so that upper-income and property-rich communities contribute more than they did under the prior system. A state-level property tax, for instance, will draw more revenue from high-value areas. Moreover, policies focused on interdistrict equity may seek to limit local discretion over district-level taxation and spending to avoid the problem of wealthy school districts self-funding at high levels that poorer districts can't match.

The taxpayers facing tax increases and losing latitude under equity-advancing policies are likely to hold a fair amount of political power. As a result, equity-advancing policies may have a greater chance at both initial passage and longevity when some concession is made to the preferences of these constituents.

Each of the states discussed in this report included some such allowances for wealthier taxpayers and communities. In Vermont, Act 68 distinguished between homestead and non-homestead property out of consideration for owners of second homes and high-value properties such as ski resorts. Before this distinction, these taxpayers, who often lived outside the school district collecting their taxes and therefore did not vote on school tax increases, had opposed Act 60 for the burden it placed on their non-homestead property, but this concern was addressed in Act 68. In Michigan, despite the fact that Proposal A set a "maximum" per-pupil amount and limited local taxing authority, districts that had been especially high-spending districts before the change were allowed to continue exceeding the limits if they raised the money through supplemental "hold harmless" taxes. Additionally, Proposal A raised the state sales tax rather than the income tax, and sales taxes are generally considered to be regressive because low-income individuals spend a larger share of their incomes in taxable transactions than high-income individuals.<sup>cclxi</sup> In Wyoming, the current system does not contain concessions to high-wealth school districts.

However, the system implemented after the *Washakie* decision did contain permission for districts to raise an optional additional six mills of property tax revenue (equivalent to a .6% tax) that was not subject to recapture and redistribution, which was essentially a dispensation for districts with high property values seeking to retain excess funding. It took a specific and explicit Wyoming Supreme Court ruling in *Campbell* to push legislators to remove the provision.

Each of these provisions was, in essence, a concession to more affluent communities and taxpayers. In themselves, they did not further the cause of interdistrict funding equity. However, each was important for ensuring that the equity-advancing policy would pass or remain in place in the face of skepticism from powerful constituencies.

### **3. Consolidation of one-party control can clear the way for reform after failed attempts.**

In two of the three states discussed, Vermont and Michigan, the governor's party gained power in the legislature shortly before policy change was achieved.

In Vermont, several attempts at funding reform in the mid-1990s failed in a legislature that was divided between a Republican Senate and a Democratic House. In 1996, though, the Democrats took the Senate and voters reelected Democratic governor Howard Dean. With one-party control, the legislature passed Act 60 in 1997—so quickly, in fact, that many Vermonters complained that other perspectives were not sufficiently considered. However, the law established a new baseline for debate, and Act 68, passed in 2003 to refine the education funding system, held true to the equity goals and principles of Act 60 even as it included concessions to more stakeholders. And in Michigan, Governor John Engler was elected in 1990 but presided over a divided government. When the 1992 election moved the legislature toward Republican control, he was able to pass the tax-cut-focused legislation that put Proposal A on the ballot despite strong opposition from prominent Democrats.

It is not surprising that a policy priority may be more easily achieved by a unified government. It is notable, though, that in both these states, several proposed funding reforms had failed in the years leading up to a change in the composition of the legislature, and reform was accomplished in the first year following the election that solidified the power of the governor's party.

### **4. Equity-advancing policies are aided when the state constitution enshrines education as a fundamental right.**

In two of the three states discussed, Vermont and Wyoming, the state supreme court issued very strong rulings finding education to be a fundamental right under the state constitution. This holding was key in motivating the policy change in both of these states. When proponents of greater funding equity argue that their states' guarantees of equal protection for all should mean that school districts see equal per-pupil funding, this argument alone is unlikely to succeed. Courts are generally cautious about the consequences of starting down the slippery slope of finding that differential provision of government services constitutes a constitutional violation. By elevating education to the status of a fundamental right, the courts in these states were able to distinguish between equality in education and in other public services, allowing for robust court rulings that spurred progressive legislation.

### **5. It may be easier to correct interdistrict inequities that lack a racial dimension.**

Each of the three state policy changes studied is notable for the lack of a racial component in the inequalities addressed by the reform.

In the 1996-97 school year, which led up to both Act 60 in Vermont and the post-*Campbell* reform in Wyoming, the student population of Vermont was 97.3% white, while that of Wyoming was 89.0% white.<sup>cclxii</sup> In these states, any notable disparity was bound to be between mostly-white districts. Michigan as a whole was somewhat more diverse—in 1993, the year leading up to the Proposal A, the state's student population was 22% nonwhite—but the inequalities addressed by the reforms were not correlated with race.<sup>cclxiii,cclxiv</sup> That year, the rural school districts whose concerns drove much of the conversation were 93.4% white.<sup>cclxv</sup> Meanwhile, the urban districts that enrolled most of the state's nonwhite students were not especially disadvantaged by the old school funding

system, and were therefore not particularly helped by the reform.<sup>cclxvi,cclxvii</sup>

As a result of these demographics, the three policy changes discussed here were focused on technocratic finance issues and did not force lawmakers or voters to engage with sensitive issues of race. It is possible that this simplified the process of passing equity-advancing policies.

## **6. It may be easier to enact redistributive policies when wealth is concentrated in the hands of a few.**

In two of the three states discussed, Vermont and Wyoming, wealth was highly concentrated in just a handful of communities: in Vermont, the “gold towns” that were vacation destinations, and in Wyoming, the energy-rich school districts. In each of these cases, equity-advancing reforms leaned heavily on contributions from a small number of taxpayers. As a result, those disadvantaged by the policies were likely not numerous enough to derail the changes, and those advantaged were so many that the new laws were bound to be broadly popular.

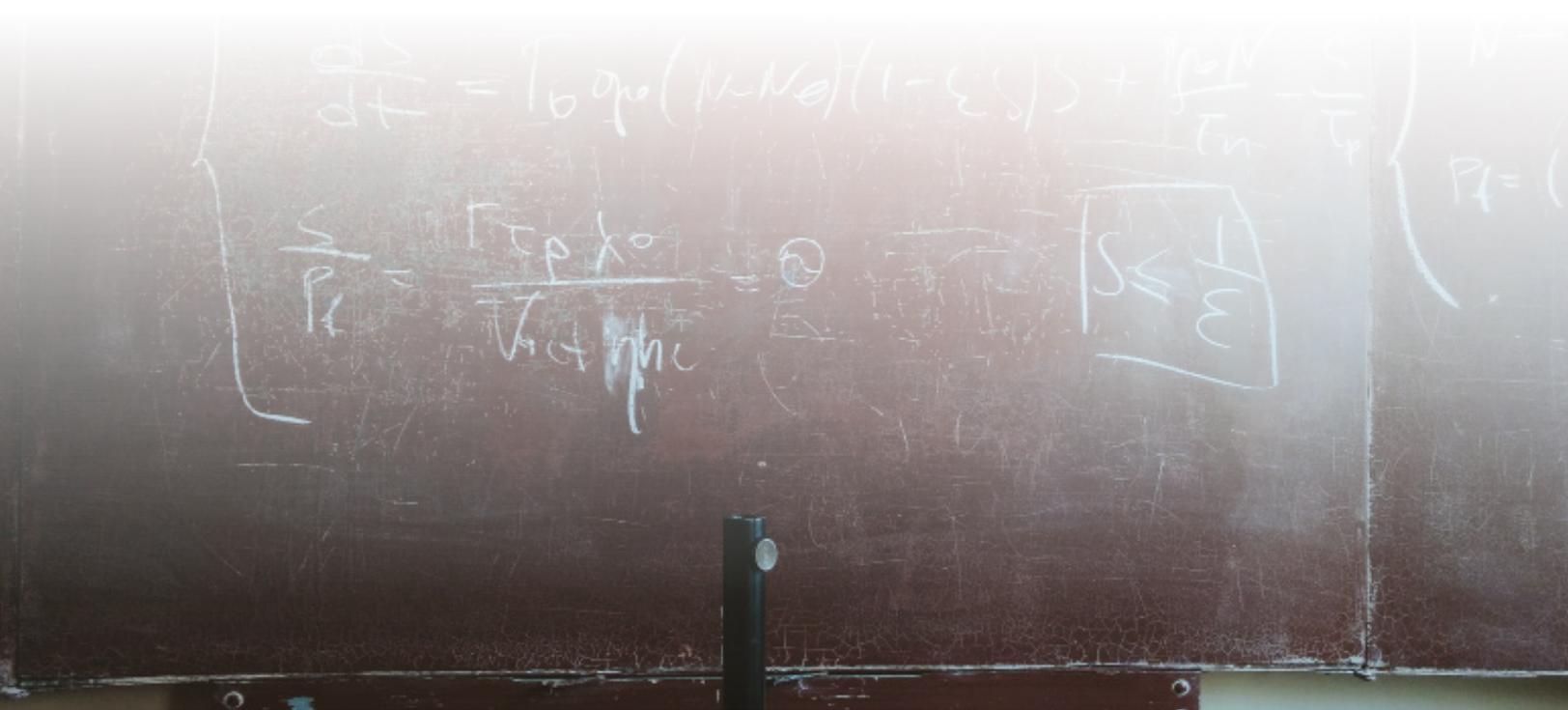


## CONCLUSION

Nearly half of public education dollars in the United States are drawn from local sources, and most of those are raised through local property taxes.<sup>cclxviii</sup> This practice links school district budgets to the level of wealth in their neighborhoods, creating a challenge for states seeking to achieve resource equality across school systems. To bring about greater parity, state lawmakers must either raise more state money to send to low-wealth areas, or it must order the sharing of local revenues. Either option has the result of increasing tax bills on the affluent, which makes it politically challenging to enact equity-advancing policies.

This report explores the stories of three states that successfully changed their school funding systems to be more equitable. Vermont, Michigan, and Wyoming each passed policies that increased state control of school funding and reduced interdistrict inequality. Though these stories differ from each other in significant ways, they also have important parallels. These commonalities offer lessons for policymakers seeking to advance school funding equity in other states.

Fairness in education funding should be a first-order priority for state governments. Each state is charged by its constitution to provide for public education, and that obligation extends to all children, not just the most fortunate. Every child deserves a high-quality, well-supported education, and it is unacceptable for states to allow persistent inequities in the resources available for children in different communities. Each of the states discussed in this report faced an inequity problem and took important steps towards equalizing school funding. The stories of their success should serve as both information and inspiration for lawmakers across the country.



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