JOHN F. DAUM (S.B. # 52313)
FRAMROZE M. VIRJEE (S.B. # 120401)
DAVID L. HERRON (S.B.# 158881)
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone (213) 430-6000
Facsimile: (213) 430-6407

Attorneys for Defendant
STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al., Plaintiff, v. STATE OF CALIFORNIA, et al., Defendant.	Case No. 312236 **EXPERT WITNESS DECLARATION RE DR. JOHN J. KIRLIN** Date Action Filed: May 17, 2000

I, PAUL B. SALVATY, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a partner at the law firm of O'Melveny & Myers LLP, counsel of record for Defendant State of California ("State Defendant") in this action.

2. State Defendant has provided a list of persons whose expert opinion testimony the State intends to offer at trial of this action, either orally or by deposition testimony. The list includes Dr. John J. Kirlin, to whom this declaration refers.

3. Dr. Kirlin has agreed to testify at trial.

4. Dr. Kirlin will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinions and their bases, that Dr. Kirlin is expected to give at trial.

5. Dr. Kirlin's fee for providing deposition testimony, consulting with State Defendant, conducting research and other activities undertaken in preparation of the attached report is $ 325 per hour.

6. Pursuant to Section 2034(f)(2)(A) of the California Code of Civil Procedure, attached hereto as Exhibit A and incorporated herein by reference is a *curriculum vitae* providing Dr. Kirlin's professional qualifications.

7. Attached hereto as Exhibit B and incorporated herein by reference is Dr. Kirlin's expert report. Pursuant to Section 2034(f)(2)(B) of the California Code of Civil Procedure, the following is a brief narrative statement of the general substance of the testimony that Dr. Kirlin is expected to give at trial. In his expert report, Dr. Kirlin analyzes the State of California's structures, policies, funding, and policy implementation in the important areas of elementary and secondary education in comparison with the nation and appropriate comparison. Dr. Kirlin analyzes the resources available to and used by the districts and schools where plaintiffs are enrolled in comparison to other districts in California. Dr. Kirlin also assesses the feasibility of the plaintiffs' proposed changes in California elementary and secondary education being successfully implemented as well as the likely effects of any such implementation. The foregoing statements are only a general

summary of the issues and conclusions discussed and documented more fully in Dr. Kirlin's report.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, this 18th day of April, 2003.

Paul B. Salvaty

John J. Kirlin

Professor of Public and Environmental Affairs
Senior Scholar, Center for Urban Policy and the Environment
Indiana University
342 North Senate Avenue, 3rd Floor
Indianapolis, IN 46204-1708
317 261 3000; 261 3050, Fax
jkirlin@iupui.edu

Home:
7161 Edgewater Place
Indianapolis, IN 46240-3020
317 253 4855; 253 5325, Fax

EDUCATION: University of Notre Dame, BA, 1963
University of California, Los Angeles, MPA, 1966; Ph.D. (Political Science) 1969

ACADEMIC APPOINTMENTS:

Indiana University, School of Public and Environmental Affairs:
Professor, 1998-

University of Southern California, School of Public Administration:
Assistant Professor, 1969-73
Associate Professor, 1974-80
Professor, 1980-98
Emery E. Olson Chair in Public-Private Entrepreneurship, 1985-98

OTHER APPOINTMENTS AND PROFESSIONAL CONSULTANTSHIPS:

Administrative Appointments at Indiana University, School of Public and Environmental Affairs:
Director, Center for Urban Policy and the Environment, 1998-2002; Senior Scholar, 2002-

Administrative Appointments at the University of Southern California, School of Public Administration:
Associate Dean and Interim Dean, 1974-76
Doctoral Advisor, Los Angeles, 1972-74
Co-Director, Sacramento Center, 1983-84
Director, Sacramento Center, 1988
Doctoral Advisor, Sacramento, 1979-98

Analyses and Consulting (selected):

"State Water Quality Management Resource Analysis." Chair, Panel established by the National Academy of Public Administration; funded by the United States Environmental Protection Agency, 2002. Publication, *Understanding What States Need to Protect Water Quality*. Washington, DC: NAPA, December 2002.

"Marion County Tax Alliance," Principal Investigator for award to the Center for Urban Policy and the Environment from the Indianapolis Chamber of Commerce, 2002.

"Municipalities Diverted Services Claim Against ExxonMobil." Analyses as an expert witness and trial testimony for defendant, 2002.

"Identifying Policy Choices and Facilitating Mobilization of Resources for Action." Principal Investigator for award to the Center for Urban Policy and the Environment from Lilly Endowment, Inc., 2002-2004.

"Central Indiana: Investments by Four Sectors." Principal Investigator for award to the Center for Urban Policy and the Environment from Lilly Endowment, Inc., 1999-2002.

"Valuation of Services Provided by the Diocese of Cleveland." Principal Investigator of project for the Catholic Diocese of Cleveland, Center for Urban Policy and the Environment, 1999-2000.

"Economic Valuation of Services Provided by Branch Libraries." Principal Investigator and Co-author of report to the Indiana-Marion County Public Library, Center for Urban Policy and the Environment, 1999-2000.

"Impacts of Gambling." Principal Investigator, editor, and part author of a report to the Indiana Gambling Impact Study Commission, 1998-1999, Center for Urban Policy and the Environment. Co-author of chapter: "Gambling by Indiana Youth." 111-134.

"Economic Valuation of Services Provided by the Central Library." Principal Investigator and Co-author of report to the Indiana-Marion County Public Library, Center for Urban Policy and the Environment, 1999.

"Evaluation of Project Impact." Principal Investigator of work for the Indianapolis Neighborhood Housing Partnership, Center for Urban Policy and the Environment, 1999.

"Learning from Innovations in Environmental Management." Member of a Panel established by the National Academy of Public Administration; funded by the United States Environmental Protection Agency, 1998-2000. Publication, *Environment.Gov – Transforming Environmental Protection for the 21st Century.* Washington, DC: National Academy of Public Administration, 2000.

"Failure of Pajaro River Flood Control Project." Analysis and deposition as an expert witness for plaintiffs, 1998.

"Community-Based Environmental Policy Processes." Chair of a Panel established by the National Academy of Public Administration; funded by the United States Environmental Protection Agency, 1995-97.

"Enterprise for the Environment." Member of a Panel established by the National Academy of Public Administration; funded by the United States Environmental Protection Agency, 1996-97.

"Fiscal Impacts of State Actions on the City of Emeryville." Analyses, deposition and

trial court testimony undertaken as an expert witness for the City of Emeryville, 1996.

"Governance of Coastal and Marine Environments." Member of a Panel established by the National Academy of Public Administration; funded by the National Academy of Sciences and the U. S. National Ocean Service, 1995-99.

"Relationships between City Councils and City Managers." Analyses and deposition undertaken as an expert witness in the case of Rita Hardin vs. City of Concord, 1994.

"Oregon Benchmarks: Analysis and Recommendations," produced for the Oregon Progress Board, 1994.

"Fiscal Reform in California," produced for the California Business-Higher Education Forum, 1994 (project director and co-author).

"Declaration of John J. Kirlin, Ph.D." Prepared as an expert witness on state-local fiscal affairs for Calleguas Municipal Water District, 1994.

"Analyses of Impacts of Property Tax Shifts." Analyses prepared as an expert witness for County of San Diego in suit against the State of California, 1993-94.

"Exxon Defendants' Preliminary Report on Alleged Economic Damages to Municipalities, Part 2." Analyses and deposition undertaken as an expert witness for Exxon/O'Melveny & Myers/Clough and Associates, 1993.

"Conservation and Cooperation: Strategies for Making Endangered Species Laws Work," prepared for the California Department of Fish and Game, 1993.

"Alternatives to Property Tax Shifts." Analyses prepared as an expert witness for the Calleguas Municipal Water District, 1993.

"Financing Regional Governance," prepared for the Fiscal Affairs/Regional Governance Task Force, The 2000 Partnership, 1991-92.

"Analysis of the Finances of California Councils of Governments," prepared for the California Association of Councils of Governments, 1991-92.

"Allocation of Property Taxes under AB 8." Analyses, deposition and expert witness court testimony in suit brought by County of San Diego against State of California, 1989-91.

"Energy and Environmental Policy Making and Regulation in California," a report to the Joint Committee on Energy Regulation and the Environment, California Legislature, 1991.

"Committee on 21," process facilitator and reports, League of California Cities, 1986-91.

"Governing Southern California," analyses for the Growth Management, Environmental Quality and Finance Working Groups, The 2000 Partnership, 1989-91.

"Cleaning Southern California's Air and Protecting Its Environment," prepared for the Environmental Defense Fund and Regional Institute of Southern California, 1989-90.

"Intra-Regional Relations Task Force," prepared for the Southern California Association of Governments, 1989-90.

"Building Now for the Future," prepared for the Commission on County Government, County Supervisors Association of California, 1988-89.

"Governance Task Force," prepared for the LA 2000, 1987-88.

"Alternative Structures for Achieving Public Purposes," prepared for the Office of Planning and Research (California), 1985-86.

"Debt Issuance by California Cities," prepared for Crocker Bank, 1985-86.

"Implementation of the Job Training Partnership Act," prepared for Westat/Department of Labor, 1984-85.

"Reagan's Domestic Policy: the California Case," prepared for Princeton University/Ford Foundation, 1982-85.

"Public Debt Policy in California," prepared for the California Debt Advisory Commission, Treasurer's Office, 1982-83.

"Service Delivery and Government in the Alaska Unorganized Borough," prepared for the Alaska Department of Community and Regional Affairs, 1980-81.

"Local Government," Prepared for Governor's Commission on Government Reform (Post Commission), 1978-79.

PROFESSIONAL SOCIETIES (including offices held and committee memberships):

American Society for Public Administration

American Political Science Association

National Association of Schools of Public Affairs and Administration, Board of Directors (one term)

HONORS:

Elected Fellow, National Academy of Public Administration, 1986-

Ford Foundation Fellow for International Development, 1965-66

TEACHING ASSIGNMENTS:

Doctoral, masters and undergraduate courses for the University of Southern California, 1969-98

Masters and undergraduate courses for Indiana University, 1998-

SERVICE: Indiana University only; public service is included in professional and consulting activities.

Director, Center for Urban Policy and the Environment, September 1998 – 2002

Member, IUPUI Promotions and Tenure Committee, 1999 –

Member, IUPUI Research Advisory Committee, 2000-2002

Member, IUPUI Task Force on Geographical Information Science, 2000-2002

Chair, Policy and Administration Faculty, SPEA, Fall 2000 (ex officio member of SPEA system wide undergraduate and graduate policy committees)

Member, SPEA Dean Search and Screen Committee, 1999-2000

Member, SPEA Promotions and Tenure Committee, 1999 –

Member, SPEA Governance Audit Committee, 2000-2001

Member, SPEA-Indianapolis Alternative Curricular Formats, 2000-2001

PROFESSIONAL ACTIVITIES:

Board of Editors, *Public Administration Review, Journal of Public Administration Research and Theory, The Regionalist*

Participant in professional conferences of the American Society for Public Administration, American Political Science Association, National Academy of Public Administration, and others.

Program track chair, national meetings of American Society for Public Administration and the American Political Science Association.

Member, Fellow Nominating Committee, National Academy of Public Administration, 2000, 2001.

Program co-chair, Spring Meeting of the National Academy of Public Administration, San Francisco (1990 ?)

National Civic League Council of Advisors, member, 1994-1999.

Manuscript review for professional journals, including *Public Administration Review,*

Journal of Public Administration Research and Theory, Publius, State and Local Government Review and others.

Speeches to professional groups (many)

GRANTS, FELLOWSHIPS AND AWARDS:

"Identifying Policy Choices and Facilitating Mobilization of Resources for Action." General support from Lilly Endowment, Inc, to the Center for Urban Policy and the Environment, 2002-2004. $4,000,000.

"Serving Central Indiana by Enhancing the Capacity of the Center for Urban Policy and the Environment." General support award from Lilly Endowment, Inc., 1999-2002. Principal Investigator. $3,400,000.

"Fiscal Reform in California." California Business-Higher Education Forum, 1993-94. Principal Investigator. $40,000.

"California Policy Choices." William and Flora Hewlett Foundation, 1988-1993. Principal Investigator. $310,000.

"Public Policy Choices for California." Sacramento Area Cable TV Community Foundation, 1986. Principal Investigator. $15,000 (?)

"California Policy Choices." William and Flora Hewlett Foundation, 1984-1998. Principal Investigator. $275,000.

"Proposition 13 Impacts on Land Uses." Lincoln Institute of Land Policy, 1979-81. Principal Investigator. $10,000.

"Proposition 13 Impacts." John Randolph and Dora Haynes Foundation, 1978-80. Principal Investigator. $20,000 (?)

"Proposition 13 Impacts on Urban Development." U.S. Department of Housing and Urban Development, 1978-79. Principal Investigator. $10,000.

"How Cities Provide Services." National Science Foundation, 1973-75. Co-Principal Investigator. $200,000 (through the Institute of Government and Public Affairs, UCLA)

PUBLICATIONS:

A. Books

California Policy Choices, volume 9. Los Angeles: USC Press, 1994. Co-editor.

California Policy Choices, volume 8. Los Angeles: USC Press, 1992. Editor.

California Policy Choices, volume 7. Los Angeles: USC Press, 1991. Co-editor.

California Policy Choices, volume 6. Los Angeles: USC Press, 1990. Co-editor.

California Policy Choices, volume 5. Los Angeles: USC Press, 1989. Co-editor.

California Policy Choices, volume 4. Los Angeles: USC Press, 1988. Co-editor.

California Policy Choices, volume 3. Los Angeles: USC Press, 1986. Co-editor.

Managing Development Through Public/Private Negotiations Washington, DC: The Urban Land Institute and the American Bar Association, 1985. Co-editor.

California Policy Choices, volume 2. Los Angeles: USC Press, 1985. Co-editor.

California Policy Choices, 1984. Los Angeles: USC Press, 1985. Co-editor.

The Political Economy of Fiscal Limits. Lexington, MA: Lexington Books, 1982.

Public Choices-Private Resources: Financing Capital Infrastructure for California's Growth Through Public-Private Bargaining. Sacramento: Cal-Tax Foundation, 1982. With Anne M. Kirlin.

How Cities Provide Services: The Impacts of Alternative Structures. Cambridge, MA: Ballinger, 1977. With John C. Ries and Sidney Sonenblum.

B. Journal articles, book chapters and reviews

Numerous book chapters on public administration theory, regional governance, service provision, public finance, policy processes, land development, environmental and ecosystems policies and joint public-private activities.

Articles on the same topics in such journals as the *Public Administration Review, Journal of Public Administration Research and Theory, Public Policy*, the *USC Law Review, National Tax Journal, Environmental Planning Quarterly* and the *Journal of Politics*.

"Strengthening Effective Government-Citizen Connections Through Greater Civic Engagement," *Public Administration Review* (62, Special Issue; September 2002,) With Mary K. Kirlin.

Book review of James C. Clingermayer and Richard C. Feiock. *Institutional Constraints and Policy Choice: An Exploration of Local Governance.* In *Canadian Journal of Political Science.* 2002

"Big Questions for A Significant Public Administration," *Public Administration Review* 61:2 (March/April 2001) 140-143.

"Dialogue: Knowledge and Research," *Administrative Theory and Praxis* 22:2 (June 2000) 414-416.

Book review of William R. Barnes and Larry C. Ledebur, *The New Regional Economies: The U. S. Common Market and the Global Economy.* In *Journal of Public Administration Theory and Practice* 8:3 (July 1998) 441-445.

"The Impact of Fiscal Limits on Governance." *Hastings Constitutional Law Quarterly* 25 (1998)195.

"Local Government Strategies Adapting to Global Forces." In Fukashi Horie and Masaru Nishio (eds.) *Future Challenges of Local Autonomy in Japan, Korea and the United States: Shared Responsibilities between National and Sub-national Governments.* Tokyo: National Institute for Research Advancement, 1997. 459-483.

Book review of Wyn Grant, Autos, Smog, and Pollution Control. In *American Political Science Review* 90:4 (December 1996) 910-11.

"The Big Questions of Public Administration in a Democracy." *Public Administration Review* 56:5 (September/October 1996) 416-425.

"What Government Must Do Well: Creating Value for Society." *Journal of Public Administration Research and Theory* 6:1 (January 1996) 161-185.

"Emerging Regional Organizational and Institutional Forms: Strategies and Prospects for Transcending Localism." In Jon Jun and Deil Wright (eds.) *Globalization and Decentralization: Institutional Contexts, Policy Issues and Intergovernmental Relationships in Japan and the United States.* Washington, DC: Georgetown University Press, 1996. 107-133.

"Protecting Species and Ecosystems Within Planning Processes." *Environmental Planning Quarterly* 12:4 (Fall 1995) 6-10.

"The Potential to Reframe Regional Policies and Institutions in Ways that Improve Governance and Address Disadvantage." *The Regionalist* 1:1 (Winter 1995) 55-64

"California Policy Choices: The Context." In: John J. Kirlin and Jeffrey I. Chapman (eds.) *California Policy Choices, Volume 9.* Los Angeles: USC Press, 1994. 1-24 (with Jeffrey I. Chapman and Peter Asmus)

"Species Conservation Through Ecosystem Management" In: John J. Kirlin and Jeffrey I. Chapman (eds.) *California Policy Choices, Volume 9.* Los Angeles: USC Press, 1994. 143-172 (with Peter Asmus and Roy Thompson)

"Citistates and Regional Governance." *National Civic Review* 82:4 (Fall 1993) 371-379

"Regional Governance: Structuring and Financing Regional Action in Southern California." In: Allen J. Scott (ed.) *Policy Options for Southern California.* Los Angeles: UCLA Lewis Center for Regional Policy Studies, 1993. 104-133.

"California Policy Choices." In: John J. Kirlin (ed.) *California Policy Choices, Volume 8.* Los Angeles: USC Press, 1992. 1-14 (with Peter Asmus).

"State Fiscal Choices." In: John J. Kirlin (ed.) *California Policy Choices, Volume 8.* Los Angeles: USC Press, 1992. 15-34 (with Jeff Chapman).

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 7.* Los Angeles: USC Press, 1991. 1-12 (with Don Winkler).

"Policy Responses; Creating the Conditions for Devising Reasonable and Regional Solutions." In: Joseph DiMento and LeRoy Graymer (eds) *Confronting Regional Challenges: Approaches to LULUs, Growth, and Other Vexing Governance Problems.* Cambridge, MA: Lincoln Institute of Land Policy, 1991. 121-132.

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 6.* Los Angeles: USC Press, 1990. 1-10 (with Don Winkler).

"Commands or Incentives to Improve Air Quality." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 6.* Los Angeles: USC Press, 1990. 147-174.

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 5.* Los Angeles: USC Press, 1989. 1-8 (with Don Winkler).

"Fiscal Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 5.* Los Angeles: USC Press, 1989. 9-18.

"Reframing State Dialogue on Infrastructure." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 5.* Los Angeles: USC Press, 1989. 165-186 (with Fred Collignon and Roger Vaughn).

"Improving Regional Governance." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 5.* Los Angeles: USC Press, 1989. 187-210.

"Urban Governance: The New Politics of Entrepreneurship." In: Michael G. H. McGeary and Laurence E. Lynn, Jr., (eds) *Urban Change and Poverty.* Washington, DC: National Academy Press, 1988. 348-374 (with Dale Rogers Marshall).

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 4.* Los Angeles: USC Press, 1988. 1-10 (with Don Winkler).

"Confronting Public Sector Complexity." *Public Administration Review* 48:2 (March/April 1988) 661-662 (with Edwin Connerley).

"Political Institutions: Adaptability and Paralysis." In: Ted K. Bradshaw and Charles G. Bell (eds) *The Capacity to Respond: California Political Institutions Face Change.* Berkeley: University of California, Institute of Governmental Studies, 1987. 73-94 (with Roy

Roy Thompson).

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 3*. Los Angeles: USC Press, 1986. 1-14 (with Don Winkler).

"The Fiscal Context." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 3*. Los Angeles: USC Press, 1986. 15-32.

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 2*. Los Angeles: USC Press, 1985. 1-14 (with Don Winkler).

"Comparing Federal Education and Housing Programs: Toward a Differentiated Theory of Federalism." In: Terry N. Clark (ed.) *Research in Urban Policy: Coping with Urban Austerity.* Greenwich CT: JAI Press, Inc., 1985. 349-356.

"The Distributive Politics of the New Federal System: Who Wins? Who Loses?" In: Charles R. Warren (ed.) *Urban Policy in a Changing Federal System.* Washington, DC: National Academy Press, 1985. 127-162 (with Dale Rogers Marshall).

"Bargaining for Development Approval." *Urban Land* 44:5 (May 1985)

"California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 1*. Los Angeles: USC Press, 1984. 1-6 (with Don Winkler).

"The Fiscal Context of California Policy Choices." In: John J. Kirlin and Donald R. Winkler (eds.) *California Policy Choices, Volume 1*. Los Angeles: USC Press, 1984. 7-36.

"A Political Perspective." In: Trudi C. Miller (ed.) *Public Sector Performance: A Conceptual Turning Point.* Baltimore: The Johns Hopkins University Press, 1984. 161-192.

"Policy Formulation." In: G. Ronald Gilbert (ed.) *Making and Managing Policy: Formulation, Analysis, Evaluation.* New York: Marcel Dekker, 1984. 13-24.

"The Impacts of Proposition 13 Upon the California Political System: Re-Regulating the Intergovernmental System." *Public Choice* 39: 147-169 (1982)

"Accommodating Discontinuity: Adjusting the Political System of California to Proposition 13." In: Charles H. Levine and Irene Rubin (eds.) *Fiscal Stress and Public Policy.* Beverly Hills: Sage Publications, 1980. 69-88.

"Adapting the Intergovernmental Fiscal System to the Demands of an Advanced Economy." In: Gary A. Tobin (ed.) *The Changing Structure of the City: What Happened to the Urban Crisis.* Beverly Hills: Sage Publications, 1979. 77-104.

"Land Use Consequences of Proposition 13." *Southern California Law Review* 53:1 (November 1979) 95-124 (with Jeff Chapman).

"Proposition 13 and the Financing of Public Services." In: Selma Mushkin (ed.) *Proposition 13 and Its Consequences of Public Management.* Cambridge MA: Abt Books and The Council for Applied Social Research, 1979. 65-72.

"California State Finance and Proposition 13." *National Tax Journal* 32:2 Supplement (June 1979) 269-276 (with Jeff Chapman).

"Changes in Government Land Use Policies-An Unforeseen Response to the Jarvis-Gann Initiative." *The Urban Interest* 1:1 (Spring 1979) 81-86 (with Jeff Chapman).

"Alternatives to City Departments." In: E. S. Savas (ed.) *Alternatives for Delivering Public Services: Toward Improved Performance.* Boulder, CO: Westview Press, 1977. 111-145.

Book review of George W. Downs, "Bureaucracy, Innovation and Public Policy." *Policy Sciences* 8:3 (September 1977) 375-380.

"The School of Public Administration at the University of Southern California." *Urban Analysis* 3 (1976) 205-212.

"Electoral Conflict and Democracy in Cities." *Journal of Politics* 37:1 (February 1975) 262-269.

"The Impact of Contract Services Arrangements on the Los Angeles Sheriff's Department and Law-Enforcement Services in Los Angeles County." *Public Policy* 21:4 (Fall 1973) 553-584.

"The Impact of Increasing Lower-Status Clientele Upon City Governmental Structures: A Model from Organization Theory." *Urban Affairs Quarterly* 8:3 (March 1973) 317-.

"Can Something be Done? Propositions on the Performance of Metropolitan Institutions." In: Lowdon Wingo (series editor) *Reform of Metropolitan Governments.* Baltimore: The Johns Hopkins University Press for Resources for the Future, 1972. 7-42 (with Francine Rabinovitz and Steve Erie).

"The Study of City Governance and Public Policy Making: A Critical Appraisal." *Public Administration Review* 32:2 (March/April 1972) 173-184 (with Steve Erie).

"Government in the Los Angeles Area: The Issue of Centralization and Decentralization." In: Werner Z. Hirsch (ed.) *Los Angeles: Viability and Prospects for Metropolitan Leadership.* New York: Praeger Publishers, 1971. 89-118 (with John C. Ries).

C. Professional publications and research monographs (selected)

"The Home Rule Debate: Why Cities?" *Western City.* 73:1 (January 1997) 8-11.

"Fiscal Reform in California." In: California Business Higher Education Forum. *California Fiscal Reform: A Plan for Action.* Oakland: CBHEF, 1994. 38-56. Co-author.

An Assessment of the Oregon Benchmarks: A Report to the Oregon Progress Board. Salem: Oregon Progress Board, 1994. With Jeff Luke and Harry Hatry.

Conservation and Cooperation: Strategies for Making Endangered Species Laws Work. Sacramento: State of California, Department of Fish and Game. 1993.

Toward Government Simplification, Accountability and Efficiency: Financing Regional Policy Making (Technical Report). Los Angeles: The 2000 Partnership, 1992.

Market-Based Pricing. Sacramento: League of California Cities Committee on 21, 1991.

Energy and Environmental Policy Making and Regulation in California. Sacramento: Joint Committee on Energy Regulation and the Environment, California Legislature. 1991. With Peter Asmus.

Celebrating Our Diversity. Sacramento: League of California Cities Committee on 21, 1990.

Beyond Independence. Sacramento: League of California Cities Committee on 21, 1989.

Governance. Sacramento: League of California Cities Committee on 21, 1987.

Committee on 21 1986 Annual Report. Sacramento: League of California Cities, 1986.

"California Property Taxation After Proposition 13." In: Tax Policy Roundtable. *Property Tax papers Series number TPR-10.* Cambridge, MA: Lincoln Institute of Land Policy, 1983.

Policy Options Concerning California Debt. Prepared for the California Debt Advisory Commission, 1983.

"Scenarios for the Political Development of Alaska." In: Alaska Department of Community and Regional Affairs, *Problems and Possibilities for Service Delivery and Government in the Alaska Unorganized Borough.* Juneau: DCRA, 1981.

"Toward a Political Perspective on (Inter) Governmental Performance in the 1980s." Prepared with the support of the Government Finance Research Center, Municipal Finance Officers Association, 1979.

Principles and Criteria for the Allocation of Functions Among Government Agencies. Sacramento: Commission on Government Reform, 1978.

Administrative Processes and Work Management in the California Department of Real Estate. Los Angeles: USC School of Public Administration, 1977. Co-author.

"Impact of Alternative Futures on Public Administration." Paper for Dialogue with Senator John Dunlop. Sacramento: USC School of Public Administration, 1977.

Selecting Structures for Providing Municipal Services. Los Angeles: UCLA Institute of Government and Public Affairs, 1975. With Sidney Sonenblum and John C. Ries.

Providing Municipal Services: the Effects of Alternative Structures. Los Angeles: UCLA Institute of Government and Public Affairs, 1975. With Sidney Sonenblum and John C. Ries.

The Future of Service Provision Structures: Evaluations, Preferences and Expectations of California City Managers. Los Angeles: UCLA Institute of Government and Public Affairs, 1974. With John C. Ries.

Expert Report

Williams, et. al. v. State of California, et. al.

John J. Kirlin

April 2003

I am an expert in the (1) development, financing and implementation of public policies, especially national-state-local relationships, (2) public finances, (3) and operations of public organizations. I am particularly expert regarding California, analyzing its policy making, finances, state-local relationships and policy implementation for over three decades.

As seen in my vita, I have experience analyzing and writing about these areas of expertise in several policy areas, for different audiences and presenting my work in different venues. As examples of consulting roles, I participate as a member or chair in panels of the National Academy of Public Administration advising the US Environmental Protection Agency, have consulted for the State of California on endangered species and energy and the environment, led a team of researchers advising the Indiana Governor's Commission on Gaming, advised the major associations of California local governments (League of California Cities, County Supervisors Association of California, California Association of Councils of Government) regarding state-local policy and fiscal matters and served as a consultant to a civic association (LA 2000) and to the Southern California Association of Governments regarding reforms in the governing structures of that region. As an expert witness, I have served California local governments in suits regarding allocations of property taxes following Proposition 13, a city defending itself against a wrongful termination suit, a private property owner harmed by failure of a flood control system, and for a corporation against a claim of diverted municipal services.

I have also written widely about the development, financing and implementation of public policies, public finances and the operations of public organizations. I am the author or co-author of numerous articles and book chapters in these areas. I am the author of *The Political Economy of Fiscal Limits*, and co-author of a book on municipal services and one on financing public improvements post Proposition 13. I am the coeditor of a book on public-private bargaining published by the American Bar Association and the Urban Land Institute. I founded and co-edited nine annual volumes of *California Policy Choices*, a collection of policy analyses by leading experts. This was the first such series analyzing state-level policy choices and was emulated by approximately a dozen other states. As Director of the Center for Urban Policy and the Environment, I obtained funding for and launched a series of analyses of Central Indiana and of eight comparison regions (e.g., Cleveland, Kansas City, Raleigh-Durham, Austin, and Sacramento).

In a three decade plus career as a professor, I have taught a variety of courses related to my areas of expertise. I have also served as the chair or member of dozens of doctoral dissertation committees, most related to one or more dimensions of the development, financing and implementation of public policies, public finances, and operations of public organizations.

I was asked to undertake three tasks:

(1) Analyze the State of California's structures, policies, funding, and policy implementation in the important area of elementary and secondary education in comparison with the nation and appropriate comparison states.

(2) Analyze the resources available to and used by the districts and schools where plaintiffs are enrolled in comparison to other districts in California.
(3) Assess the feasibility of the plaintiffs' proposed changes in California elementary and secondary education being successfully implemented and their likely effects.

The plaintiffs' claims and the opinions of plaintiffs' experts are broad, asserting that the State has failed to adopt, fund and implement a variety of public policies that plaintiffs and their experts prefer. The claims and expert opinions often focus attention on the three areas of teacher qualification, instructional materials (especially textbooks) and school facilities. The plaintiffs and their experts advance a set of proposed remedies, often focused in the same three areas, but with much broader and more fundamental implications for elementary and secondary education in California.

The policies advocated by these plaintiffs and their experts should be recognized as representing only one of several alternative approaches to improving educational performance that are hotly contested among policy makers, analysts, advocacy groups and parents.

As is more fully developed below, plaintiffs and their experts argue for a top-down, state-driven, expert-directed approach to elementary and secondary education of sweeping implications. Their preferred choices regarding education policies, financing and implementation would be (1) extraordinary in this nation, (2) unlikely to be successfully implemented, if attempted, and (3) would have uncertain and most likely counter-productive results if implemented.

In analyzing the plaintiffs' claims and their experts' opinions, I emphasized the structures, policies, financing and implementation of elementary and secondary education of California versus:

a. all states in the nation,
b. the three contiguous states of Arizona, Nevada and Oregon, and
c. the five next states in size of elementary and secondary education student enrollments (Texas, New York, Florida, Illinois and Pennsylvania).

In analyzing educational structures, policies, financing and performance, I was especially attentive to the most recent comparisons across all fifty states and for the eight comparison states. Many such comparisons are included below. Others exist and are not reported here, usually (a) because I report a summary or representative comparison, (b) there is no variation among the states or (c) the comparison is not as relevant to issues addressed in this analysis.

I also examined analyses of policy making, financing and implementation in (a) education and (b) other policy arenas (e.g., welfare, environmental protection, land uses, economic development, or transportation), general analyses and theoretical frameworks of policy making, financing and implementation, and analyses of efforts to reform large and complex public policies involving national-state-local relationships.

I relied upon sources of data and analyses in the following order: (1) official reports of governments, (2) nationally recognized "think-tanks" (e.g., The Brookings Institution, The Urban Institute or RAND), (3) analyses of elementary and secondary education, (4) blue-ribbon and similar commissions focused on education, (5) professional associations of participants in elementary and secondary education, and (6) advocacy organizations.

Selection of contiguous and large enrollment states for comparison with California is reasonable. The three contiguous states share important attributes in the composition of students and are sources and destinations of migrants.[1]

The five large elementary and secondary enrollment states share the challenges of educating diverse populations and also the challenges of making, financing and implementing policies affecting a large number of school districts with varied characteristics and competencies. When joined with comparison to national patterns across all states, these comparisons to three contiguous and next five larges enrollment states provide a consistent template with which to assess the performance of California.

As seen in Table 1, which provides basic descriptive information about the states and the nation, California has the largest population of all the comparison states, with a growth rate near the national figure for 1990-2000, but surpassed by five of the eight comparison states. Its K-12 enrollment is half again as large as the next largest state K-12 enrollment in Texas and rises to nearly 20 times as large as that of contiguous Nevada. The state enrolls more than half again as high a proportion of students receiving LEP services as do Arizona and Texas, the next highest state and nearly four times the proportion of these students as does Illinois. It enrolls the highest proportion of students eligible for free and reduced price lunches, although Texas, Florida and New York are not far behind.

In another comparison not seen in Table 1, California is singular in the nation in the number of immigrant children in its public schools. In 1995-96, one third of all newcomer immigrant children in the United States attended a California public school. In 1997-98, about 36 percent of all California school districts qualified for assistance under the federal government's Emergency Immigrant Education Act (EIEA) of at least 500 newcomer immigrant children who have attended classes for less than three years or newcomer immigrants totaling at least 3 percent of all enrollment.[2] Immigrants typically achieve mobility and integration into the society not immediately, but over two or three generations. For example, Borjas estimates that about half of any wage differential between a first generation immigrant and nonimmigrants persists into the second generation and half the difference remaining in the second generation persists into the third.[3] This

---

[1]. Johnson, Hans P.and Richard Lovelady. 1995. *Migration Between California and Other States: 1985-1994*. Sacramento: California Department of Finance. http://www.dof.ca.gov. Accessed 2.10.03.

[2]. Ruiz-de-Velasco, Jorge and Michael Fix. 2000. *Overlooked and Underserved: Immigrant Students in U.S. Secondary Schools*. Washington, DC: The Urban Institute. 36.

[3]. Borjas, George J. 1999. Research Summary: Immigration. National Bureau of Economic Research. http://216.239.33.100/

pattern may hold for educational performance and becomes more important for children of low education immigrants.

Overall, these comparisons to the nation and to the eight states chosen for systematic comparison with California suggest that this state will have among the most challenges of any state in the nation in successfully educating students.

Explicit comparisons and judgments regarding the reliability of available analyses and data are a common and desirable feature in professional analyses. However, I found little evidence of systematic comparison of policies and practices and caution in sources of data and analyses in the opinions offered by the plaintiffs' experts. Their statements often rely upon interpretation of selected research in the field of education, data for California only, and selective use of examples of policy making, financing and implementation in a shifting selection of states. Such selective use of literature and of examples moves from analysis toward advocacy which is also sometimes seen in the tone of these experts' reports.

Of necessity, comparisons rely on historical data (mostly through 2000 or 2001 and occasionally for 2002). California launched several major initiatives to improve performance of its schools in the last few years, efforts which are not fully reflected in the available comparative data. These initiatives are important to understanding the positive trajectory of public elementary and secondary schools in California and are discussed in the closing section of this report.

Table 1: Descriptive Information on US, California and Comparison States

State	Population, 2000	1990-2000 Pop % change	K-12 enroll	% students receiving LEP services	% students eligible for free or reduced price meals
source code	1	1	2: T.1	2: T.10	2: T.10
US/reporting states	281,421,906	13.1	47,222,778		
CA	33,871,648	13.6	6,142,348	24.5	46.6
AZ	5,130,632	40.0	877,696	15.0	
NV	1,998,257	66.3	340,706		27.3
OR	3,421,399	20.4	546,231	7.9	34.8
FL	15,982,378	23.5	2,434,821	7.7	44.3
IL	12,419,293	8.6	2,048,792	6.2	
NY	18,976,457	5.5	2,882,188	8.0	42.9
PA	12,281,054	3.4	1,814,311	-	28.1
TX	20,851,820	22.8	4,059,619	14.1	44.9

1. U.S. Census Bureau. State and County Quick Facts (accessed 2.1.03)
2. NCES, Statistical Analysis Report, Overview of Public Elementary and Secondary Schools and Districts, School Year 2000-2001. NCES 2002-356.

To illustrate how the plaintiffs' experts approach their work, Table 2 lists the states which these experts advocate be used as models for changes in California. The table also shows state's total student membership, percentage receiving LEP services and percentage eligible for free and reduced price lunches.

A dozen states are cited at least three times as models for changes in California's elementary and secondary education systems and an additional nine states are each cited once. Included among those receiving multiple citations are three states selected for comparison in this analysis (Illinois, New York, and Texas). However, most of the other states differ in important ways from California. Connecticut has a total student membership less than a tenth of California and Kentucky schools enroll barely more than 10 percent of the number enrolled in California schools. In both Connecticut and North Carolina, less than four percent of students receive LEP services, in contrast to 46.6 percent in California, more than an eleven-fold increase. Similarly, the other states cited as possible models differ significantly from California. The challenges to successful improvements in school performance increase as the size of student enrollments (and numbers of districts, schools and teachers similarly increase) and the variety of student attributes increase (and variety in resources available to schools and communities similarly increase).

The important point is that plaintiffs' experts have not analyzed California schools against a systematically selected set of other comparable states. Nor have they selected states as possible models for California in any systematic manner. Instead, selection of states as models appears to follow (a) familiarity or (b) selection to fit into the particular expert's set of recommendations. Six experts cite New York approvingly and three experts cite Connecticut, North Carolina, Kentucky, Texas and Oregon approvingly, but no other state receives more than two expert's citation (four states) or those of one expert (eleven states). The plaintiffs' experts also show distinct preferences for states they advocate as models: Sobol cites only New York, but five times, and Darling-Hammond favors Connecticut and North Carolina, while Grub and Goe favor Kentucky, and Myers favors Maryland and New Mexico.

The plaintiffs' experts do not say that they prefer ALL of the education policies of these states nor the overall performance of their schools, but only those elements they have chosen. These states also have weaknesses in school performance compared to California.

Table 2. States Cited by Plaintiff Experts as Models for Changes in California Schools

State	Times cited as a model for CA	Experts citing	Total student membership	Percentage receiving LEP services	Percentage eligible for free and reduced price lunches
CA			6,142,348	24.5	46.6
NY	14	Earthman (1); Fine (3); Myers (1); Darling-Hammond (3); Oakes, overcrowding (1); Sobol (5)	2,882,188	8.0	42.9
CT	9	Darling-Hammond (7); Grubb & Goe (1); Russell (1)	562,179	3.6	-
NC	8	Darling-Hammond (6); Grub & Goe (1); Oakes, overcrowding (1)	1,293,638	3.4	36.4
KY	8	Grubb & Goe (4); Oakes, textbooks (2); Russell (2)	665,850	0.6	47.6
MD	6	Myers (5); Oakes, overcrowding (1)	852,920	2.8	30.0
TX	5	Darling-Hammond (1); Grubb & Goe (2); Russell (2)	4,059,619	14.1	44.9
RI	5	Oakes, textbooks (3); Russell (2)	157,347		
MA	4	Russell (4)	975,150	5.0	24.3
NJ	4	Fine (1); Grubb & Goe (3);	1,307,828	-	27.2
OR	4	Darling-Hammond (1); Grubb & Goe (1); Oakes-overcrowding (2)	546,231	7.9	34.8
NM	3	Myers (3)	320,306	21.4	54.6
IL	3	Fine (2); Myers (1)	2,048,792	6.2	-
CO, ID, NV, PA, TN, UT, WA, WV,WY	1 each				

Enrollments, LEP and free and reduced price lunch data from: NCES. *Overview of Public Elementary and Secondary Schools and Districts: School Year 2000-01*. NCES 2002-356 (May 2002)

Overall Assessment Provides Mixed Picture of the Performance of California Schools

To set the context for further discussion, Table 3 provides the most recent assessment of expenditures by and performance of California schools in comparison to the nation and to the eight comparison states. As shown in data collected by the National Center for Educational Statistics, California spends less per pupil than the nation and four of the comparison states, with New York spending substantially more per pupil. However, California spends more per pupil than Arizona, Nevada, Florida and Texas.

Moreover, California's expenditures are apparently under reported in these national data. The *State Budget Highlights* on the 2002-03 budget as enacted, reports that per pupil K-12 expenditures from all sources are $9,477.[4] The California State Legislative Analyst (LAO) has provided a good analysis of how differences arise in measuring expenditures on elementary and secondary education across states, identifying five factors: (1) choice of index; (2) which expenditures are counted; (3) Average Daily Attendance versus enrollment; (4) time lags; and (5) accuracy of data and estimates.[5] Many reports of spending on education in California exclude important costs. One reason is that expenditures counted in Proposition 98 calculations are often reported while other expenditures for K-12 education which are not so counted are omitted. For 2001-02, the LAO reports these non Proposition 98 funds totaled $13.8 Billion, 36 percent the $38.8 Billion counted under Proposition 98 and 26 percent of total expenditures of $52.7 Billion.[6]

California's actual total spending on education was $9068 per ADA in 2001-02 ($1,544, 20 percent, more than shown in Table 3) and the mid-year revisions of the 2002-03 budget leave total expenditures at $9216 per ADA.[7] Other states may also have made reductions in budgeted expenditures for education this year as most are in fiscal difficulties.

California's raw performance scores in the latest available National Assessment of Educational Performance (NAEP) scores of 8th graders in reading, math and science are below the nation and all comparison states for which NAEP scores are available. It must also be noted that NAEP scores are unadjusted for characteristics of students and California has by far the highest fraction of students with Limited English Proficiency, as shown in Table 1.

California performs substantially better against other performance criteria. Its high school graduation rates are close to the national average (66 percent versus 69 percent) and exceed those of four comparison states (Arizona, Nevada, Florida, and New York) and match those of Oregon. It graduates whites at nearly the national average rate (75 vs. 76 percent) and surpasses Nevada, Oregon and Florida in this measure. It exceeds national averages in graduation rates of African Americans (59 versus 55 percent) and of Hispan-

---

4. Department of Finance, State of California. October 2002. *State Budget Highlights*. Sacramento. P. 9.

5. LAO. 2000. *Analysis of the 2000-01 Budget Bill: K-12 Education Introduction*. Sacramento, CA: LAO. http://www.lao.ca.gov/analysis_2000/education/ed_k12-dept1_an100.htm. . 1.30.03. Pages 6-7

6. LAO. 2003. *Analysis of the 2003-04 Budget Bill*: Education section. Sacramento, CA. Page E-34.

7. LAO. 2003. *Analysis of the 2003-04 Budget Bill*: Education section. Sacramento, CA. Pages E-17-E-21, E - 34.

ics (55 versus 53 percent). In graduation rates of African Americans it also surpasses five comparison states, equals Pennsylvania and falls short of Texas by two percentage points. In graduation rates of Hispanics, it is surpassed by two percentage points by both Illinois and Texas, but surpasses Florida, New York and Pennsylvania (no data are available for Arizona, Nevada and Oregon).

In an important gross measure of school performance, the percent of 16-19 year olds not in school who had not graduated from high school, California's 9 percent betters the national rate of 10 percent. It also betters the rates of Arizona (17 percent), Nevada (16 percent), Oregon (16 percent), Florida (12 percent), Illinois (10 percent), and Texas (12 percent). It equals New York and is surpassed by only Pennsylvania (7 percent). Another analysis of "achievement gaps" compares the performance of poor urban schools against other schools in their state, expressed as a standard deviation from the mean. No national score is provided and all reported scores are negative, meaning that students from these schools consistently score lower than students in other schools in their states. However, California's score of -0.75 is substantially better than the performances of Illinois (-1.89), New York (-1.88) and Pennsylvania (-2.05). Texas (-0.72) performs slightly better than California and Florida (-0.43) and Arizona (-0.65) perform better on this measure.

In summary, California schools may have somewhat less resources than the national average and most of the eight comparison states; they do perform worse on NAEP 8th grade testing, and have roughly equal statewide rates of high school graduation. But California schools graduate higher proportions of African American and Hispanic students, have a smaller percentage of 16-19 year olds not in school who have not graduated, and the performance of students from California poor urban schools is closer to the other schools in California than in half of the comparison states.

California's success in targeting resources to higher need students is also seen in *Education Weeks'* calculations of resource adequacy versus resource equity. On adequacy California gets a score of 65 (average state score: 79) and grade of D. On equity it receives a score of 77 (average state score: 72) and grade of C+. In the equity calculations, California trails the comparison states of Florida, Nevada, Texas, and Oregon, but surpasses Arizona, New York, Pennsylvania and Illinois. (*Quality Counts 2002*)

Table 3. Expenditures and Performance of California Schools in Comparison to Nation and Eight Comparison States

State	Estimated Expenditures per pupil, 2001-02	% of 8th graders scoring at basic or proficient levels, NAEP, reading	% of 8th graders scoring at basic or proficient levels, NAEP, math	% of 8th graders scoring at basic or proficient levels, NAEP, science	Graduation rates, state wide, 2000	Graduation rates, white, 2000	Graduation rates, African-American, 2000	Graduation rates, Hispanic, 2000	Percent of 16-19 year olds not in school who had not graduated, 1999	Achievement of poor urban schools vs others in their state, std deviation from mean
source code	16: T.5	17: student achievement	17: student achievement	17: student achievement	14: student achievement	14: student achievement	14: student achievement	14: student achievement	14: student achievement	11: T.12
US/reporting states	7,524	72	61	60	69	76	55	53	10	na
CA	6,878	64	51	47	66	75	59	55	9	-0.75
AZ	5,445	73	57	55	59	?	?	?	17	-0.65
NV	6,134	69	na	na	60	68	56	?	16	na
OR	8,280	78	67	68	66	68	56	?	16	na
FL	6,232	65	54	51	55	60	46	48	12	-0.43
IL	7,598	na	na	na	77	86	57	57	10	-1.89
NY	10,725	78	61	57	64	78	46	40	9	-1.88
PA	8,673	na	na	na	78	83	59	50	7	-2.05
TX	6,833	76	59	55	67	76	61	57	12	-0.72

11 Loveless, Tom. How Well are American Students Learning? 2001 Brown Center Report. Washington, DC: Brookings Institution, 1:2 2001
14 Education Week. Quality Counts 2002. Released January 9, 2003. http://edweek.org/reports/qc03
16 NCES. April 2002. Early Estimates of Publi Elementary and Secondary Education Statistics: School Year 2001-02. NCES 2002-311
17 Education Week. Quality Counts 2000. http://edweek.org/reports/qc00

The Structure and Governance of California Schools are Similar to Other States

California elementary and secondary schools are structured and governed very similarly to schools across the nation. Following the dominant federal structure of relationships among states and local governmental entities, elementary and secondary education is commonly provided through locally governed districts with significant responsibilities for establishing, financing and operating school facilities. In the 19th Century local lay control of schools was the pervasive pattern. In the 20th Century, states commonly exercise increased influence over the activities of districts and thereby schools through a combination of codification of practices (e.g., length of the school year), credentialing of teachers and guidance regarding educational practices. State departments of education expanded influence in the 20th Century and collective bargaining increased the influence of teachers, among other changes.[8]

The Educational Commission of the States identifies four models of state education governance.[9]

Model One: The governor appoints the state board of education and that board appoints the chief state school officer. There are ten Model One states, including Florida and Illinois among the comparison states used here.

Model Two: The state board of education is elected and appoints the chief state school officer. There are eight Model Two states, including Nevada among the comparison states used here.

Model Three: The governor appoints the state board of education. The chief state school officer is elected. There are ten Model Three states, including California and the comparison states of Arizona and Oregon.

Model Four: The governor appoints the state board of education and the chief state school officer. There are eight Model Four states, not including any of the comparison states used here.

Fourteen states do not fit into these four models. Of the remaining comparison states used here: (1) in New York, the state legislature appoints the state board and the state board appoints the chief state school officer; (2) in Pennsylvania, four state board members are elected, the governor appoints 17 members and also appoints the chief state school officer; and (3) in Texas, the state board is elected and the governor appoints the governor appoints the chief state school officer.

---

8. Education Commission of the States. 1999. *The Invisible Hand of Ideology: Perspectives from the History of School Governance.* Denver, CO: ECOS; Education Commission of the States. 1999. *Governing America's Schools: Changing the Rules. Report of the National Commission on Governing America's Schools.* Boulder, CO; ECOS.

9. Education Commission of the States. 2002. Models of State Governance. Boulder, CO; ECOS.

In other respects too, California is quite typical. Table 4 shows how many other states in the nation share several governance structural and accountability features of elementary and secondary education.

Table 4. California Shares Many Governance Structural and Accountability Features With Other States.

Feature in California	*Found in how many states?*	*Found in which of the eight comparison states?*
Regional boards (county districts in California)*	29	IL, NY,OR, PA, TX
State policy allowing teacher collective bargaining *	33	FL, IL, NV, NY,OR, PA
Content and performance standards complete, math**	50	AZ, FL, IL, NV, NY, OR, PA, TX
Content and performance standards complete, science**	47	AZ, FL, IL, NV, NY, OR, TX
Content and performance standards complete, English/language arts**	49	AZ, FL, IL, NV, NY, OR, PA, TX
Reports school level performance**	42	AZ, FL, IL, NV, NY, OR, PA, TX
High school exit exam in place or development*** T.12	28	AZ, FL, IL, NV, NY, OR, TX
State policies on textbooks *** T.14	11 select; 10 recommend	FL, IL, NV, OR, TX

Sources: * from: Education Council of the States. http://www.ecs.org/dbsearches/Search_Info; ** from: Council of Chief State School Officers. http://www.ccsso.org/NAEP2002/50_State. *** From: Council of Chief State School Officers. 2000. *Key State Education Policies on K-12 Education: 2000.*

California has similar requirements for high school graduation as do other states, as seen in Table 5. Nineteen states make graduation contingent upon passage of a statewide examination, a requirement that will become effective in California with the class of 2004. California's state course requirements for high school graduation in math, science and English are somewhat lower than national averages. However, the California requirements compare more favorably with the eight comparison states, equaling or besting requirements in math in four of seven reporting states, in six of seven reporting states in science and in two of seven reporting states in English. California course requirements in social sciences are typical of the nation and equal or best six of the seven reporting comparison states. California is one of 27 states requiring course work in the arts for graduation and its one course requirement is the same as that of all five reporting comparison

states. California does not link teacher professional development to content standards, but only roughly half (24) states make this link (five of the eight comparison states make the link).

California Districts Score Quite Well re Teachers

While fewer California school districts currently require full certification of teachers than the national average or most comparison states, California teachers score well on other dimensions. Table 6 reports several such comparisons.

As shown in Table 6, fewer California districts required full standard state certification in a teaching field in 1999-2000 than the national pattern. Similarly, in all the comparison states except Florida, more districts required full standard certification in teaching fields than did California districts. The same pattern is seen in the percentage of California districts requiring a passing score on a state test of subject knowledge, with California (and Oregon) being below the national average and the other comparison states above that average.

However, California teachers are well-paid, with an average teacher salary in 2000-01 over 20 percent higher than the national average and above all eight comparison states. In an important measure of teacher salaries compared to typical incomes in the respective states, California again performs well, with a ratio of 1.63 between teacher salary and per capita personal income. This compares to a ratio of 1.47 across the nation and compares well with the eight comparison states, where Pennsylvania alone does slightly better with a 1.68 ratio and Oregon matches the California performance.

California does a much better job than the national average or the eight comparison states in equalizing distribution of teachers with a major or a minor in the area they teach across high-poverty and high-minority schools. While 25 percent of California teachers in 2000 did not have a major or minor in their area of instruction, compared to a national average of 22 percent, that ratio rose only to 26 percent in high poverty schools and was unchanged in high-minority schools, while the national ratios increased to 32 percent (10 point increase) and 26 percent (four percent increase) respectively. Of the eight comparison states, only New York bests California in this measure. Some comparison states have large differences in this measure, with Illinois being the extreme example, where the state wide ratio of teachers instructing outside a field in which they have a major or minor is 22 percent, but 50 percent in high poverty schools and 40 percent in high minority schools. This also is an example where states cited positively by the plaintiffs' experts do not all perform well. In Connecticut, the statewide average is 26 percent (marginally higher than California) and that ratio rises to 33 percent in high poverty schools and to 34 percent in high minority schools.[10]

Two systematic assessments of the context in which teachers work rate California quite positively. The Thomas B. Fordham Foundation provides both a quantitative score and

[10]. *Education Week*. 2003. Quality Counts 2003: Teacher Qualifications. http://www.edweek.org/sreports/qc03/reports/17qualif-t1.cfm. Accessed 1.30.03.

letter grade. California scores 34.04 and a grade of "B" versus a national average score of 23.29 and a grade of "D+." Among the eight comparison states, Florida's "A-"and the "A" of Texas surpass California, but the other six comparison states score lower. Professor Darling-Hammond, writing for the National Commission on Teaching and America's Future (1997) reports that California has four of twelve quality indicators, well above the national average of 2.76. Only Pennsylvania of the comparison states also had four quality indicators and Florida, Illinois, New York and Texas had only one teaching quality indicator. Arizona had none, Nevada two and Oregon three.

The most recent overall grade for improving teacher quality calculated by *Education Week* for *Quality Counts 2002* gives California a score of 83 and grade of B, better than the national average grade of 74 and grade of C. California's score for improving teacher quality surpasses all eight comparison states, with none of these states scoring within 10 points of California.

Table 5. California Course Requirements for High School Graduation below Nation in Core Areas, But Closer to Comparison States

State	Graduation contingent upon performance on statewide exam, 2002	State course requirements for high school graduation-2002-math	State course requirements for high school graduation-2002-science	State course requirements for high school graduation-2002-English	State course requirements for high school graduation-2002-social studies	State course requirements for high school graduation-2002-arts	State policy linking professional development with content standards, 2002
source code	14: standards and accountability	15: T.8	15: T.8	15: T.8	15: T.8	15: T.8	15: T.16
US/reporting states	19	25 states: 2.5-4 courses	22 states: 2.5-4 courses	38 states: 4 courses	36 states: 2.5-4 courses	27 states	24 states
CA	class of 2004	2	2	3	3	1	no
AZ	class of 2006	2	2	4	2.5	1	no
NV	X	3	2	4	2	1	X
OR	none	2	2	3	3	1	no
FL	X	3	3	4	3	1	X
IL	none	2	1	3	2	1	X
NY	X	2	2	4	4	[redacted]	no
PA	none	[redacted]					X
TX	X	3	2	4	2.5	[redacted]	X

14 Education Week. Quality Counts 2002. Released January 9, 2003. http://edweek.org/reports/qc03

15 Council of Chief State School Officers. Key State Education Policies on PK-12 Education, 2002. Washington, DC: CCSSO. 2002.

Table 6. Comparisons of California Teachers Requirements, Assessments and Availability of Alternative Routes

	% of school districts requiring full standard state certification in teaching field	% requiring passsing score on State test of subject knowledge	Average teacher salary, 2000-01	Average teacher salary as ratio of per capita personal income	Fordham Report card re teachers, score	Fordham Report card re teachers, grade	Total Quality Indicators re Teaching (out of 12), 1997	Overall grade for improving teacher quality, 2002	State alternative-route programs, Teach for America (#, 2002-03)	State alternative-route programs, Troops to Teachers (#, 2001-02)	State alternative-route programs, numbers (2001-02)
source code	3: T .1.04	3: T .1.04	4: T 1-1	4: T 1-6	5: p 12	5: p 12	6: Apnd A	14: imp. teacher quality	7: 3 pps	7: 3 pps	8: 3 pps
US/reporting states	81.5	54.2	43,250	1.47	23.29	D+	2.76	73.86	2,471	4,499	17,911
CA	46.4	43.8	52,480	1.63	34.04	B	4	83	466	319	7,098
AZ	66.5	70.8	36,502	1.46	25.04	C-	0	61	118	141	
NV	92.7	66.2	44,234	1.5	19.14	D-	2	70		37	
OR	64.9	45.4	44,988	1.63			3	61		22	
FL	41.4	64.7	38,230	1.38	37.3	A-	1	72		360	180
IL	93.4	88.2	47,865	1.5	26.08	C	1	78	121	104	380
NY	97.6	82.4	51,020	1.47	31.54	B-	1	76	277	52	2,000
PA	85.3	77.3	49,528	1.68	29.84	C+	4	69		45	n/a
TX	69.2	82.4	38,359	1.38	41.13	A	1	68	320	674	3,969

3 NCES, Schools and Staffing Survey, 1999-2000. E.D. Tabs, May 2002. NCES 2002-313.

4 American Federation of Teachers, AFL-CIO. Survey and Analysis of Teacher Salary Trends, 2001. Washington, DC: AFT-CIO, 2002.

5 Thomas B. Fordham Foundation. The Quest for Better Teachers: Grading the States. Washington, DC. 1999.

6 Darling-Hammond, Linda. Doing What Matters Most: Investing in Quality Teaching. New York: National Commission on Teaching and America's Future. 1997.

7 EdWeek. State Alternative-Route Programs.http://www.edweek.org/sreports/qc03/reports/17altern-t1.cfm

8 EdWeek. State Alternative-Route Programs.http://www.edweek.org/sreports/qc03/reports/17altern-t1b.cfm

14 Education Week. Quality Counts. January 9, 2003.

California makes more use of alternative routes to teaching than do comparison states although Texas has more participants in the Troops to Teachers program than does California. By one overall measure, California has nearly half the nation's participants in alternative route programs. As noted by *Education Week* in providing the data, these are "structured" programs that include both a preservice training and mentoring component. California requires passage of a teacher licensing exam and work experience and/or subject area course work or testing for entrance into its alternative route programs and 120 hours of training before becoming teachers of record. California is one of 18 states to require passage of an exam and of 12 states to require demonstration of subject area competence, so its requirements are higher than most states.

Recent initiatives California is making to improve teacher quality and availability are discussed in the closing section. The available evidence suggests that California is building upon the largely positive base seen in these comparative analyses. California is, for example, one of only five states that required at least two years of state-financed mentoring of new teachers as of 2002.[11]

California Spends as Much on School Facilities as Other States

Table 7 provides comparative information on California schools' facilities and instructional materials. The first column shows self-reported needs to upgrade and repair on-site school facilities from a 1994 report of the US General Accounting Office. Eighty-seven percent of the responses in California were affirmative—saying that up-grades or repairs were needed. No national compilation is available, but the California response is lower than that in Oregon, Illinois and New York (where 90 percent of respondents reported need to up-grade or repair school facilities). In four other states, fewer school facilities were judged wanting, but only in Pennsylvania (70 percent) and Texas (76 percent) is the difference very large. Less than half of the states routinely track the condition of all school facilities according to a mid-1990s survey. California does not, nor do half the comparison states (Nevada, Oregon, Pennsylvania and Texas do not track facility condition). California is one of 40 states in which have an ongoing facilities funding program (the comparison states of Illinois, Nevada, Oregon, and Texas did not). Forty-four states had technical assistance or compliance reviews for facilities, including California (the comparison states of Arizona and Nevada did not).[12] By 2002, one more state tracked facility condition (23 in the 1995 GAO report and 24 in *Quality Counts 2002*, shown in column 2 of Table 7). There is not much movement toward greater state involvement in this area.

---

[11]. *Education Week*. 2003. Quality Counts 2003: State Support for New Teachers. http://www.edweek.org/sreports/qc03/templates/chart.cfm?slug=17odds-c1.h22. Accessed 1.30.03.

[12]. US GAO. 1995. *School Facilities: State's Financial and Technical Support Varies*. Washington, DC. GAO. November 1995. GAO/HEHS-96-27. p. 23-24.

California slightly exceeds the national per enrollment expenditures on facilities, as seen in column four of Table 7. It trails six of the comparison states but surpasses Oregon and New York.

Public infrastructure is often broadly judged to be inadequately funded and California is no exception to this pattern. In non-education examples, the US Environmental Protection Agency estimated that California needed $12 Billion for wastewater treatment facilities (1996) and $19 billion for drinking water infrastructure (1997). The Federal Highway Administration judged 47 percent of California's freeways to be congested in 1999 (almost twice the national rate and much higher than any of the comparison states) but provides no cost estimates.[13]

Recent bond issues and changes in allocation of state funds for school facilities are discussed in the closing section of this report. California has made very substantial commitments in improving school facilities.

California Spends as Much on Instructional Materials as Other States

In the best national data found, compiled by the National Center for Educational Statistics and shown in column seven of Table 7, California spends 94 percent of the national average per pupil expenditures on instructional materials. Its expenditures surpass those of Nevada, Florida, New York and Pennsylvania, and equal those of Illinois, among the comparison states.

As in the case of facilities, California made large investments in instructional materials after the time period reported in Table 7. Those commitments are discussed in the closing section.

[13]. American Society of Civil Engineers. Report Card on America's Infrastructure Needs, 2001.

Table 7. Comparisons of Expenditures on Facilities and Instructional Materials

state	% schools reporting need to up-grade or repair on-site buildings, 1994	State tracks condition of all school facilities, 2002	Facilities acquisition and construction expenditures, 1999-2000 (thousands of $)	Facilities acquisition and construction expenditures, 1999-2000 (per pupil)	Instructional materials, current expenditures, 1999-2000 (thousands of $)	Instructional materials, current expenditures, 1999-2000, per pupil
source code	9: profiles	14: school climate	13: T.7	calculated	13: T.6	calculated
US/reporting states	na	24	35,482,203	751	9,751,742	207
CA	87	no	4,625,124	753	1,199,931	195
AZ	85	X	1,098,073	1,251	325,405	371
NV	83	no	366,396	1,075	46398	136
OR	96	no	327,143	599	120,215	220
FL	85	X	2,560,277	1,052	379,922	156
IL	89	X	1,916,145	935	398,565	195
NY	90	X	1,543,391	535	551,635	191
PA	70	no	1,613,004	889	339,076	187
TX	76	no	4,061,524	1,000	1,059,003	261

9 US General Accounting Office. School Facilities: Profiles of State Condition by State. 1996. GAO/HEHS-96-148

13 National Center for Education Statistics. Revenues and Expenditures for Public Elementary and Secondary Education: School Year 1999-2000. US Department of Education, May 2002.

14 Education Week. Quality Counts 2002. Released January 9, 2003. http://edweek.org/reports/qc03

Comparisons of Districts in Which Plaintiffs are Enrolled vs Other Districts of Same Type

Much as the plaintiffs' experts provide no systematic analysis of California educational structures, policies and financing in comparison to the nation or other states, they provide no systematic analysis of school districts in California. As shown in Table 8, there are 102 plaintiffs from 41 schools (no school is identified for two plaintiffs) in 17 districts. Neither the plaintiffs nor their experts provide systematic information on these schools or districts.

Summary information on (a) enrollments, (b) expenditures per ADA, (c) percent minority students (d) percent of students receiving LEP services, and (e) percent of students eligible for free and reduced price meals for the seventeen districts is shown in Table 9. Comparisons to all of California are also provided. As can be seen, the plaintiffs include students from Los Angeles Unified School District, the largest district in California and from much smaller districts such as Pioneer Union Elementary. These districts do enroll larger fractions of minority students (128 percent of statewide average), students receiving free or reduced price lunches (138 percent of statewide average) and of English learners (138 percent of statewide average).

However, the median expenditure per ADA for these districts is above the average for all California districts. The finances of the districts in which plaintiffs are enrolled were also compared to those of schools of the same type state wide. In these comparisons, elementary districts are compared to elementary districts and unified districts to unified districts. The Alhambra City Elementary School District and Alhambra City High School District are organized as a common administrative unit, reporting financial information jointly to the California Department of Education (CDE). Following the practice of the CDE, the Alhambra Elementary and High School Districts are compared to unified districts.

To most accurately summarize the finances of these districts in comparison to districts of the same type, comparisons for the five years 1996-97 through 2000-01 were calculated. This process reduces the variations that could occur in a single year. The analysis shows these districts:

- Had total revenues/enrollment equal to 102.4 percent of districts of the same type
- Had total expenditures/enrollment equal to 104.3 percent of districts of the same type
- Expended an average of $1,008 per enrollment on instructional materials ($202/annually), equal to 107.1 percent of like districts
- Expended an average of $2,474 per enrollment on sites and buildings ($495/annually), equal to 89.1 percent of like districts.
- Carried an average audited fund balance (July 1) equal to 22.4 percent of expenditures

Compared to all California districts in aggregate, or to districts of the same type, the districts in which plaintiffs are enrolled are ahead in all but the comparison of expenditures on sites and buildings.

No good explanation for being below the average of similar districts in expenditures on school sites and buildings is available. These districts include the state's largest and several other large districts with extensive professional staff so it is very unlikely that they do not know how to access state funds for facilities, one of the claims of the plaintiffs.

In completing this analysis, the possibility arose that there may be other funds available for the education of students in some districts which are not captured in the official school district financial reports of the California Department of Education. For example, the revenues available for services to students in San Francisco Unified School District could be substantially greater than those reported by the Department of Education (and used in these calculations). The San Francisco County Office of Education, serving the single district of SFUSD, receives disproportionately large revenues among county offices of education, totally nearly $2000 per enrollment in SFUSD in 2000-01. If ALL of the revenues available to the Los Angeles County Office of Education that year had been used to serve students enrolled in LAUSD, it equaled $850/enrollment, but there are many more districts and students to serve in Los Angeles County. San Francisco is likely to be an extreme example, however.

At least two incentives exist to direct funds to schools outside the "normal" process: (1) legislators willing to advantage schools in their districts and (2) desire to keep expenditures out of Proposition 98 base calculations. The calculations reported here are based only on the official fiscal reports available from the Department of Education. That is the appropriate starting point and provides the most conservative judgment of the fiscal resources available to these districts.

Table 8. Districts, Schools of Plaintiffs and Number of Plaintiffs by School

district #	DISTRICT	SCHOOL	Number of Plaintiffs
1	Alhambra City Elementary School District	Brightwood Elementary School	2
	Alhambra City High School District	Mark Keppel High School	4
2	Campbell Union Elementary School District	Castlemont Elementary School	2
3	Cloverdale Unified School District	Cloverdale High School	4
4	Fresno Unified School District	Morris E. Dailey Elementary School	4
5	Inglewood Unified School District	Daniel Freeman Elementary School	1
	Inglewood Unified School District	Frank D. Parent Elementary School	3
6	Long Beach Unified School District	Jackie Robinson Elementary School	1
7	Los Angeles Unified School District	Thomas Jefferson Senio High School	7
	Los Angeles Unified School District	unspecified school	2
	Los Angeles Unified School District	John C. Fremont Senior High School	2
	Los Angeles Unified School District	Thomas Jefferson Senio High School	2
	Los Angeles Unified School District	Marina Del Rey Middle School	2
	Los Angeles Unified School District	Berendo Middle School	3
	Los Angeles Unified School District	Gulf Avenue Elementary School	3
	Los Angeles Unified School District	Huntington Park Senior High School	2
	Los Angeles Unified School District	Cahuenga Elementary School	9
	Los Angeles Unified School District	Crenshaw Senior High School	2
	Los Angeles Unified School District	Bret Harte Preparatory Intermediate School	1
	Los Angeles Unified School District	Belmont Senior High School	1
	Los Angeles Unified School District	Joseph A. Gascon Elementary School	1
	Los Angeles Unified School District	George Washington Carver Middle School	2
	Los Angeles Unified School District	Berendo Middle School	
	Los Angeles Unified School District	Susan Miller Dorsey High School	1
8	Lynwood Unified School District	Lynwood Middle School	2
9	Merced City Elementary School District	Tenaya Middle School	1
10	Oakland Unified School District	Garfield Elementary School	3
	Oakland Unified School District	Burbank Elementary School	1
	Oakland Unified School District	Stonehurst Elementary School	4
11	Pajaro Valley Joint Unified School District	Watsonville High School	1
12	Pioneer Union Elementary School District	Berry Creek Elementary School	2
13	Ravenswood City Elementary School District	Cesar Chavez Academy	5
	Ravenswood City Elementary School District	Edison-McNair Academy	2
15	San Francisco Unified School District	Bryant Elementary School	5
	San Francisco Unified School District	Balboa High School	1
	San Francisco Unified School District	Luther Burbank Middle School	4
	San Francisco Unified School District	Balboa High School	1
16	Visalia Unified School District	Redwood High School	1
	Visalia Unified School District	Mount Whitney High School	1
17	West Contra Costa County Unified School District	Wendell Helms Middle School	5
	West Contra Costa County Unified School District	John F. Kenndey High School	2
17		41	102

Table 9. Basic Information on Districts in Which Plaintiffs Enroll

	enrollment	expenditure/ADA	percent minority	percent free and reduced price meals	percent English Learners
State wide	5,790,168	6,360	64.1	46.8	25.0
Districts					
Alhambra City Elementary	11,722	na	91.2	63.4	43.0
Alhambra City High School	8,054	na	92.7	59.6	38.6
Campbell Union Elementary	7,389	6,336	51.2	23.7	23.7
Cloverdale Unified	1,542	6,331	33.5	31.2	7.0
Fresno Unified	76,883	7,018	79.8	72.8	31.0
Inglewood Unified	16,969	6,142	99.3	61.8	36.4
Long Beach Unified	92,194	6,516	82.2	63.3	33.8
Los Angeles Unified	701,280	7,144	90.1	73.9	42.6
Lynwood Unified	17,438	5,734	99.4	76.1	52.6
Merced City Elementary	11,283	6,181	74.7	75.5	35.1
Oakland Unified	51,333	7,527	93.9	54.2	35.3
Pajaro Valley Joint Unified	19,974	6,412	77.9	53.9	45.2
Pioneer Union Elementary	159	7,659	33.3	91.4	0.0
Ravenswood City Elementary	5,134	6,681	99.0	72.3	67.0
San Francisco Unified	57,222	6,457	88.3	40.9	30.1
Visalia Unified	23,326	6,151	56.8	49.4	21.8
West Contra Costa County Unified	32,208	6,904	82.5	46.9	25.2
Median values		6,457	82.4	62.6	34.5

The Remedies Proposed by Plaintiffs and Their Experts Are (a) Based on One of Several Competing Ideas to Improve Education; (b) Not Well Tested; and (c) Are Likely to Have Harmful Effects

The plaintiffs' proposed remedy is to order the State to put in place "..a system with the following components: (1) basic resources and conditions standards governing the availability of adequate facilities, sufficient numbers of qualified teachers, and appropriate instructional materials that apply to all California public schools; (2) a mechanism to monitor the actual conditions in California public schools against those standards; and (3) the capacity to address departures from these standards with an array of intervention and support mechanisms."[14]

The plaintiffs continue to draw from their experts to cite approvingly actions in 10 other states including:

- Regarding access to instructional materials, the states of Florida, South Carolina, Rhode Island, Utah and Kentucky.[15]
- Regarding access to qualified teachers, the states of Connecticut and North Carolina.[16]
- Regarding access to facilities, the states of Arizona, Maryland, and West Virginia.[17]

As suggested above, it is worth noting that no single state serves as a model for the plaintiffs. Moreover, as noted earlier, most of these "model" states differ dramatically from California in the size and/or composition of their student populations. On important measures of educational performance, these states are not good models for California or any state. For example, while 34 percent of Connecticut white 8th graders scored proficient or above on 2002 NAEP math tests, fourth among all states, there is a significant gap between performances of white and black or Hispanic students. Forty-four percent of the state's white's attained this score, but only 4 percent of black students and 9 percent of Hispanic students.[18]

The plaintiffs then lay out "one of many" possible frameworks for remedies in some detail. Their proposed remedy includes standards regarding equal access to (a) instructional materials (e.g., each student should have their own, current text book in satisfactory physical condition), (b) qualified teachers (e.g., 80% of the teachers in each school be fully credentialed), and (c) clean, safe and properly maintained facilities (e.g., indoor air temperature within range of 68-80 degrees Fahrenheit and minimum light of 55 foot-candles at students' desks).[19]

---

[14]. *Plaintiffs' Liability Disclosure Statement,* Williams vs. State of California. October 3, 2002. 324.
[15]. Ibid., 332-334.
[16]. Ibid., 335-337.
[17]. Ibid., 337-341.
[18]. Doherty, Kathryn M. and Ronald A. Skinner. 2003. "Quality Counts 2003. Introduction: State of the States." *Education Week.* January 9.
http://edweek.org/sreports/qc03/templates/article.cfm?slug=17sos.h22 Accessed 1.27.2003.
[19]. Ibid., 341-346.

For implementation, the plaintiffs' suggest building upon AB 1200, passed to reduce the likelihood of school insolvency. The plaintiffs propose monitoring school compliance against their proposed standards, suggesting that the state have county offices of education, each headed by a county superintendent, collect the needed information regarding schools in their county. They also propose intervention: "Districts with substantial departures from standards would receive increased oversight and assistance from the county office of education, and in some instances, the State."[20] A graduated set of interventions is advanced, including (1) informal discussions, (2) increased oversight and assistance using FCMAT intervention teams, (3) withholding budget approval, (4) replacing certain school or district personnel, and (5) requirements to follow specific recommendations (potentially with access to additional funds). County superintendents would be required to annually prepare and make pubic a "state of the schools" report for schools in their county.[21] In this proposed remedy, the California Department of Education would provide technical assistance, develop intervention models and document best practices, facilitative of county district efforts. However, the CDE "might" also supervise interventions in schools with ".. .the most extreme and prolonged substandard conditions...the CDE may expand its current personnel to address these needs. The expanded accountability role of the county offices of education would also be incorporated and coordinated with the CDE's accountability mechanisms."[22] The plaintiffs also propose that the High Priority Schools Grant Program could serve as another potential framework for intervention, leading to "aggressive State intervention" in schools that did not make reasonable progress within three years of entry into HPSGP.[23]

The plaintiffs propose additional interventions regarding facilities funding and construction. Here they propose modifying the state's current fund allocation systems, including the $11.4 Billion bond issues approved by voters in 2002 and the projected additional $10 billion to be placed before voters in 2004. They would assign personnel to assist districts with facilities needs, "order" the state to allocate funds to specified types of districts and "if all else failed" set up an authority to take over capital construction and modernization in a district.[24]

The plaintiffs also seek to reverse or modify selected policies and programs, including:

- Phase out multi-track year-round calendars which offer fewer than 180 days of instruction, such as Concept 6 MTYRE.
- Phase out use of emergency permits, preintern certificates and their equivalents.
- The State be enjoined from conditioning receipt of a high school diploma upon passage of the high school exit exam until the state can demonstrate equality in access to basic educational necessities.

---

[20]. Ibid., 348.
[21]. Ibid., 348-349.
[22]. Ibid., 350.
[23]. Ibid., 351.
[24]. Ibid., 352-357

- The State refrain from expanding programs such as class size reduction without first ensuring they will not exacerbate inequality.[25]

The plaintiffs' proposed remedies have three elements:

1. Increased inputs in the three areas of certified teachers, instructional materials and facilities
2. Increased state direction of school activities, initially through county offices of education, but ultimately with direct state action
3. Cessation, suspension or reversal of several current educational practices, including some recently adopted reforms

As a set, the remedies advanced by the plaintiffs and their experts advocate substantially increased state direction of activities in schools. They also advocate specific changes in the allocation of resources to schools.

Their ideas are but one of several hotly contested approaches to improve education. Indeed, at a time when many initiatives to improve education focus on (a) performance, (b) accountability and (c) increased flexibility, the plaintiffs are focusing upon inputs and state control. This contrast is visible in comparing the plaintiffs' proposed remedies to the requirements of the national No Child Left Behind Act, for example, a comparison further developed in the closing section of this report.

Plaintiffs' Remedies Are Based on One of Several Competing Ideas to Improve Education. Competition for dominance in policy making is common to some policy arenas, particularly those where societal values conflict and "technical" uncertainty exists as to how to achieve the desired goal. In these policy arenas, which include education, welfare and public safety, for example, conflict is intense because of differences of judgment regarding goals, policy instruments and the effectiveness of those policies. One possible result in such a policy arena is ambiguity and volatility in the structures and policies adopted. Another consequence is continued conflict through shifting arenas as advocates of one or another set of reforms continue their advocacy in whatever arena they judge likely to afford a receptive audience. Those arenas include legislative processes, initiatives, courts, the Department of Education and other state agencies related to schools, colleges and universities preparing teachers, the schools themselves and whatever structures are available for parent and citizen involvement in schools.

Brief examination of several ideas advanced on improving schools illustrates the breadth and depth of division. The challenges these divisions pose for successful implementation of the plaintiffs' proposed remedies are examined below.

As a first example, the report of the National Commission on Governing America's Schools (1999) contrasts two competing images of the future of education. The first al-

[25]. Ibid., 357-361.

ternative is "a system of publicly authorized, publicly funded and publicly operated schools." The second alternative is "a system of publicly authorized, publicly funded and independently operated schools."[26]

The plaintiffs and their experts are advocates of the first alternative. But the second alternative, which shifts substantial discretion downward to local communities and families, has strong advocates and is making progress on several fronts. Charter schools and vouchers are examples of initiatives which shift discretion downward to local communities and families. One compilation counts a total of 428 charter schools operating in California in fall 2002, sixteen percent of those operating nationally.[27] Another report from the Education Commission of the States, analyzes the "invisible hand" of ideology in school governance and policies. It comments that the current debates about schools take place in a "..global trend toward a diminished state role in public life."[28]

The evidence on vouchers and charter schools is mixed and much remains to be learned, especially if these initiatives become wide spread and enroll large numbers of students. An assessment by RAND concludes:[29]

> ..in some contexts—such as high poverty cities with substantial African-American populations, or communities that have underperforming public schools—targeted voucher programs may produce discrete benefits. Such programs will not be the silver bullet that will rescue urban education, but they are unlikely to produce the negative consequences that voucher opponents fear.
>
> Evidence on existing charter laws is hard to summarize...Existing charter schools frequently satisfy a parental demand and are producing mixed but promising academic results.

The United States Supreme Court upheld the Cleveland voucher program in June 2002, shifting battles over vouchers and charters to the states and school districts.[30] Those battles will be intense. California voters rejected Proposition 38, an ambitious voucher program, in 2000, but the interest in charter schools and vouchers continues.

A different broad distinction among approaches to improving educational performance is suggested by Professor Eva Baker, who analyses three frequently used metaphors used to explain/sell education reform. She focuses on the "closely-linked" metaphors (1) all chil-

---

[26], National Commission on Governing America's Schools. 1999. Denver: Education Commission of the States.

[27]. Center for Education Reform. 2003. Charter School Highlights and Statistics. http://edreform.com/pubs/chglance.htm Accessed 2.26.03.

[28]. Education Commission of the States. 1999. The Invisible Hand of Ideology: Perspectives from the History of School Governance. Denver. Page 16.

[29]. Gill, Brian P., Michael Timpane, Karen E. Ross and Dominic J. Brewer. 2001. *Rhetoric versus Reality: What We Know and What We Need to Know About Vouchers and Charter Schools.* Santa Monica, CA: RAND. MR-118-EDU. 213-214

[30]. Walsh, Mark. 2002. "Justices Settle Case, Nettle Policy Debate." *Education Week.* July 10. http://www.edweek.org Accessed: 2.8.03; Gehring, John. 2002. "Voucher Battles Head to State Capitals." *Education Week.* July 10. http://www.edweek.org Accessed: 2.8.03.

dren can learn, (2) high standards/aligned systems, and (3) management by results. Baker concludes that the metaphors mask real differences in values and obscure challenges in implementing reforms. She advocates creation of "strong standards to judge the quality of assessment and accountability systems...to guide practice." She also advocates investment in a "detailed map of school learning."[31]

Within those advocates who argue for publicly operated schools, there are important differences regarding strategy. For example, Husbands and Beese (2001) analyzed five broad approaches to improving high schools:[32]

- Small schools
- Applied learning
- Professional development/curriculum and instruction
- Youth development
- Comprehensive/whole school reform

These broad approaches were based on different theories of action, sought different intended outcomes and marshaled different bodies of evidence to advance their ideas regarding desirable reforms.

One example of systematic efforts to pursue the comprehensive/whole school reform approach is the New American Schools effort, supported by a non-profit of that name, begun in 1991. The RAND Corporation was retained to chronicle and evaluate the effort, providing extensive information on adoption of the model by over 500 schools by 1995, challenges encountered (e.g., to ramp up to many schools), and assess changes in student performance. RAND tracked 104 schools longitudinally as they implemented reforms.[33]

Others advocate narrower, but still very ambitious objectives. An example is the desire of The Education Trust to "..make sure all of California' public high school students are enrolled in a high-rigor, college quality curriculum." They supported legislation (SB 1731) originally drafted to this end, but then amended in ways that caused The Education Trust to withdraw support.[34]

In still another approach, the strategy shifts to changing local school governance, especially in large urban districts, with state legislatures giving city mayors increased authority over schools. Chicago, New York, Boston and Cleveland are examples of seven dis-

---

[31]. Baker, Eva L. 2002. *The Struggle to Reform Education: Exploring the Limits of Policy Metaphors.* Los Angeles: Center for the Study of Evaluation, National Center for Research on Evaluation, Standards and Student Testing, Graduate School of Education and Information Studies, UCLA. CSE Technical Report 576. 10.

[32]. Husbands, Jennifer and Stacy Beese. 2001. Review of Selected High School Reform Strategies. Paper prepared for the Aspen Program on Education. Aspen, CO. July 17-22, 200.

[33]. RAND. 2002. *A Decade of Whole-School Reform: The New American Schools Experience.* Santa Monica, CA: RB-8019; Berends, Mark; Susan J. Bodilly, Sheila Nastaraj. 2002. *Facing the Challenges of Whole School Reform: New American Schools After a Decade.* Santa Monica, CA. http://www.rand.org/publications/MR/MR1498.

[34]. The Ecducaton Trust. 2002. An Update on Senate Bill 1731. http://www.edtrust.org/main/main/calbillupdate.asp Accessed: 2.26.03.

tricts with enrollments of greater than 100,000 now governed by an appointed board as a result of state-mayoral actions.[35] Evaluations of these efforts have been summarized and extended by Kirst, who identified important differences in mayoral influence and in strategies pursued to improve educational performance, concluding that "Mayors are able to help balance the budget, improve buildings, and increase school supplies, but intervention in the classroom is more difficult.[36] In California, Mayor Serna's effort to improve performance of Sacramento schools by selecting and campaigning for a slate of school board members, but then letting them work to reform the schools is counted by Kirst as an example of (successful) low mayoral influence. Mayor Brown's appointment of three (of ten) members of the Oakland school board is counted as an (ineffectual) example of low/moderate mayoral influence.

Local business and civic led efforts to improve schools are also common. Stone and colleagues analyzed such efforts in eleven large urban school districts (including Los Angeles and San Francisco).[37] They argue that "civic mobilization" is required to achieve systemic efforts to improve education. They analyzed civic mobilization for school reform in five sectors (business, parents, teachers, superintendent, and other, such as foundations or courts). To judge systemic reforms, they analyzed ten different alternative reforms (e.g., post school transition programs, administrative decentralization, innovative testing and assessment practices) with districts engaging in more such reforms judged to be engaged in systemic reforms. More civic mobilization occurred in Los Angeles than in San Francisco, according to these analysts, and also more systemic reform of education and although pressure of a consent decree under a federal desegregation order compelled some change in San Francisco, it fell below that achieved in Los Angeles.[38]

The strategy advocated by the Institute for Research and Reform in Education is an example of a school site focus with a particular focus on the transition from school to adult roles. They advocate [for students] (1) lower student/adult ratios by half during core instructional periods, primarily by reassigning professional staff, (2) provide continuity of contact between adults and students, (3) set high, clear, and fair academic and conduct standards, (4) provide ample opportunities for students to learn, to perform and to be recognized, and [for adults] (5) equip, empower and expect all staff to improve instruction, (6) allow for flexible allocation of resources and (7) assure collective responsibility.[39] Their approach has been implemented with support from the US Department of Education in Kansas City, Kansas, selected Houston schools and a few others.

Even among advocates of "adequate" funding, a group that includes the plaintiffs and their experts, there are a variety of approaches to defining adequacy in funding and a

---

[35]. Cook, Glenn. 2002. "Taking Charge." *American School Board Journal*, December.

[36]. Kirst, Michael W. 2002. *Mayoral Influence, New Regimes, and Public School Goverrnance.* Philadelphia, PA: Consortium for Policy Research in Education. May. RR-049.

[37]. Stone, Clarence N., Jeffrey R. Henig, Bryan D. Jones, and Carol Pierannunzi. 2001. *Building Civic Capacity: The Politics of Reforming Urban Schools.* Lawrence, KS: University of Kansas Press.

[38]. Ibid., 132-33.

[39]. Institute for Research and Reform in Education. 2001. *First Things First: A Framework for Successful School Reform.* A White Paper Prepared for the Ewing Marion Kauffman Foundation. Philadelphia, PA: IRRE.

wider variety of ideas regarding how improved student performance will be achieved. WestEd identified four models by which to determine adequate funding based on: (1) costs of typical high-performing schools, (2) costs of implementing pre-deigned curricular elements, (3) costs to implement professional judgments of education professionals and (4) econometric estimation of cost functions to achieve desired performance.[40] The third model is closest to that used by plaintiffs and their experts.

WestEd concludes that giving individual schools more discretion over allocation of funds is critical and turns to lessons from research on comprehensive reforms such as those described above for suggestions. These do NOT include the remedies advocated by the plaintiffs, making almost no mention of facilities, instructional materials or teacher certification. Instead, WestEd also advocates (1) allocating resources in support of instructional improvement, (2) building capacity of teachers and principals, (3) changing incentives, including restructuring teacher compensation (mention is made of licensing teachers under standards) and (4) building system capacity through investment in extra student learning opportunities such as preschool, all-day kindergarten and extended day academic programs (mention is made of safe, adequate school facilities and investments in technology in this section).

Sacramento City Unified School District was assessed as one of four urban school districts that improved student achievement (the others were Houston Independent School District, Charlotte-Mecklenburg School District and New York City Chancellor's District) for the Council of Great City Schools. Large urban school districts face common challenges, according to this report: (1) unsatisfactory academic achievement, (2) political conflict, (3) inexperienced teaching staff, (4) low expectations and lack of demanding curriculum, (5) lack of instructional coherence, (6) high student mobility, and (7) unsatisfactory business operations.[41] These four school systems were chosen for analysis because they demonstrated a trend of improved student achievement over at least three years, narrowed the difference between minority and white students, were improving more rapidly than other schools in their respective states and were geographically representative.

The four successful schools were found to meet important preconditions (e.g., effective board, shared vision, accurate diagnoses, specific goals, improved business operations and finding funds to commit to instructional priorities) and shared elements of educational strategies (e.g., specific timetables to meet goals, accountability, focus on lowest performing schools, uniform curricula, professional development built on curriculum, ensuring reforms reach classroom, and effective use of data).[42] This analysis suggests that improving student performance require approaches quite different than those advocated by the plaintiffs; this approach focuses on effective use of resources, not provision of fa-

---

[40]. WestEd. 2000. *Policy Brief: School Funding, From Equity to Adequacy.* San Francisco. July. http://www.wested.org/cs/wew/view/rs/180. Accessed; 2.28.03.

[41]. Snipes, Jason, Fred Doolittle and Corinne Herlihy. 2002. *Foundations for Success: Case Studies of How Urban School Systems Improve Student Achievement.* Washington, DC: Prepared by Manpower Demonstration Research Corporation (NDRC) for the Council of the Great City Schools.

[42]. Ibid., 4-12.

cilities, instructional materials or credentialed teachers (teacher professional development was required in Sacramento).

Others are not sure that state efforts to improve schools over the past two decades have been successful. For example, a careful analysis of the effects of school reforms as measured by impacts on state-level NAEP math scores in 4th and 8th grades found wide variation in increased scores over the 1990-96 period. This analysis controlled for family SES (always having significant effects), school resource level measured as pupil/teacher ratios and teacher salaries (modest, variable effects) and for state group (Northern urban, Southern and Northern nonurban) analyzing NAEP scores for central city, suburban and rural schools. California is classified as a "Northern urban" state in this work. Only the three states of North Carolina, Texas and Michigan have statistically significant gains in NAEP math scores in central city, suburban and rural schools. Mississippi, Indiana, Kentucky and Arkansas have statistically significant increases in two school types.[43]

Triesman and Fuller report a similar analysis of state improvements in NAEP scores, focused on minority subpopulations and whites, finding that only the three states of Texas, North Carolina and Colorado had statistically significant increases in 1996 eighth grade scores for whites, African Americans and Hispanics and only Texas had significant fourth grade score increases for all three subpopulations.[44] Taken together, these four authors conclude that the number of states that have effectively reformed their schools is very small: only Texas and North Carolina meet the criteria of statistically significant increases in NAEP scores for central city, suburban and rural schools and for whites, African Americans and Hispanics.

Others argue that the data that would be required to assess the success of state reform efforts are unavailable. Meyer argues that the NAEP data are not a good base upon which to develop policy recommendations and Linn and Haug find year-to-year scores of students in Colorado are so volatile as to show almost zero correlation of school gains from years 1 to 2 with those from years 3 to 4.[45]

The Education Trust has been analyzing "high-flying" schools with high poverty and minority student enrollments in its *Dispelling the Myth* series. To qualify for inclusion as high flying, a school must have performance on one or more state assessments (e.g., fourth grade math) among the top one third of all schools in its state. A school qualifies

---

[43]. Grissmer, DAvic and Ann Flanagan. 2001. "Searching for Indirect Evidence for the Effects of School Reforms." In: Diane Ravitch (editor) *Brookings Papers on Education Policy, 2001*. Washington, Dc: Brookings Institution. 181-207.

[44]. Treisman, Philip Uri and Edward J. Fuller. 2001. Comment on Grissmer and Flanagan. In: Diane Ravitch (editor) *Brookings Papers on Education Policy, 2001*. Washington, Dc: Brookings Institution. 208-218.

[45]. Meyer, Robert H. 2001. . Comment on Grissmer and Flanagan. In: Diane Ravitch (editor) *Brookings Papers on Education Policy, 2001*. Washington, Dc: Brookings Institution. 218-229; Linn, Rober L. and Carolyn Haug. 2002. "Stability of School Building Accountability Scores and Gains." Los Angeles: Center for the Study of Evaluation, National Center for Research on Evaluation, Standards, and Student Testing. Graduate School of Education and Information Studies. UCLA. April. CSE Technical Report 561.

as high poverty when at least 50 percent of its students qualify for the federal free and reduced lunch program and it ranks among the top one-third of all schools in its state at the same grade level on this measure. The high minority criterion is similar: at least 50 percent of all students are African American or Latino and rank in the top one third of all schools in the state for that grade level. In its 2001 report, 162 California high poverty and/or high minority schools qualified for inclusion. Nine of the 17 districts in which plaintiff students enroll had at least one school qualify as a high flyer. In the 2002 report of The Education Trust, in which the criteria were further tightened to include schools with two consecutive years as high flyers (but the areas tested were expanded beyond reading and math to any of six areas tested by a state), 256 California schools qualified (out of 2770 nationally). Eight of the 17 districts in which plaintiff students enroll had at least one school qualify as a high flyer.[46]

The Remedies Advanced by the Plaintiffs Are Not Well-Tested. Understanding the effects of education reform efforts is critical and requires careful designs, of which there are some examples. The RAND analysis of whole schools also includes development of a careful methodology by which to assess progress in implementation and effects achieved.[47] Another careful development of the research design necessary to assess the effectiveness of efforts to improve school performance is offered by The Urban Institute (Puma et al., 2000) in discussing what is needed to evaluate the movement to standards.[48]

Without results from such careful evaluations of large scale reforms, advocacy of selected ideas to improve education must necessarily rely upon belief as to what might be successful without any evidence that their good ideas can be successful. The challenges in effective implementation of any large initiative in complex arenas are well known, but not recognized by the plaintiffs and their experts.

It takes much more than good ideas and good intentions to reform a complex school district, a point well-illustrated by Los Angeles Unified School District, the nation's second largest. WestEd's analysis of local efforts to reform Los Angeles Unified School District reports as follows:[49]

> Over the past two decades, the Los Angeles Unified School District (LAUSD) has experienced successive waves of reforms aimed at increasing school level authority and autonomy, and building the capacity of school personnel to lead curricular innovations. While each reform was exposed to a period of heightened attention and impact on practice, none managed to seriously alter the relationships and culture of the system known as LAUSD. More importantly, sustained gains in student achievement did not occur...A brief summary of the major

---

46. The Education Trust. 2001. Dispelling the Myth Revisited.

47. Ibid., 171-207.

48. Puma, Mike; Jacqueline Raphael; Kristen Olson and Jane Hannaway. 2000. *Putting Standards to the Test: A Design for Evaluating the Systemic Reform of Education.* Washington, DC: The Urban Institute, prepared for the US Department of Education.

49. WestEd. 2003. *Creating Excellence for all Students: Transforming Education in Los Angeles.* Recommendations from WestEd to the Los Angeles Alliance for Student Achievment. San Francisco. Appendix C, 41-42.

achievement did not occur...A brief summary of the major reform efforts over the past two decades [includes]:

- Los Angeles Education Partnership (LAEP) – 1984
- Site Based Management (SBM) – 1989
- Kids 1st – 1990
- LEARN – 1993
- LAAMP – 1995
- Los Angeles Alliance for Student Achievement (merger of LEARN and LAAMP) – 2000
- District Reorganization – 2000 (decentralization under interim superintendent Cortines, then centralization under superintendent Romer)

However, WestEd observes that these reform efforts have been training grounds for cadres of leaders, outside and inside LAUSD, who remain committed to reforming the District and are increasingly well-informed. WestEd's recommendations for LAUSD are very different than those advocated by the Williams plaintiffs and their experts. They recommend (a) creation of a network of new schools to foster innovation and offer new opportunities based on existing charter school legislative authority and (b) revamping district governance and structures to ensure high standards and strong accountability while decentralizing decision making and offering greater school choice.[50] The WestEd analysis of LAUSD recognizes shortages in fully certified teachers and a "crisis" in facilities caused by burgeoning enrollments (nearly 180,000 since 1980) but it sees the major barriers to improving student performance in "..a set of structures and a culture that are highly resistant to change, leadership constraints that impede the progress of the superintendent, a school board operating in a politically charged environment, limited school autonomy, and unclear accountability at all levels."[51]

The plaintiffs focus on teachers, instructional materials and facilities is a far simpler strategy than the Los Angeles Alliance for Student Achievement /WestEd proposals for LAUSD or the comprehensive reforms being undertaken under other approaches examined above. Given the poor track record of prior efforts to improve student performance in LAUSD, there is little reason to believe the plaintiffs' remedies would have significant positive impacts on student performance in LAUSD.

Plaintiffs' experts sometimes recognize the challenges to implementing their proposed approaches. Grubb and Goe, for example, state:

> ..even if the "new" school finance is not new, its perspectives are not yet widespread, either in research, or in the practices of administrators and school reformers, or in legislation and policy making...Principals and other school leaders seem to lack the capacity to make cost-effective spending decisions, spending in piecemeal ways that respond to immediate needs rather than driving spending, despite school-based management and

---

50. Ibid., iv-v.
51. Ibid., 8.

> other changes that give them (some) greater power...Policy makers continue to increase funding for schooling without clear ideas about how these resources will be spent. So it's worth continuing to articulate the perspectives of the "new" school finance since it will not become the dominant way of examining school resources until educators, policy makers and researchers all embrace it.[52]

Grubb and Goe also lament that policies and funding for California schools are "uncoordinated" and want stability in education policy.[53] Similarly, Oakes complains of

> ..deeper, systemic flaws in California's education system. These flaws include a) a fragmented and incoherent approach to state policy making; b) a system of school finance constructed in the absence of an overall plan for providing equitable and adequate resources and conditions; and c) a reluctance to invest in ways that ensure an equitable distribution of adequate resources and conditions; d) the delegation of responsibility for providing adequate and equitable education to local districts in the absence of State will or capacity to prevent the occurrence of serious inadequacies and disparities or to detect and correct them, should they arise. These flaws grow out of California's peculiar education policy history since the 1960's, and they have been exacerbated by the State's recent decision to rely on test-based accountability to drive educational improvement.[54]

This is a complaint against a democracy of shared powers and a federal governmental system not at all particular to education or to California. Policy making in this democracy is famously messy, fragmented, incoherent, and involves multiple levels, complex financing structures and all the rest of Oakes' complaints. A few examples illustrate this important point.

Beryl Radin, past President of the Association for Public Policy Analysis and Management, writes about the role of the policy analyst in these terms:

> At the most basic level, the American system of shared powers (with authority widely dispersed among the executive, legislative and judicial branches) effectively means that there are very few cases in which any one institution—let alone any one person—has the power to make a clear cut decision....decisions in the U.S. political system almost always involve bargaining and negotiation...fragmentation..creates situations in which various institutions are able to stop decisions even if unable to make a decision on their own.[55]

---

[52]. Grubb, W. Norton and Laura Goe. nd. *The Unending Search for Equity: California Policy, the "New" School Finance, and the Williams Case.* Plaintiffs expert report. 30.

[53]. Ibid., 26,58.

[54]. Oakes, Jeannie. nd. *Education Inadequacy, Inequality, and Failed State Policy: A Synthesis of Expert Reports Prepared for Williams v. State of California.* Plaintiffs' expert report. 2.

[55]. Radin, Beryl. 2000. *Beyond Machiavelli: Policy Analysis Comes of Age.* Washington, DC: Georgetown University Press. 93.

Deborah Stone's classic analysis of policy making emphasizes the impacts of differing approaches to four common goals (equity, efficiency, security and liberty) which are continuously constructed through political struggle. Similarly, the major policy strategies (incentives, rules, persuasion, legal rights, and reorganization of decision making authority) are complex social processes.[56] Political struggle is central to continued construction of the political community and policy debates over education, welfare, the environment or whatever are the stuff of that odyssey.

Robert Lieberman makes the same argument regarding political conflict and messy policies in democracies in a recent analysis of passage and implementation of the Civil Rights Act. Analyzing the interplay between institutions and ideas, he writes:

> Policy making in democratic government is not simply a process of optimizing the choice of policy instruments to solve readily identifiable social problems...Rather, it entails formation of coalitions among actors who represent both interests vying for power and diverse policy ideas...the results it produces are not necessarily coherent and orderly but rather tend to build on prior policies without clearing away or dismantling them. The very process of policy making can perpetuate the system of clashing ideological and institutional orders..[57]

Moreover, the plaintiffs and their experts misrepresent California as an outlier in structures, policy strategies and finances of schools. As seen earlier in this analysis, California is very much in the mainstream of educational practices in this nation. Indeed, if Oakes complains that California has exacerbated challenges to improving education by adopting high stakes testing, she is equally unhappy with the choice of many other states.

The plaintiffs and their experts also underestimate the difficulties in changing a system of the size and complexity of California public elementary and secondary education. They similarly underestimate the risks of unintended consequences or of introducing constraints on future changes. The list of efforts to improve educational performance discussed above provides compelling evidence that changing these systems is very difficult. It is not for want of ideas, money or human energy that more progress has not been made in improving educational performance of students. Many ideas about how to improve schools have been pursued vigorously. Much has been learned about barriers to achieving desired improvements in educational performance. The list of efforts to improve the student performance in the Los Angeles Unified School District provided above is one illustration of the challenges confronted in implementing reform ideas.

Unintended consequences can also arise from the most well-intentioned strategies to improve performance of complex systems. As cited above, Stone and colleagues suggest the existence of court orders may have compelled some changes in the San Francisco Unified School District but also constrained capacity of the district to innovate in other areas.

---

[56]. Stone, Deborah. 2002. *Policy Paradox: The Art of Political Decision Making.* New York: W. W. Norton & Company. Revised edition (first edition 1988). 37-38; 261-264.

[57]. Lieberman, Robert. 2002. "Ideas, Institutions, and Political Order: Explaining Political Change." *American Political Science Review* 96:4 (December) 697-712. 709.

These patterns of (a) great difficulty in achieving intended reforms, (b) unintended consequences and (c) past choices constraining new options are seen widely in most policy areas seeking to affect complex systems. For example, the analyses of environmental protection undertaken by the National Academy of Public Administration found that the regulatory system centered on the U S Environmental Protection Agency "..can fail the nation because it cannot address three pervasive problems.." (1) Inability to extend the national regulations that have proven effective in controlling large industrial sites to millions of small, dispersed sources. (2) EPA's organizational structures focus separately on (a) air pollution, (b) water pollution and (c) hazardous wastes, impeding efforts to deal with complex, multilayered environmental problems or to collaborate effectively with critical governmental and private organizations. And (3) political problems faced in overcoming a deadlock between Democrats and Republicans about how best to protect the environment and to balance other values.[58]

Another example of the challenges faced in reforming complex systems is seen in California's effort to implement the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Much has been accomplished in the years since adoption of these major welfare reforms, but challenges remain. Researchers from the Urban Institute, for example, found that California's subsidized child care system, a three stage system involving two state agencies (California Department of Social Services and California Department of Education) and all counties in the state, remains challenged by "..(1) its own complexity, (2) inadequate funding to serve all eligible families, (3) inequitable access to subsidies for nonwelfare families, (4) lack of statewide data systems, and (5) shortages of care for infants and toddlers, children with special needs, children with short- or long-term illnesses, and care during nontraditional hours."[59]

California is Making Good Progress to Improve Schools, Progress Which Plaintiffs Proposed Remedies Threaten

As seen in the systematic comparisons of the performance of California schools versus the nation and eight appropriate comparison states, California is doing reasonably well. Statewide high school graduation rates are near the national average, but California schools graduate higher proportions of African American and Hispanic students, have a smaller percentage of 16-19 year olds not in school who have not graduated, and the performance of students from California poor urban schools is closer to the other schools in California than in half of the comparison states.

The plaintiffs and their experts identify no states to serve as a model for California. They cherry pick features of policies they like that have been adopted by different states, but they identify no state which they would emulate in full. In many cases, their comparisons

---

[58]. National Academy of Public Administration. 2000. *Environment.gov: Transforming Environmental Protection for the 21st Century.* Washington, DC. Pages 18-19.

[59]. Montgomery, Deborah, et. al., 2002. *Recent Changes in California Welfare to Work, Child Care, and Child Welfare Systems.* Washington, DC. The Urban Insitute. May. Page 21.

are to states radically different than California. Nor do the plaintiffs and their experts judge the overall educational performance of any state as superior to California.

The available research suggests Texas is the only state roughly comparable to California in composition of students and in scale that may have improved the educational performance of all important subpopulations of students. The Texas strategy for improving education focused on early childhood education, curricular improvements and strong accountability measures. While Grissmer, et al, found that Texas students doing well on NAEP tests, Klein, et al cautioned that more careful examination suggests that while Texas 4th graders scored well compared to national patterns, the improvements between 4th and 8th grades are not much different than the national pattern, and they find less reason to believe that the educational performance of minority students have improved remarkably.[60]

When recent initiatives are considered, it is even more plausible to argue that California is on a good trajectory toward improving performance of its schools. The metaphorical glass is half full and filling as opposed to close to empty and draining. In addition, implementation of the national No Child Left Behind Act will increase the focus upon continued school improvement.

The list of initiatives to improve education in California that have been implemented in the past few years and are pending is impressive, including:

- Substantial increases in funding available for schools, up approximately 20 percent in real dollar terms per ADA from 1991-92 through 2002-03.[61]
- AB 1200 (effective 1992) sought to improve fiscal solvency of schools, giving county offices of education responsibility and authority over district fiscal affairs; has been expanded subsequently (e.g., AB 139, effective 2002). The key components of the AB 1200 approach include: (a) budgeting and financial reporting, (b) standards and criteria, (c) auditing, (d) intervention and (e) public disclosure.[62]
- Fiscal Crisis and Management Assistance Team (FCMAT) (created in 1992), to provide assistance to school districts in fiscal difficulty. The roles of FCMAT have been expanded subsequently (e.g., to encompass reviews of districts' human resources and personnel practices, to provide technical assistance to districts with high numbers of teachers with emergency permits, presentation of professional development broadcasts, and managing the California School Information System). Since 1992, FCMAT has performed over 300 reviews for school districts

---

[60]. Grissmer, David W., Ann Flanagan, Jennifer Kawata and Stephanie Williamson. 2000. *Improving Student Achievement: What State NAEP Test Scores Tell Us.* Santa Monica, CA: RAND (MR-924-EDU) http://www.rand.org/publications/MR/MR924/. Klein, Stephen P., Laura S. Hamilton, Daniel F. McGaffrey and Brian M. Stecher. 2000. *Issue Paper: What Do Test Scores in Texas Tell Us?.* Santa Monica, CA: RAND (MR-924-EDU) http://www.rand.org/publications/IP?IP202.

[61]. Legislative Analyst. 2003. *Analysis of the Budget Bill, 2003-04.* Sacramento: Legislative Analyst Office, State of California. Page E-8.

[62]. Los Angeles County Office of Education, Division of Business Advisory Services, Financial Management Services. 2002. *Fiscal Solvency Evaluation Workshop.* Los Angeles. November 13 (PowerPoint slides).

and county offices of education. Eight of the 17 districts enrolling plaintiffs have received review services from FCMAT.[63]

- Passage of large state bond issues for school facilities:
  - 1998 - $6.7 Billion
  - 2002 - $11.4 Billion
  - 2004 (on the ballot) - $10 Billion
- Proposition 39 (passed by voters in November 2000 and setting a 55 percent threshold for passage of school bonds). In the November 2002 election, 85 percent (69 of 81) K-12 bond measures on the ballot passed, for a total of $ 6.2 billion in local bond financing for schools.[64]
- Changed formula for allocation of funds for facilities in Proposition 1 A (1998), with specific amounts to new construction ($2.9 Billion), modernization ($2.1 Billion), hardship cases ($1 billion) and class size reduction ($700 million), allocated on a "unhoused" per pupil basis[65] Proposition 1A made substantial reforms in how the state funds school facilities.
- Substantial increases in funding for instructional materials including textbooks. The Schiff-Bustamante Standards-Based Instructional Materials program (1998) appropriated $1 billion over four years. The State Board of Education subsequently decided that English language arts and mathematics instructional materials purchased with these funds which met interim standards did not qualify as being standards-aligned because they were not adopted using the existing standard-aligned framework even though there are not significant differences in the materials, a decision the LAO recommends the Legislature reverse so that the $1 billion investment can be recognized.[66] In 2002, the Legislature created a new block grant program for instructional materials (IMFRP, effective January 1, 2003) to provide funding for purchase of standards-aligned materials in core subject areas of English language arts, mathematics, history-social science, and science. That act requires school districts to provide each student with standards-aligned materials within 24 months of a statewide adoption and allocates funds to schools on an equal amount per pupil enrolled in elementary and high schools.[67]
- Significant increases in numbers of fully qualified teachers. In the last year for which data are available (2000-01), the number of teachers newly available increased 8 percent, the number of emergency teaching permits decreased 5 percent and the number of credential waivers decreased 17 percent. A significant part of

---

[63]. Fiscal Crisis and Management Assistance Team. 2002. *Annual Report, July 1, 2002-June 30, 2002.* Bakersfield: FCMAT. (October 20).

[64]. School Services of California, Inc. 2002. *The Fiscal Report: California School Bonds Pass Handily.* 22:23 (November 15).

[65]. Cohen, Joel. 1999. *School Facility Financing: A History of the Role of the State Allocation Board and Options for Distribution of Proposition 1A Funds.* Sacramento: California Research Bureau. Unhoused students are defined as the number of students above the maximum set by the California Department of Education to be in a classroom. Priority points are based on the percentage of currently and projected unhoused students relative to total student populations among other things. Page 43.

[66]. Legislative Analyst. 2003. *Analysis of the Budget Bill, 2003-04.* Sacramento: Legislative Analyst Office, State of California. Pages E-132 – E-133.

[67]. Legislative Analyst. 2003. *Analysis of the Budget Bill, 2003-04.* Sacramento: Legislative Analyst Office, State of California. Pages E-133 - E-134.

the increase in newly prepared teachers reflected success in attracting teachers prepared out of state, testimony to the success of recent legislation streamlining the credentialing process for out-of-state teachers.[68] California has established incentives to attract first-rate teachers to low-performing schools, including a college-loan forgiveness program, housing incentives, waivers of state testing and licensing fees, and bonuses. As noted earlier, it is one of the few states to fund a two year mentoring program for new teachers. California retains teachers at higher than the national averages (84 percent after 4 years compared to 67 percent nationally).[69] Over 60 percent of the individuals who received their first long-term emergency credential in 1995-96 earned a full teaching credential within five years, a success which increased to over 70 percent for the 1997-98 cohort.[70] The number of emergency permits and waivers issued annually declined from high in 1998-99 through 2000-01, the latest data available.[71]

- Completion of a California Master Plan for Education which includes pre-K through higher education (2002)
- The Governor's proposals in his 2003-04 submitted budget to combine 58 categorical grant programs into a block grant, providing school districts with increased flexibility. The LAO advocates consolidating even more categorical grants in to five block grants (Academic Improvement [combines 22 current programs], Compensatory and Alternative Education [19 current programs], Core Services [12 current programs], Vocational Education [5 current programs], and Regional Support [6 current programs]).[72]

Moreover, there is evidence that student performance is improving as a result of these efforts. EdSource analyzed the lowest performing California schools, those in the 1st and 2nd deciles of the 1999 California Academic Performance Index (API) based on the Stanford-9 test of basic skills, to see how many had improved by 2002 and to understand reasons for varying levels of improvement.[73] Here are highlights from the Executive Summary:

1. 1999 1st and 2nd deciles elementary schools have made greater point gains than 1999 9th and 10th deciles schools
2. About a third of 1999 1st and 2nd deciles elementary schools have met statewide targets for growth in scores all three years, 29 percent have met all targets for significant subgroups and 25 percent have done both
3. About 11 percent of the 1999 1st and 2nd deciles elementary schools (104 of 968) met EdSource criteria of "Exemplary Progress"

---

[68]. California Commission on Teacher Credentialing. 2002. *Teacher Supply in California: A Report to the Legislature. Fourth Annual Report, 2000-01.* (April)

[69]. California Commission on Teacher Credentialing. 2002. *Preliminary Report on Teacher Retention in California.* September 17.

[70]. California Commission on Teacher Credentialing. 2003. *Preliminary Report: Emergency Permit Holders Earning Teaching Credentials in California.* Sacramento: CCTC. March 6.

[71]. California Commission on Teacher Credentialing.

[72]. Legislative Analyst. 2003. *Analysis of the Budget Bill, 2003-04.* Sacramento: Legislative Analyst Office, State of California. Pages E-43 – E-75.

[73]. EdSource. 2003. *California's Lowest-Performing Schools: Executive Summary.* Palo Alto, CA" EdSource, Inc. February.

4. 75 of those 104 Exemplary Progress elementary schools are in LAUSD
5. Much less progress was made in middle and high schools

The factors contributing to success in the Exceptional Progress schools included:[74]

1. Curriculum based reforms (all teachers use the same books, have had the same training on using the curriculum effectively, share common expectations regarding student performance, the same methods of student assessment and the same suite of tools to help students having trouble)
2. School leadership (principals at successful schools were much more likely to report spending more than half their time on instructional issues)
3. Addition of before and after school instructional time
4. Retain students in benchmark grades when their performance does not meet acceptable standards

Contrary to what the plaintiffs and their experts argue, credentialing teachers did not contribute to success. EdScource states: "..many Exemplary Progress schools had percentages of less than fully credentialed teachers and staff turnover comparable to those that did not show as much progress."[75]

Sorting out the marginal returns to different strategies to improve educational performance is difficult. One conscientious effort to do so was undertaken by the RAND team of Grissmer, et al, who conclude that the return to various strategies (e.g., reducing class size in grades 1-4, public prekindergarten, or increasing teacher salaries) as measured in student assessment tests will vary depending on the Socio-Economic Status (SES) of students and the initial student-teacher ratio. They also caution that very important returns to improved education, such as reduced need for special education offerings, increased labor force performance and reduction of future governmental "social" expenditures may not be well-measured by short-term changes in student assessments.[76]

California policy makers and educators are now addressing the integration of recent state reforms into the requirements of the federal No Child Left Behind Act. The Governor has proposed consolidation of categorical grants. The LAO has endorsed that effort and suggests additional improvements in state education policy. Implementing legislation for the Master Plan for Education has been introduced. Local efforts to improve education are underway in a number of districts, including some which enroll plaintiffs (LAUSD) and others which do not (Sacramento).

If adopted, implementing the plaintiffs' remedies would detract from and possibly conflict with the necessity to implement the national No Child Left Behind act. The challenges involved in that act are fundamental. The LAO writes, for example:

---

74. Ibid.
75. Ibid. page 2.
76. Grissmer, David W., Ann Flanagan, Jennifer Kawata and Stephanie Williamson. 2000. *Improving Student Achievement: What State NAEP Test Scores Tell Us.* Santa Monica, CA: RAND (MR-924-EDU) http://www.rand.org/publications/MR/MR924/. Pages 85-94.

> The effectiveness of the state and federal accountability programs is still unproven. California is at the beginning of a long process of learning to use these programs to substantially raise the level of student achievement of pupils who currently under perform. Although SDE [State Department of Education] has successfully intervened in districts to correct fiscal mismanagement, it has little experience in fixing broken educational processes.
>
> We are also concerned that federal accountability under the No Child Left Behind (NCLB) Act is so demanding that it will prove ineffective in providing real accountability for the state's schools. The department's projections show more than 60 percent of schools in the state failing to meet NCLB performance targets in a few years. It remains to be seen whether accountability can be meaningful if schools believe there is little chance of success.[77]

The LAO provides an extensive discussion of state and federal school accountability provisions and of how they may be integrated. The differences between the two systems are important:

> The NCLB fundamentally changes the school accountability landscape for California by requiring the state to have one integrated state and federal accountability system. The *state* accountability system is based on the PSAA [Public Schools Accountability Act, 1999] which (1) rewards schools for academic improvement, (2) provides external intervention for low-performing schools, and (3) sanctions schools that continue to fail after receiving external assistance. The new *federal* accountability system has some similarities to the state system, but has several fundamental differences, including: (1) growth targets which measure different goals than the state, (2) different entities responsible for intervention, and (3) sanctions and interventions which differ significantly.[78]

While believing the federal standard may be unachievable and that decisions regarding proficiency by the California State Board of Education have compounded the challenge of satisfying the requirements of NCLB,[79] the LAO lays out a "Framework for an Integrated Accountability System" including:[80]

- Focus State Interventions at the School District Level
- Target State Interventions at the Neediest Schools
- Provide Less Intensive Interventions at Higher Performing Schools
- Redesign the High Priority Schools Grand Program (HPSGP) to Serve State and Federal Purposes
- Transition Schools in State Intervention Programs to New System Expeditiously
- Change Definition of Proficiency

---

77. Legislative Analyst. 2003. *Analysis of the Budget Bill, 2003-04*. Sacramento: Legislative Analyst Office, State of California. Page E-52.
78. Ibid., Page E-119
79. Ibid., Pages E-124 – E-125
80. Ibid., Pages E-125 – E-131.

- Set Aside Funding for Restructured Accountability System

The provisions of No Child Left Behind will require adjustments in policy and practice in many parts of elementary and secondary education in California. For example, recent meetings of the California Commission on Teacher Credentialing have included discussion of steps needed to bring this activity into compliance with the provisions of the national No Child Left Behind Act, including changes in waiver provisions, standards to meet the federal act requirement of "highly qualified teachers," satisfying the Act's requirement that new teachers pass subject matter tests and its requirements that middle and high school teachers have a major (not a minor) in their teaching subject area and that veteran teachers be evaluated for competence. The Commission is participating in a liaison team established by the State Board of Education to work on meeting the requirements of NCLB.[81]

Whatever steps are taken to bring California into accord with the national No Child Left Behind Act, the challenges are substantial and will of necessity by a primary focus of educators and policy makers over the next several years. The remedies advanced by the plaintiffs do not speak to satisfying the NCLB act or to reconciling California's existing accountability system to that of the national government. Neither the state nor the national accountability programs requires the remedies proposed by plaintiffs. Pursuing the plaintiffs' proposed remedies would be at minimum a distraction of policy maker and administrator energy and a diversion of funds to lower priority uses. It could well jeopardize satisfying requirements of the national NCLB Act.

A new set of state mandates for specific expenditures and increased state oversight of schools of a few inputs to education, as proposed by the plaintiffs, would be harmful at this time. The plaintiffs' focus on inputs is contrary to the best available evidence on what is required to improve educational performance of students and to the practices of most states in the nation. If this remedy were adopted, California courts could find themselves in the situation of Kansas City, Missouri, where court-ordered investments in facilities and programs under a desegregation order proved very expensive and failed to improve student performance. In that instance approximately $2 billion was spent on the 32,000 student district over the 1985-2000 period, about $700 million on 15 new schools and renovations at more than 50 additional schools and $1.3 billion on teachers and program enrichment. Student performance did not improve.[82]

Additionally, the plaintiffs would reverse other state and district policies, especially testing for graduation, with harmful effects. Their recommendation that the State be enjoined from conditioning receipt of a high school diploma upon passage of the high school exit exam until the state can demonstrate equality in access to basic educational necessities would delay this important focus on performance and mechanism of accountability in-

---

[81] California Commission on Teacher Credentialling. 2003. Minutes of the Commission Meeting, February 5-6. Pages 8-13.

[82] Gewertz, Catherine. 2000. A Hard Lesson for Kansas City's Troubled Schools. *Education Week.* April 6; Ciotti, Paul. 1998. Money and School Performance: Lessons from the Kansas City Desegregation Experiment. *Cato Policy Analysis.* No. 298.

definitely. The plaintiffs do not say how they would judge "equality in access to basic educational necessities."

If the test was equality in expenditures on instructional materials and facilities and equally certified teachers, is the goal the exact same number for all students? Is it distribution within some range of variation?

In any educational system there will be a distribution of student performance, yet the plaintiffs and their experts suggest a goal of equal outcomes, at least in passage of examinations. Unless examination criteria are set so low as to be meaningless, this is an unlikely standard to meet in any state. It is even more improbable in California, with high numbers of students whose status as immigrants, poor or with limited English proficiency pose increased challenges to state's system of public elementary and secondary education.

The performance of California's public schools does compare favorably to the nation and to appropriate comparison states. California has been especially successful in reducing discrepancies between school districts and students that are measured by differences in race and income. No state has been offered by the plaintiffs as a preferred model to California. When looked at closely, the performance of ANY state will be better in some areas and lag in others. But that is the normal consequence of undertaking important activities in settings where there is some disagreement about which features of a general goal such as "good education" should be emphasized, uncertainty about the best instruments to achieve the goal, and a democratic policy system.

The plaintiffs do not acknowledge the substantial efforts underway to improve the educational performance of California students. The plaintiffs do not recognize the progress that is being made as a result of those initiatives. The plaintiffs offer proposed remedies that will distract from and/or derail those efforts and the most immediate challenge facing California education policy makers, which is maintaining the reform momentum now bearing fruit while bringing California systems into congruence with the provisions of the national No Child Left Behind Act.