FROM BRIGGS V. ELLIOTT TO ABBEVILLE V. SOUTH CAROLINA: A
HISTORICAL LEGAL ANALYSIS OF SCHOOL FUNDING LITIGATION IN
SOUTH CAROLINA

by

DELIA B. ALLEN

(Under the Direction of JOHN DAYTON)

ABSTRACT

One of the central questions of education finance is how much funding is enough
to provide a specific quality of education. Concern over the adverse effects of inadequate
school funding on student achievement has led to multiple lawsuits throughout the United
States. However, there still remains considerable debate over both the effect of school
funding and education finance litigation on both effective policy and student
achievement. The purpose of this study is to explore the historical legal landscape of
school funding litigation in South Carolina. Inspired by the *Abbeville v. South Carolina*
2014 ruling, this study is important to the state of South Carolina because almost 70 years
after the first school funding lawsuits were filed against the state, the state Supreme Court
has set a precedent for school funding litigation in South Carolina. Using a legal research
methodological approach, this study focuses on the litigation strategies and adjudication
of school finance lawsuits in South Carolina, along with the implications to policy and
student outcomes. Situated at the intersection of law, finance, and politics, this study also
illuminates factors beyond the law and logic that possibly influenced judicial decisions in South Carolina’s school funding cases. The research questions guiding this study are:

1. What is the relevant legal history of school funding litigation in South Carolina?
2. What factors beyond law and logic were involved in school funding cases in South Carolina?
3. What was the legislative response to the litigation decisions?
4. How effective has school funding litigation been in improving funding and student outcomes?

INDEX WORDS: Education Finance Litigation, South Carolina, Abbeville v. South Carolina, School Funding Litigation, Briggs v. Elliott
FROM BRIGGS V. ELLIOTT TO ABBEVILLE V. SOUTH CAROLINA: A
HISTORICAL LEGAL ANALYSIS OF SCHOOL FUNDING LITIGATION IN
SOUTH CAROLINA

by

DELIA B. ALLEN
B.S., CLEMSON UNIVERSITY, 1999
M.S., NORTHWESTERN UNIVERSITY, 2002
M.A.T., CONVERSE COLLEGE, 2010

A Dissertation Submitted to the Graduate Faculty of The University of Georgia in Partial
Fulfillment of the Requirements for the Degree

DOCTOR OF PHILOSOPHY

ATHENS, GEORGIA
2018
FROM BRIGGS V. ELLIOTT TO ABBEVILLE V. SOUTH CAROLINA: A HISTORICAL LEGAL ANALYSIS OF SCHOOL FUNDING LITIGATION IN SOUTH CAROLINA

by

DELIA B ALLEN

Major Professor: John Dayton
Committee: Elizabeth DeBray
Sheneka Williams

Electronic Version Approved:

Suzanne Barbour
Dean of the Graduate School
The University of Georgia
May 2018
DEDICATION

In memory of my father Anthony “Ray” Bromell. You left your fingerprints of a strong work ethic on my life. You shall not be forgotten.
ACKNOWLEDGEMENTS

I wish to express my gratitude to several people who have supported me throughout this journey. A special thank you goes to my husband, Michael Allen for your love and patience. To my mother, Diane Bromell, thank you for your daily prayers and always checking on me. I am also grateful for my 88-year-old grandmother, Janie Mae Friday, for always providing me with a sense of comfort during this journey. To all my family and friends, thank you for your words of encouragement.

I also wish to thank my committee chair and members. I am truly grateful for the guidance, support, and reassurance of my committee chair, Dr. John Dayton. Thank you for your insightfulness and vision for my future. To my committee members, Dr. Elizabeth DeBray and Dr. Sheneka Williams, thank you for your willingness to accompany me on this journey. Thank you for the great feedback and expanding my scholarship.

I like to acknowledge Dr. Sally Zepeda for being so generous with your time and support. Although you were not a member of my committee, you were still willing to provide me with feedback and guidance. Words cannot accurately express my gratitude for you. To Dr. Carolina Darbisi, thank you for your ideas and continuous support. Being under your leadership at the Fanning Institute help to make the last year of this journey endurable.

Finally, thank you God for guiding me to my passion and life purpose.
# TABLE OF CONTENTS

| ACKNOWLEDGEMENTS | .......................................................... v |
| LIST OF TABLES | .......................................................... viii |
| LIST OF FIGURES | .......................................................... ix |

## CHAPTER

1. **BACKGROUND AND RATIONALE** .......................................................... 1
   - Introduction ....................................................................................... 1
   - Background of the Study .................................................................. 5
   - Statement of the Problem ................................................................. 13
   - Purpose of the Study and Research Questions .................................. 14
   - Methodological Approach ............................................................... 15
   - Significance of the Study ................................................................. 17
   - Organization of the Study ............................................................... 18

2. **LITERATURE REVIEW** ................................................................. 20
   - School Funding Litigation in the United States ............................... 21
   - School Funding Litigation in South Carolina ................................... 29
   - The Politics of Abbeville v. South Carolina .................................... 51
   - State Education Clause for SC, NC, and GA ................................. 64
   - Regional School Funding Judicial Analysis ..................................... 67
LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1</td>
<td>State Education Clauses</td>
<td>66</td>
</tr>
<tr>
<td>Table 2</td>
<td>Overview of School Funding Litigation in South Carolina</td>
<td>110</td>
</tr>
<tr>
<td>Table 3</td>
<td>South Carolina in the National Landscape of School Funding Litigation</td>
<td>116</td>
</tr>
<tr>
<td>Table 4</td>
<td>Snapshot of National School Funding Litigation Waves</td>
<td>118</td>
</tr>
<tr>
<td>Table 5</td>
<td>Regional Cases Situated within National Litigation Waves</td>
<td>119</td>
</tr>
<tr>
<td>Table 6</td>
<td>Legislation Enacted in Response to South Carolina School Funding Cases</td>
<td>136</td>
</tr>
<tr>
<td>Table 7</td>
<td>General Appropriations Act Provisions for Abbeville Districts</td>
<td>141</td>
</tr>
<tr>
<td>Table 8</td>
<td>Original 40 Abbeville Plaintiff Districts</td>
<td>142</td>
</tr>
<tr>
<td>Table 9</td>
<td>Districts Academic Performance Comparison</td>
<td>144</td>
</tr>
<tr>
<td>Table 10</td>
<td>Current Profile Snapshot of Abbeville Trial Districts</td>
<td>145</td>
</tr>
<tr>
<td>Table 11</td>
<td>Overall District Student Achievement Rating of Abbeville Trial Districts</td>
<td>146</td>
</tr>
<tr>
<td>Table 12</td>
<td>End of Course State Exam Performance Since 2014 Abbeville Ruling</td>
<td>149</td>
</tr>
<tr>
<td>Table 13</td>
<td>Abbeville Per-Pupil Spending Comparison (Trial Evidence vs 2014 Data)</td>
<td>153</td>
</tr>
<tr>
<td>Table 14</td>
<td>Abbeville Per-Pupil Disaggregate Revenue</td>
<td>155</td>
</tr>
<tr>
<td>Table 15</td>
<td>PPE vs Outcomes Comparison for Abbeville Trial Evidence</td>
<td>158</td>
</tr>
<tr>
<td>Table 16</td>
<td>PPE vs Outcomes Comparison for Abbeville Pre-Ruling Data</td>
<td>159</td>
</tr>
<tr>
<td>Figure</td>
<td>Description</td>
<td>Page</td>
</tr>
<tr>
<td>--------</td>
<td>------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>1</td>
<td>Elements of Legal Research</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>Legal Research as a Reductive Process</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Methodological Tools in Legal Research</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>Snapshot of School Funding Litigation in South Carolina</td>
<td>108</td>
</tr>
<tr>
<td>5</td>
<td>Timeline of School Funding Litigation in South Carolina</td>
<td>109</td>
</tr>
<tr>
<td>6</td>
<td>Timeline of South Carolina Situated in National Litigation Landscape</td>
<td>113</td>
</tr>
<tr>
<td>7</td>
<td>National Map of School Funding Activity and Adjudication</td>
<td>114</td>
</tr>
<tr>
<td>8</td>
<td>South Carolina Alignment with Nationwide Litigation Wave Strategies</td>
<td>115</td>
</tr>
<tr>
<td>9</td>
<td>South Carolina Bordering States School Funding Cases</td>
<td>118</td>
</tr>
<tr>
<td>10</td>
<td>How States High Court Judges are Selected</td>
<td>122</td>
</tr>
<tr>
<td>11</td>
<td>Percentage of Non-White Students in <em>Abbeville</em> Trial Districts</td>
<td>133</td>
</tr>
<tr>
<td>12</td>
<td>Legislative Response to <em>Briggs</em>: School Equalization Building Program</td>
<td>138</td>
</tr>
<tr>
<td>13</td>
<td>Pre-Trial Consolidated Districts</td>
<td>143</td>
</tr>
<tr>
<td>14</td>
<td><em>Abbeville</em> Eight Trial Districts</td>
<td>144</td>
</tr>
<tr>
<td>15</td>
<td><em>Abbeville</em> Trial Districts Student Math and Reading Achievement</td>
<td>148</td>
</tr>
<tr>
<td>16</td>
<td><em>Abbeville</em> Trial Districts 2016 Higher Education Enrollment</td>
<td>150</td>
</tr>
<tr>
<td>17</td>
<td><em>Abbeville</em> Trial Districts Per-Pupil Spending</td>
<td>152</td>
</tr>
<tr>
<td>18</td>
<td><em>Abbeville</em> Trial Districts Per-Pupil State Revenue</td>
<td>156</td>
</tr>
</tbody>
</table>
CHAPTER 1

INTRODUCTION

Education finance and the allocation of school resources is a critical educational issue that states across America continue to face. Originating with Brown v. the Board of Education (1954), Serrano v. Priest (1971), and the San Antonio Independent School District v. Rodriguez (1973), there exists a lengthy list of cases that address the issues of education finance. Disparities in state education funding systems and ambiguity in states’ obligation to provide a specific quality of education for students have been the basis of school funding litigation across the United States.

A central question of education finance is how much funding is enough to provide a specific quality of education. In addition, since the release of James Coleman’s et al. (1966) report, there remains considerable debate over the effect of funding on student achievement (Baker, 2016; Hanushek, 1997; Hedges et al., 2016; Westbrook, 1995). There is also a growing consensus that every district and school should be accountable for how efficiently and effectively it allocates its available financial resources. On the whole, concern over the adverse effects of inadequate school funding on student achievement has led to scholarly debates and multiple lawsuits throughout urban and rural America.

Many past and present school funding cases include urban and rural schools, but “as long as rural schools continue to be placed at a disadvantage by state systems of school funding, it is likely that rural school advocates will continue to pursue remedies
through litigation” (Dayton, 2003, p. 17). In this manner, in an attempt to address an inequitable funding system, inadequate educational opportunities, and inaction of the state courts and legislature, citizens from low wealth rural school districts across South Carolina joined to seek more equitable funding.

Spanning 70 years, from 1947 to 2017, citizens and school districts in South Carolina pursued remedies through litigation to address the educational inequities spawned by segregation and the state’s education finance system. Starting in 1947 with a petition seeking equal access to schools via school buses, leading to *Pearson v. Clarendon County* being filed in 1948 and ending in 2017 with the SC Supreme Court terminating its jurisdiction over the 21-year *Abbeville v. South Carolina* case, South Carolina has an extensive school funding litigation history.

Being directly linked to what many consider the most significant ruling regarding public education, *Brown v. Board* (1954), school funding litigation in South Carolina is situated in the bigger picture of school funding litigation history regarding lawsuits decisions and litigation strategies. School funding lawsuits in South Carolina have included equality, equity, and adequacy claims. The progeny of *Pearson*, South Carolina’s first school funding lawsuit, *Briggs v. Elliott* (1952) has a direct association with *Brown v. Board*. When *Briggs v. Elliott*, South Carolina’s second school funding lawsuit, but first to make it to trial, was appealed to the U.S. Supreme Court, it consolidated with four other cases to become *Brown v. Board*.

It was not until 1988 that South Carolina experienced its third school funding lawsuit, *Richland County v. Campbell* (1988). *Richland* challenged the constitutionality of the South Carolina’s public school funding system, claiming an inequitable funding
system. Approximately 40 years following the Briggs and Brown rulings, 40 superintendents, along with students and taxpayers, filed a school funding lawsuit against the state of South Carolina making various claims, which included and adequacy claim challenging the state constitution’s education clause. Although, this lawsuit is the fourth to be filed in South Carolina, it is the state’s longest ongoing school funding lawsuit and the first to be argued before the South Carolina Supreme Court. In 1993, this filing was the beginning of what was to become the 21-year school funding lawsuit know as Abbeville County School District v. the State of South Carolina (2014).

While this case has been in and out of courts for over two decades, finally in 2014, the South Carolina Supreme Court ruled in favor of the Plaintiff Districts; ruling that the state had failed in its constitutional duty to ensure that students in the Plaintiff Districts receive the required minimally adequate educational opportunity (Abbeville v. SC, 2014). Although the Justices found the state to have failed in their constitutional duty to ensure that students in the Plaintiff Districts receive the required minimally adequate educational opportunity, the Court also acknowledged the following regarding funding:

[W]e do not (nor could we legally) merely order the Defendants to disperse additional funding to the Plaintiff Districts. We believe that all parties could agree that – given that the Defendants have disproportionately funded poorer counties such as the Plaintiff Districts in the past with little noticeable impact on student achievement rates – money is not the answer. (Abbeville v. SC, 2014, p.37)

The South Carolina Supreme Court’s perspective regarding money is in align with scholars and other state courts involved in school funding litigation. Several courts have held that money is a significant factor in providing educational opportunities, but exact
equality in per pupil expenditures is not constitutionally required, nor is there a basis to
determine that amount (Dayton, 2001; Thro, 1994; Weishart, 2016). Similarly, scholars
like Hanushek and Lindseth (2008) contend that simply asking for more dollars for
schools will not create the systemic changes needed to help student achievement and that
money does matter if it is used and allocated efficiently among resources.

Notwithstanding, there appears to be a growing consensus that while money alone
may not improve student achievement, a combination of adequate funding, coupled with
district and school level allocation accountability and efficiency may produce better
student outcomes (Baker, 2016; Hanushek, 2016; Hanushek & Lindseth, 2008; Jackson,
Johnson, & Persico, 2016; Koski, 2011). Thus, the emerging debate is more not that
money does not matter, but how the money is allocated may matter more.

Hanushek (2016) showed that current expenditures per pupil have increased over
the years, yet student achievement has remained virtually unchanged. Thus, Hanushek
(2016) contends that “what remains to be unpacked is the precise ways in which
expenditure needs to be directed and administered if it is to lift student achievement
efficiently and effectively” (p. 26). In addition, a decade earlier Hanushek (2006) argued
that after decades of court cases on school funding, little effort has been made to assess
the effect of court involvement on student outcome nor on the ability of courts to make or
have researched this issue and argued that court-mandated school finance reform policies
have made a difference on student educational outcomes. However, Jackson et al. (2016)
also found that “how that money is spent may be important. As such, to be most effective
it is like that spending increases should be coupled with systems that help ensure
spending is allocated toward the most productive inputs” (p. 214). Accordingly, this study contributes to the ongoing academic and legal debate regarding the provision of additional school funding, judicial intervention, and the adequacy of educational opportunity and achievement.

**Background of the Study**

Almost 70 years after the first school funding lawsuits were filed against the state of South Carolina, rural school districts are still waiting for the state to provide adequate educational opportunity for their low-wealth, rural, predominately Black students. While the state Supreme Court has finally made a ruling in the 21-year enduring *Abbeville* lawsuit, it remains to be seen if the South Carolina legislature will uphold the Court’s order and provide a remedy so that the students can have access to minimally adequate education as defined by the Court and guaranteed under the South Carolina constitution. However, one of the challenges for the courts involved in funding litigation nationally and in South Carolina is to decide how to measure the presence or absence of the educational opportunity standard.

Specifically, for the *Abbeville* case, how to determine what constitutes a “minimally adequate” education and the cost to provide an opportunity to such a quality of education continues to be a contentious issue. The relationship between financial resources and academic performance was key evidence during the *Abbeville* trial. Based on this input versus output relationship, while considering other factors such as poverty, transportation and teacher quality, the South Carolina Supreme Court concluded that the state was in violation of its constitutional obligation to provide students in the plaintiff districts with the opportunity to obtain a minimally adequate education.
The 2014 *Abbeville* decision was a 3-2 ruling. Only time will tell if the ruling will have a long-term influence on school funding, education policy, and student achievement for the *Abbeville* districts. Subsequently, there will continue to be the ongoing debate regarding the notion of school funding being a political or judicial issue, coupled with whether or not money matters and how it matters for student outcomes. The dissenting opinion argued that the *Abbeville* plaintiff districts claim represents a nonjusticiable political issue and that the Court overstepped its boundary with the ruling. In addition, the dissent opinion maintained that student outcomes cannot be legislated and in terms of funding, five of the eight trial districts are in the top ten funded school districts.

**Judicial Intervention**

The federal and state courts played a significant role in educational policy starting with *Brown, Serrano,* and *Rodriguez.* But still to this day, there is disagreement regarding judicial intervention and education policy. It has been argued that “although school finance litigation may be long and difficult, it can be an ideal opportunity for defining the state’s commitment to education and setting the state on a planned, coordinated path designed to provide all children with the education they need to compete in the [21st] century” (Westbrook, 1995, p. 2124). However, Hanushek (2006) contends that judicial intervention has not been successful with improving student achievement, specifically that “the political branches, for all their rhetoric, have not succeeded in solving our educational shortcomings after decades of effort” (p. xix). Providing a hybrid of the arguments presented by Westbrook (1995) and Hanushek (2006), Kirst and Wirt (2009) assert the following:
A court mandate does not bring total or quick acceptance, does not provide sufficient resources for the resourceless, and does not teach us how to resolve conflict or to live with ambiguity. However, courts can create a new policy agenda that others in the political system can implement...The result is a dialog among courts, politicians, and education advocates…

Specific to this study, the role of the courts in addressing South Carolina’s failure to provide minimal adequate educational opportunity to all students is an ongoing quarrel, that started with *Briggs* and continued with *Abbeville*. In *Briggs* and *Abbeville*, the issue of whether the court should become involved in educational policy was challenged by the defendants.

During the *Briggs* trial, one of the three judges stated to the plaintiff’s attorney that “it’s not the function of the court to determine what is the best educational policy. It is the function of the court to see that all men are given their rights” (Kluger, 2004, p. 358). Correspondingly, the *Abbeville* opinion stated the following:

While the Defendants and the dissent point to the amount of spending in Plaintiff Districts, this spending fails to provide students with the opportunity to obtain a minimally adequate education. Rather, the evidence demonstrates that there is a clear disconnect between spending and results. This Court cannot suggest methods of fixing the problem, but we can recognize a constitutional violation when we see one. (*Abbeville v. SC*, 2014, p. 30)

In addition, Hanushek (2014) testified that research over the years has shown that there is no consistent improvement in student achievement with a court ordered increase or voluntarily increase in funding. However, Baker (2016) contends that state school finance
reforms and a more equitable distribution of school funding can improve outcomes and that Hanushek’s research and arguments are flawed. According to Garrow (2004), proponents of the Abbeville lawsuit “equate their case to Briggs and say that once again, judicial intervention is the only solution that can bring true educational opportunity to Clarendon County's students” (p. 2). More than a decade after this statement was made, it remains unknown if judicial intervention will be able to provide adequate educational opportunity to students in the Abbeville plaintiff districts.

Judicial Interpretation

Henig (2013) contends that “there seems to be a consensus that courts are less well suited than other general purpose governmental entities to handle the intricacies of implementing school level educational remedies” (p. 92). Notwithstanding, interpretation of the law is unquestionably a part of the court’s role. Yet, in Abbeville, the lower court and state Supreme Court had a different interpretation of the South Carolina Constitution. It is clear that South Carolina’s education clause does not establish any qualitative standard for providing public education.

However, in the Abbeville I ruling, the SC Supreme Court applied judicial interpretation and held that the educational clause requires the General Assembly to provide for the opportunity for each child to receive a minimally adequate education. In providing this ruling, the 1999 SC Supreme Court declared that judicial interpretation is its duty and stated the following to the lower court.

[I]t was its duty to interpret and declare the meaning of the Constitution,” and, therefore, [the lower court] “erred in using judicial restraint, separation of powers,
and the political question doctrine as the basis for declining to decide the meaning of the education clause. (*Abbeville v. SC*, 2005, p. 6)

Both the lower court judge and the dissenting Justices found the Supreme Court action to be an improper exercise of judicial power. In response to the majority’s interpretation and stance, the dissenting opinion offered the following:

[D]etermining what constitutes an adequate education is so subjective as to defy judicial resolution. However, this Court, in *Abbeville I*, proceeded to judicially engraft a qualitative standard into our state constitution so it could then interpret its meaning. In my judgment, this was error and was fundamentally inconsistent with the plain language of our state constitution, which speaks only of the General Assembly and its duty to create and maintain a public school system. (*Abbeville v. SC*, 2014, p. 46)

This assertion is not a surprise because Thro (2016) contends that “[w]hile the Education Clauses limit legislative discretion by requiring certain actions, the legislature retains a wide amount of discretion as to how to achieve quality standards. Disagreement with policy choices or with current outcomes does not equal a constitutional violation” (p. 556).

**The Ongoing Money Debate**

There remains continuous debate on whether or not money matters and how it matters. Specifically, there is considerable debate over the effect of funding on student achievement (*Baker*, 2016; *Hanushek*, 1997; *Hedges* et al., 2016; *Westbrook*, 1995). Throughout the history of school funding litigation, there is some consensus linking low achievement to inadequate funding. As early as 1995, fifteen state’s high courts
recognized that there exists a positive correlation between expenditures and educational opportunity (Dayton, 1995). Although “no court has affirmatively ruled that money makes no difference to educational opportunity” (p. 8), four states’ high courts “found that the plaintiffs did not sufficiently carry their burden of providing this fact, leaving the establishment of this correlation unproven” (Dayton, 1995, p. 8). Although this was not the finding for the South Carolina Supreme Court, presently, there appears to be more of a political debate, instead of scholarly and judicial, regarding this correlation.

According to Baker (2016) “[t]he growing political consensus that money doesn’t matter stands in sharp contrast to the substantial body of empirical research that has accumulated over time” (p. 2) which shows that money does matter. Notwithstanding, Hedges et al. (2016) argues that given the diversity of research methods used to study this issue, a meta-analysis of the research did not provide reliable inferences to indicate whether or not an increase in school financial resources directly impacts or affects student achievement. In addition, Jackson et al. (2016) concludes that although “increased school funding alone may not guarantee improved outcomes” (p. 214), their findings suggest that “provision of adequate funding may be a necessary condition” (p. 214). Regardless of the conflicting findings, this ongoing debate is key to the litigation strategies for the latest wave of school funding cases. And as it has been in the past, these cases have expert witnesses willing to testify on both sides of this issue (Dayton, 1995).

**Education Production Function**

During the latest wave, also known as the third wave of school funding litigation cases, academic performance data was used as key evidence by both the plaintiffs and defendants specifically, when making the connection between inadequate funding and
student achievement. The courts considered the inputs being provided to the students versus the outputs being provided by the students.

While plaintiffs argued that students were not achieving due to disparities with inputs, the defendants contended that over the years there has been an increase in funding yet no change in outputs. Nonetheless, in general, inputs are money, curriculum, teachers and other instrumentalities of learning and resources, whereas outputs are primarily test scores and graduation rates and other methods used to indicate student achievement and attainment. This concept is known as the education production function.

Eric Hanushek was one of the earliest researchers to approach the school funding issue from the economist’s production function perspective. Studying production functions aids in understanding the relation between inputs and outputs of an educational system. Furthermore, in setting school policy and addressing school funding litigation, “knowledge of the educational production function is essential to efficient resource allocation” (Bowles, 1970, p. 12).

From Hanushek’s (1997) early research of educational production functions, he has concluded that it is not that additional funding makes no difference, “only that it does not make an apparent difference on the average, in the ways that schools presently use additional funding” (Levin, 1989, p. 16). Hanushek and Lindseth (2008) contend that simply asking for more dollars for schools will not create the systemic changes needed to help student achievement. Although Hanushek and Lindseth (2008) provide compelling arguments, there are other scholars such as Baker (2016) and Hedge et al. (2016) who challenge their claims.
The Correlation Between Resources and Student Achievement

Overall, early research has provided minimum evidence to indicate that an increase in school financial resources directly impacts or affects student achievement. An extensive literature review conducted by Hanushek (1997) found that close to 400 studies of student achievement demonstrate that there is not a strong or consistent relationship between student performance and school resources. Hanushek (1997) argued that “there is little reason to be confident that simply adding more resources to schools as currently constituted will yield performance gains among students” (pp. 148). Interestingly, the Justices in Abbeville shared the same argument as Hanushek (1997).

While the South Carolina Supreme Court 2014 Abbeville opinion asserted that the state educational system in its current state is not fulfilling its constitutional responsibility to provide minimally adequate education to all students, the opinion also made it very clear that money alone is not the solution. However, Baker (2016) and Hedge et al. (2016) contend that given advances in data quality and statistical techniques, Hanushek’s early studies—that claim money essentially does not matter when it comes to improving student outcomes—no longer has methodological creditability. Baker (2014) argues that “[m]ost of the studies included in Hanushek’s review suffered from serious data and methodological limitations, which have since been addressed in more recent work” (p. 4).

In addition, Hedges et al. (2016) claims that Hanushek’s “original argument, is not based on a strong evidence base” (p. 161) and Jackson et al. (2016) found that an increase in per pupil spending can improve student outcomes. Furthermore, Koski (2011) rationalizes that the money matters debate has “shifted to the more nuanced questions of which educational resources affect student attainment and achievement and how we can
design a school-finance system that ensures the efficient use of funds” (p. 927). This background on the research is important because defendants in school funding cases often reference Hanushek’s research during litigation. Furthermore, regardless of the research, whether an increase in school financial resources directly impacts or affects student achievement continues to be vehemently debated in both the academic and legal spaces.

Statement of the Problem

Given the complexity of our educational system and the continuous school funding lawsuits, there are gaps in the literature that make it difficult to ascertain any firm conclusions about whether or not money matters regarding student achievement, including the adequacy of that money. In addition, the role of the court and the effectivity of judicial intervention on enacted legislation and student achievement continue to be debated. After an extensive history of school funding litigation in South Carolina, the amount of money spent on students in the plaintiff districts demonstrates a clear disconnect between funding and outcomes, enacted legislation and increase in funding has not improve student outcomes, and the State of South Carolina has failed to show how much it cost to provide the constitutionally mandated educational opportunity.

Although in South Carolina’s latest school funding case, *Abbeville*, the state Supreme Court found the state to be in violation of its educational clause, they did not find the state’s school finance system to be unconstitutional, they did not provide a remedy for the State to address its violation, and then without providing a reasoned explanation, in November 2017 the Court ended their oversight of legislative efforts to remedy the violation.
The 2014 *Abbeville* dissent, along with the General Assembly, contend that student outcomes cannot be legislated and regarding financial resources, five of the eight *Abbeville* trial districts are in the top ten school districts in terms of funding. In addition, the dissenting opinion argued that the Plaintiff Districts claim represents a nonjusticiability political issue and that the South Carolina Supreme Court overstepped its boundary with the *Abbeville* ruling. Subsequently, there will continue to be the ongoing debate nationally and in South Carolina regarding the notion of school funding being a political or judicial issue, coupled with whether or not additional money matters for student outcomes.

**Purpose of the Study**

Situated at the intersection of law, finance, and politics, the purpose of this study was to examine the historical legal landscape of school funding litigation in South Carolina. Grounded in the *Abbeville v. South Carolina* adjudication and the economist’s education production function model, this study illuminated the relationship between school funding litigation and student achievement. In addition, the study addressed the idea that the law and judicial decisions are often a product of the politics of the state, judges, and other factors.

**Research Questions**

This study investigated the following research questions:

1. What is the relevant legal history of school funding litigation in South Carolina?
2. What factors beyond law and logic were involved in school funding cases in South Carolina?
3. What was the legislative response to the litigation decisions?
4. How effective has school funding litigation been in improving funding and student outcomes?

**Methodological Approach**

This study was a historical legal analysis that utilized legal research methods. According to Dayton (2017) the purposes of legal research are to understand and improve the law. Legal research can consist of finding, understanding, and/or presenting the law. As illustrated in Figure 1, there are four elements of legal research. Legal research presents relevant evidence, findings based on the evidence, conclusions logically deduced from the findings, and policy recommendations (Dayton, 2017). In addition, Dayton (2017) contends that legal research, regardless of the specific methodologies used, “essentially involves a meta-analysis of the relevant evidence and legal authorities comprised of three key tasks” (p. 13). Figure 2 shows these three key tasks as a reductive process that comprise of a search for relevant evidence, an analysis of the relevant evidence, and a synthesis of research findings into a current composite picture of the law.

*Figure 1. Elements of legal research. Dayton (2017).*

*Figure 2. Legal research as a reductive process. Dayton (2017).*
The methodological tools used in legal research are diverse and one research method is not valued over the others. Dayton (2017) believes that in legal research “the research question drives the choice of methodology with applicable research methods being viewed as tools in the researcher’s working toolbox” (p. 11). Figure 3 illustrates the various methodological tools used in legal research. Legal history, legal analysis, case law interpretation, and economics are the methodological tools that were employed to conduct this study. This study started with gathering relevant evidence/data; extracting key information from the evidences/data; organizing this information into a logical order; and then deriving conclusions logically deduced from the finding (Dayton, 2017).

I reviewed both primary and secondary legal resources including the *Abbeville v. South Carolina* opinions and dissents, in addition to other relevant cases, legal documents and publications.

*Figure 3. Methodological tools in legal research. Dayton (2017).*
Specifically, the data sources used for this study included, but were not limited to, the South Carolina Constitution, previous South Carolina court cases addressing school funding, state legislation related to preK-12 public education, data from school districts, legal and academic articles, in addition to reports submitted by the South Carolina General Assembly.

**Significance of the Study**

This study is significant to the field of education and law because the focus of the study addresses questions that are deemed important by scholars, courts, legislators, and school administrators. Although the amount of scholarly and legal work related to school funding litigation is extensive, the history of school funding litigation in South Carolina, specifically the *Abbeville* case, has received minimum examination, thus requires greater scrutiny. There remains considerable debate over the effect of school funding litigation and additional school funding on both effective policy and student achievement (Baker, 2016; Hanushek, 2006; Hanushek, 2014, 2016; Hedges et al., 2016; Jackson, Johnson, & Persico, 2014, 2016). Some scholars argue that after decades of court cases on school funding, little effort has been made to assess the effect of court involvement on student outcome nor on the ability of courts to make or influence effective policy. While others contend that an increase in school funding due to court-mandated school finance reform policies do improve student outcomes.

The *Abbeville v. SC* school funding litigation case is situated at the intersection of several relevant educational finance issues. One of the central questions of education finance is how much money is enough funding to provide a specific quality of education. In addition, there continues to be the ongoing debate regarding the notion of school
funding being a political or judicial issue, coupled with whether or not additional money matters and how it matters for student outcomes. Given the recent adjudication of Abbeville, seeking knowledge regarding school funding litigation rulings and their influence is significant because the information will hopefully contribute to theories, laws, and policies that can be used to formulate solutions and interventions to improve litigation strategies, school funding equity, resource allocation efficiency, student educational opportunities and student outcomes.

**Organization of the Study**

Chapter 1 introduced the central question of education finance and the debate over the effect of funding on student achievement, along with the need to study the legal history of school funding litigation in South Carolina. Although this chapter provided a brief discussion of the background of the problem and the significance of the study, what follows is a detailed academic and legal literature review that shores up the need for conducting this study.

In Chapter 2, the literature review is a narrative that provides the in-depth legal and contextual background for the study. The literature review will summarize and assess existing research and legal documents in an effort to provide the context for the inquiry addressed in this study. The history of school funding litigation will be addressed, followed by a review of the Abbeville case. Next, the politics of education as it relates to the Abbeville case will be discussed. Then, a legal analysis of the rulings from regional (SC, NC, GA) school funding litigation cases will be provided.

Finally, Chapter 2 concludes with a review of the current literature addressing the question of whether there exists a correlation between money and student achievement.
Chapter 3 then provides evidence, extracted from Chapter 2 and other data sources, to address the study’s four research questions. The study concludes with Chapter 4. In this final chapter, a discussion of conclusions deduced from the findings is provided, in addition to implications for policy, practice, and future research.
CHAPTER 2
REVIEW OF THE LITERATURE

Situated at the intersection of law, finance, and politics, the purpose of this study was to examine the historical legal landscape of school funding litigation in South Carolina. Grounded in the *Abbeville v. South Carolina* adjudication and the economist’s education production function model, this study illuminated the relationship between school funding litigation and student achievement. In addition, the study addressed the idea that the law and judicial decisions are often a product of the politics of the state, judges, and other factors. The following research questions guided this study:

5. What is the relevant legal history of school funding litigation in South Carolina?
6. What factors beyond law and logic were involved in school funding cases in South Carolina?
7. What was the legislative response to the litigation decisions?
8. How effective has school funding litigation been in improving funding and student outcomes?

Thus, to prepare for this study, I reviewed court documents and law review articles related to school funding litigation, in addition to existing literature related to the issue of school resources and student achievement. There are many school funding cases to consider, but for gaining knowledge for this study, I focused on the rulings for South Carolina school funding lawsuits and cases in the neighboring states of North Carolina and Georgia. Similarly, there are many studies that address the relationship between
school resources and student achievement. However, for this study, I have chosen to focus on meta-analysis studies that examine the relationship between school financial resources and student achievement.

This literature review is a narrative that provides the in-depth background knowledge required to establish the need for the study. The literature review will summarize and assess existing research and legal documents. The review begins with addressing the history of school funding litigation, followed by a review school funding litigation in South Carolina. Next, the politics of education as it relates to the Abbeville case, the most recent case in South Carolina, will be discussed. Then, including a review of the state constitution educational clauses, a legal analysis of the ruling from regional (SC, NC, GA) school funding litigation cases will be provided. Finally, this chapter concludes with a review of the current literature addressing the question of whether there exists a correlation between money and student achievement. What follows are the six sections that will provide context for the inquiry addressed in this study.

**School Funding Litigation in the United States**

There is not much debate regarding the Brown decision and the significance of the foundation it provided for school funding litigation movement; however, it is important to recognize that school funding litigation in the United States can be traced even farther back (Dayton, 2004). In 1819, the Supreme Judicial Court of Massachusetts heard arguments for Commonwealth v. Dedham. According to Dayton (2004), “the town of Dedham was charged with failing to provide an adequate education” (p. 4) to all children. The Court held in this case,
that schools must be maintained for the benefit of the whole town, as it is the wise policy of the law to give all the inhabitants equal privileges, for the education of their children in the public schools. Nor is it in the power of the majority to deprive the minority of this privilege. (Institute on Education Law and Policy, 2017a, para. 3)

Nonetheless, after the failure of *Brown* to truly desegregate rural schools, advocates retreated from seeking equal educational opportunity through integration. Winston (2003) contends that this retreat “is significant to rural schools in America because the failure to desegregate schools along racial lines also ensured that the economic inequities continued” (Winston, 2003, p. 200). Notwithstanding *Commonwealth v. Dedham*, the modern era of school funding litigation originated in California and Texas.

**The Foundation of Litigation**

Originating in California with *Serrano v. Priest* (1971) and in Texas with *the San Antonio Independent School District v. Rodriguez* (1973), many states have seen at least one lawsuit regarding how it funds schools and/or whether that funding is equitable or adequate. With *Serrano* being illustrative of the first 20th century school funding case to appear before a state high court, along with the first victory for school funding plaintiffs, it has played a significant role in education finance. It is highly improbable to find literature on school finance litigation that does not reference *Serrano*. According to Dayton (2001), most scholars recognize the *Serrano* ruling as “the beginning of the modern era in school funding litigation” (p. 1).

Also, Dayton (2004) posits that since *Brown*, the U.S. Supreme Court ruling in *Rodriguez* may be the most significant decision regarding public schools. In contrast,
Weishart (2016) argues that school funding litigation might have fared better if “rather than promot[ing] Brown as the standard-bearer for the right to education” (p. 977), they should have “parlay[ed] its oft-criticized companion, Bolling v. Sharpe” (p. 977) which was decided the same day as Brown. Downes (1996) challenges the overall effect of Serrano on the quality of education. Regardless of sentiments regarding the significance and influence of these early cases, Brown, Serrano, and Rodriguez established a roadmap for school funding litigation.

In Serrano, the goal of the plaintiffs was to have California’s high court rule that the California public school finance system, which relied on local property taxes that resulted in significant disparities among schools’ revenue, violated the federal equal protection clause of the Fourteenth Amendment (Serrano v. Priest, 1971). The California Supreme Court held that California’s property-tax-based funding system violated the equal protection clause. However, just two years after the Serrano ruling, in Rodriguez, the U.S. Supreme Court ruled that education was not a fundamental right and that disparities in school funding among school districts do not violate the federal constitution (San Antonio v. Rodriguez, 1973).

Consequently, this ruling eliminated the opportunity for plaintiffs to seek the federal courts for assistance with seeking better equity and adequacy in school funding. Despite this, the dissenting opinion of Justice Marshall set a precedence for plaintiffs to continue the school funding fight on the State level. Justice Marshall noted that “nothing in the Court’s decision today should inhibit further review of state education funding schemes under state constitutional provisions” (Dayton, 2004).
Furthermore, immediately following the *Rodriguez* decision, the New Jersey Supreme Court held in *Robinson v. Cahill* (1973) that the state school funding system was unconstitutional. This decision was based on the mandate of the New Jersey Constitution’s education article and not the state or federal equal protection provisions. Thus, the *Robinson* decision “established a new model for plaintiffs throughout the country as they pressed their state courts to overturn entrenched school funding systems” (Dayton & Dupre, 2004, p. 2365).

Post *Rodriguez*, in which the US Supreme Court ruled that the State’s school funding system did not violate the Equal Protection Clause, approximately 45 states have been involved in school funding litigation (National Conference of State Legislatures, 2017). Specifically, Delaware, Hawaii, Mississippi, Nevada, and Utah are the only states that have managed to avoid litigation at the state supreme court level (Thro, 2016). Nonetheless, the states that did not manage to avoid litigation have experienced varying judicial approaches and rulings from Plaintiffs’ attorneys and the states’ high courts (Dayton, 2001; Dayton, 2004; Lundberg, 2000; Thro, 2016). Given the time span of 40 plus years, coupled with the frequency of school funding cases, scholars tend to look at the history of school funding litigation in three waves, with speculation of an emerging fourth wave (Hinojosa, 2016; Heise, 1995; Thro, 1990).

The three waves of litigation strategies started with federal equal protection clause challenges and equality of funding and/or educational opportunity, followed by a strategy focused on state equal protection challenges, and presently using a strategy that focuses on state education clause challenges seeking a minimum quality standard (Thro, 1994).
The Three Waves of Litigation

The first wave, which began with *Serrano* and ended with *Rodriguez*, relied on the federal Equal Protection Clause. Historically, it is important to note that school funding litigation grounded in equal protection was first “suggested by Arthur Wise in a 1965 article titled, *Is Denial of Equal Educational Opportunity Constitutional?*” (Dayton, 1992, p. 5). The second wave, which started in New Jersey with *Robinson v. Cahill* (1973) and ended in early 1989, focused on state constitutions’ equal protection and education clauses with the continued emphasis on equality (Heise, 1995; Thro, 1990). It is during this wave that the school funding cases, *McDaniel v. Thomas* (1981) and *Britt v. NC* (1987), emerged in Georgia and North Carolina.

South Carolina’s third school funding case, *Richland County v. Campbell* (1988), also occurred during this second wave of funding litigation. Unlike the first and second waves, the third wave emphasized adequacy in school funding. The shift from equity based lawsuits to adequacy lawsuits has been attributed to the complexities of equity theory, the threat equity litigation poses to local control, the inability for equity arguments to advance urban school districts’ financial interests, and the fact that successful equity lawsuit did not always generate the desired changes to a states’ school finance systems (Heise, 1998).

This transition from equality and/or equity to adequacy is also often accredited to the standards-based reform movement of the 1980’s (Gillespie, 2010). Nonetheless, the third wave began in 1989 with plaintiff’s victories Montana, Kentucky, and Texas and continues to present day (Thro, 1990). The defining characteristic of third wave cases is that courts analyze cases based solely on a state constitution’s education clause (Fogle,
Enrich (1995) contended that adequacy arguments offer a natural alternative to equality because “adequacy arguments provide tools which are more firmly grounded on the constitutional base…and less threatening in their reach and power” (p. 183).

While some plaintiffs continued to pursue equality-based claims, most litigate after 1990 focused on the amount of resources available for public education and its insufficiency (Hinojosa, 2016). It is during this third wave, with *Leandro v. NC* (1997/2004/2012) and *Abbeville v. South Carolina* (1996/2005/2014), that both North Carolina and South Carolina experienced their lengthiest school funding cases, along with plaintiffs finally receiving their first favorable rulings against the state.

By 2001, which is 30 years after *Serrano*, the first three waves consisted of 35 cases where the states’ highest courts ruled on the merits of conditional challenges to their states’ funding systems, 18 cases where courts upheld states’ systems of public school funding, which included South Carolina, North Carolina, and Georgia funding systems, and 17 cases where courts declared school funding systems unconstitutional (Dayton, 2001).

At the moment, unlike the second and third wave of cases that focused on equality and adequacy, some scholars are proposing the existence of a fourth wave (Bowman, 2009; McMillian, 1998; Morgan, 2001; Hinojosa, 2016). Bowman (2009) contends that “since 1996, a fourth wave has developed alongside some third wave cases” (p. 58). The 1996 Connecticut Supreme Court ruling on *Sheff v. O’Neill*, signifies the start of the fourth wave.
The Emerging Wave of Litigation

This fourth wave focuses on race-conscious litigation (Bowman, 2009; Hinojosa, 2016). Dayton and Dupre (2004) make the case that “the Brown desegregation legacy and the Rodriguez funding legacy are, of course, inextricably linked” (p. 2407). In addition, Casebeer (2000) suggests that the Court in Brown wrote about the importance of education, not because education itself was a constitutionally protected right, but that race separation by the state perpetuated a system of inequality. Kiracofe (2004) argues that the relationship between desegregation and school funding litigation should be explored given that “[d]esegregation cases have frequently centered around funding issues, and many funding cases have highlighted the disparate impact funding systems have had on minority students” (p. 3).

Although there appears to be a consensus regarding the litigation strategy of this fourth wave, some scholars propose other strategies (e.g., Bauries 2004; Black 2016; Buszin, 2013; Gillespie 2010). Gillespie (2010) argues that the fourth wave should focus on adequacy claims on the federal level. Although not directly referencing a fourth wave, Bauries (2004) argues that school funding litigation should begin to focus on individual rights to adequate education under each state’s constitution and Buszin (2013) proposes that litigation should focus on inequitable or inadequate distributions of skill-based education inputs such as teacher quality.

In agreement with the skill-based focus litigation strategy, Black (2016) also suggests taking a break from focusing litigation on funding to focusing on access to quality teaching. Nonetheless, the fourth wave “conceptually straddles school desegregation and school finance litigation, and thus has the potential to raise different
claims of inequality than arguments about race/ethnicity and resources raised separately from one another” (Bowman, 2009, p. 59). The emergence of this fourth wave is unquestionably relevant given the following:

[M]inority districts do not win school finance cases nearly as often as white districts do, and in the few states where minority districts have successfully challenged school finance schemes, they have encountered legislative recalcitrance that exceeds, in both intensity and duration, the legislative resistance that successful white districts have faced. (Ryan, 1999, p. 433)

Consequently, Morgan (2001) argues that “traditional school finance cases, which do not explicitly take race into account, are unlikely to cure the racial disparities (p. 165)” that exist throughout school districts. More recently, Weishart (2016) discusses how “scholars have urged school finance litigants to incorporate an argument that racial and socioeconomic integration are necessary components of a student’s constitutional right to an equal or adequate education” (p. 967).

Hinojosa (2016) is optimistic that two current race-conscious school finance cases New Mexico and North Carolina, *Martinez v. New Mexico* and *Silver v. Halifax County School Board Association*, show promise with using this strategy. Interestingly, in 2001 following remand for the *Abbeville v. South Carolina* case, the Plaintiffs tried to amend their complaint by including allegations regarding the racial characteristics of the Plaintiff Districts (*Abbeville v. SC*, 2005). The court denied the amendment request citing that “it was too late to inject those issues” and “the court has considered only evidence related to poverty as pertinent to this case” (*Abbeville v. SC*, 2005, p. 8). Nonetheless, whether this fourth wave will continue to emerge and manifest a new successful path for
School finance litigation remains to be seen. Perhaps with North Carolina’s current Silver v. Halifax (2016) case forging the way.

School Funding Litigation in South Carolina

What follows is a chronological historical narrative of school funding litigation in South Carolina. The narrative, starting with South Carolina’s first two complaint filings, which pre-dates Brown, Serrano, and Rodriguez, and concludes with South Carolina’s longest and current case. The following cases will illustrate why 46 years after Serrano the efficacy and racial component of school funding litigation, coupled with the role of courts, remains open to discussion and analysis.

Pearson v. Clarendon County and School District No.26 (1948)

School funding cases in South Carolina begin nearly 70 years ago. In 1947, The Pearson family, from Summerton, SC (Clarendon County) petitioned for adequate transportation for their children to attend school. It is imperative to note that in Clarendon County, there were 61 schools for Black children and 12 for White children; however, the county provided 30 buses for the White children to attend school while providing zero buses for the Black children (Hine, 2004). Accordingly, legal action was set in motion for the first lawsuit addressing unequal educational opportunities for the citizens of Summerton, SC. On behalf of the Pearson family, attorney Harold Boulware submitted a petition, dated July 28, 1947 to the local school board (Kluger, 2004). The following facts were used to support the petition:

1. Mr. Levi [Pearson] had three children who attended Scott’s Branch School, about eight miles from the Pearson house.
2. Mr. Levi’s children had attended Bob Johnson Elementary School, about a quarter mile from their house.

3. Bob Johnson School was in Clarendon School Districts 26, where there was no high school.

4. Black students from District 26 attended high school at Scott’s Branch in Clarendon School District 22.

5. Clarendon County provided no public transportation for black children.

6. White children in the area where Mr. Levi lived were transported to school by buses provided by the county. (DeLaine, 2011, pp. 27-28)

After almost four months of no response from the local school board regarding the petition, a hearing was requested on behalf of Mr. Levi Pearson. However, it took several more months before the local school board scheduled the requested hearing (DeLaine, 2011).

When the local school district refused the request to provide the Black students with school buses, the families filed a lawsuit. In 1948, South Carolina attorney Harold Boulware along with NAACP’s chief legal counsel, Thurgood Marshall, filed *Pearson v. County Board of Education* in the U.S. District Court. This lawsuit sought equal free bus transportation for Black students within the Clarendon County school district.

Unfortunately, the lawsuit was dismissed, due to a tax and zoning technicality regarding Mr. Levi Pearson’s residential property not being solely located within the school district for which he had filed suit (Kluger, 2004). Thus, arguing that Mr. Pearson did not pay taxes in the district named in the lawsuit. This initial lawsuit was grounded in
equal access to schools, via school buses, however what followed *Pearson*, turned into a lawsuit challenging the notion equality and segregation.

**Briggs v. Elliott, 342 U.S. 350 (1952)**

Originating from the 1947 petition by the parents of Black students attending school in Clarendon County, SC, *Briggs v. Elliott*, was the first school funding lawsuit that made it to court in South Carolina. The lead plaintiff, whose name was first alphabetically on the second petition, was Harry Briggs. This second petition beyond equal bus transportation and sought overall equal educational opportunity for the Black students within the Clarendon County school district (see Appendix A). The suit named Roderick Elliott, the White chairman of the local school district, as the defendant (Patterson, 2001).

Initially filed in 1948 as *Pearson v. County Board of Education*, this filing was to argue the discriminatory bus-transportation practices in the state. Filed again in 1950, the case went beyond transportation and seeking equal educational opportunities to ultimately attacking segregation (The Leadership Conference on Civil and Human Rights, 2016; Kluger, 2004). The new filing declared the following:

This is a suit for a declaratory judgment and injunctive relief in which it is alleged that the schools and educational facilities provided for Negro children in School District No. 22 in Clarendon County, South Carolina, are inferior to those provided for white children in that district and that this amounts to a denial of the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution, and further that the segregation of Negro and white children in the public schools, required by Article 11, section 7 of the Constitution of
South Carolina and section 5377 of the Code of Laws of that state, is of itself violative of the equal protection clause of the Fourteenth Amendment. (Briggs v. Elliott, 1951, pp. 530)

The new strategy would now demand equal treatment in transportation, buildings, teachers’ salaries, and educational materials (Patterson, 2001). Public meetings were held in Clarendon County to explain to the community that the suit now demanded desegregation and full educational equity, not just equal access to transportation (Wellington, 2004). According to Kluger (2004), at the very least, the Plaintiffs:

…would hope to win an equalization order from the courts, and if [they] could not get an opinion that overturned Plessy, he [Thurgood Marshall] could try to prove that segregation as administered in South Carolina never resulted in equality and therefore had to fall. (pp. 330)

Interestingly, at the start of the 1950 pre-trial hearing, the defendants admitted that the educational facilities, equipment, curricula, and opportunities provided to the plaintiffs were not equal to those provided for the White students in their Clarendon County school district (Briggs v. Elliott, 1951). This change is strategy, from equal school funding and educational opportunity to desegregation, appeared to be an understandable and natural transition for everyone involved with Briggs. Kiracofe (2004) contends that there exists a natural relationship between desegregation and school funding litigation because they “both share the same basic goal of improving educational opportunities for poor and minority students” (p.3).

Nonetheless, in response to the new strategy, the Governor of South Carolina acted by getting the state legislature to approve a statewide school equalization program.
This equalization program “provided for school-building under the bond program, state operation of school transportation, and higher teacher’s salaries paid on an equal basis to both races” (Kluger, 2004, p. 334). According to the National Park Service (2017), South Carolina published a report on the equalization program in 1955, which highlighted the new schools constructed, the new buses purchased, and the locations of new schools across the state (see Appendix B).

The Governor’s attempt to stay one step ahead of the law and the plaintiffs’ attorneys was enough for two of the District Judges to rule in favor of the Clarendon County School District. The ruling of the court was that the schools must be equalized but not integrated (The Leadership Conference on Civil and Human Rights, 2016). The lone dissenting judge provided the following, which was later referenced in the *Brown v. Board* opinion:

> [S]egregation in education can never produce equality and that it is an evil that must be eradicated... the system of segregation in education adopted and practiced in the State of South Carolina must go and must go now. Segregation is per se inequality. (Waring, 1951, pp. 19)

Although the ruling was a lost for the citizens of Clarendon County, *Briggs v. Elliott* played a significant role in the formulation of Thurgood Marshall and the NAACP’s strategy to abolish *Plessy v. Ferguson* (1896). The ruling set the stage for *Briggs v. Elliott* to be appealed to the U.S. Supreme Court, where it consolidated with four other cases to become *Brown v. Board of Education*, 347 U.S. 483 (1955). Nonetheless, it is important to note that *Briggs v. Elliott* became the first case to reach the U.S. Supreme Court regarding equal educational opportunity for the Black citizens of South Carolina and the
first of the four *Brown v. Board* cases to be heard. Interestingly, Wellington (2004) illuminates the fact that the U.S. Supreme Court went against tradition when naming the consolidated cases of *Brown*.

Briggs chronologically preceded the other suits. Alphabetically, also, Briggs precedes Brown. Court cases traditionally bear the name of the first of the litigants in the alphabetical list. It has been suggested that in this sensitive social challenge to the American way of life the Supreme Court justices were reluctant to hear a case that appeared to be directed specifically against the South. A case bearing South Carolina in its name could inflame passions. But for the legal or political move that changed the name of the case to that of the second of the litigants, *Brown v. the Board of Education of Topeka, Kansas* would have been known instead as the case of Harry Briggs v. R. M. Elliott, chairman of the board of education of the Summerton district public schools. (para. 8)

Nonetheless, after the 1955 historical *Brown* ruling, rural school districts in South Carolina continued to work towards receiving equal educational opportunities and receiving fair funding by challenging the State’s education funding system. *Richland County v. Campbell, 249 S.C. 346 S.E.2d 470 (1988)*

While the initial plaintiffs in *Briggs v. Elliott* (1952) focused on adequate funding and equal educational opportunities, the second school funding case to make it to court in South Carolina challenged the constitutionality of South Carolina’s public school funding system. The litigation for this case was in line with the other second wave of school finance cases taking place around the nation. The litigation focused on the State’s constitution equal protection and public education funding plan. The plaintiffs were five
individual residents or Richland County, whereas the defendants were the current Governor, Carroll Campbell, along with the Lieutenant Governor and Speaker of the House of Representatives. The plaintiffs in *Richland County v. Campbell* claimed that South Carolina’s public school public system was inequitable based on disparities in per-pupil spending between high wealth and low wealth school districts. They also argued that South Carolina’s funding plan “denies students equal educational opportunities because the formula considers each school district’s wealth, thereby depriving them of equal protection” (*Richland County v. Campbell*, 1988, p. 350).

Initially filed in 1987, over 30 years after South Carolina’s first school funding case, it was dismissed by a trial court judge. The trial judge found the state’s system of school finance to be a valid legislative means to provide for the funding of public education (*Richland County v. Campbell*, 1988). The plaintiffs appealed to the state high court with no success. In 1988, the SC Supreme Court affirmed the circuit court’s dismissal of the lawsuit.

The Court held that the state’s system of school finance did not violate the state constitutional requirement to provide for maintenance and support of public schools nor did it deprive plaintiffs of their rights under the equal protection clause (Institute on Education Law and Policy, 2017b). The SC Supreme Court also affirmed that the public education funding plan implemented by the General Assembly was a rational and constitutional means to equalize the educational standards of South Carolina public schools and the educational opportunities of all students (*Richland County v. Campbell*, 1988).
Abbeville v. the State of South Carolina, 335 S.C. 58, 515 S.E.2d 535 (1999/2014)

The next and most current attempt to seek more equitable funding and educational opportunity across South Carolina’s rural public schools occurred a short five years after the SC Supreme Court ruling on Richland County v. Campbell. In 1993, 40 school districts filed an initial lawsuit seeking equity in education funding. It is important to note that in addition to the 40 school districts, 25 individually named parents and 26 students from specified school districts were also Plaintiffs. This filing was the beginning of what was to become the twenty-one-year lawsuit know as Abbeville County School District v. State of South Carolina, correspondingly referred to as Abbeville I and Abbeville II.

The Plaintiff Districts. The Justice who delivered the Abbeville opinion provided the following description of the Plaintiff Districts:

Inadequate transportation fails to convey children to school or home in a manner conducive to even minimal academic achievement. Students in the Plaintiff Districts receive instruction in many cases from a corps of unprepared teachers. Students in these districts are grouped by economic class into what amounts to no more than educational ghettos, rated by the Department of Education’s guidelines as substandard. Large percentages of the students in the Plaintiff Districts—over half in some instances—are unable to meet minimal benchmarks on standardized test, but are nonetheless pushed through the system to “graduate.” (Abbeville v. SC, 2014, pp. 30)

Remedying the inequity in educational opportunity in South Carolina’s rural public schools may prove equally as difficult as did ending racial segregation after Brown. Clarendon County, specifically Clarendon County School District 1, where the schools
involved in *Briggs* and *Abbeville* are located, along with the other rural school districts that are a part of *Abbeville*, are still segregated, still unequal and still inadequate. Thus, the inherent relationship between school segregation and school funding cases is evident in South Carolina.

Other than the fact that South Carolina’s first funding court case, *Briggs*, initial started as an argument for adequate funding as a means to provide equal educational opportunity, segregation was at the forefront of the case. The Governor of South Carolina during the time of the *Briggs* case understood the connection between segregation, funding equality, and the role of the Court to address educational and racial issues.

A former Justice of the Supreme Court, [the Governor] understood very well the trend of the Court’s decisions on racial matters. If conditions as bad as those in Clarendon were allowed to remain, the federal courts might indeed be obliged to intervene and command the state to equalize – and perhaps even to desegregate as the quickest, fairest means to equalize. (Kluger, 2004, pp. 334)

In 2017, still segregated and still not equalized, the 36 Plaintiff Districts of *Abbeville* are collectively referred to as the “Corridor of Shame” (see Appendix C). This nickname was taken from a 2004 documentary that in 2007 made national headlines when then Presidential Candidate Barak Obama visited one of the school districts highlighted in the documentary (Graves, 2016).

Produced and directed by Bud Ferillo, the documentary “Corridor of Shame: The Neglect of South Carolina’s Rural Schools” is an hour-long documentary that tells the story of the challenges faced in funding an adequate education in South Carolina’s rural school districts (Ferillo & Associates, 2006). Specifically, the documentary tracks the
evidence presented on behalf of the eight school districts in *Abbeville v. SC* (Ferillo & Associates, 2006).

Taking into consideration that inequalities in the context of rural school districts tend to be overshadowed by urban educational issues, it could be argued that this documentary was invaluable for rural schools across America. Rural schools are served the least by politically motivated individuals and less likely to have access to strong political advocacy (Winston, 2003). Thus, making former President Obama’s visit and the documentary even more significant.

It is contextually important to note that in 1999, before the start of the *Abbeville* trial, due to district consolidation, the number of districts was down from 40 to 36 (*Abbeville v. SC*, 2014). In addition, when it was time to take the case to trial, the plaintiffs’ attorneys selected only eight school districts to represent the other districts as “trial plaintiffs” in the lawsuit. These trial Plaintiffs are as follows: Allendale County School District (Allendale Fairfax, SC), Dillon County School District 2/now 4 (Dillon, SC), Florence County School District 4 (Timmonsville, SC), Hampton County School District 2 (Estill, SC), Jasper County School District (Ridgeland, SC), Lee County School District (Bishopville, SC), Marion County School District 7 (Marion, SC), and Orangeburg County School District 3 (Holly Hill, SC).

**Abbeville I.** The initial 1993 filing sought a declaratory judgment against South Carolina’s public education funding formula. In an amended complaint filed in 1995, the plaintiffs argued that the state’s funding formula violated the South Carolina Constitution’s education clause, the equal protection clauses of the State and federal constitutions, and the Education Finance Act of 1977 (*Abbeville v. SC*, 2005).
Specifically, the Plaintiffs contended the following regarding the education funding system:

[It] (1) was under funded, lacked uniformity and imposed unlawful tax burdens on Plaintiffs; (2) was not serving the purposes for which it was enacted; (3) had resulted in a disparity in the educational opportunities for students throughout the State; and (4) was not being funded at the level mandated by the EFA and the Education Improvement Act (“EIA”). (*Abbeville v. SC*, 2005, p. 3)

The state of South Carolina filed motions to dismiss the amended complaint, arguing that the specifics of the complaint did not represent a violation of the State or federal constitutions and no private right of action exists under the Education Finance Act (EFA) (*Abbeville v. SC*, 2005). Based on the *Richland County v. Campbell* ruling, the court, in 1996, granted the State’s motion to dismiss. The circuit court contended that “[t]he very funding scheme at issue herein passed constitutional muster in *Richland County v. Campbell*” (*Abbeville v. SC*, 2005, p.4).

Unsurprisingly, the Plaintiffs immediately appealed to the South Carolina Supreme Court. The plaintiffs brought a declaratory judgment action challenging South Carolina’s funding of public education; however, they did not seek equity in state funding, but instead claimed that the current funding system resulted in inadequate educational opportunity. The Plaintiff Districts claimed the following:

South Carolina's education system was underfunded, resulting in a violation of the state constitution's education clause, and that to the extent the Defendants distributed funds without regard for school district wealth under the Education
Improvement Act (EIA), the system violated the state and federal constitutional guarantees of equal protection. *(Abbeville v. SC, 2014, p. 4)*

It took three years after the appeal for the high court to provide a ruling. In 1999, after six years of the State attempting to get the lawsuit dismissed, the South Carolina Supreme Court returned the case to the circuit court. The Supreme Court affirmed a part of the circuit court’s 1996 decision while reversing another part.

Although the circuit court argued that the constitution’s education clause did not impose qualitative standards, therefore holding that the Plaintiffs Districts could not state a claim under the clause, the SC Supreme Court upheld the plaintiffs’ adequacy claim and remanded the case for trial. Hence, The *Abbeville I* Supreme Court upheld the circuit court’s ruling that the EFA did not create a private cause of action and claims under the equal protection clauses but found that the Plaintiff Districts complaint did have a claim of inadequate educational opportunity. Thus, ordering the circuit court on remand to consider the claim for violation of the State Constitution’s education clause which reads as follows:

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable. *(S.C. Const. art. XI, § 3)*

It is clear that South Carolina’s education clause does not establish any qualitative standard for providing public education. However, in the *Abbeville I* ruling, the SC Supreme Court applied judicial interpretation and held that the educational clause requires the General Assembly to “provide for the opportunity for each child to receive a
minimally adequate education” (Abbeville v. SC, 2005). The Court went a step further and defined “minimally adequate” as follows:

[T]o include the provision of adequate and safe facilities in which students have the opportunity to acquire: 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills. (Abbeville v. SC, 2014)

With the Abbeville I 4-1 decision, and the clarification regarding the interpretation of the educational clause along with the definition of “minimally adequate”, the lower court was set to hear the case.

**Abbeville I Remand.** In 2001, following Abbeville I, the Plaintiffs submitted a third amendment to their initial complaint. The third amended complaint reiterated prior claims, but this time also sought monetary damages, a jury trial, and contained allegations regarding the racial characteristics of the Plaintiff Districts. (Abbeville v. SC, 2005). The lower court granted the motion to amend but denied all three of the new requests presented in this third amended complaint (Abbeville v. SC, 2005).

Although the inclusion of racial characteristics claims was denied by the lower court, scholars maintain that there exists a natural relationship between desegregation and school funding litigation and illustrates how race has been addressed in school finance cases since Serrano, including Abbott v. Burke, Levittown v. Nyquist, and James v. Alabama (Kiracofe, 2004). Nonetheless, in July 2003, the non-jury retrial commenced
without considering the racial characteristics of the Plaintiff Districts and lasted until December 2004 (Abbeville v. SC, 2014).

The lower court believed that the Abbeville I decision created one single issue to be determined on remand: “Are the student is the Plaintiff’s Districts being provided the opportunity to acquire a minimally adequate education in adequate and safe facilities as defined by the South Carolina Supreme Court?” (Abbeville v. SC, 2005, p. 8). To assist the circuit court judge with answering this question in their favor, the Plaintiffs employed the following litigation strategy:

[They] examined the resources available to the relevant school districts, also referred to as system “inputs,” as well as the school districts’ and their students’ performances, referred to a system “outputs.” The Plaintiff Districts argued that an analysis of the inputs placed into the school system, and the resulting outputs, proved that the State did not afford students in these districts an opportunity to receive a minimally adequate education. (Abbeville v. SC, 2014, p. 6)

The State’s defense to this argument was that “the resources placed into the system provided the opportunity for students to obtain a minimally adequate education, and some students chose to take advantage of the opportunity, while others did not” (Abbeville v. SC, 2014, p. 6). Specifically, the Defendants contended that “bad outcomes alone do not mean that opportunity is not present and, further that the Court cannot conclude that all students who fail to achieve were deprived of the opportunity to success” (Abbeville v. SC, 2005, p. 159).

In 2005, the circuit court judge provided a judgement that sided with both the Plaintiffs and Defendants, but ultimately the rendered judgment was in favor of the
Plaintiff Districts. The judge determined that state educational system did provide the Plaintiff Districts an opportunity to receive a minimally adequate education, thus satisfying the constitutional requirement. Additionally, the circuit judge declared that facilities in the Plaintiff Districts were safe and adequate and that inputs into the educational system satisfied the constitutional requirement. Yet, the circuit judge also found that the State failed to fund early childhood intervention programs and this failure to provide adequate funding violated the constitutional requirement (Abbeville v. SC, 2014). Thus, the court mandated the General Assembly to establish and adequately fund an early childhood education program for students in the plaintiff districts (Lawson, 2007). Unfortunately, the new House Bill, that was clearly drafted to address the Abbeville order, did not mention the Abbeville litigation, it did not give the Abbeville plaintiffs priority access, and the early childhood program presented in this bill only covered four-year-old children (Lawson, 2007).

Interestingly, like the Brown decision, the Abbeville court considered “a vast amount of social science research and expert testimony in reaching its conclusions” (Lawson, 2007, p. 1028). Research regarding the relationship between other inputs and achievement, as well as the relationship between poverty and achievement was addressed during the trial (Abbeville v. SC, 2005). The court also considered the following data regarding the trial Plaintiff Districts: Characteristics such as student demographics, curriculum and instruction, standardize test scores, per pupil spending and interventions and technical assistance; Teacher issues such as licensing, salaries, turnover, experience, and professional development; Facilities conditions; and Revenue and spending analysis (Abbeville v. SC, 2005).
Nonetheless, neither the Plaintiff Districts nor the Defendants were happy with the court’s judgment. Consequently, in 2006, both parties filed motions to get the court to change its order. Those motions were denied. Responding to the denied motions, in 2007, the decision was appealed to the SC Supreme Court by the Plaintiff Districts and cross-appealed by The State of South Carolina (Abbeville v. SC, 2014).

**Abbeville II.** The SC Supreme Court granted the motions to appeal. Initial oral arguments were heard in 2008. Interestingly, four year later, the Court ordered a re-hearing and requested both the Plaintiffs and Defendants to submit briefs on how laws enacted, since the circuit court’s 2005 decision, affect their initial oral arguments (The Associated Press, 2015). As a result, in 2012, both the Plaintiffs and Defendants re-argued their case before the high court. The issues considered by the SC Supreme Court were as follows:

1) Whether this case is moot?

2) Whether the State’s education system affords students in the Plaintiff Districts the opportunity for a minimally adequate education?

3) Whether the Court should become involved in the controversy?

4) Whether the Court may fashion a remedy? (Abbeville v. SC, 2014, p. 7)

In 2014, six years after the initial oral arguments had been held, the South Carolina Supreme Court ruled in favor of the Plaintiff Districts. Regarding the mootness issue, the Court referenced several state courts’ decisions and the US Supreme Court’s decision in *Northeastern Florida Chapter of Associated General Contractors v. City of Jacksonville* (1993), as justification for their finding.
The Court found that the case was not moot. The Court contended that although, the State have made additional funding available to the Plaintiff Districts and introduced new education programs, the state education funding system has not substantially changed. Therefore, they found that “the Plaintiff Districts may validly argue that the overall funding scheme continues to disadvantage them in the same fundamental way” (*Abbeville v. SC*, 2014, p. 9). The court also found the state to have failed in their constitutional duty to ensure that students in the Plaintiff Districts receive the required minimally adequate educational opportunity. However, the Court also acknowledged the following regarding funding:

…we do not (nor could we legally) merely order the Defendants to disperse additional funding to the Plaintiff Districts. We believe that all parties could agree that – given that the Defendants have disproportionately funded poorer counties such as the Plaintiff Districts in the past with little noticeable impact on student achievement rates – money is not the answer. (*Abbeville v. SC*, 2014, p. 37)

The Court’s perspective is in align with scholars and other state courts involved in school funding litigation. Several courts have held that money is a significant factor in providing educational opportunities, but that exact equality in per pupil expenditures is not constitutionally required, nor is there a basis to determine that amount (Dayton, 2001; Thro, 1994; Weishart, 2016). Similarly, scholars like Hanushek and Lindseth (2008) contend that simply asking for more dollars for schools will not create the systemic changes needed to help student achievement and that money does matter as long as it is used and allocated efficiently among resources.
The *Abbeville II* decision was a 3-2 ruling and the dissenting opinion argued that the Plaintiff Districts claim represents a nonjusticiable political issue and that the Court overstepped its boundary with the ruling. The dissent contended that defining a minimally adequate education is fundamentally a policy determination to be made by the citizens of South Carolina, through their elected representatives (*Abbeville v. SC*, 2014). Because the Education Clause in the South Carolina Constitution (S.C. Const. art. XI, § 3.) does not reference a minimum standard for providing education, the dissent offered the following:

Court today reverses this primary determination of the trial court. In this regard, determining what constitutes an adequate education is so subjective as to defy judicial resolution. However, this Court, in *Abbeville I*, proceeded to judicially engraft a qualitative standard into our state constitution so it could then interpret its meaning. In my judgment, this was error and was fundamentally inconsistent with the plain language of our state constitution, which speaks only of the General Assembly and its duty to create and maintain a public school system. (*Abbeville v. SC*, 2014, pp. 46)

When considering whether the Court should become involved in fashioning a remedy to the constitutional violation, the SC Supreme Court made it clear that they believe in the principle of separation of powers, citing that the legislature, not the judiciary, is the proper institution to make major educational policy choices.

Although the Court refused to provide the General Assembly with a specific remedy to the constitutional violation, it did order that both the Plaintiff Districts and Defendants must work together to address the educational issues on both the state and
local levels. The Court ordered the parties to reappear before the Court within a
reasonable time with a plan to address the State’s constitutional violations of not
providing minimally adequate education opportunities (*Abbeville v. SC*, 2014). However,
by 2015, the “reasonable time” given in the order became an actual compliance deadline.
The Court gave the legislators until Feb 1, 2016 to develop a plan “detailing their efforts
to implement a constitutionally complaint education system, including all proposed,
pending or enacted legislation” (Leatherman & Lucas, 2016, p. 1).

The Plaintiff Districts were given a month to respond to the plan before a judicial
review (The Associated Press, 2015). This mandate would be considered a political
solution versus a judicial solution (Dayton, 1992). Nonetheless, it is important to note
that the solution presented in the *Abbeville II* order is in align with other State court’s
decisions to hold the legislature accountable for a remedy.

There is a historical tendency for courts to turn the problem back to the state
legislature (Dayton, 1992; Dayton, 2004). Yet, these courts still expect legislators to
provide a remedy to address the violation. Some courts have also rejected the political
solution and provided a judicial remedy for school funding inequities and inadequacies
(Dayton, 1992).

Even though the SC Supreme Court opted for a political remedy, the dissenting
opinion found the order of the General Assembly to submit an education legislative
agenda to the Court as a slippery slope for the SC Supreme Court’s involvement in policy
making not just limited to the funding of public education. Consequently, the legislature
has not been inclined to fully comply with the Court’s order.
According to The Associated Press (2015), “the chambers’ legislative leaders make clear in a letter to the chief justice that the Legislature will ignore the court’s timeline and continue its own path” (para. 14). Nonetheless, on June 29, 2016, the Legislature submitted a report to the SC Supreme Court. This report highlighted the activities undertaken by the General Assembly since the 2014 order, in addition, the report outlined the legislative action taken (Leatherman & Lucas, 2016).

In 2016, South Carolina Appleseed Legal Justice Center released a report which found public school districts in South Carolina overall received less financial support per student in 2013-2014 than they did five years earlier. However, they also found that “support declined most severely in those districts ranking highest on a state education poverty index” (Washington, 2016, para. 1), which would include the Abbeville Plaintiffs’ districts. This finding is important because, following the victorious ruling, the Plaintiffs, along with many other supporters throughout South Carolina, still are not hopeful that they will receive the educational opportunities that they were seeking.

The executive director of South Carolina Appleseed Legal Justice Center voiced concern about the lack of movement since the Abbeville case has been decided, stating “considering that the decision came out two years ago we would have hoped that there would be some final resolution at this point” (Washington, 2016, para. 6). Although several new educational bills were passed in response to the Abbeville I Remand and Abbeville II ruling, the rural, poor, mostly Black school districts, after 70 years, are still waiting for a long-term trustworthy solution and commitment from the state of South Carolina.
The State of South Carolina has requested that the SC Supreme Court to vacate continuing jurisdiction in the Abbeville case due to the legislative actions that the General Assembly has taken with the new “Abbeville bills” (i.e. H. 4936, H. 4939, H. 4940, and H. 4938), along with the other information provided in the 2016 report submitted to the Court. According to the Education Law Center (2017), the State claims that its “legislative actions have remedied the constitutional violation.” In disagreement, the Abbeville Plaintiffs opposed the State’s report and request, arguing that the legislative actions were “minimal and failed meaningfully to address the Courts’ 2014 ruling” (Education Law Center, 2017, para. 6).

The plaintiff school districts requested that the Court retain jurisdiction over the Abbeville case. They contended to the SC Supreme court that “while the reports indicate the defendants have studied the issues identified by this Court in Abbeville II, they have failed to set forth a remedial plan or a timeline for implementation of a plan to cure the constitutional violation” (Abbeville v. SC, 2016, p. 7). Specifically, regarding the enacted legislation, the Plaintiffs assert that “the four bills enacted by the General Assembly do not reflect a comprehensive plan to address the myriad issues identified by this Court and to eliminate, through comprehensive educational reform, the constitutional violation found by this Court in Abbeville II” (Abbeville v. SC, 2016, p. 7).

One could assume that the Abbeville Plaintiff Districts are hoping that the SC Supreme Court will follow suit with the Texas Supreme Court in Edgewood Independent School District v. Kirby (1991) and find that the General Assembly’s remedy is inadequate and order the legislators to try again (Thro, 1994). This was not the case for
the Abbeville case. After reviewing all of the reports and requests submitted by both the
Plaintiffs and Defendants, the SC Supreme Court offered the following:

In sum, we find the combined reports indicate a studied and dedicated approach
has been and will continue to be taken by the defendants to resolve the issues
identified by this Court in Abbeville II and to provide the students in the plaintiff
school districts with an opportunity to obtain a minimally adequate education.

(Abbeville v. SC, 2016)

Even though the Court found the defendant’s report acceptable, the Court decided to
retain jurisdiction over the case. Specifically, the Court will “continue to monitor the
progress towards a constitutionally compliant education system by requiring the
submission another report by the parties in approximately one year” (Abbeville v. SC,
2016, p. 9-10).

Still holding both the plaintiff school districts and the General Assembly
accountable for a remedy, the Court reiterated their Abbeville II expectations in that they
“expect the plaintiff school districts, in addition to the defendants, to present a report of
their efforts in addressing the issues identified by this Court in Abbeville II” (Abbeville v.
SC, 2016, p. 10). The SC Supreme Court ordered the reports to be submitted no later than
June 30, 2017. Given that courts that have found violations of their state’s educational
clause and/or school funding system “rarely go beyond judicial declarations of
unconstitutionality and a call for legislative reform” (Dayton & Dupre, 2004, p. 2400), it
remained to be seen how the SC Supreme Court would respond to the upcoming reports
of the Defendants and the Plaintiff Districts of Abbeville.
In November 2017, after the review of the court ordered documents submitted in June, the SC Supreme Court dismissed the General Assembly from the *Abbeville* case. In a 3-2 ruling, the Court ended its oversight of legislative efforts to remedy the state’s constitutional violation on the grounds of separation of powers. Some legal scholars argue that the SC Supreme Court ended jurisdiction over this landmark case without offering a reasoned explanation (Black, 2017). Accordingly, viewing the South Carolina Supreme Court as a subsystem of the larger political system, what follows is an analysis of the dynamics of education politics evident in *Abbeville*.

**The Politics of *Abbeville v. South Carolina***

**The Role of the Courts**

The federal and state Courts played a significant role in educational policy starting with *Brown*, *Serrano*, and *Rodriguez*. But still to this day, there is disagreement regarding judicial intervention and education policy. Specifically, the role of the Courts in addressing South Carolina’s failure to provide minimal adequate educational opportunity to all students is an ongoing debate, that started with *Briggs* in 1952 and continued with *Abbeville* in 2014.

In *Briggs* and *Abbeville*, the issue of whether the Court should become involved in educational policy was challenged by the Defendants. During the *Briggs* trial, one of the three judges stated to the Plaintiff’s attorney that “it’s not the function of the court to determining what is the best educational policy. It is the function of the court to see that all men are given their rights” (Kluger, 2004, p. 358). Correspondingly, the *Abbeville* opinion stated the following:
While the Defendants and the dissent point to the amount of spending in Plaintiff Districts, this spending fails to provide students with the opportunity to obtain a minimally adequate education. Rather, the evidence demonstrates that there is a clear disconnect between spending and results. This Court cannot suggest methods of fixing the problem, but we can recognize a constitutional violation when we see one. *(Abbeville v. SC, 2014, p. 30)*

Throughout the history of school funding cases, the role of the court has differed just as much as the rulings. Dayton and Dupre (2004) suggests that “[c]ourts commonly acknowledge separation of powers limitations on judicial authority, but courts have also recognized a judicial duty to interpret provisions in their state constitutions” (p. 2400).

Regarding the *Abbeville* case, Hawthorne (2005) argues that educational reform through the courts is both necessary and appropriate for South Carolina. Groups, frustrated by educational policies, tend to turn to the state and federal courts for assistance. Henig (2013) refers to this as venue shopping. Groups that feel disadvantaged by the political system, can look for a more receptive decision-making arena. In response to states General Assemblies’ unwillingness or inability to provide adequate funding between districts or fair remedies, citizens file law suits to challenge the constitutionality of states’ school financing systems and education clauses (Dayton, 2004; Kiracofe, 2004; Thro, 1989)

In the case of *Abbeville v. SC* (2014) the Plaintiff Districts decided to get the state Supreme Court involved to shift to a decision-making arena in which civil rights, rather than political power and individual values, might triumph (Henig, 2013). Many past and present school funding cases include rural schools and “as long as rural schools continue
to be placed at a disadvantage by state systems of school funding, it is likely that rural school advocates will continue to pursue remedies through litigation” (Dayton, 2003, p. 17).

According to Garrow (2004), proponents of the *Abbeville* lawsuit “equate their case to *Briggs* and say that once again, judicial intervention is the only solution that can bring true educational opportunity to Clarendon County's students” (p. 2). More than a decade after this statement was made, it remains unknown if judicial intervention will be able to provide true adequate educational opportunity to students attending a rural school in South Carolina.

It is imperative to keep in mind that the SC Supreme Court made it clear throughout the *Abbeville II* opinion that they do not make policy themselves, nor do they consider themselves experts in education. This assertion is not a surprise, because there seems to be a consensus that “courts are less well suited than other general purpose governmental entities to handle the intricacies of implementing school level educational remedies” (Henig, 2013, p. 92). Nonetheless, interpretation of the law is unquestionably a part of the court’s role.

**Judicial Interpretation.** To no surprise, in *Abbeville*, both the lower court and high court had a different interpretation of the South Carolina Constitution. Not only did the SC Supreme Court take it upon themselves to interpret the state’s Education Clause as a requirement of the state to provide minimally adequate education, it also defined the parameters of what constitutes a minimally adequate education. Thro (1989) acknowledges the difficulties of interpreting state constitutional educational clauses and
presented four distinct categories, “based on the obligation imposed on the state legislature” (p. 1646), for which these clauses can be classified.

With the lowest category being I and the highest being IV, the likelihood that a state’s school funding system will be overturned is the lowest in category I (Thro, 1989). South Carolina’s clause falls under Category I. Category I imposes the minimal educational obligation on a state and only provides “for a system of free public schools and nothing more” (Thro, 1989, p. 1662) and cannot be regarded as imposing a quality standard. Consequently, the lower court judge and the dissenting Justices found the Supreme Court interpretation of the education clause to be an improper exercise of judicial power. In response to the majority’s interpretation, the dissenting opinion offered the following:

…the General Assembly cannot legislate outcomes, deemed "outputs" …The education clause of the Constitution does not require the State to ensure that all students acquire a minimally adequate education. However, it does require the State to provide 'each child' the opportunity to obtain a minimally adequate education. (Abbeville v. SC, 2014, p. 48)

In short, the dissenting opinion still believed that the separation of powers doctrine prevented the South Carolina high court from reviewing the adequacy of the legislative function of interpreting the state’s education clause.

Fogle (2000) disagreed with the dissenting opinion. After conducting research on the SC Supreme Court’s interpretation of the education clause in relation to the three waves of school funding litigation, Fogle (2000) concluded that “the education clause of
the South Carolina Constitution did provide a basis for the court’s holding in *Abbeville* without violating the separation of powers doctrine” (p. 1).

In contrast, Thro (1994) would argue that because South Carolina’s education clause is a Category I, “obviously, if the education clause does not impose a quality standard, there can be no violation” (p. 610). According to Thro (1994), South Carolina’s General Assembly had met its constitutional duty. Thro (2016) contends that “[w]hile the Education Clauses limit legislative discretion by requiring certain actions, the legislature retains a wide amount of discretion as to how to achieve quality standards. Disagreement with policy choices or with current outcomes does not equal a constitutional violation” (p. 556).

**Legislative Action.** In addition to interpreting the law, some see the court’s role as seeking a balance between nudging and dictating state legislatures to enact laws. Justices understand that the courts have to “respect boundaries that established the legislature as the institution properly responsible for making law and policy; [making judges] reluctant to specify precise remedial steps or even timing” (Henig, 2013, p. 86). This is illustrative in the *Abbeville II* order to the Defendants.

Regardless of the Justices’ difference in interpretation, it is imperative to keep in mind that “the quality of judicial writing is one of encouraging the legislature, setting activities in motion which will have secondary consequences to lead the senators and assemblymen to act…We can encourage legislature to pass laws...without directing them to do that” (Henig, 2013, p. 87). The *Abbeville v. SC* (2014) ruling has caused new educational policy to be enacted. However, as noted by Kirst and Wirt (2009):
A court mandate does not bring total or quick acceptance, does not provide sufficient resources for the resourceless, and does not teach us how to resolve conflict or to live with ambiguity. However, courts can create a new policy agenda that others in the political system can implement...The result is a dialog among courts, politicians, and education advocates… (p. 327)

This is evident with *Abbeville v. SC* (2014), for although the ruling did create a new policy agenda for the General Assembly, reforming the educational finance system is not high on the state’s priority list. Perhaps, the General Assembly has other ways to reform education, other than just through policy, that they would rather focus on.

Nonetheless, South Carolina’s legislators have chosen to focus their efforts on other causes such as improving transportation infrastructure, domestic violence legislation, and ethics reform (FITNEWS, 2015). Regardless of judiciary influence, Zeehandelaar and Griffith (2015) acknowledge that legislators are often the primary initiators of policy and that “state-specific studies have continued to show that political culture and accumulated history help to predict both the dynamics and outcomes of legislation” (p. 565). Nonetheless, Hanushek (2006) argues that after decades of court cases on school funding, little effort has been made to assess the effect of court involvement on student outcomes nor on the ability of courts to make or influence effective policy. Whereas, Jackson et al. (2014, 2016) provide evidence that court-mandated school finance reform policies have improved student outcomes, Jackson et al. (2014) found that legislative reforms were only “somewhat effective at reducing spending gaps” (p. 43) between high and low-wealth school districts. Interestingly, Jackson et al. (2014) found that equity-based court mandated school finance reforms
appear to be effective at reducing spending gaps through redistributing school spending, whereas adequacy-based reforms reduced the gap by “increased school spending in all districts, with larger increases for low-income districts” (p. 43).

Hanushek (2006) insists that “the political branches, for all their rhetoric, have not succeeded in solving our educational shortcomings after decades of effort” (p. xix). Ultimately, regardless if it is from a scholar, judge, legislator, school district, or constituent’s perspective, one can propose that the role of courts in addressing education funding issues “may be influenced by many factors, including notions of federalism, economic concerns, and perhaps even political viewpoints” (Dayton & Dupre, 2004).

**The Political Values**

All types of groups use political power to satisfy their values. According to Kirst and Wirt (2009) judges are political because they must choose between competing values brought before them in a real conflict. As addressed later in the policy process discussion, not every issue is seen as a problem. Kingdon (2011) believes that for a condition to become a problem, people have to be convinced that something should be done to change it. Regarding political values, “people in and around government make that translation by evaluating conditions in the light of their values, by comparison between people…, and by classifying conditions into one category or another” (Kingdon, 2011, p.114).

Kirst and Wirt (2009) identify the following four values that are pursued in educational policy: Quality, efficiency, equity, and choice. Kingdon’s (2011) argument that people in and around government sometimes do not solve problems, could be grounded in differences in values. It is interesting that Kingdon (2011) also suggests that
instead of solving problems, individual in and around government become advocates for solutions and look for current problems to which to attach their specific solution.

When considering *Abbeville*, the Plaintiff Districts exhibited a greater policy emphasis on the value of equity and quality, whereas the State emphasized the value of efficiency. The Court’s opinion exhibited a greater policy emphasis on the value of efficiency and quality. These differences in values is important because Kirst and Wirt (2009) make the argument that a tension arises among values because different policy actors back different values and the values are not a nicely integrated ideology, thus generating political conflict as observed in the *Abbeville* opinion and dissent.

Unfortunately, “just as no political action takes place without having different effects on different group’s values, educational policymaking is contentious because some participants win and some lose” (Kirst & Wirt, 2009, p. 241). However, the opinion for *Abbeville v. SC* (2014) believes that neither the Plaintiff Districts nor the State won, but the winners are “fittingly, the students in those districts and the throughout the State” thus "there is no loser" (p. 38).

Still, judges are “not free to make such value choices alone, for, as with all power, there are limits” (Kirst & Wirt, 2009, p. 310). The Justices in *Abbeville* (2014) were limited not only by the federal and state constitutions, but also by the political culture. The dissenting opinion offered the following:

As a citizen of our great State, I would find much to cheer about in the majority's decision. I, however, approach this so-called legal case not as a private citizen, but as a judge constrained by the rule of law and the inherent constitutional limitations upon the power of the Judicial Branch. (*Abbeville v. SC*, 2014, pp. 40).
The Governance Issues

Who governs education and the relationships between these governmental entities is definitely an issue of political culture for Abbeville. Zeehandelaar and Griffith (2015) defines education governance as “the institutions with the authority to make and implement education policies plus the processes through which this authority is granted and exercised” (p. 12). In South Carolina, the main institutions and individuals include the legislature, state board of education, governor, state superintendent of education, and department of education.

Based on the governance structure in South Carolina, I posit that one cannot separate education governance from the politics due to the appointment of the Justices by the General Assembly. Regarding education politics, political culture affects education politics by way of education governance (Zeehandelaar & Griffith, 2015). The definition of political culture according to Heck, Lam, and Thomas (2014) includes how political institutions and policy processes work, in addition to the role of each institution in the policy process.

Thus, it can be argued that governance of education in South Carolina is the result of the political culture as well as an indicator of the political culture. Heck, Lam and Thomas (2014) characterized South Carolina as a Traditionalist state. Traditionalist political culture is defined as “maintaining established values and sociopolitical structures, with a more limited type of local participation in political life” (p. 12). Specifically, with education governance, South Carolina has limited the local participation regarding education policy.
When it comes to governing education in South Carolina, the General Assembly dominates influence over the state’s political culture. While the state superintendent is an elected official, all state board of education members, excluding one, are appointed by the legislature. This is not a common governance structure, for only two other states, Mississippi and Washington, have state board of education members appointed by multiple authorities (Workman, 2013).

In South Carolina, the legislature appoints 16 of the 17 state board members, with the governor appointing the remaining member. In addition, South Carolina is one of two states whose Legislature elects state high court judges; Virginia being the other. This education governance structure is in alignment with traditionalistic states “having more closed policy processes dominated by elite insiders and more centralized policymaking” (Heck, Lam, & Thomas, 2014, p. 14). For example, in SC, candidates for Supreme Court judgeships and their supporters traditionally gather pledges, or commitments, from legislators in the weeks before the election. Thus, it could be argued that the South Carolina Supreme Court’s governance relationship with the legislative branch creates a political and judicial issue. It can be reasoned that the governance structure establishes a possible principal-agent issue.

The principal-agent problem exists when conflicts arise between the state government and the citizens of South Carolina. Because “the judiciary in only one subsystem of the political system” (p. 311), and is also appointed by the General Assembly, the SC Supreme Court must maintain some kind of balance with other state governance entities in order to reduce conflict among them. (Kirst & Wirt, 2009). Thus, the General Assembly reliance on the Supreme Court to protect the State and its
constitution creates the potential for a serious principal-agent challenge. Because the state
government appoints the Justices to operate in that role, the SC Supreme Court is
essentially the state. However, the SC supreme court lack the authority to monitor and
dictate the legislature educational policy actions.

In other words, unlike the federal Supreme Court that clearly has superior power
over the state of South Carolina and can use that power to force the state to comply with
laws, the state supreme court does not have superior power of the state. Remembering, it
is the state, looking at the Abbeville II ruling, there is definitely an issue in governance
when considering the role of the SC Supreme Court insisting on the General Assembly to
take action and adhere to the Court’s order. Since the SC Supreme Court cannot dictate
the State’s actions, if the state legislative branch does not appropriately adhere to the
orders of the Court, then the General Assembly has both the motivation and the ability to
act, potentially without any consequence, against the interest of the citizens or just to act
in the State’s interest. Thus, creating a principal-agent problem.

The Policy Process

Because policy is typically not objective or nonpartisan, several factors affect the
agenda setting process, including the visibility of the issue, the type of agenda setting,
and the political culture. Kingdon (2011) focuses on three independent processes streams
that facilitate the formation of policy. These three policy streams are identified as the
problem, policy, and political streams. He posits that the three streams must be joined for
an idea to reach the government agenda, thus opening of a favorable political window at a
particular time.
Being that it took over 20 years and judicial intervention for South Carolina to make the issue of adequate education a priority on their judicial and legislative agendas, demonstrates the existence of a favorable political window. Investigating the specifics of what aspects of each stream contributed to such a drastic change is beyond the scope of this paper. Even so, it is imperative to acknowledge that a window of opportunity played a significant role in the ruling of Abbeville II. Then again, the mere limited agenda space in higher courts can alone make it hard for issues to break through (Henig, 2013).

Regarding the problem stream, it’s interesting that after years of the Plaintiff Districts trying to make the issue of inadequate school funding a priority on the supreme court’s agenda, the supreme court finally decided to become involve in not only addressing the claim, but also in suggesting policy solutions to consider. The SC Supreme Court recommended that the General Assembly look at what other states have done to address their educational clause violations. In response to the Court’s ruling, the South Carolina legislature enacted several policies under what they refer to as the Abbeville bills. One could argue that up until the Abbeville II ruling, the General Assembly viewed the inputs and outputs of the educational system as a condition as opposed to a problem.

Kingdon believes that conditions become defined as a problem only after people come to believe that something should be done about it (Cooper, Randall, & Fusarelli, 2004). Also, the change in the Plaintiff Districts’ constitutional claim strategy from a violation of the 14th Amendment to seeking adequacy in educational opportunity, contributed to elevating the issue as a problem. This could be seen as a redefining the problem, thus capturing the attention of some of the Justices on the court. As noted by
Cooper, Randall, and Fusarelli (2004), “if a policy issue is not well defined, it will not be perceived as important, making it difficult to attract enough attention to reach the policy agenda” (p. 65). Getting people to see old problems in a new way is considered a major conceptual and political accomplishment (Kingdon, 2009). This is important because the first time that the state Supreme Court addressed *Abbeville*, it upheld the lower court’s ruling that there was no equal protection claim. The state court stated the following:

The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it, a sufficient answer to appellees' argument is that, at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages. (*Abbeville v. SC*, 2014, p. 5)

When considering the three policy process streams, it could also be advantageous to consider the public mood during the 21 years *Abbeville* saga. However, one of the findings from Young, Shepley, Misek, and Song (2010) serves as a reminder that when considering the political stream and mood, that although public mood is important, it is organized political forces that showed the most influence on the agenda setting process. Accordingly, currently in South Carolina, superintendents and school board members are a part of professional interest groups who send lobbyists to advocate on behalf of public education funding reform.
Both organizations, SC Association of School Administrators (SCASA) and South Carolina School Boards Association (SCSBA) publicly share their legislative platforms and position statements. SCASA (2016) decided that for the 2016 South Carolina legislative session, it would focus on public education funding reform as its sole major platform issue. SCASA (2016) believes that a comprehensive plan for educational funding and tax reform is necessary and urges the General Assembly to “set as its first priority providing equitable and adequate funding of preK-12 to ensure a quality public education for all students regardless of the level of their unique needs, where they live, or where they attend school” (SC Association of School Administrators, 2016, p. 2).

SCSBA (2016) states that “South Carolina’s system of funding public schools is broken, a fact we have recognized, studied and argued in court for more than a decade” (para. 1). SCSBA (2016) has taken its advocacy a bit further into the political system by teaming up with several state educational organizations to develop a comprehensive tax and funding reform plan to address the inadequate and unfair educational funding policies that currently exist.

**State Education Clause for SC, NC, and GA**

Every state constitution contains an Education Clause and the wording used has had significant consequences for the outcome of school funding litigation. Given that the second and third wave of litigation relied heavily on the constitutionality of a state’s education clause, it is imperative to know what South Carolina, and its neighboring states of North Carolina and Georgia have declared in their constitutions about education provision and why the interpretation of the education clauses is an ongoing debate in and out of courtrooms.
Thro (1989) acknowledges the difficulties of interpreting state constitutional educational clauses and presented four distinct categories, “based on the obligation imposed on the state legislature” (p. 1646), for which these clauses can be classified. With the lowest category being I and the highest being IV, the likelihood that a state’s school funding system will be overturned is the lowest in category I (Thro, 1989).

Thro (1989) describes the four clause categories as follows: Category I imposes a legislative duty which is met simply by establishing a public school system; Category II require the system be of a specific quality; Category III goes beyond providing a specific quality level of education to include a specific purpose for the educational system; and Category IV education is the fundamental or primary duty of the state legislature and thus the needs of the public school system must be addressed prior to the other general needs of the state.

South Carolina and North Carolina’s clause falls under Category I. Category I imposes the minimal educational obligation on a state and only provides “for a system of free public schools and nothing more” (Thro, 1989, p. 1662) and cannot be regarded as imposing a quality standard. As indicated in Table 1, it is clear that South and North Carolina’s education clause does not establish any qualitative standard for providing public education. It is important to note that during the second wave of litigation, Connecticut was the only Category I state to find its school funding system unconstitutional (Thro, 1989).

As shown in Table 1, polar opposite of the Carolinas, Georgia’s education clause falls under Category IV, which is considered to impose the greatest and clearest education obligation on the state legislature. Typically, Category IV clauses “provide that
education is “fundamental,” “primary” or “paramount” (Thro, 1989, p. 1668), yet like Category I, challenges are consistently reject based on Category IV provisions.

Table 1

State Education Clauses

<table>
<thead>
<tr>
<th>South Carolina</th>
<th>North Carolina</th>
<th>Georgia</th>
</tr>
</thead>
<tbody>
<tr>
<td>S.C. Const. art. XI, § 3</td>
<td>N.C. Const. art. IX, § 2</td>
<td>Ga. Const. art. VIII, § 1</td>
</tr>
<tr>
<td>The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.</td>
<td>(1) The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students. (2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.</td>
<td>Public education; free public education prior to college or postsecondary level; support by taxation. The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amount as may be provided by law.</td>
</tr>
</tbody>
</table>

The following review of school funding litigation in South Carolina, North Carolina, and Georgia, will show that regardless of the education clause category, none of the state’s funding systems were found to be in violation of their constitutions. Thro (1994) would argue that because South and North Carolina’s education clause is a
Category I, “obviously, if the education clause does not impose a quality standard, there can be no violation” (p. 610). In short, Thro (2016) contends that “[w]hile the Education Clauses limit legislative discretion by requiring certain actions, the legislature retains a wide amount of discretion as to how to achieve quality standards. Disagreement with policy choices or with current outcomes does not equal a constitutional violation’ (p. 556).

**Regional School Funding Judicial Analysis**

The purpose of this review is to examine the court rulings of funding litigation cases of rural school districts in South Carolina, North Carolina, and Georgia. Specifically, the review will provide a snapshot of the funding cases rulings that attempted to change the educational landscape of the plaintiffs involved in *McDaniel v. Thomas* (1981), *Britt v. North Carolina State Board of Education* (1987), *Richland County v. Campbell* (1988), *Leandro v. the State of North Carolina* (1997), *Abbeville v. the State of South Carolina* (2014), and *Silver v. Halifax County Board of Commissioners* (2016).

Of the aforementioned cases, two occurred in South Carolina, three in North Carolina, and one in Georgia. While South Carolina has an extensive history of school funding litigation, *Abbeville* is the leading case in South Carolina, *Leandro* is the leading case in North Carolina, and school funding litigation in Georgia essentially failed to exist after the *McDaniel* case.

After reviewing the history of funding litigation cases of rural school districts in South Carolina, North Carolina and Georgia, several similarities and differences emerged from the rulings. What follows is a comparison discussion regarding these ruling.
However, when comparing the rulings of the school funding cases in SC, NC, and GA it is necessary to make the comparison between cases occurring during the same wave. This separation is required because, as previously discussed in the section of this chapter, the main issue before the courts differed between the four waves of litigation.

Because the second wave cases, *Britt v. NC, McDaniel v. Thomas* and *Richland County v. Campbell*, were considered equality cases, the courts had to determine whether education is a fundamental right and/or whether the school finance system is irrational (Thro, 1994; Westbrook, 1995). Thus, interpreting the equal protection clause of the state constitution was the basis the second wave rulings. In contrast, *Leandro v. NC* and *Abbeville v. SC* took place during the third wave of litigation and were mainly focused on the education clause and are now considered to be quality cases.

Interestingly, some of the third wave cases were not explicitly identified as a quality or equality case, causing the courts to make that determination before making a ruling (Thro, 1994). According to Thro (1994), for the third wave cases, there are several common issues addressed during judicial analysis. The courts tend to address the following five questions: (1) Is the suit primarily a quality or equality issue? (2) Does the state education clause impose a particular quality standard? (3) What does the quality standard mean? (4) Does the state funding system meet the quality standard? and (5) If the state system does not meet the constitutional quality standard, what role, if any, does a lack of money play in the violation?

What follows is a closer look at the similarities and differences of the rulings for the cases that were reviewed for this paper. At this point, it is important to note that the *Briggs* case took place prior to the three waves of school funding litigation and will not
be included in this comparison discussion. However, the *Silver* case that is illustrative of the merging fourth wave will be addressed.

**Second Wave Rulings**

Comparing the rulings of the second wave cases in SC, NC and GA, all three rulings utilized the equal protection analysis and ultimately concluded that the states were not in violation of the state’s equal protection clause. Thus, upholding the state’s school funding systems. Although these cases depended primarily on the equal protection clause, there were references to the education clauses in their opinions. Looking at *Britt v. NC* (1987), the trial court dismissed the plaintiffs’ claim that the North Carolina school financing system resulted in inequities in educational programs. The North Carolina Supreme Court refused to review the case on appeal and affirmed the trial court’s dismissal of the case.

The Court argued that because the plaintiffs did not claim that “they were being denied an education, but only that they are not receiving the same educational opportunities as students in some other places in the State” (*Britt v. NC*, 1987, p. 289), the state’s equal protection clause is not being violated. In addition, the NC Supreme court clarified that the state constitution only require that the state provide a general and uniform education for all students in North Carolina (*Britt v. NC*, 1987). The state of North Carolina is not required to provide equal educational opportunities to all students. Because no constitution violation was found, the NC Supreme contended that the method chosen to fund public education is a legislative concern, with the fairness of the method being a political question, not a matter of the courts (*Britt v. NC*, 1987).
In contrast, the trial court for Georgia’s *McDaniel v. Thomas* (1981) case found that the state was in violation of the equal protection argument and found the school funding system unconstitutional. The plaintiffs claimed that the existing school funding system “1) violates the equal protection provision of [Georgia’s] constitution and 2) deprives the children in their district of an “adequate education” in contravention of [the state’s educational clause]” (*McDaniel v. Thomas*, 1981, p. 633).

Following the wave two trend of focusing primarily on equality and not quality, the trial court rejected the claim regarding the adequacy of the education being provided. Nonetheless, on appeal, the GA Supreme Court overturned the lower court’s ruling and upheld the state’s education funding system. Like the NC Supreme Court’s ruling with *Britt*, the GA Supreme Court also asserted that education equality was not a fundamental right in Georgia and deciding the adequacy of that education is not a judicial issue.

The Georgia high court held that “while Georgia’s system of public school funding did in fact result in disparities between rich and poor school districts, educational equity was not a fundamental right under the Georgia Constitution’s education or equal protection clauses” (Pinder & Hanson, 2010, p. 188). According to the ruling, Georgia constitution’s education clause (see Table 1) requires only an adequate education and basic educational opportunity (Dayton & Dupre, 2004). Although the GA Supreme Court recognized disparities in educational goods and services, the Court contended that the question whether students receive adequate education is best left to legislatures (Dayton, 1995; Dayton & Dupre, 2004).

Like the plaintiffs in *Britt* and *McDaniel*, the plaintiffs in *Richland County v. Campbell* (1988) claimed that South Carolina’s public school public system was
inequitable based on disparities in per-pupil spending between high wealth and low wealth school districts. They also argued that South Carolina’s funding plan “denies students equal educational opportunities because the formula considers each school district's wealth, thereby depriving them of equal protection” (Richland County v. Campbell, 1988, p. 350). Identical to the fate of the Britt case, Richland County was dismissed by a trial court judge.

The trial judge found the South Carolina system of school finance to be a valid legislative means to provide for the funding of public education (Richland County v. Campbell, 1988). The plaintiffs appealed to the state high court with no success. Like the NC Supreme Court, the SC Supreme Court affirmed the circuit court’s dismissal of the lawsuit. Thus, just as the rulings for Britt and McDaniel, the SC Supreme Court held that the state’s system of school finance did not violate the state constitutional requirement to provide for maintenance and support of public schools nor did it deprive plaintiffs of their rights under the equal protection clause (Institute on Education Law and Policy, 2017b).

Unlike, the rulings for Britt and McDaniel, the Richland County ruling did not address the role of the court concerning the adequacy of school funding system. Notwithstanding, these three cases in NC, GA, and SC didn’t take the exact route to get to their rulings, but they ultimately reached the same destination as the majority of other school funding cases litigated during the second wave. The Court’s validated the plaintiff’s assertion regarding the disparities in funding yet upheld that the education finance systems were not unconstitutional and did not violate the equal protection clause.
Third Wave Rulings

**Equality or Quality Suit.** Considering the rulings of the third wave cases, both South and North Carolina had one case, whereas Georgia did not experience any litigation. Both *Abbeville v. SC* and *Leandro v. NC* ultimately resulted in South Carolina and North Carolina being found in violation of the state’s education clause (see Table 1). *Abbeville* and *Leandro* have been in and out of court for over twenty years. *Abbeville* and *Leandro*, filed in 1993 and 1994 respectively, followed a similar journey to reach a state Supreme Court ruling and order.

Addressing Thro’s (1994) first issue in analyzing wave three cases, both the *Leandro* and *Abbeville* rulings were grounded in the notion that these cases were quality suits. However, the plaintiff’s in *Abbeville* and *Leandro* sought both equality and quality claims. In *Abbeville*’s initial 1993 filing, the plaintiffs only sought a declaratory judgment against South Carolina’s public education funding formula. The complaint was later amended, and the plaintiffs argued that the state’s funding formula violated the South Carolina Constitution’s education clause, the equal protection clauses of the State and federal constitutions, and the Education Finance Act of 1977 (*Abbeville v. SC*, 2005).

Likewise, in 1994, the *Leandro* plaintiffs claimed that the state of North Carolina had “failed to provide equal and adequate educational opportunities as required by the state constitution” (Almeida, 2004, p. 531). In response to the 1993 claim in SC, the state of South Carolina filed motions to dismiss the amended complaint, arguing that the specifics of the complaint did not represent a violation of the State or federal constitutions and no private right of action exists under the Education Finance Act (EFA) (*Abbeville v. SC*, 2005).
Based on the *Richland County v. Campbell* ruling, the court, in 1996, granted the State’s motion to dismiss. Like the response to the claim in *Abbeville*, the state of North Carolina also filed a motion to dismiss the plaintiff’s claim in *Leandro*. The defendants asserted that the NC trial court lacked subject matter and personal jurisdiction (*Leandro v. NC*, 1997). However, unlike the *Abbeville* ruling, the trial court in *Leandro* denied the State’s motion to dismiss.

The plaintiffs’ in *Abbeville* immediately appealed the trial court’s ruling to the SC Supreme Court, whereas it was the defendants in *Leandro* who immediately appealed their trial court’s ruling to the NC Court of Appeals. On appeal, the *Abbeville* plaintiffs brought a declaratory judgment action challenging South Carolina’s funding of public education, however they did not seek equity in state funding, but instead claimed that the current funding system resulted in inadequate educational opportunity.

In 1999, the SC Supreme Court affirmed a portion of the trial court’s 1996 decision while reversing another part. The Court upheld the circuit court’s ruling that the EFA did not create a private cause of action and claims under the equal protection clauses but found that the plaintiffs’ complaint did have a claim of inadequate educational opportunity under the education clause (*Abbeville v. SC*, 1999). Thus, the SC Supreme Court upheld the plaintiffs’ adequacy claim and remanded the case for trial and ordering the trial court to consider the claim for violation of the State Constitution’s education clause. This ruling is known as *Abbeville I*.

Regarding the *Leandro* appeal, in 1996, the NC Court of Appeals ruled in favor of the defendants and reversed the trial’s court’s order. The NC Court of Appeals “concluded that the right to education guaranteed by the North Carolina Constitution is
limited to one of equal access to the existing system of education” (*Leandro v. NC*, 1997, p. 344) and found the plaintiffs’ claims “to be indistinguishable from the plaintiffs’ claims in *Britt v. N.C.*, which the Court of Appeals had found without merit” (*Leandro v. NC*, 1997, p. 344).

**State Education Clause and Quality Standard.** Within these appeal rulings of both *Abbeville* and *Leandro*, the second and third issue of Thro’s (1994) analysis of wave three cases were addressed. However, the answer to those issues were different in the appeal decisions. In its opinion, the SC Supreme Court found that the state education clause does impose a particular quality standard and provided a meaning to the quality standard. Although it is clear that South Carolina’s education clause (see Table 1) does not establish any qualitative standard for providing public education, the SC Supreme Court applied judicial interpretation and held that the educational clause requires the General Assembly to “provide for the opportunity for each child to receive a minimally adequate education” (*Abbeville v. SC*, 2005). The SC Supreme Court defined “minimally adequate” as follows:

> [T]o include the provision of adequate and safe facilities in which students have the opportunity to acquire: 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills. (*Abbeville v. SC*, 2014)

In contrast to the SC Supreme Court, the NC Court of Appeals found that the North Carolina Constitution “does not embrace a qualitative standard” (*Leandro v. NC*, 1997, p.
For that reason, in 1996, the plaintiffs appealed to the North Carolina Supreme Court. Just as the SC Supreme Court, in 1997, the NC Supreme Court found that the state education clause does impose a particular quality standard and proceeded to provide a meaning to the quality standard.

In their judicial interpretation, the NC Supreme Court concluded that the state constitution’s right to education “is a right to a sound basic education. An education that does not serve the purpose of preparing students to participate and compete in the society in which they live, and work is devoid of substance and is constitutionally inadequate.” (Leandro v. NC, 1997, p. 345).

Experiencing the same fate as Abbeville, Leandro was remanded for a trial. However, unlike Abbeville, the criteria for a “sound basic education” given to the Leandro trial court was based on the guidelines of another school funding case. The NC Supreme court provided a criterion inspired by the Kentucky Supreme Court in Rose v. Council for Better Education (Education Law Center, 2017a). The NC Supreme Court defined “sound basic education” as follows:

1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; 2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student’s community, state, and nation; 3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or
vocational training; and 4) sufficient academic and vocational skills to enable
the student to compete on an equal basis with others in further formal
education or gainful employment in contemporary society. (Leandro v. NC, 1997, pp. 349)

Another significant difference in the appeal rulings is that the Leandro ruling
included a provision for the trial judge, not the General Assembly as seen in Abbeville, to
provide the remedies if a constitutional violation is indeed found by the trial court
(Leandro v. NC, 1997).

The Leandro ruling empowered the trial court to order the deficiency remedied,
impose a specific remedy, and enforce the implementation of the remedy (Hinojosa, 2016). Inclusively, this court ruling is known as Leandro I. Thus, in Abbeville I and
Leandro I, the state high courts concluded that the plaintiffs did not have an equality
claim under the equal protection clauses, as already determined in Richland County and
Britt, yet upheld the plaintiffs’ quality claims under the state education clause.

**Existence of a Violation.** According to Thro (1994), after determining what the
quality standard of the constitution means, the courts must apply that standard to the
plaintiff districts and determine if a violation exists. Fittingly, a trial commenced for
Abbeville and Leandro. The trial court believed that the Abbeville I decision created one
single issue to be determined on remand: “Are the students in the Plaintiffs Districts
being provided the opportunity to acquire a minimally adequate education in adequate
and safe facilities as defined by the South Carolina Supreme Court?” (Abbeville v. SC, 2005, p. 8).
Similarly, the *Leandro* trial court could conclude that the *Leandro I* decision created one single issue to be determined on remand: Based on competent evidence, had the defendants fail to provide all children in North Carolina with an opportunity for a sound basic education? (*Leandro v. NC*, 1997). It is imperative to note that although urban school districts intervened as plaintiffs in the *Leandro* lawsuit, the rural districts plaintiffs went to trial separately. The rural school districts portion of the *Leandro* case became known *Hoke County v. State of North Carolina*, also referred to as *Leandro II*. Still, the *Hoke* ruling applied to all school districts, rural and urban, in North Carolina (Almeida, 2004).

In 2005, the *Abbeville* trial court provided a judgement that sided with both the Plaintiffs and Defendants, but ultimately the rendered judgment was in favor of the Plaintiffs. The judge determined that state educational system did provide the Plaintiff Districts an opportunity to receive a minimally adequate education, thus satisfying the constitutional requirement. Additionally, the facilities were found to be safe and adequate and that inputs into the educational system satisfied the constitutional requirement. However, the trial judge also found that the State failed to fund early childhood intervention programs and this failure to provide adequate funding violated the constitutional requirement (*Abbeville v. SC*, 2014).

Neither the Plaintiff Districts nor the Defendants were happy with the court’s judgment. Consequently, both parties filed motions to get the court to change its order. Those motions were denied. Responding to the denied motions, in 2007, the decision was appealed to the SC Supreme Court by the Plaintiff Districts and cross-appealed by The State of South Carolina (*Abbeville v. SC*, 2014).
Unlike the trial judge in *Abbeville*, who found only a constitutional quality violation with the funding of early childhood education in SC, in 1999, the *Leandro* trial judge found that not every child in North Carolina was receiving a sound basic education and order the state to remedy the funding deficiencies. Specifically, from 2000-2002, the *Leandro* trial judge offered a series of decisions that Almeida (2004) refers to as the four memoranda of decision. Almeida (2004) succinctly describe these major rulings for *Leandro II* as follows:

The court held that 1) the minimum level of academic performance under Leandro is performance at or above grade level as defined by Level III in the ABCs program; 2) “those at-risk children, who are not presently in quality pre-kindergarten educational programs, are being denied their fundamental constitutional right to receive the equal opportunity to a sound basic education”; 3) the State had failed to meet its constitutional burden to provide a sound basic education to at-risk children throughout North Carolina; 4) plaintiff parties had failed to meet their burden of showing that at-risk children were not obtaining a sound basic education because of lack of sufficient funding by the State of North Carolina; 5) the State and individual school districts must first spend existing resources on programs that satisfy Leandro’s constitutional mandate, even though doing so would mean that funds currently spent “for any other educational purpose than to meet the constitutional mandate . . . must be reallocated;” and 6) the State must remedy the constitutional deficiencies for the at-risk children who are not receiving a sound basic education, but left the “nuts and bolts” of the remedy for the legislative and executive branches to determine. (p. 537)
As with the 2005 *Abbeville* trial court ruling, both the plaintiffs and defendants took issue with the ruling. However, only the defendants appealed the *Leandro II* ruling. There was no cross appeal as seen in *Abbeville*. In 2004, the North Carolina Supreme Court upheld the *Leandro II ruling*, whereas in 2014, the South Carolina Supreme Court reversed the *Abbeville* trial judge ruling. It only took the NC Supreme Court a year to reach a decision, compared to eight years for the SC Supreme Court. Nonetheless, like the *Leandro* trial judge and NC Supreme Court, the SC Supreme Court found the state to have failed in their constitutional duty to ensure that students in the Plaintiff Districts receive the required minimally adequate educational opportunity (*Abbeville v. SC*, 2014).

This ruling is referred to *Abbeville II*. Although both *Leandro II* and *Abbeville II* found their states in violation, unlike the *Leandro I* and *II* ruling, the *Abbeville II* ruling refused to provide the SC General Assembly with specific suggestions regarding a remedy to the constitutional violation. Definitively, the *Abbeville II* court contended that “[t]his Court cannot suggest methods of fixing the problem, but we can recognize a constitutional violation when we see one (*Abbeville v. SC*, 2014, p. 30). Nonetheless, the ruling did order that both the plaintiffs and defendants work together to address the educational issues on both the state and local levels.

There is a historical tendency for courts to turn the problem back to the state legislature (Dayton, 1992; Dayton, 2004). Yet, these courts still expect legislators to provide a remedy to address the violation. Some courts have also rejected the political solution and provided a judicial remedy for school funding inequities and inadequacies (Dayton, 1992). This type of rejection was evident in 2012, with *Leandro*, regarding state legislation on preschool funding. This rejection has yet to be seen in *Abbeville*. Even so,
Abbeville remains under the jurisdiction of the SC Supreme Court, thus the Court will continue to monitor the progress towards a constitutionally compliant education system.

The Role of Money. Given that both the North and South Carolina Supreme Courts found their states to be in violation of meeting the constitutional quality standard, the fifth and final issue of Thro’s (1994) judicial analysis will be addressed. According to Thro (1994), once a court determined that the “failure to meet the constitutional standard is extensive enough to warrant a finding of a system-wide violation, there remains the question of the significance of funding in the failure of the system to meet the constitutionally mandated standard” (p. 607-608).

Although neither the SC nor NC Supreme Courts found a constitutional violation in their state’s funding systems, they did identify a constitutional violation and address the issue of money. Regarding educational opportunity and student performance, the ongoing debate about whether or not money matters makes this final issue regarding funding failures significant. Both the Leandro II ruling and Abbeville II ruling found that funding played a role in the states’ violation, however they also acknowledged that the lack of money is not the only cause of the violation and allocating additional funds is not the remedy (Abbeville v. SC, 2014; Almeida, 2004).

Specifically, the SC Supreme Court contended that they “do not (nor could we legally) merely order the Defendants to disperse additional funding to the Plaintiff Districts” (Abbeville v. SC, 2014, p.37) and “it is striking that the parties to the instant litigation have focused narrowly on a struggle between education expenditures and education outcomes while ignoring the overarching dilemmas emanating from the organizational structure of public education. (Abbeville v. SC, 2014, p. 27). Similarly, the
Leandro II trial judge did not order an increase in school funding. The trial judge contended that plaintiffs did not proved that State’s violation to provide all students a sound basic education is the result of lack of sufficient funding (Hoke v. NC, 2004).

Nonetheless, the Leandro II court judge also made it clear that the defendants cannot avoid or “delegate its ultimate responsibility to provide each and every child in the State with the equal opportunity to obtain a sound basic education, even if it requires the State to spend additional monies to do so” (Almeida, 2004, p. 542). The Leandro II court also suggested that the State of NC reallocate its funding to address the needs of the students who are not obtaining a sound and basic education (Hoke v. NC, 2004).

Ultimately, the trial court concluded the following in its four-part ruling:

The State must step in with an iron hand and get the mess straight. If it takes removing an ineffective Superintendent, Principal, teacher, or group of teachers and putting effective, competent ones in their place, so be it. If the deficiencies are due to a lack of effective management practices, then it is the State’s responsibility to see that effective management practices are put in place.

(Almeida, 2004, pp. 541-542)

Regardless of the favorable rulings in Abbeville II and Leandro II, Hanushek (2006) argues that after decades of court cases on school funding, little effort has been made to assess the effect of court involvement on student outcome nor on the ability of courts to make or influence effective policy. Hanushek (2006) insists that “the political branches, for all their rhetoric, have not succeeded in solving our educational shortcomings after decades of effort” (p. xix).
Fourth Wave Rulings

Because the fourth wave is considered an emerging wave, presently, North Carolina is the only state that has experienced a ruling during this wave. In 2015, Black parents, students, and two organizations filed a suit against the Halifax County Board of Commissioners. This case is known as Silver v. Halifax. The plaintiffs claimed that the County Board denied the students in Halifax County the right to a sound basic education as set forth by Leandro I and the state constitution (Hinojosa, 2016). What made the Silver lawsuit different from the other school funding cases discussed in this paper, is the inclusion of a racial claim.

Ryan (1999) addresses the influence of race in school finance reform. Interestingly, in 2001 following remand for the Abbeville v. South Carolina case, the plaintiffs tried to amend their complaint by including allegations regarding the racial characteristics of the plaintiff districts (Abbeville v. SC, 2005). The court denied the amendment request citing that “it was too late to inject those issues” and “the court has considered only evidence related to poverty as pertinent to this case” (Abbeville v. SC, 2005, p. 8). Nonetheless, the plaintiffs in Silver claimed that the County Board chose “to maintain and fund an inefficient three-district system that divides its children along racial lines into ‘good’ and ‘bad’ school districts, violating the constitutional rights of its school children” (Hinojosa, 2016, p. 884).

Just as the fate of NC, SC, and GA second wave cases, the Silver plaintiffs’ claim was dismissed. In 2016, the State Superior Court contended that it is not the defendant’s responsibility to implement and maintain an education system for Halifax County (Silver v. Halifax, 2016). According to Hinojosa (2016), “the court did not articulate much
behind its two-page ruling and a negative ruling was anticipated by the plaintiffs’
counsel” (p. 890). The Silver plaintiffs have yet to appeal, but if they do, the precedent in
North Carolina with the Leandro II ruling appears promising.

The Law and Policy Implications of Regional Adjudication

After reviewing the history and rulings for the school funding cases in SC, NC, and GA it is only fitting to review what influence, if any, the cases made on education policy. However, as noted by Kirst and Wirt (2009):

A court mandate does not bring total or quick acceptance, does not provide
sufficient resources for the resourceless, and does not teach us how to resolve
conflict or to live with ambiguity. However, courts can create a new policy
agenda that others in the political system can implement...The result is a dialog
among courts, politicians, and education advocates… (p. 327)

Justices understand that the courts have to “respect boundaries that established the
legislature as the institution properly responsible for making law and policy; [making
gistrates] reluctant to specify precise remedial steps or even timing” (Henig, 2013, p. 86).
This is illustrative in the McDaniel, Leandro, and Abbeville rulings.

Regardless of the Justices’ difference in interpretation of educational clauses and
the role of the court, it is imperative to keep in mind that “the quality of judicial writing is
one of encouraging the legislature, setting activities in motion which will have secondary
consequences to lead the senators and assemblymen to act…We can encourage
legislature to pass laws...without directing them to do that” (Henig, 2013, p. 87). When
considering whether the Court should become involved in fashioning a remedy to the
constitutional violations, the SC and NC Supreme Courts made it clear that they believe
in the principle of separation of powers, citing that the legislature, not the judiciary, is the proper institution to make major educational policy choices.

Although not all the cases highlighted in this chapter resulted in laws and policies being enacted or changes on the district level, it is safe to say that they all played a significant part in making education a priority on the General Assembly’s agenda and holding both the state and districts accountable for the allocation of their resources. What follows is a brief review of the policy implications of school funding litigation for South Carolina, North Carolina, and Georgia.

South Carolina

In 1951, the Briggs case caused South Carolina to enact legislation to provide equality throughout the segregated educational system. In response to the Briggs lawsuit, the Governor of South Carolina acted by getting the state legislature to approve a statewide school equalization program. This equalization program “provided for school-building under the bond program, state operation of school transportation, and higher teacher’s salaries paid on an equal basis to both races” (Kluger, 2004, p. 334).

The Abbeville I court mandated the General Assembly to establish and adequately fund an early childhood education program for students in the plaintiff districts (Abbeville v. SC, 2005). Unfortunately, the new House Bill, that was clearly drafted to address the Abbeville order, did not mention the Abbeville litigation, it did not give the Abbeville plaintiffs priority access, and the early childhood program presented in this bill only covered four-year-old children (Lawson, 2007).

After the Abbeville II ruling, the SC General Assembly introduced eight bills that were directly in response to the ruling. Of the eight bills, four were enacted by the
General Assembly and approved by the Governor of SC (Leatherman & Lucas, 2016). These bills addressed the expectations of a South Carolina high school graduate, emanated outdated statues, promoted greater resource allocation efficiency by districts, required the State Department of Education to offer technical assistance to struggling districts, created an Office of Transformation in the State Department of Education, and conducted a survey to identify incentives to get new teachers to work in rural lower income districts (Leatherman & Lucas, 2016).

Interestingly, the State of South Carolina has requested that the SC Supreme Court vacate continuing jurisdiction in the Abbeville case due to the legislative actions that the General Assembly has taken with the new “Abbeville bills” (i.e. H. 4936, H. 4939, H. 4940, and H. 4938), along with the other information provided in the Leatherman & Lucas (2016) report submitted to the Court. According to the Education Law Center (2017), the State claims that its “legislative actions have remedied the constitutional violation.”

In disagreement, the Abbeville Plaintiffs opposed the State’s report and request, arguing that the legislative actions were “minimal and failed meaningfully to address the Courts’ 2014 ruling” (Education Law Center, 2017, para. 6). Specifically, regarding the enacted legislation, the Plaintiffs assert that “the four bills enacted by the General Assembly do not reflect a comprehensive plan to address the myriad issues identified by this Court and to eliminate, through comprehensive educational reform, the constitutional violation found by this Court in Abbeville II” (Abbeville v. SC, 2016, p. 7). The plaintiff school districts requested that the Court retain jurisdiction over the Abbeville case. As previously discussed, the SC Supreme Court retains jurisdiction over Abbeville.
North Carolina

Although no specific policy was enacted due to the Britt case, in the years following Britt, advocacy groups began to illuminate funding inequities across North Carolina (Almeida, 2004). By 1991, in response to the public pressure, the General Assembly approved “a program of supplemental funding that was not intended to fully equalize spending among districts, but rather narrow the gap by bringing the lowest spending districts up to the level of the average-spending districts” (Almeida, 2004, p. 529-530). This was referred to as the Low-Wealth Supplemental Fund. Needless to say, the supplemental funding program never received full state funding. Following Leandro I and II, the NC State Board of Education and General Assembly took actions in response to the rulings.

The state proposed a pre-K program called North Carolina More at Four. The bill called More at Four (MAF) was enacted in 2001 (Hoke v. NC, 2012). In addition, since Leandro I and II, overall school funding in North Carolina has increased. Specifically, between the start of Leandro I and the ruling for Leandro II, NC increased its funding of public schools by 40% (Almeida, 2004). But, despite the increase in funding, the inequity gap remained (Hoke v. NC, 2012; Silver v. Halifax, 2016).

Georgia

In McDaniel v. Thomas, the Georgia Supreme Court found that its school funding system did not violate the state’s education or equal protection clauses. However, the Georgia high court held that Georgia’s school funding system did result in education and funding disparities between rich and poor school districts. Thus, in 1985, the General Assembly enacted the Quality Basic Education Act (QBE) as a part of already existing
education funding legislation (Pinder & Hanson, 2010). For this discussion, the most significant elements of QBE are the fair-share provision and the equalization grants. The fair-share provision allowed for money to be allocated to local districts based on the number of students, as opposed to its previous way of being based on the number of students (Pinder & Hanson, 2010).

Although the equalization grants, provided under QBE, do not equalize funding between districts, they did “seek to bring each district up to some minimum (adequate level of funding)” (Pinder & Hanson, 2010, p. 190). Although criticism exists regarding the efficacy of QBE, at one brief point it did manage to narrow the funding gap between the poorest and wealthiest districts and QBE also reflected the shift in school funding discourse from equality to adequacy (Pinder & Hanson, 2010).

Financial Resources and Student Achievement

This ongoing debate of whether money matters in the educational process and how it matters is a progeny of the question whether schools matter, which was addressed in the Coleman et.al. (1966) *Equality of Educational Opportunity* report, also known as the Coleman Report. The historical origins of school resources and student achievement research can be traced back to the 1966 Coleman Report and Eric Hanushek’s 1986 paper. Because school funding adequacy litigation is grounded in the argument that additional funds will improve student outcomes and/or that mediocre student outcomes are due to the lack of adequate funding, it is imperative to review the literature regarding this relationship.

Interestingly, from 1966 until 2016, there remain conflicting conclusions in the literature regarding the relationship between school resources and student achievement.
Given the vast amount of different studies addressing this relationship, for this study, I have chosen to focus on meta-analysis studies that examine the relationship between school resources and student achievement. The literature review will start with the Coleman Report and conclude with the latest published meta-analysis by Hedge et al. (2016).

**Historical Background**

Since the release of James Coleman’s et al. (1966) report, there remains considerable debate over the effect of funding on student achievement (Baker, 2016; Hanushek, 1997; Hedges et al., 2016; Westbrook, 1995). The Coleman report represented the findings from a national survey administered to more than 650,000 teachers and students across more than 3,000 schools. The purpose of the research was to examine the equality of educational opportunity.

The data were analyzed using an analytical method referred to input-output analysis. This type of analysis was commonly used in the field of economics, but not in educational research. Specifically, relevant to this study, the Coleman report addressed the relationship between school resources and student outcomes. The report found that school effects on student achievement were much smaller than variation in individual background (Gamoran & Long, 2006).

In short, the report suggested an insignificant relationship existed between school resources and student achievement. Although there appears to be a consensus that the Coleman Report is flawed, it served as a catalyst for exploring the correlation of school inputs and student outcomes (Baker, 2016; Hanushek, 1986; Hedges et al., 2016). After the release of the Coleman Report, the flood gates were open for researchers to use input-
output analysis to address the question whether money matters when it comes to improving student outcomes.

Given the abundance of research grounded in education production functions, 20 years after the Coleman Report, Hanushek (1986, 1989, 1997) was able to review this literature and publish articles that addressed the relationship between school resources and student achievement. According to Baker (2016), Hanushek’s 1986 article “arguably became the most widely cited source for the claim that money simply doesn’t matter when it comes to improving school quality and student outcomes” (p. 3). Nonetheless, prior to reviewing the literature, I believe that it is important to first provide a brief overview of how the education production literature relates to the Abbeville case. The background regarding Abbeville and the production function establishes a basis for identifying the literature’s most critical studies.

**Abbeville and the Educational Production Function**

A review of the literature related to school resources and student achievement is important because during the third wave of school funding litigation cases, academic performance data, along with school resources, was used as key evidence by both the plaintiffs and defendants. Particularly, when making the connection between inadequate state funding and student achievement. The courts in the Abbeville case were presented evidence of the inputs being provided to the students versus the outputs being provided by the students.

While the plaintiffs argued that students were not achieving due to disparities with inputs, the defendants contended that over the years there has been an increase in funding yet no change in outputs (Abbeville v. SC, 2014). The latter was shown to be the trend for
the *Abbeville* plaintiff districts (*Abbeville v. SC*, 2014). The SC Supreme Court relied on the relationship between school resources and student outcomes when it provided the *Abbeville* decision. When considering this relationship, for most cases, inputs are money, curriculum, teachers and other instrumentalities of learning and resources, whereas outputs are primarily test scores and graduation rates and other methods used to indicate student achievement and attainment. Specifically, this concept is known as the educational production function.

As previously discussed, the origin of educational production function analysis can be traced back to the Coleman Report. However, Eric Hanushek (1986) was one of the earliest researchers to approach the school funding issue and policy implications from the economist’s production function perspective. Studying production functions aids in understanding the relation between inputs and outputs of an educational system.

From Hanushek’s (1997) research of educational production functions, he has concluded that it is not that additional funding makes no difference, “only that it does not make an apparent difference on the average, in the ways that schools presently use additional funding” (Levin, 1989, p. 16). Hanushek and Lindseth (2008) contend that simply asking for more dollars for schools will not create the systemic changes needed to help student achievement. Interestingly, although not directly referring to Hanushek’s research, the SC Supreme Court shared the same sentiment regarding the state’s violation. So, although the Court found that the state failed in its constitutional obligation to provide students in the plaintiff districts with a “minimally adequate” education, they did not find a constitutional violation in the state’s education funding system nor did they order the state to provide the plaintiff districts with additional funding.
Given that the *Abbeville* ruling implicitly addresses the question of whether money matters and how money that is provided for education translates into increased student achievement, what follows is a review of the education production function research literature that I believe are most critical to addressing the question of adequate funding and student achievement.

**The 1980s Production Function Literature**

Hanushek (1986) focused on production and efficiency aspects of schools. According to Hanushek (1986), since the Coleman Report, 147 individual education production function studies had been published. However, they did vary in focus, methodology, and quality. The studies divided almost evenly between studies of individual student performance and aggregate performance in school or districts, while 96 of the studies measured output based on the score of standardized tests. Nonetheless, using these 147 publications as his dataset, Hanushek (1986) reached several conclusions.

As it relates to this study, Hanushek (1986) found schools to be economically inefficient. Thus, arguing that although school expenditures could have an important effect on performance, it is possible to conclude that “expenditures are unrelated to school performance as schools are currently operated” (p.1166). Hanushek (1986) attributes this inefficiency to educational decision makers not being guided by incentives to maximize outcomes or to conserve on costs and a lack of understanding the production process.

Following this initial analysis of education production function literature, Hanushek (1989) provided another synthesis of the literature on the relationship between school inputs and student outputs. The data for this research came from 38 different
publications and focused on the following seven school inputs: teacher/pupil ration, teacher experiences, teacher education, teacher salary, administrative inputs, facilities, and per pupil expenditures (PPE). Relevant for this study, Hanushek (1989) found that 13 of 65 (20%) of the correlation between PPE and student outcome to be positive and statistically significant. Thus, concluding that “there is no strong or systematic relationship between school expenditures and student performance” (Hanushek, 1989, p. 47). At this point, Hanushek (1989) had completed the most comprehensive and important synthesis of existing researcher on educational production functions (Hedges, Lain, & Greenwald, 1994). What followed was a series of meta-analysis that reanalyzed Hanushek (1989) and/or expanded the research conducted by Hanushek (1989).

**The 1990s Production Function Literature**

In 1994, Hedges, Laine, and Greenwald published the findings of a meta-analysis study of the effects of differential school inputs on student outcomes. This study was a reanalysis of the evidence provided by Hanushek (1989). The main purpose of this reanalysis was to examine whether Hanushek’s conclusions about the relationship between school inputs and student outcomes are supported using more improved statistical analysis methods to examine his data set. Applicable to this study, Hedges et al. (1994) were particularly interested in Hanushek’s (1989) general conclusion that PPE and student achievement are unrelated. Hedges et al., contended that Hanushek’s (1989) statistical analysis method of vote counting “has serious failings as an inference procedure…that regardless whether vote counting can identify if a relation exists, it cannot provide an indicated of its magnitude” (p. 6).
Thus, Hedges et al. (1994) reanalyzed the evidence using two types of statistical methods in meta-analysis, combined significance tests and combined estimation methods. Using these analytical methods, Hedges et al. (1994) found systemic positive patterns in the correlation between resource inputs and student outcomes. Specifically, they concluded that there is statistically reliable evidence that there is a positive correlation between PPE and school outcomes. In addition, Hedges et al. (1994) suggested that “local circumstance may determine which resource inputs are most effective, and local authorities utilize discretion in wisely allocating global resources among the areas most in need” (p. 11).

Regarding Hanushek (1989) conclusion regarding money, Hedges et al. (1994), relying on the Hanushek’s data that is “most often used to deny that resources are related to achievement” (p.13), found that money does matter. However, they made sure to make it clear that throwing money at schools is not the most efficient methods of improving student achievement. Notwithstanding, Hedges et al. (1994) acknowledged the age of the data sets used in their research. Consequently, they expanded the amount of studies considered for Hanushek (1989) and their reanalysis of Hanushek (1989).

In 1996, Greenwald, Hedges, and Laine published the results for a meta-analysis examining the effect of school resources on student achievement. The study assessed 60 research studies for the direction and magnitude of the relationships between a variety of school inputs and student achievement. The research studies included 29 from Hanushek (1989) and 31 newly identified studies. For the study, three general categories were selected as school inputs: PPE, teacher background characteristics, and school/class size. The general finding from this article was that school resources were systematically
related to student achievement and the magnitude of the relationships were large enough to be educationally important.

Significant for this research, Greenwald et al. (1996) concluded that PPE showed strong and consistent relations with student achievement. Nonetheless, Greenwald et al. (1996) acknowledged that their findings are not intended to specify to policy makers the allocation of existing and new dollars in schools. Greenwald et al. (1996) contended that although the results show a relationship, money is not everything and how the money is spent, and the incentives created for children and teachers are equally important.

Although Greenwald et al. (1996) believed that this latest meta-analysis represented a more significant contribution, than their previous research Hedges et al. (1994), to the relationship between school resources and student achievement literature, they did experience difficulties during the analysis. According to Greenwald et al. (1996), researchers in the education production function literature were not consistent with the set of covariates that should be included and difficulties existed with dependencies within studies among the estimates of the relationship between PPE and student achievement. Thus, 20 year later, researchers decided to use new meta-analytic techniques and a subset of a more studies to address these difficulties and update the Greenwald et al. (1996) synthesis of education production function study (Hedges et al., 2016).

The 2000s Production Function Literature

In 2016, Hedges et al. reported the results of a meta-analysis of studies examining the relationship between school resources and student achievement. Although the study expanded on the work conducted by Hanushek (1989) and Greenwald et al. (1996),
Hedges et al. (2016) focused only on subset of studies measuring the impact of PPE on achievement. Thus, the Hedges et al. (2016) study “flows directly from the historical concerns around efficiency” (p. 154). In addition to considering the studies from Hanushek (1989) and Greenwald et al. (1996), education production function studies completed from 1993 to 2014, were also considered for the meta-analysis.

In addition to the inclusion criteria that required the studies to include PPE in the model examining correlation with academic achievement, the model also had to control for race and either socioeconomic status or prior achievement. In addition, separate meta-analysis was conducted for studies at the district level and for studies at the school level. Hedges et al. (2016) ended up with six studies that met their inclusion criteria and found that “the diversity of methods has resulted in a body of literature too diverse and too inconsistent to yield reliable inferences through meta-analysis” (p. 143). Despite this conclusion, two of the major findings are that a non-statistical relationship exists between PPE and that the studies included in the meta-analysis do not identify how to use PPE to increase achievement.

The additional Hedges et al. (2016) findings significant for this study will be addressed in the following section. However, applicable to the purpose of this study, Hedges et al. (2016) concluded that “researchers mush endeavor to be rooted in the realities of those who understand schools at the ground level and those who work with students from all backgrounds and learning styles” (P. 164). The 5 meta-analysis studies addressed in this literature review provides some insight into the ongoing debate, but none of them included the insight of school level administrators. Nonetheless, despite the research from as early as 1966 until 2016, there remains the ambiguity around why and
how money matters for student achievement. What follows in an examination of two of
the most current literature addressing the relationship between financial resources and
student achievement.

**The Ongoing Does Money Matter Debate**

Accordingly, this literature review concludes with exploring the question
regarding school funding and student achievement as discussed in the most current
literature by Baker (2016) and Hedges et al. (2016). What follows is a review of the
major components that the Baker (2016) and Hedges et al. (2016) articles identify as
most critical to the relation between funding and student outcomes and assessing
adequacy. The major components of the Baker (2016) brief and Hedge et al. (2016)
article are grounded in the relationship between school resources and student outcomes
and the studies used as evidence to support or dispute the existence of a correlation.

Baker (2016), while providing evidence of empirical analysis that shows why and
how money matters in improving education, dedicates the majority of his brief critiquing
Erik Hanushek’s theory regarding money and educational outcomes. The Hedge et al.
(2016) article is a meta-analysis of studies examining the relationship between school
resources and student achievement. The Hedge et al. reading, while critiquing the
methodology of the studies, reexamines the work of Erik Hanushek, along with other
scholars who attempted to provided evidence of the relationship between school funding
and student outcomes. Both readings discuss the historical origins of the continuing
debate on whether money relate to student achievement.
The Major Components of the Readings

Baker’s (2016) *Does Money Matter in Education* brief and Hedges et al. (2016) *The Question of School Resources and Student Achievement: A History and Reconsideration* article addresses the question of whether there exists a correlation between money and student achievement from two different angles. Baker (2016) provides research evidence to support a positive relationship between money and student outcomes, whereas Hedges et al. (2016) conducts a meta-analysis study on the evidence used by scholars to determine whether that relationship exists.

Interestingly, Baker (2016) cites research from 1996, that is included in Hedges et al. (2016) meta-analysis, as the “the most direct rebuttal to Hanushek’s characterization of the findings of existing research [regarding money and student outcomes]” (p. 4). However, upon Hedges et al. (2016) reexamination of that cited study, coupled with other studies, they found no relationship between spending and academic achievement. This finding is consistent with Hanushek’s ongoing argument.

That being said, it is important to note that Hedges et al. (2016) caution that the results are not “necessarily representative of the population of students or districts in the United States” (p. 161). This is due to the limited amount of studies that met the criteria to be included in this meta-analysis, in addition to level of analysis (Hedges et al., 2016). Nonetheless, the readings do share a few similar critical components. Thus, I will first address what I found to be the shared critical components. This will be followed by the different critical components identified in each reading.
Shared Critical Components

The readings contend that given advances in data quality and statistical techniques, Hanushek’s early studies that claim money essentially does not matter when it comes to improving student outcomes no longer has methodological creditability. This is critical because as late as 2014, Hanushek has provided testimony for defendants in school funding cases, in which he refers to some of his earlier studies (Hanushek, 2014). Baker (2014) argues that “[m]ost of the studies included in Hanushek’s review suffered from serious data and methodological limitations, which have since been addressed in more recent work” (p. 4). Whereas Hedges et al. (2016) claims that Hanushek’s “original argument, is not based on a strong evidence base” (p. 161).

Regarding how adequacy should be address, this is important because Hanushek’s research is probably the most widely used source to support litigation and scholarly claims that money is not the solution for improving student outcomes. Another critical component shared among both readings concludes that regardless of all the studies and rhetoric, the answer to the question of how money relates to student outcomes remains unanswered.

Baker (2016) admits that “there are many unanswered questions about how money matters and how it can matter most” (p. 19). Similarly, Hedges et al. (2016) contend that “there is no best method to answer the question unequivocally” (p. 162). Consequently, the manner of how to assess adequacy remains uncertain. The final critical component shared in both readings is that research focused on the impact of school finance reform through court or legislative action is promising. Both readings refer to study conducted by Jackson et al. (2014), which finds these reform efforts to be
successful in equalizing school spending across districts. This is significant because the more research available regarding judicial and legislative intervention, the more information available for courts to reference when considering state and district level remedies. In addition, this type of research provides a basis to counter opposing claims presented by Hanushek (2014) and other scholars.

**Does Money Matter in Education?**

In this brief, Baker (2016) reviews the research that addresses the following three major components regarding school funding and student outcomes: does money matter, do school resources that cost money matter, and do school finance reforms matter. Regarding those components, Baker (2016) concludes that yes, money matters, yes, school resources that cost money are positively associate with student outcomes, and yes, state school finance reforms matters. Specifically, a critical component regarding the correlation between spending and student outcome is that much of the studies addressing this issue are conducted at the district level as opposed to the school level. This is critical because examining data at only the district level disregards the manner in which districts allocate funds among schools and how schools allocate the funds received.

Baker (2016) indicates that “[m]ost existing financial data continue to be reported at the school district level, but resources may vary widely across schools within these districts. As a result, questions about whether money matters are often restricted to linking district-level funding with student-level outcomes” (p. 4). Thus, adequacy determined on a district level may not be a one-to-one direct translation to adequate funding on the school level.
Concerning school resources, Baker (2016) acknowledges that “it’s not just how much you spend but how you spend it” (p. 5) also matters. This reading argues that school resources that cost money has a positive association with student outcomes. This is critical because there is a shift in the money matter debate towards allocation efficiency and accountability on the district and school levels. Some scholars are arguing that it is not that money does not matter, how districts and schools spend it just matters more (Hanushek, 2014; Koski, 2011). Thus, current funding levels may be adequate, but not being allocated efficiently to the resources that could improve student outcomes.

Another critical component of this reading is the issue of school finance reform. Concerning school finance reform, Baker (2016) argues “not only does money matter, but reforms that determine how money is distributed matter too” (p. 12). The reading finds that an increasing body of empirical literature exists to validate that state school finance reform, whether court ordered or not, can reduce student outcome disparities and increase overall performance levels.

In addition, Baker (2016) suggests that “the analyses provided by Hanushek and Lindseth (2009) and others who have tried to prove that court-ordered school funding reforms result in few or no measurable improvements offer little credible evidence” (p. 12). This is critical because both plaintiffs and defendants currently facing funding litigation or currently under court order may find it useful to explore both sides of this issue as they evaluate current and proposed legislation enacted to assess funding adequacy.

The final critical component addressed in the reading is the use of the cost function to assess the adequacy of funding. As discussed earlier in this paper, cost
functions are valuable because they provide some insight into the amount of additional money that is needed in different school environments and with different students to achieve specific outcomes. Baker (2016) contends that some of the cost function literature suggest that “achieving common educational outcome goals in settings with concentrated child poverty, children for whom English is a second language and children with disabilities costs more than achieving those same outcome goals with less needy student populations” (p. 14).

In addition, unlike the production function, inefficiency can be addressed with the cost function. This is critical because there appears to be a consensus that no matter the amount of money allocated, inefficiency in spending can limit the effectiveness of adequate and/or additional funding on student achievement. In summary, the overall takeaway from this reading is the author’s acknowledgment that just providing more money is not a comprehensive solution for improving student outcomes and that “available evidence suggests that appropriate combinations of more adequate funding with more accountability for its use may be most promising” (p. i).

The Question of School Resources and Student Achievement

In this article, Hedges et al. (2016) identified 2,641 potential studies conducted from 1993 to 2014 to use for their meta-analysis. The potential studies included Hanushek’s studies as well as previous research (Greenwald et al. (1996)) conducted by Hedges. But after excluding articles for not meeting the inclusion criteria, only six studies made it into the meta-analysis. This is critical because, while using per-pupil spending as a predictor of academic achievement, the characteristics of the included studies not only show that there is limited research that is conducted at the district or school level, but also
uses models that controls for race and either prior achievement or socioeconomic status. The authors found that “[m]any research studies have examined school inputs and outputs, but the literature is too diverse and too inconsistent to employ meta-analysis to estimate a reliable effect” (p. 161).

Specifically, they concluded that most of the studies they initially identified did not control for basic student background difference, thus revealing a major shortcoming in the literature. Therefore, it could be argued that justifying that low student achievement in low-wealth and non-White districts is due to inadequate funding or can be improved by allocating additional funds is supported by extremely limited research. The authors also suggest that “given the complexity of schools and school districts and the critical importance of student background in examining student performance” (p. 161) it may be impossible to explore whether money has a positive correlation with improved student outcomes. This is critical for emerging scholars to consider as we try to influence policy and fill the gap in the school spending and achievement correlation literature.

In addition, when assessing adequacy, courts, legislators, and districts should at least consider the background of the students their decisions wanting to impact. Interestingly, Hedges et al. found that even with the Coleman Report being confounding, the report found “distinct disparities in academic achievement among racial groups, and yet the studies in our sample failed to account for race in their models” (p. 161).

A final critical component of this reading concerns who has provided the answers to the question of how money and student outcomes are related. The reading illustrates how most of the responses to this question have been influenced by disciplines outside of education. From physicians and psychologists, to quantitative sociologist and economist,
Hedges et al. contend that most researcher exploring this question “had little relationship or intimate knowledge of the inner working of schools” (p. 162). This is critical because researchers from the field of education may have provided a different research question to address the concern regarding resources and outcomes.

Thus, addressing the perceived problem from an education policy, district, or school level perspective. Hedge et al. suggest that the lack of substantial experience and familiarity with school and school systems by researchers “may have set up a situation where the research question was flawed” (p. 163) from the beginning. Nonetheless, the overall most critical takeaway from this reading is that the studies conducted to address the question of school resource and student achievement were too diverse in their methodological approach, thus generating “a body of literature too diverse and too inconsistent to yield reliable inferences through meta-analysis” (p. 143).

Chapter Summary

The review of the literature illustrates why 47 years after Serrano the efficacy of litigation coupled with the role of courts, remains open to debate and examination. Originating with Brown v. the Board of Education (1954), Serrano v. Priest (1971), and the San Antonio Independent School District v. Rodriguez (1973), there exists a long list of cases that address the issues of school funding throughout the United States. Many past and present school funding cases include rural schools. One could confidently argue that since Pearson (1948), Briggs (1952), McDaniel (1981), Britt (1987), Richland County (1988), Leandro (1997), Abbeville (2014) and Silver (2016) not enough has changed in rural school districts within the neighboring states of South Carolina, North Carolina, and Georgia.
The inequity and inadequacy of school finance and educational opportunity will continue to be a relevant and controversial political topic in these states and throughout our Nation. Given the complexity of our educational system, coupled with the many different approaches used to fund our schools, there are gaps in the literature that make it difficult to come to any firm conclusions about how much money matters regarding student performance. Prior and emerging literature attempts to address this dispute (Adams, 2010; Hedges et al., 2016; Hanushek, 1997; Hanushek & Lindseth, 2008; Hedges et al., 2016; Levin, 1989; Baker, 2016; Koski, 2011).

Scholars like Hanushek and Lindseth (2008) argue that simply asking for more dollars for schools will not create the systemic changes needed to help student achievement and that money does matter as long as it is used and allocated efficiently among resources. Hanushek even testified for the defendants in North Carolina’s Leandro case. Hanushek contended that “increased education inputs have had little impact on student achievement” (Almeida, 2004, p. 536). In addition, several courts have held that money is a significant factor in providing educational opportunities, but that exact equality in per pupil expenditures is not constitutionally required, nor is there a basis to determine that amount (Dayton, 2001; Thro, 1994; Weishart, 2016).

Approximately 70 years after the first school funding lawsuit was brought against the state of South Carolina, rural school districts are still waiting for the state to provide adequate educational opportunity for poor, rural, mostly Black students. The schools in these districts are still segregated, still unequal, and still inadequate. Thus, the residents of Summerton, SC, the birthplace of Pearson and Briggs, found themselves in yet another court battle over school funding and access to adequate educational opportunities.
Ironically, the latest school funding case in South Carolina, Abbeville, first went to trial in the same courthouse where Briggs originated.

There continues to be the ongoing political debate regarding whether or not money matters, coupled with the notion of school funding being a political or judicial issue. Notwithstanding, the notion of legislating educational outcomes must still be addressed. Brown and Cooper (2011), reiterates the fact that politics of funding equity has been focused initially in the courts, “thus the courts have both forced and empowered governors and legislative leaders to provide financial equity polices that provide greater financial equity in states” (p. 155). Albeit, the role of the court in educational reform will continue to be a contentious manner. In addition, Thro (2016) asserts that “almost half a century after the first cases and almost three decades after the rise of the adequacy theory, school finance litigation remains both incoherent and incomprehensible” (p. 556).

Disparities in state education funding systems and ambiguity in a state’s obligation to provide a specific quality of education for students have been the basis of school funding litigation across the United States. Concern over the adverse effects of inadequate school funding on student achievement has led to multiple lawsuits throughout the United States. Throughout the history of school funding litigation there has been some consensus linking low achievement to inadequate funding. Nonetheless, there remain limited evidence regarding the connection between funding and long-term student achievement (Baker, 2016).

Only time will tell if the 2014 Abbeville ruling will have a long-term influence on school funding, student achievement, and effective policy for South Carolina and its school funding litigation plaintiffs. Thus, what follows is the evidence extracted from
legal and scholarly data sources to address the present-day influence of school funding litigation in South Carolina on these issues. Through the presentation of findings that align with each question, the study’s four research questions will be addressed in Chapter 3. Chapter 3 consists of evidence extracted and analyzed to support the findings that emerged from the data sources used for this study.
CHAPTER 3

FINDINGS

Situated at the intersection of law, finance, and politics, the purpose of this study was to examine the historical legal landscape of school funding litigation in South Carolina. Grounded in the *Abbeville v. South Carolina* adjudication and the economist’s education production function model, this study illuminated the relationship between school funding litigation and student achievement. In addition, the study addressed the idea that the law and judicial decisions are often a product of the politics of the state, judges, and other factors. The following research questions guided this study:

1. What is the relevant legal history of school funding litigation in South Carolina?
2. What factors beyond law and logic were involved in school funding cases in South Carolina?
3. What was the legislative response to the litigation decisions?
4. How effective has school funding litigation been in improving funding and student outcomes?

Chapter 3 consists of the presentation of findings that align with each of the study’s four research questions. What follows is the evidence extracted and analyzed to support the research question findings that emerged from the data sources used for this study.

**What is the History of School Funding Litigation in South Carolina?**

South Carolina has an extensive history of school funding lawsuits. Spanning 70 years, from 1947 to 2017, citizens and school districts in South Carolina pursued
remedies through litigation to address the educational inequities spawned by segregation and the state’s education finance system. What follows is the evidence extracted to answer Research Question 1. The evidence is presented around three findings that emerged from the data presented in Chapter 2.

**South Carolina has Experienced Considerable Litigation**

After 70 years of four different lawsuits, two dismissed lawsuits, several appeals to both the U.S. Supreme Court and South Carolina Supreme Court, in addition to experiencing both equity and adequacy claims, South Carolina has a significant history of school funding litigation (see Figure 4).

![Figure 4. Snapshot of school funding litigation in South Carolina](image)

Starting in 1947 with a petition seeking equal access to schools via school buses, leading to *Pearson v. Clarendon County* being filed in 1948 and ending in 2017 with the SC Supreme Court terminating its jurisdiction over the 21-year *Abbeville v. South*
Carolina case, Figure 5 provides a timeline of South Carolina’s extensive school funding litigation history.
Table 2, which offers a brief overview of each event in the timeline, shows that during this 70-year timespan, the first two claims were against a school district as opposed to the state of South Carolina and of the four lawsuits, two were dismissed. Furthermore, one lawsuit was appealed to the U.S. Supreme Court, two were appealed to the SC Supreme Court, with the State receiving one favorable ruling and the plaintiffs receiving two.

Table 2

*Overview of School Funding Litigation in South Carolina*

<table>
<thead>
<tr>
<th>Date</th>
<th>Events</th>
<th>Overview</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947-1948</td>
<td>Pearson v. Clarendon County Board of Education</td>
<td>Seeking equal access, for Black students, to school via school buses, <em>Pearson</em> was the first South Carolina school funding lawsuit filed, but was dismissed due to tax and zoning technicality.</td>
</tr>
<tr>
<td>1950</td>
<td>Briggs v. Elliott</td>
<td>Originating from the <em>Pearson</em> lawsuit, <em>Briggs</em> went beyond transportation and seeking equal educational opportunities to attacking segregation and <em>Plessy</em>.</td>
</tr>
<tr>
<td>1951</td>
<td>Briggs v. Elliott Decision</td>
<td>Ruling in favor of the defendants and declared that schools in South Carolina must be equalized but not integrated.</td>
</tr>
<tr>
<td>1952</td>
<td>Briggs First Appeal to US Supreme Court</td>
<td>Being the first SC school funding case to reach the US Supreme Court, Briggs was returned to the district court for rehearing. The district court again ruled in favor of the defendant.</td>
</tr>
<tr>
<td>1952</td>
<td>Briggs Second Appeal to US Supreme Court</td>
<td>Briggs consolidate with four other cases to become Brown v. Board of Education and was the first of the four to be argued before the US Supreme Court.</td>
</tr>
<tr>
<td>1987</td>
<td>Richland County v. Campbell</td>
<td>Grounded in the disparities in PPE between high and low-wealth school districts, plaintiffs claimed the state funding system was inequitable.</td>
</tr>
<tr>
<td>1988</td>
<td>Richland Decision</td>
<td>Circuit court dismissed the lawsuit.</td>
</tr>
<tr>
<td>1989</td>
<td>Appeal to SC Supreme Court</td>
<td>Court affirmed the circuit court’s dismissal of the lawsuit.</td>
</tr>
<tr>
<td>Year</td>
<td>Event</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>-------------</td>
</tr>
<tr>
<td>1993</td>
<td>Abbeville v. South Carolina</td>
<td>40 rural low-wealth school districts filed an initial lawsuit seeking equity in education funding, but only eight school districts were chosen to represent the other districts as “trial plaintiffs” in the lawsuit.</td>
</tr>
<tr>
<td>1996</td>
<td>Abbeville I Decision</td>
<td>Based on precedent of Richland County v. Campbell ruling, the court granted the State’s motion to dismiss the lawsuit.</td>
</tr>
<tr>
<td>1996</td>
<td>Appeal to SC Supreme Court (Plaintiffs)</td>
<td>Challenged South Carolina’s funding of public education, however the plaintiffs did not seek equity in state funding, instead claimed that the current funding system resulted in inadequate educational opportunity.</td>
</tr>
<tr>
<td>1999</td>
<td>Appeal Decision</td>
<td>The SC Supreme Court upheld the circuit court’s ruling that the lawsuit did not have claim under the equal protection clauses, but ordering the circuit court on remand to consider the claim for violation of the State Constitution’s education clause.</td>
</tr>
<tr>
<td>2003</td>
<td>Abbeville Remand Trial</td>
<td>The lower court believed that the Abbeville I decision created one single issue to be determined on remand: “Are the student is the Plaintiffs Districts being provided the opportunity to acquire a minimally adequate education in adequate and safe facilities as defined by the South Carolina Supreme Court?”</td>
</tr>
<tr>
<td>2005</td>
<td>Abbeville Remand Decision</td>
<td>Circuit court judge provided a judgement that sided with both the plaintiffs and Defendants, but ultimately the rendered judgment and order was in favor of the plaintiff districts.</td>
</tr>
<tr>
<td>2006</td>
<td>Petition to Circuit Court</td>
<td>Both plaintiffs and defendants filed motions to get the court to change its order, but those motions were denied.</td>
</tr>
<tr>
<td>2007</td>
<td>Appeal to SC Supreme Court</td>
<td>The 2005 decision was appealed to the SC Supreme Court by the plaintiffs and cross-appealed by the defendants.</td>
</tr>
<tr>
<td>2014</td>
<td>Abbeville II Decision</td>
<td>SC Supreme Court ruled in favor of the plaintiffs and found the state to have failed in its constitutional duty to ensure that students in the plaintiff districts have the opportunity to receive a minimally adequate education.</td>
</tr>
<tr>
<td>2017</td>
<td>End of Jurisdiction over Abbeville v. SC</td>
<td>SC Supreme Court terminated jurisdiction over Abbeville v. SC.</td>
</tr>
</tbody>
</table>
South Carolina is Situated in the National Landscape of School Funding

Originating with *Commonwealth v. Dedham* (1819), *Brown v. the Board of Education* (1954), *Serrano v. Priest* (1971), and *the San Antonio Independent School District v. Rodriguez* (1973), there exists a long list of cases that address the issues of school funding equality, equity and adequacy throughout the United States. As indicated in the subsequent timeline (see Figure 6), South Carolina is situated in the national historical landscape of school funding lawsuits. In addition, like South Carolina, Figure 7 shows that all but five states have experienced at least one lawsuit regarding how it funds schools and/or whether that funding is equitable or adequate. Delaware, Hawaii, Mississippi, Nevada, and Utah are the only states that have managed to avoid litigation at the state supreme court level. Although Iowa has experienced lawsuits, all have been withdrawn or dismissed in the lower court. Of the 44 states that did not manage to avoid litigation, they have experienced varying judicial rulings from the states’ high courts.
Figure 6. Timeline of South Carolina Situated in National Litigation
Figure 7. National map of school funding activity and adjudication. Image retrieved from schoolfundinginfo.com (2018).

Given the timespan of forty plus years, coupled with the frequency of school funding cases, scholars tend to look at the history of school funding litigation in three waves, with speculation of an emerging fourth wave. The school funding lawsuit claims filed in South Carolina are aligned with this trend identified by scholars (see Figure 8). Although South Carolina’s first two lawsuits were filed prior to the national first wave of school funding litigation, its latter two cases of Richland County v. Campbell and Abbeville v. South Carolina were consistent with the national trend. The three waves of litigation strategies started with federal equal protection clause challenges and equality of
funding and/or educational opportunity, followed by a strategy focused on state equal protection challenges, and presently using a strategy that focuses on state education clause challenges seeking a minimum quality standard.

Figure 8. South Carolina alignment with nationwide litigation wave strategies.

School funding litigation in South Carolina is not only situated in the bigger picture of school funding litigation history regarding lawsuits decisions and litigation waves, but South Carolina cases are also directly linked to what many consider the most significant lawsuit regarding public schools. Briggs v. Elliott, South Carolina’s first school funding lawsuit to make it to trial, has a direct association with Brown v. Board. When Briggs v. Elliott was appealed a second time to the U.S. Supreme Court, it consolidated with four other cases to become Brown v. Board.
The four other companion cases were from Kansas (*Brown v. Board*), Virginia (*Davis v. Prince Edward County*), Delaware (*Gebhart v. Belton*), and the District of Columbia (*Bolling v. Sharpe*). Briggs was the first of the five companion cases to be appealed to the U.S. Supreme Court. In view of this, to conclude the evidence of the second finding for Research Question 1, Table 3 provides a summary of where and how South Carolina fits in the national landscape of school funding litigation.

Table 3

*South Carolina in the National Landscape of School Funding Litigation*

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
<th>SIGNIFICANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1819</td>
<td>First school funding case litigated in the United States</td>
<td>The town of Dedham was charged with failing to provide an adequate education to all children and the high Court of Massachusetts ruled in favor of the plaintiffs.</td>
</tr>
<tr>
<td></td>
<td>(Commonwealth v. Dedham)</td>
<td></td>
</tr>
<tr>
<td>1948</td>
<td>First School Funding lawsuit filed in South Carolina</td>
<td>Seeking equal access to schools via school buses, <em>Pearson</em> was the first South Carolina school funding lawsuit filed</td>
</tr>
<tr>
<td></td>
<td>(Pearson v. Clarendon County Board of Education)</td>
<td></td>
</tr>
<tr>
<td>1950</td>
<td>Second lawsuit filed in South Carolina</td>
<td>Originating from the <em>Pearson</em> suit, <em>Briggs</em> went beyond transportation and seeking equal educational opportunities to attacking segregation and <em>Plessy</em></td>
</tr>
<tr>
<td></td>
<td>(Briggs v. Elliott)</td>
<td></td>
</tr>
<tr>
<td>1951</td>
<td>Decision made in Briggs v. Elliott</td>
<td>The Federal District Court provided a 2-1 ruling in favor of the defendants and declared that schools in South Carolina must be equalized but not integrated</td>
</tr>
<tr>
<td>1952</td>
<td>Briggs first appeal to the Federal Supreme Court</td>
<td>Briggs was returned to the district court for rehearing and the district court again ruled in favor of the defendants.</td>
</tr>
<tr>
<td>1952</td>
<td>Briggs second appeal to the U.S. Supreme Court</td>
<td>Briggs consolidate with four other cases, becoming <em>Brown v. Board of Education</em>, to challenge school segregation; Briggs was the first of the four to be argued before the US Supreme Court</td>
</tr>
<tr>
<td>1954</td>
<td>Decision made in <em>Brown v. Board</em></td>
<td>The Court ruled in favor of the Plaintiffs, thus the Brown ruling sought to provide equal educational opportunity to all students by making school segregation unconstitutional.</td>
</tr>
<tr>
<td>1971</td>
<td>California Supreme Court decision in <em>Serrano v. Priest</em></td>
<td>The Court held that California's property tax based funding system violated the federal equal protection clause, thus most scholars recognize the Serrano ruling as the beginning of the modern era in school funding litigation</td>
</tr>
<tr>
<td>1973</td>
<td>US Supreme Court decision in <em>San Antonio v. Rodriguez</em></td>
<td>The Court ruled that education was not a fundamental right and that disparities in school funding among school districts do not violate the federal constitution, thus some scholars argue that post Brown, the Rodriguez ruling may be the most significant decision regarding public schools</td>
</tr>
<tr>
<td>1973</td>
<td>New Jersey's Robinson v. Cahill ruling</td>
<td>Identified as the start of the 2nd wave of school funding litigation, ending in 1989, that focused on state constitution's equal protection and education clauses</td>
</tr>
<tr>
<td>Year</td>
<td>Event Description</td>
<td>Details</td>
</tr>
<tr>
<td>------</td>
<td>-------------------</td>
<td>---------</td>
</tr>
<tr>
<td>1988</td>
<td>Third funding lawsuit filed in South Carolina</td>
<td>Plaintiffs challenged the constitutionality of the state public school funding system, but the court dismissed the lawsuit (Richland County v. Campbell)</td>
</tr>
<tr>
<td>1993</td>
<td>Most current lawsuit filed in South Carolina</td>
<td>The state’s longest spanning case, 40 rural low-wealth school districts filed an initial lawsuit seeking equity in education funding - the litigation strategies evolved throughout the lifespan of the case (Abbeville v. South Carolina)</td>
</tr>
<tr>
<td>2014</td>
<td>Decision made in Abbeville v. South Carolina</td>
<td>After 21 years of court appearances, the SC Supreme Court upheld Richland Court, but found the State to be in violation of its constitution education clause - the Court did not provide a remedy to address the violation.</td>
</tr>
<tr>
<td>2017</td>
<td>South Carolina Supreme Court terminated jurisdiction over Abbeville v. South Carolina</td>
<td>Three years after the ruling, the Court ends its oversight of the State's efforts to remedy its constitutional violation holding that the 2014 decision was a violation of separation of powers</td>
</tr>
</tbody>
</table>

**South Carolina has a Comparable History to Bordering States**

Given the bird’s eye view of how school funding litigation in South Carolina is situated in the national landscape of school funding, I contend that it is equally relevant to consider an environmental scan of the region. Consequently, the third finding for Research Question 1 shows that South Carolina is not the only state in its region with a history of addressing the equity and adequacy issue of school funding through litigation. Neighboring states of Georgia and North Carolina have also experienced school funding lawsuits (see Figure 9).

The first regional lawsuits adjudicated in each state occurred first in 1948 in South Carolina, followed by Georgia in 1981 and North Carolina in 1987. Of the regional cases, four occurred in South Carolina, three in North Carolina, and one in Georgia.

While South Carolina has an extensive history of school funding litigation, Leandro is the leading case in North Carolina, and school funding litigation in Georgia essentially failed to exist after the McDaniel case.
Table 4

Snapshot of School Funding Litigation Waves

<table>
<thead>
<tr>
<th>1st Wave</th>
<th>2nd Wave</th>
<th>3rd Wave</th>
<th>Emerging Wave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Began with Serrano v. Priest and ended with San Antonio v. Rodriguez, relied on the federal Equal Protection Clause</td>
<td>Began in New Jersey with Robinson v. Cahill (1973) and ended in early 1989; focused on state constitutions’ equal protection and education clauses with the continued emphasis on equality</td>
<td>Began with plaintiff’s victories in Helena v. Montana, Rose v. Council for Better Education (KY), and Edgewood v. Kirby (TX) and continues to present day; emphasized adequacy in school funding by focusing solely on the state constitution’s education clause</td>
<td>Two current race-conscious school finance cases in New Mexico and North Carolina, Martinez v. New Mexico and Silver v. Halifax County School Board Association, show promise with using a racial claim strategy</td>
</tr>
</tbody>
</table>

**Figure 9.** South Carolina bordering states school funding cases

As described below in Table 4 and illustrated with Figure 8 in the previous section, academic and legal scholars divided the history of school funding litigation into three distinct waves.

Table 4

**Snapshot of School Funding Litigation Waves**

- **GEORGIA**
- **SOUTH CAROLINA**
  - Pearson v. Clarendon County (1948)
  - Briggs v. Elliot (1952)
  - Richland County v. Campbell (1988)
  - Abbeville v. South Carolina (2014)
- **NORTH CAROLINA**
  - Silver v. Halifax (2016)
Table 5 shows that like South Carolina, Georgia and North Carolina cases were all aligned with the national trend of school funding litigation strategies. However, because the first wave of litigation was abbreviated by the U.S. Supreme Court’s decision in *San Antonio v. Rodriguez* (1973), none of the three states experienced litigation during the first wave. But, all three states experienced litigation during the second and third waves.

The second wave, which started in New Jersey with *Robinson v. Cahill* (1973) and ended in early 1989, focused on state constitutions’ equal protection and education clauses with the continued emphasis on equality. It is during this wave that the school funding cases, *McDaniel v. Thomas* (1981) and *Britt v. NC* (1987), emerged in Georgia and North Carolina. South Carolina’s third school funding case, *Richland County v. Campbell* (1988), also occurred during this second wave of funding litigation.

### Table 5

*Regional Cases Situated within National Litigation Waves*

<table>
<thead>
<tr>
<th>Litigation Wave</th>
<th>State</th>
<th>Duration</th>
<th>Lawsuit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Wave</td>
<td>NONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NC</td>
<td>1987</td>
<td>Britt v. North Carolina</td>
</tr>
<tr>
<td></td>
<td>SC</td>
<td>1987-1988</td>
<td>Richland County v. Campbell</td>
</tr>
<tr>
<td></td>
<td>SC</td>
<td>1993-2014</td>
<td>Abbeville v. South Carolina (Abbeville I &amp; II)</td>
</tr>
<tr>
<td>Emerging Wave</td>
<td>NC</td>
<td>2015-2016</td>
<td>Silver v. Halifax County Board of Commissioners</td>
</tr>
</tbody>
</table>
Unlike the first and second waves, the third wave emphasized adequacy in school funding. As described in Table 4, the third wave of litigation began in 1989 with plaintiff’s victories in Montana, Kentucky, and Texas and continues to present day. The defining characteristic of third wave cases is that courts analyze cases based solely on a state constitution’s education clause. While some plaintiffs continued to pursue equality-based claims, most litigate after 1990 focused on the amount of resources available for public education and its insufficiency.

It is during this third wave, with *Leandro v. NC* (1997/2004/2012) and *Abbeville v. SC* (1996/2005/2014), that both North Carolina and South Carolina experienced their lengthiest school funding cases, along with plaintiffs finally receiving their first favorable rulings against the state. *Abbeville* and *Leandro* have been in and out of court for over twenty years. *Abbeville* and *Leandro*, filed in 1993 and 1994 respectively, followed a similar journey to reach a state Supreme Court ruling and order. Regarding the emerging wave of school funding litigation, North Carolina is the only state that has experienced a ruling during this wave. In 2015, Black parents, students, and two organizations filed a suit against the Halifax County Board of Commissioners. This case is known as *Silver v. Halifax*. The plaintiffs claimed that the County Board denied the students in Halifax County the right to a sound basic education as set forth by *Leandro I* and the state constitution (Hinojosa, 2016). What makes the *Silver* lawsuit different from the other school funding cases in the region, is the inclusion of a racial claim.

Concluding the evidence of the history of school funding litigation in South Carolina, what follows are relevant findings and evidence extracted to address Research Question 2. This second research question addresses factors other than the law and logic
that were key in the adjudication of school funding cases in South Carolina. Given that this study is situated at the intersection of finance, law, and politics, it is fitting for the next section to illuminate that the law and judicial decisions regarding educational finance are often a product of the politics of the state and decision makers, in addition to other personal values.

What Factors Beyond Law and Logic Were Involved in Adjudicating School Funding Cases in South Carolina?

Examining the history of school funding litigation in South Carolina revealed that factors beyond law and logic can influence judicial outcomes. Specifically, that the law and judicial decisions regarding educational finance are often a product of the politics of the state and decision makers, personal values, and/or other factors. From governance structure and litigation strategy to the role of the court and race, these are factors beyond law and logic that have influenced school funding cases in South Carolina. What follows is the evidence extracted to illustrate how these factors were involved in adjudicating school funding cases in South Carolina.

The South Carolina Legislature Dominates Governance of Education

Who governs education and the relationships between these governmental entities is pertinent to examining school funding litigation in South Carolina. As indicated in Figure 10, South Carolina is one of two states whose legislature elects state high court judges; Virginia being the other. Between the 2014 Abbeville 3-2 decision in favor of the plaintiff districts and the 2017 3-2 decision to terminate jurisdiction, a new Justice was appointed to South Carolina’s high court. In 2016, the new Justice was elected to fill the vacancy left by the Chief Justice who authored the 2014 Abbeville opinion. This is
noteworthy because during the legislature questioning of the judgeship candidates, the chairman of the Senate Judiciary Committee questioned the candidates about the *Abbeville* decision.

One question specifically, the chairman asked the now newly appointed Justice, if he think the high court could require the Legislature to enforce some order on public policy. The new justice provided the following response, “highly unlikely that the judicial branch of government would ever issue a writ (order) against the legislative branch of government” (Monk, 2016).

Figure 10. How states High Court Judges are selected. Figure retrieved from American Judicature Society via Wisconsin State Journal (Verburg, 2013).

In South Carolina, the main entities involved in education include the legislature, state board of education, governor, state superintendent of education, and department of education. However, when it comes to governing education in South Carolina, the General Assembly dominates influence over education policy. The governance structure of education not only limits the local participation and influence on education policy, but
also creates power limitations on judicial and other educational entities. In addition, while the state superintendent is an elected official in South Carolina, all state board of education members, excluding one, are appointed by the legislature. This is not a common governance structure, for only two other states, Mississippi and Washington, have state board of education members not appointed by multiple authorities. In South Carolina, the legislature appoints 16 of the 17 state board members, with the governor appointing the remaining member.

Judicial Interpretation

Interpretation of the law is unquestionably a part of the court’s role. Yet, in Abbeville v. SC, both the lower court and state Supreme Court had a different interpretation of the South Carolina Constitution. It is clear that South Carolina’s education clause does not establish any qualitative standard for providing public education. However, in the Abbeville I ruling, the SC Supreme Court applied judicial interpretation and held that the educational clause requires the General Assembly to “provide for the opportunity for each child to receive a minimally adequate education” (Abbeville v. SC, 2005). In providing this ruling, the SC Supreme Court declared that judicial interpretation is its duty.

[I]t was its duty “to interpret and declare the meaning of the Constitution,” and, therefore, this Court “erred in using judicial restraint, separation of powers, and the political question doctrine as the basis for declining to decide the meaning of the education clause.” (Abbeville v. SC, 2005, p. 6)

The Court went a step further and defined “minimally adequate” as follows:
[T]o include the provision of adequate and safe facilities in which students have the opportunity to acquire: 1) the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills. (*Abbeville v. SC*, 2014, p. 5)

Not only did the SC Supreme Court take it upon themselves to interpret the state’s Education Clause as a requirement of the state to provide minimally adequate education, but it also defined the parameters of what constitutes a minimally adequate education. Both the lower court judge and the dissenting Justices found the Supreme Court action to be an improper exercise of judicial power. Consequently, in response to the majority interpretation, the dissenting opinion declared “[t]his Court’s construction of the Education Clause in *Abbeville I* to require a minimally adequate education, while well intentioned, does not give rise to a legal issue that this Court is capable of resolving” (*Abbeville v. SC*, 2014, p. 42). In addition, the minority stated the following:

…the General Assembly cannot legislate outcomes, deemed "outputs" …The education clause of the Constitution does not require the State to ensure that all students acquire a minimally adequate education. However, it does require the State to provide 'each child' the opportunity to obtain a minimally adequate education. (*Abbeville v. SC*, 2014, p. 48)

The dissent contended that defining a minimally adequate education is fundamentally a policy determination to be made by the citizens of South Carolina, through their elected representatives (*Abbeville v. SC*, 2014). Because the Education Clause in the South
Carolina Constitution (S.C. Const. art. XI, § 3.) does not reference a minimum standard for providing education, the dissent offered the following:

Court today reverses this primary determination of the trial court. In this regard, determining what constitutes an adequate education is so subjective as to defy judicial resolution. However, this Court, in Abbeville I, proceeded to judicially engraft a qualitative standard into our state constitution so it could then interpret its meaning. In my judgment, this was error and was fundamentally inconsistent with the plain language of our state constitution, which speaks only of the General Assembly and its duty to create and maintain a public school system. (Abbeville v. SC, 2014, p. 46)

Amended Plaintiffs’ Complaints

The plaintiffs in Briggs and Abbeville amended their initial complaints before going to trial. While Briggs plaintiffs experienced one change with their complaint, the Abbeville plaintiffs submitted the court with three different amendments to their initial complaint. The Briggs claim originated with the Pearson lawsuit. Initially filed in 1948 as Pearson v. County Board of Education, this filing was to argue the discriminatory bus-transportation practices in the state in addition to seeking overall equal educational opportunity. Filed again in 1950, as Briggs v. Elliott, the case went beyond transportation and seeking equal educational opportunities to attacking segregation. The new claim now demanded equal treatment in transportation, buildings, teachers ‘salaries, and educational materials. The amended complaint declared the following:

This is a suit for a declaratory judgment and injunctive relief in which it is alleged that the schools and educational facilities provided for Negro children in School
District No. 22 in Clarendon County, South Carolina, are inferior to those provided for white children in that district and that this amounts to a denial of the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution, and further that the segregation of Negro and white children in the public schools, required by Article 11, section 7 of the Constitution of South Carolina and section 5377 of the Code of Laws of that state, is of itself violative of the equal protection clause of the Fourteenth Amendment. (Briggs v. Elliott, 1951, pp. 530)

The ruling of the court was that the schools must be equalized but not integrated. Although the ruling was a lost for the plaintiffs of Clarendon County, Pearson’s amended complaint argued as Briggs v. Elliott played a significant role in the formulation of Thurgood Marshall and the NAACP’s strategy to abolish Plessy v. Ferguson (1896).

The plaintiffs of Abbeville petitioned the court several times to amend their complaint. Some of the amendments were granted, but later dismissed, while others were not granted at all. These submitted amendments for Abbeville happened over an eight-year timespan and included elements ranging from equity and adequacy to race and monetary damages.

The initial 1993 filing sought a declaratory judgment against South Carolina’s public education funding formula. This complaint challenged the State’s constitutional scheme for funding schools. However, in an amended complaint filed in 1995, the plaintiffs argued that the state’s funding formula violated the South Carolina Constitution’s education clause, the equal protection clauses of the State and federal constitutions, and the Education Finance Act of 1977. The plaintiffs brought a declaratory
judgment action challenging South Carolina’s funding of public education; however, they
did not seek equality in state funding, but instead claimed that the current funding system
resulted in inadequate educational opportunity. This amended complaint was dismissed
by the lower court with prejudice for failure to state facts sufficient to constitute a cause
of action.

In 1996, the plaintiffs appealed to the South Carolina Supreme Court regarding
the lower court’s dismissal of the amended complaint. The Supreme Court upheld the
circuit court’s ruling that the EFA did not create a private cause of action and claims
under the equal protection clauses but found that the plaintiff districts complaint did have
a claim of inadequate educational opportunity. Thus, ordering the circuit court on remand
to consider the claim for violation of the State Constitution’s education clause.

In 2001, prior to the 2003 Abbeville trial, the plaintiffs submitted another
amendment to their initial complaint. The third amended complaint reiterated prior
claims, but this time also sought monetary damages, a jury trial, and contained allegations
regarding the racial characteristics of the Plaintiff Districts. The lower court granted the
motion to amend but denied all three of the new requests presented in this third amended
complaint.

The Role of the Court

The role of the courts, in addressing South Carolina’s failure to provide minimal
adequate educational opportunity to all students, is an ongoing debate that started with
Briggs in 1952 and continued until 2017 with Abbeville. In Briggs and Abbeville, the
issue of whether the court should become involved in educational policy was addressed.
During the Briggs trial, one of the three judges stated to the Plaintiff’s attorney that “it’s
not the function of the court to determining what is the best educational policy. It is the function of the court to see that all men are given their rights” (Kluger, 2004, p. 358).

Correspondingly, when considering whether the Court should become involved in fashioning a remedy to the constitutional violation, the SC Supreme Court made it clear that they believe in the principle of separation of powers, citing that the legislature, not the judiciary, is the proper institution to make major educational policy choices. The 1999 *Abbeville* opinion provided the following:

> [W]e do not intend by this opinion to suggest to any party that we will usurp the authority of that branch to determine the way in which educational opportunities are delivered to the children of our State. We do not intend the Courts of this State to become super-legislatures or super-school boards.  

(*Abbeville* vs. *SC*, 2005, p. 7)

Remaining consistent over the span of the case, the 2014 *Abbeville* opinion stated the following:

> While the Defendants and the dissent point to the amount of spending in Plaintiff Districts, this spending fails to provide students with the opportunity to obtain a minimally adequate education…This Court cannot suggest methods of fixing the problem, but we can recognize a constitutional violation when we see one.  


In addition, the 2014 Abbeville opinion provided the following regarding the Court’s provision of a remedy for the State’s violation:

> The principle of separation of powers directs that the legislature, not the judiciary, is the proper institution to make major educational policy choices. Thus, the
General Assembly is primarily responsible for school finance reform. In light of this sacrosanct principle, we refuse to provide the General Assembly with a specific solution to the constitutional violation. However, the Defendants may find remedies fashioned by other states’ courts instructive. (Abbeville v. SC, 2014, p. 32)

Yet, regardless of the majority opinion acknowledgement of the principle separation of power, the minority in the 2014 Abbeville ruling affirmed that “[a]t the heart of this matter is the constitutional separation of powers, a principle the majority acknowledges is “sacrosanct,” yet ignores in application” (Abbeville v. SC, 2014, p. 48). The dissent stated the following:

Based on my view of the rule of law, especially the principle of separation of powers, I believe the Court has overstepped its bounds. I would overall Abbeville I, as I believe it represents a nonjusticiable political question…The South Carolina Constitution vests the legislative power of the State in the General Assembly and the judicial power in the courts. Thus, our constitutional construct directs that judges “refrain from scaling the walls that separate law making from judging… (Abbeville v. SC, 2014, p. 40)

**The Role of Race**

Race has played a significant role in school funding litigation in South Carolina. Although the role of race was explicitly taken into account in Briggs, that was not the circumstance for Abbeville. While race was at the forefront of the Briggs case, it remained silently in the backdrop of the Abbeville case. The claims argued in Briggs were grounded in racial inequality. Whereas, the plaintiffs in Abbeville were denied the
opportunity to include a racial claim. What follows is a snapshot of evidence to illustrate how school funding cases in South Carolina explicitly and implicitly took race into account during both litigation and adjudication.

**Briggs v. Elliott.** Initially filed in 1948 as *Pearson v. County Board of Education*, this filing was to argue the discriminatory bus-transportation practices in the state. Filed again in 1950, the case went beyond transportation and seeking equal educational opportunities to attacking segregation. This suit demanded desegregation and full education equity, not just equal access to transportation. The new filing declared the following:

>This is a suit for a declaratory judgment and injunctive relief in which it is alleged that the schools and educational facilities provided for Negro children in School District No. 22 in Clarendon County, South Carolina, are inferior to those provided for white children in that district and that this amounts to a denial of the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution, and further that the segregation of Negro and white children in the public schools, required by Article 11, section 7 of the Constitution of South Carolina and section 5377 of the Code of Laws of that state, is of itself violative of the equal protection clause of the Fourteenth Amendment. (*Briggs v. Elliott*, 1951, p. 530)

The incoming Governor of South Carolina during the time of the *Briggs* case understood the connection between segregation, funding equality, and the role of the court to address educational and racial issues.
A former Justice of the Supreme Court, [the Governor] understood very well the
trend of the Court’s decisions on racial matters. If conditions as bad as those in
Clarendon were allowed to remain, the federal courts might indeed be obliged to
intervene and command the state to equalize – and perhaps even to desegregate as
the quickest, fairest means to equalize. (Kluger, 2004, pp. 334)

In response to the Briggs filing, the incoming Governor, James F. Byrnes, stated the
following during his 1951 inaugural address, and immediately insisted that the General
Assembly pass school equalization legislation:

> It must be our goal to provide for every child of this state, white or colored, at
> least a grade school education…We must have a state school building
> program…One cannot speak frankly on this subject without mentioning the race
> problem. It is our duty to provide for the races substantial equality in school
> facilities. We should do it because it is right. For me that is suffice
> reason…Except for the professional agitators, what the colored people want, and
> what they are entitled to, is equal facilities in their schools. We must see that they
> get them. (Byrnes, 1951, p. 3-4)

According to Holleman (2010), in a speech given later that same year to the South
Carolina Education Association, Governor Byrnes discussed the educational equalization
program that was pending in the Legislature. The Governor made it clear that if the
Briggs court were to order the state to eliminate segregated schools, he would petition the
state legislature to abandon public education. In short, he would rather eliminate public
education for all than to allow Black students to attend the same school as White
students; segregation trump education. The Governor declared the following in his speech:

Of only one thing can we be certain. South Carolina will not now, nor for some years to come, mix white and colored children in our schools…If that is not possible, reluctantly we will abandon the public school system. (Holleman, 2010, para. 10)

The Governor’s attempt to stay one step ahead of the law and the plaintiffs’ attorneys, in an effort to keep schools segregated, was enough for two of the District Judges to rule in favor of the defendants. The ruling of the court was that the schools must be equalized but not integrated. The lone dissenting judge provided the following, that was later referenced in the Brown v. Board opinion:

[S]egregation in education can never produce equality and that it is an evil that must be eradicated... the system of segregation in education adopted and practiced in the State of South Carolina must go and must go now. Segregation is per se inequality. (Waring, 1951, p. 19)

**Abbeville v. South Carolina.** As illustrated in Figure 11, the *Abbeville* plaintiff districts consisted mostly of non-White students. In 2001, after the remand, the Plaintiffs amended their complaint to include allegations regarding the racial characteristics of the plaintiff districts. However, prior to the 2003 trial, the lower court denied the amendment request, declaring that it was too late to inject racial issues and thus the court considered only evidence related to poverty as pertinent to this case. Notwithstanding, the plaintiffs’ attorneys still included racial data as evidence during the trial.
Throughout the trial, Plaintiffs continued to proffer evidence concerning the racial composition of the Plaintiff Districts and its alleged impact. While the Court allowed some evidence of the racial makeup of the Plaintiff Districts for limited purposes, the Court finds that student achievement is not a function of race, but rather of poverty. Moreover, Dr. Greg Hawkins, a Plaintiff’s expert testified that in the Plaintiff Districts, race and poverty were collinear, i.e. essentially one and the same. Tr. Trans. (08/14/03), p. 38, ll. 4-7. Therefore, there is no need for the Court to consider race as a separate factor. Accordingly, the Court has considered only evidence relating to poverty as pertinent to this case. (Abbeville v. SC, 2005, p. 8)

![Figure 11. Percentage of Non-White Students in Abbeville Trial Districts. Data represents trial evidence presented during 2003 trial. Data retrieved from South Carolina School Board Association (Hart, 2015).](image-url)
In addition, without out explicitly referring to South Carolina’s racial history, the conclusion of the 2014 Abbeville opinion included the following statement:

The Plaintiff Districts presented much of this case as a manipulative political argument, framing the dispute within some of our State’s most disturbing historical images, and couching this case’s most meaningful aspects in conventions which deny our progress. This approach simultaneously ignores their own actions in helping to create devastating metrics and outcomes. (Abbeville v. SC, 2014, p. 38)

Concluding the evidence that addresses the notion that factors beyond law and logic were involved in adjudicating school funding cases in South Carolina, what follows are relevant findings and evidence extracted to address this study’s third research question. Research Question 3 addresses South Carolina’s legislative response to school funding litigation. Given that the SC Supreme Court made it clear throughout the Abbeville (2014) opinion that they do not make policy themselves, nor do they consider themselves experts in education, it is fitting for the next section to identify some of the laws and policies that were enacted in response Briggs and Abbeville.

**What was the legislative response to the litigation decisions?**

After reviewing the history and non-judicial factors of school funding cases in South Carolina, it is timely to identify the influence, if any, these cases made on education policy. The plaintiffs of Briggs and Abbeville, frustrated by the inequitable educational policies, turned to the federal and state courts for assistance. Although the SC Supreme Court made it clear throughout the Abbeville v. SC (2014) opinion that they do not make policy themselves, nor do they consider themselves experts in education, school
funding litigation in South Carolina resulted in laws and policies being enacted, in addition to making education a priority on the General Assembly’s agenda.

Table 6 shows the school funding lawsuits and the courts in South Carolina both encouraged legislature to pass laws and directly directed them to do so. What follows is a snapshot of some of the enacted policies initiated by school funding litigation.

**Briggs v. Elliott**

The *Briggs* case caused South Carolina to enact legislation to provide equality throughout the segregated educational system. Before the *Briggs* court ordered them to do it, officials in South Carolina decided to be proactive regarding the blatant inequities between Black and White educational opportunities. In response to the *Briggs* lawsuit, the Governor of South Carolina acted by getting the state legislature to approve a statewide school equalization program (see Table 6).
Table 6

*Legislation Enacted in Response to South Carolina School Funding Cases*

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Legislation</th>
<th>Enactment Period</th>
<th>Purpose</th>
<th>Initiator</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Briggs v. Elliott</td>
<td>1951</td>
<td>Education Revolution</td>
<td>Prior to the start of the 1951 trial</td>
<td>School Equalization</td>
<td>Directed by the Governor, the state General Assembly passed an ambition school equalization program</td>
<td>New school building program, state operation of school buses, and higher and equal teacher salaries for both Blacks and Whites; $75 million in bonds to be issued over a 20-year period and to be paid for by revenues from a new 3% state sales tax</td>
</tr>
<tr>
<td>Abbeville v. South Carolina</td>
<td>2006</td>
<td>Child Development Education Pilot Program - Budget Proviso 1.75 (CDEPP)</td>
<td>After 2005 Remand Trial Ruling</td>
<td>Increase access to Pre-K</td>
<td>Ordered by the circuit court, the state General Assembly established CDEPP in annual budget proviso</td>
<td>A pilot program to expand the provision of full day 4k for children residing in the Abbeville plaintiff districts</td>
</tr>
<tr>
<td></td>
<td>2014</td>
<td>Child Development Education Program (Act 284, section 2)</td>
<td>Same year as SC Supreme Court Decision</td>
<td>Codify CDEP</td>
<td>General Assembly initiated the Read to Succeed Act (Act 284) and the Governor signed the act in 2014</td>
<td>Mandated that CDEP must be made available to qualified children in all public school districts within the State</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>Act 195 (H. 4936)</td>
<td>After 2014 ruling and order to provide a plan to remedy the violation</td>
<td>To improve public education through the state, with particular attention on plaintiff districts</td>
<td>In response to the 2014 Supreme Court decision, the General Assembly undertook legislative action as an attempt to help alleviate the financial burdens of the plaintiff districts</td>
<td>To redefine the expectations of a South Carolina high school graduate</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>Act 241 (H. 4939)</td>
<td>Same as Act 195</td>
<td>Same as Act 195</td>
<td>Same as Act 195</td>
<td>To eliminate outdated statues and promote great efficiency, to cut unnecessary expenses, and to require the DOE to offer technical assistance to struggling districts</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>Act 178 (H. 4940)</td>
<td>Same as Act 195</td>
<td>Same as Act 195</td>
<td>Same as Act 195</td>
<td>To create an Office of Transformation under the DOE for the purpose of reviewing low performing school districts plans and reporting back to the General Assembly with best practice suggestion</td>
</tr>
<tr>
<td></td>
<td>2016</td>
<td>Rat. #273 (H. 4938)</td>
<td>Same as Act 195</td>
<td>Same as Act 195</td>
<td>Same as Act 195</td>
<td>To conduct a survey to identify incentives to entice new teacher to live and work in rural, lower income districts.</td>
</tr>
</tbody>
</table>
This equalization program provided for school-building under the bond program, state operation of school transportation, and higher teacher’s salaries paid on an equal basis to both races. According to a 1954 speech delivered to the South Carolina Education Association, the Governor declared the following regarding the legislative response to Briggs:

Since 1951 the consolidated program has eliminated 824 of our inferior schools in rural areas. Of these, 287 were white schools and 537 Negro schools. The former students of those schools are now in consolidated schools and possess educational opportunities equal to the opportunities afforded boys and girls of the cities. The consolidation of schools has brought about a great increase in the number students transported in buses to school. In 1950-51 under the district transportation systems 142,00 pupils rode school buses daily at an average cost of $24.77 per year. Under the State system last year 203,000 children rode the buses daily at an annual per capita cost of only $16.55. The number of Negro students being transported has increased from 29,166 in 1951 to 78,567 in 1954. Substantial equality with the transportation of white pupils has been attained. (Byrnes, 1954, pp. 2)

In 1955, South Carolina published a report on the equalization program which highlighted the new schools constructed, the new buses purchased, and the locations of new schools across the state. Figure 12 illustrates the location of the school building equalization efforts.
Figure 12. Legislative response to *Briggs*: School equalization building program. Figure retrieved from National Park Service (2016).

The Governor’s attempt to stay one step ahead of the law and the *Briggs* litigation generated educational policy that brought the Blacks throughout South Carolina closer toward access to equal educational opportunities. The school building program enacted by the Legislature provided for the following:

[F]or completion of construction in 20 years. During that period $176,000,000.00 will be spent by the State for school buildings. It will be paid for out of sales tax revenue…At first the limitation on the issuance of bonds was $75,000,000.00, at
any one time. It has been increased to $100,000,000.00…[Bonds were issued to] promptly equalize school facilities as between the races. (Byrnes, 1954, p. 4)

In addition, the State Educational Finance Commission “allocated $94,000,000.00 out of the proceeds of bonds issued and the sales tax revenue. Negro schools have received two-thirds of the total allocation. When these buildings have been constructed, there will be substantially equal building facilities in those particular counties” (Byrnes, 1954, p. 5).

**Abbeville v. South Carolina**

In 2005, the *Abbeville I* order mandated the General Assembly to establish and adequately fund an early childhood education program for students in the plaintiff districts. In response to the ruling, in 2006, the Child Development Education Program Pilot (CDEPP) was enacted (see Table 6). CDEPP was a full-day 4k program for kids living in poverty in the trial and plaintiff districts. The CDEPP was funded via Proviso.

In 2014, a few months prior to the SC Supreme Court *Abbeville II* ruling, the Governor signed the Read to Succeed Act (Act 284). Section 2 of Act 284 codified the Child Development Education Program (CDEP) and mandated that the program must be made available to qualified children in all school districts within the State, not just the *Abbeville* plaintiffs.

Although the Court did not order any specific remedy or mandated legislation, the General Assembly gave attention to the *Abbeville* districts and issues raised in the *Abbeville* opinion. In response to the 2014 Supreme Court decision, the General Assembly undertook legislative action as an attempt to help alleviate the financial burdens of the plaintiff districts. Legislators introduced eight bills that were directly in response to the ruling. As a result, of the eight bills introduced during the 2016 annual
session, four were enacted by the General Assembly and approved by the Governor.

These bills, H. 4936, H. 4939, H. 4940, and H. 4938, became known as the “Abbeville bills”. As indicated in Table 6, these bills addressed the expectations of a South Carolina high school graduate, emanated outdated statues, promoted greater resource allocation efficiency by districts, required the State Department of Education to offer technical assistance to struggling districts, created an Office of Transformation in the State Department of Education, and conducted a survey to identify incentives to get new teachers to work in rural lower income districts. In addition to enacting the “Abbeville bills”, the General Assembly also provided provisions in the FY 2016-17 General Appropriations Act (see Table 7). The appropriations were to supplement the general legislation with the addressing the plaintiff districts finance burden. Table 7 provides a snapshot of some the provisions applicable to the Abbeville plaintiff districts.

Concluding the evidence of the legislative response to school funding litigation in South Carolina, what follows are relevant findings and evidence extracted to address Research Question 4. This final research question addresses the relationship between financial school resources and student outcomes. Given that the argument presented by both the plaintiffs and defendants in South Carolina’s latest school funding case is grounded in this relationship, it is fitting for the final section of Chapter 3 to analyze Abbeville regarding this relationship.
Table 7

*General Appropriations Act Provisions for Abbeville Districts (FY 2016-17)*

<table>
<thead>
<tr>
<th>Provision</th>
<th>Total Dollars Allocated to Abbeville Districts</th>
<th>Percentage Allocated to Abbeville Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3.1 million to pay for efficiency studies in all Abbeville Plaintiff Districts</td>
<td>$3.1 million</td>
<td>100%</td>
</tr>
<tr>
<td>$9 million for teacher recruitment retention for Abbeville districts and districts with poverty index of 80% or higher</td>
<td>Not indicated</td>
<td>Cannot be determined</td>
</tr>
<tr>
<td>$218 million to increase Base Student Cost (BSC) by $130 to $2,350 per pupil</td>
<td>$337 million of the $2.4 billion in BSC</td>
<td>14%</td>
</tr>
<tr>
<td>$19.2 million to reimburse school districts expenses for bus driver pay to relieve bus driver shortages and reduce student ride times</td>
<td>$11.4 million out of the $55 million</td>
<td>21%</td>
</tr>
<tr>
<td>2% pay increase for teachers on top of the annual step increase and an increase in the state salary schedule to 23 years</td>
<td>$25 million of the $150 million</td>
<td>17%</td>
</tr>
<tr>
<td>$29.3 million for the K-12 Technology Initiative</td>
<td>$6.5 million</td>
<td>22%</td>
</tr>
<tr>
<td>$1 million for full day 4k instructional cost increase for public and private providers</td>
<td>$22 million out of $58 million</td>
<td>38%</td>
</tr>
</tbody>
</table>

*Note.* Data retrieved from joint House and Senate report submitted to the South Carolina Supreme Court by Leatherman and Lucas (2016). This report was in response to the *Abbeville* 2014 Supreme Court Order.

**How effective has school funding litigation been in improving student outcomes and funding?**

Since the release of James Coleman’s et al. (1966) report, there remains considerable debate over the effect of funding on student achievement. Because school funding adequacy litigation is grounded in the argument that additional funds will improve student outcomes and/or that mediocre student outcomes are due to the lack of
adequate funding, it is imperative to analyze the data regarding this relationship with the Abbeville case. What follows is the evidence extracted to analyze Abbeville regarding its effectiveness with improving funding and student outcomes for the trial plaintiff districts. The evidence supports four findings that emerged from the data presented in Chapter 2.

The Abbeville Trial Data Was Limited

It is important to recall, that the Abbeville case originated with 40 school districts (see Table 8), including the Briggs district of Clarendon County School District 1. These initial 40 districts represented approximately 47% of the total school districts in South Carolina and were mostly located in the rural low-wealth areas of South Carolina.

Table 8

Original 40 Abbeville Plaintiff Districts

<table>
<thead>
<tr>
<th>Abbeville</th>
<th>Chesterfield</th>
<th>Florence 2</th>
<th>Laurens 56</th>
<th>McCormick</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allendale</td>
<td>Clarendon 1</td>
<td>Florence 3</td>
<td>Lee</td>
<td>Orangeburg 1</td>
</tr>
<tr>
<td>Bamberg 1</td>
<td>Clarendon 2</td>
<td>Florence 4</td>
<td>Lexington 4</td>
<td>Orangeburg 2</td>
</tr>
<tr>
<td>Bamberg 2</td>
<td>Clarendon 3</td>
<td>Florence 5</td>
<td>Marion 1</td>
<td>Orangeburg 3</td>
</tr>
<tr>
<td>Barnwell 19</td>
<td>Dillon 1</td>
<td>Hampton 1</td>
<td>Marion 2</td>
<td>Orangeburg 6</td>
</tr>
<tr>
<td>Barnwell 29</td>
<td>Dillon 2</td>
<td>Hampton 2</td>
<td>Marion 3</td>
<td>Orangeburg 7</td>
</tr>
<tr>
<td>Barnwell 45</td>
<td>Dillon 3</td>
<td>Jasper</td>
<td>Marion 4</td>
<td>Saluda</td>
</tr>
<tr>
<td>Berkeley</td>
<td>Florence 1</td>
<td>Laurens 55</td>
<td>Marlboro</td>
<td>Williamsburg</td>
</tr>
</tbody>
</table>

Due to consolidation of school districts, the number of plaintiff districts was reduced by four (see Figure 13). Thus, 36 districts were being represented during the trial.
More significant to this study, when it was time to take the case to trial, the plaintiffs’ attorneys selected only eight school districts to represent the other districts as “trial plaintiffs” in the lawsuit (see Figure 14). Thus, the evidence presented during the trial and argued before the South Carolina Supreme Court was limited to data representing only 22% of the plaintiff districts. In addition, of the Abbeville trial districts, Allendale, Jasper, and Lee are county-wide school districts while the other five districts are located within counties with multiple school districts. Florence County has five school districts, Dillon, Marion and Orangeburg County each have three, and Hampton County has two school districts.

It is believed that these eight districts best represented the case the plaintiffs wanted to present to the court. As illustrated in Table 9, the litigation strategy to use these eight districts provided a strong argument that the state needed to improve the quality of education it was providing the plaintiff districts. At the time of the remand trial, none of the trial districts had an academic standing of higher than Below Average.
Before moving forward to the academic and financial analysis of the trial districts, it is worth highlighting some characteristics of the districts. Other than consolidations, the districts’ characteristics have not varied much. Thus, Table 10 provides a comparison of district characteristics from the 2016-2017 school year, illustrating district size, poverty
levels, and educational opportunities. Although the enrollment of the districts varies, the districts are similar regarding student poverty and advanced education enrollment.

Table 10

Current Profile Snapshot of Abbeville Trial Districts

<table>
<thead>
<tr>
<th>District</th>
<th>Student Enrollment</th>
<th>Number of Schools</th>
<th>Number of Teachers</th>
<th>% of Students in Poverty</th>
<th>% Enrolled in an AP/IB Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allendale</td>
<td>1210</td>
<td>4</td>
<td>87</td>
<td>92</td>
<td>11.4</td>
</tr>
<tr>
<td>Dillon 2*</td>
<td>4207</td>
<td>8</td>
<td>234</td>
<td>84</td>
<td>1</td>
</tr>
<tr>
<td>Florence 4</td>
<td>684</td>
<td>3</td>
<td>57</td>
<td>91.8</td>
<td>0</td>
</tr>
<tr>
<td>Hampton 2</td>
<td>755</td>
<td>3</td>
<td>58</td>
<td>90</td>
<td>2</td>
</tr>
<tr>
<td>Jasper</td>
<td>2753</td>
<td>4</td>
<td>192</td>
<td>85.7</td>
<td>8.7</td>
</tr>
<tr>
<td>Lee</td>
<td>2067</td>
<td>6</td>
<td>129</td>
<td>90.8</td>
<td>0</td>
</tr>
<tr>
<td>Marion 7*</td>
<td>4776</td>
<td>11</td>
<td>337</td>
<td>89.2</td>
<td>6.5</td>
</tr>
<tr>
<td>Orangeburg 3*</td>
<td>2791</td>
<td>6</td>
<td>205</td>
<td>88.4</td>
<td>9.4</td>
</tr>
</tbody>
</table>

*Note: Data retrieved from South Carolina Department of Education. Data represents 2017 profile. *In 2012, Dillion School District 1 and Dillion 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.

Academic Achievement Remains Stagnant in Some Districts, Improves in Others

After seven decades of using the legal system as a mechanism to provide their students with an adequate education, the educational landscape of the plaintiffs in Abbeville shows mixed progress. Focusing on the trial districts, during the 2003 trial, the evidence presented showed that all the districts except Dillion 2 and Florence 4, were classified as Unsatisfactory (see Table 11). By 2014, the year of the state Supreme Court ruling, just one district, Jasper, was classified as Unsatisfactory/At Risk, but only three districts, Dillon 2, Marion 7, and Orangeburg 3 were classified as exhibiting an Average...
academic standing. The remaining districts, Allendale, Florence 4, Hampton 2, and Lee still experienced low academic standings. It is also worth noting that the three districts that achieved the highest rating, among the trial districts in 2014, were all consolidated with other districts some time prior to that school year. School districts in Marion consolidated twice since the 1993 filing and the 2014 decision. Thus, creating one single district, Marion 10.

Table 11

*Overall District Student Achievement Rating of Abbeville Trial Districts*

<table>
<thead>
<tr>
<th>District</th>
<th>2002-03</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALLENDALE</td>
<td>Unsatisfactory</td>
<td>At Risk</td>
<td>Below Avg</td>
<td>Below Avg</td>
</tr>
<tr>
<td>DILLON 2*</td>
<td>Below Avg</td>
<td>At Risk</td>
<td>Average</td>
<td>Average</td>
</tr>
<tr>
<td>FLORENCE 4</td>
<td>Below Avg</td>
<td>At Risk</td>
<td>Below Avg</td>
<td>Below Avg</td>
</tr>
<tr>
<td>HAMPTON 2</td>
<td>Unsatisfactory</td>
<td>Below Avg</td>
<td>Below Avg</td>
<td>Below Avg</td>
</tr>
<tr>
<td>JASPER</td>
<td>Unsatisfactory</td>
<td>At Risk</td>
<td>At Risk</td>
<td>At Risk</td>
</tr>
<tr>
<td>LEE</td>
<td>Unsatisfactory</td>
<td>Below Avg</td>
<td>Below Avg</td>
<td>Below Avg</td>
</tr>
<tr>
<td>MARION 7*</td>
<td>Unsatisfactory</td>
<td>NA</td>
<td>Average</td>
<td>Average</td>
</tr>
<tr>
<td>ORANGEBURG 3*</td>
<td>Unsatisfactory</td>
<td>Average</td>
<td>Average</td>
<td>Average</td>
</tr>
</tbody>
</table>

*Note.* Data retrieved from Abbeville 2005 court order and South Carolina Department of Education. The rating are as follows: If District Performance is Excellent – substantially exceeds the standards for progress toward the 2020 SC Performance Vision; Good – exceeds the standards for progress toward the 2020 SC Performance Vision; Average meets the standards; Below Average – is in jeopardy of not meeting the standards for progress toward the 2020 SC Performance Vision; At Risk – fails to meet the standards for progress toward the 2020 SC Performance Vision; and Unsatisfactory – Equivalent to At Risk rating. *In 2012, Dillion School District 1 and Dillion 2 consolidated to become Dillion 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.*
Unfortunately, due to state law, the 2015-2017 academic standings cannot be included in this study. Based on state law, schools and districts will not be rated again for state accountability purposes until Fall 2018. Nonetheless, from the 2003 trial to the 2014 decisions a bird’s eye view indicates the districts have improved but are still under performing. A more detailed examination into student achievement provides a less optimistic finding.

**Elementary – Middle School.** Considering math and reading performance for grades 3rd-8th. Examining test scores from the trial data and 2014, only one district, Marion 7, had an increase in their state math assessment passage rate (see Figure 15). Regarding the state reading assessment, a trend similar to the math scores and the overall district ratings was evident. Only one district, Dillon 2, had an increase in their state reading assessment passage rate and that was only a 1% change. All the other districts experienced significant decreases, except for Marion 7 who experienced no change in its percentage of 3rd-8th grade students who performed at or above the grade level.
Figure 15. Student performance on the state achievement test (PACT) given to 3\textsuperscript{rd}-8\textsuperscript{th} graders. In 2012, Dillon School District 1 and Dillion 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.

**High School.** Considering the performance of high school students, Table 12 shows the average district performance on all end of course exams (EOC). The End-of-Course Examination Program (EOCEP) provides tests in four high school core courses and for courses taken in middle school for high school credit. These courses include Algebra 1, English 1, Biology 1, and US History and the Constitution. Since the 2014 *Abbeville* ruling, none of the trial districts have performed at or above the State average. The only districts that consistently experienced more than half of their students passing were the consolidated districts of Dillon 2, Marion 7, and Orangeburg 3. The districts of
Allendale and Hampton 2 have the lowest performance, while Dillon 2 and Marion 7 students have the highest performance rates of the trial districts.

In addition, although only by 1%, Marion 7 is the only district that has improved academic performance since the 2014 ruling. When considering districts with student demographics like the Abbeville trial districts, these comparative districts had an end of course passage rate of 55.8% in 2014. Thus, excluding the three consolidated districts, the trial districts were performing worse than their comparative districts.

Table 12

*End Of Course State Exam Performance Since 2014 Abbeville Ruling*

<table>
<thead>
<tr>
<th>Average Percentage Passage Rate on All EOCEP Subject Tests</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>74</td>
<td>77</td>
<td>77</td>
</tr>
<tr>
<td>Allendale</td>
<td>36</td>
<td>44</td>
<td>38</td>
</tr>
<tr>
<td>Dillon 2*</td>
<td>63</td>
<td>70</td>
<td>68</td>
</tr>
<tr>
<td>Florence 4</td>
<td>46</td>
<td>40</td>
<td>52</td>
</tr>
<tr>
<td>Hampton 2</td>
<td>44</td>
<td>31</td>
<td>29</td>
</tr>
<tr>
<td>Jasper</td>
<td>42</td>
<td>49</td>
<td>53</td>
</tr>
<tr>
<td>Lee</td>
<td>43</td>
<td>50</td>
<td>41</td>
</tr>
<tr>
<td>Marion 7*</td>
<td>65</td>
<td>66</td>
<td>64</td>
</tr>
<tr>
<td>Orangeburg 3*</td>
<td>59</td>
<td>59</td>
<td>59</td>
</tr>
</tbody>
</table>

*Note:* Data retrieved from South Carolina Department of Education. Data represents the percent of tests with scores of 70 or above on all subject test (Algebra 1/Math for the Technologies 2, English 1, Biology 1, US History and the Constitution). *In 2012, Dillion School District 1 and Dillion 2 consolidated to become Dillion 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.
**Graduate.** Finally considering the likelihood to attain education beyond high school, the percent of students from the 2016 graduating class enrolled in a two- or four-year college or technical college pursing an associate degree, certificate, or diploma in Fall 2016 was 71% for South Carolina. Figure 16 illustrates that compared to the State, many students from the *Abbeville* trial districts are not presently pursing higher educational opportunities. Interestingly, the districts that have demonstrated the best and most consistent overall academic performance from 2003 to 2014 did not have the most students pursing a higher education in 2016. Specifically, Orangeburg 3 sent the least number of students, 41%, to college with Marion 7 and Dillon 2 at 55% and 54%. Whereas, the least academic performing districts of Florence 4 and Allendale had the most students pursing a higher education at a rate of 59% and 56% respectively.

![Abbeville Trial Districts Higher Education Enrollment](image)

*Figure 16.* Percentage of students from 2016 graduating class enrolled in college. College enrollment includes a two- or four-year college or technical college pursuing an associates degree, certificate, or diploma in Fall 2016. Data retrieved from South Carolina Department of Education.
Funding Has Increased in Each of the Plaintiff Districts, But Not Equitably

Examining the state documents that report district revenue and expenditures, it is important to note that the per pupil expenditures reported varied across documents. In addition, the total revenue per pupil reported by the S.C. Revenue and Fiscal Affairs Office is different from the per pupil expenditure reported by the S.C. Department of Education. Therefore, the aggregate data will reflect per pupil spending, while the disaggregate data will reflect per pupil revenue received. For clarity, the per pupil expenditure data for this section, unless otherwise indicated, was retrieved from the S.C. Department of Education and legal court documents.

Aggregate Per-Pupil Spending (2002-2016). Notwithstanding the state agencies reporting differences, the total per-pupil revenues allocated to the Abbeville trial districts have increased over the duration of the case. As illustrated in Figure 17, the districts exceeded the average state per pupil expenditure prior to the 2003 trial and the 2014 ruling. It is important to note that South Carolina public education is funded by the federal, state, and local governments, accounting for 9%, 40%, and 50% respectively during the time of the trial. Unless otherwise noted, the evidence presented in this section represents the total per-pupil spending from all three funding sources.

During the time of the 2003 trial, the highest per-pupil spending was in Allendale and Marion 7, at $10,946 and $9,213 respectively. The lowest was $6,255 in Dillon 2 with a state average of $7,232 per-pupil spending. By the 2014 Supreme Court ruling, Allendale had reached a high of $14,400, followed by Hampton 2 at $14,388 (see Figure 17). Per the National Center for Education Statistics, the national average per-pupil
expenditures for 2003 and 2014 were $10,641 and $11,222 respectively. This represented a 5% increase in national per-pupil spending.

Figure 17. The per-pupil spending in Abbeville trial plaintiff district. In 2012, Dillon School District 1 and Dillon 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.

Comparing the Abbeville trial data to per-pupil spending in 2014, the per-pupil spending has increased for all eight districts. However, the increases were not consistent across the districts and not all of the increases matched or exceeded the overall state rate of increase (see Table 13).
Table 13

*Abbeville Per-Pupil Spending Comparison (Trial Evidence vs 2014 Data)*

<table>
<thead>
<tr>
<th></th>
<th>Trial Evidence</th>
<th>Pre-Ruling Data</th>
<th>Dollar Change</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Average</td>
<td>$7,232</td>
<td>$9,732</td>
<td>$2,500</td>
<td>35%</td>
</tr>
<tr>
<td>Allendale</td>
<td>$10,946</td>
<td>$14,400</td>
<td>$3,454</td>
<td>32%</td>
</tr>
<tr>
<td>Dillon 2*</td>
<td>$6,255</td>
<td>$7,963</td>
<td>$1,708</td>
<td>27%</td>
</tr>
<tr>
<td>Florence 4</td>
<td>$8,964</td>
<td>$9,773</td>
<td>$809</td>
<td>9%</td>
</tr>
<tr>
<td>Hampton 2</td>
<td>$8,437</td>
<td>$14,388</td>
<td>$5,951</td>
<td>71%</td>
</tr>
<tr>
<td>Jasper</td>
<td>$8,058</td>
<td>$11,221</td>
<td>$3,163</td>
<td>39%</td>
</tr>
<tr>
<td>Lee</td>
<td>$8,650</td>
<td>$9,740</td>
<td>$1,090</td>
<td>13%</td>
</tr>
<tr>
<td>Marion 7*</td>
<td>$9,213</td>
<td>$9,737</td>
<td>$524</td>
<td>6%</td>
</tr>
<tr>
<td>Orangeburg 3*</td>
<td>$8,298</td>
<td>$11,319</td>
<td>$3,021</td>
<td>36%</td>
</tr>
</tbody>
</table>

Note. Fiscal School Year Per-Pupil Spending Comparison. Data represents fiscal school year data from 2002-2003 (Trial Evidence) and 2013-2014 (Pre-Ruling) data. Data Retrieved from South Carolina Department of Education and *Abbeville* 2005 trial court order. *In 2012, Dillion School District 1 and Dillion 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.

The state experienced a 35% increase in its average per-pupil expenditure. The percent increases for the *Abbeville* trial districts ranged from as high as 71% in Hampton 2 to a low of 6% in Marion 7, with an average increase of 29% across all eight districts. Table 13 indicates only three districts, Hampton 2, Jasper, and Orangeburg 3, experienced an increase greater than the State’s per-pupil expenditures percent change. Considering districts comparative to the *Abbeville* trial districts, these districts spent an average of $11, 221 per pupil during the 2013-2014 fiscal year.
As reported on the South Carolina Department of Education district report cards, comparative districts are districts with students like the Abbeville trial districts, meaning districts with poverty indices of nor more than 5% above or below the index for the trial district.

**Disaggregate Per-Pupil Revenue (2013-2018).** Comparing per-pupil revenue from the year of the 2014 Abbeville ruling to the current estimated 2017-18 data, the per-pupil spending has increased for all eight districts. However, similar to the time span between the trial data and the 2014 ruling, the increases were not consistent across the districts and not all of the increases matched or exceeded the overall state rate of increase (see Tables 14 and 15).

The fiscal year per-pupil revenue during the 2014 Abbeville ruling and 2017-2018 is shown in Table 14. The data represented in Table 15 shows that although the trial districts share similar demographics and student outcomes, both the amount of state per-pupil revenue and the percentage of total per-pupil revenue contributed from local funds vary across the districts. In addition, Table 14 illustrates that the disaggregate data during the time span of the 2014 ruling to the 2017-18 fiscal year has a various range of percent changes in state, local, and total spending.

From 2013 to 2018, The state experienced a 14% increase in its total average per-pupil revenue. The percent increases for the Abbeville trial districts ranged from as high as 19% in Lee to a low of 7% in Allendale, with an average increase of 14% across all 8 districts. Thus, the trial district total per-pupil average is the same as the state average. Table 15 also indicates only three districts, Allendale, Dillon 2, and Orangeburg 3 did not
## Table 14

*Disaggregated Per-Pupil Revenue for FY 2013-14 and 2017-18*

<table>
<thead>
<tr>
<th></th>
<th>Allendale</th>
<th>Dillon 2**</th>
<th>Florence 4</th>
<th>Hampton 2</th>
<th>Jasper</th>
<th>Lee</th>
<th>Marion 7**</th>
<th>Orangeburg 3**</th>
<th>State Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2013-14</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>$2,832</td>
<td>$1,771</td>
<td>$2,285</td>
<td>$3,538</td>
<td>$2,182</td>
<td>$1,998</td>
<td>$1,198</td>
<td>$2,708</td>
<td>$1,181</td>
</tr>
<tr>
<td>State</td>
<td>$7,591</td>
<td>$5,086</td>
<td>$5,724</td>
<td>$6,651</td>
<td>$5,103</td>
<td>$6,450</td>
<td>$5,690</td>
<td>$5,823</td>
<td>$5,297</td>
</tr>
<tr>
<td>Local</td>
<td>$6,004</td>
<td>$1,655</td>
<td>$4,458</td>
<td>$5,335</td>
<td>$6,185</td>
<td>$2,982</td>
<td>$2,291</td>
<td>$5,930</td>
<td>$5,156</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$16,427</td>
<td>$8,512</td>
<td>$12,466</td>
<td>$15,524</td>
<td>$13,471</td>
<td>$11,569</td>
<td>$9,979</td>
<td>$14,462</td>
<td>$11,634</td>
</tr>
<tr>
<td>% of Total from Local</td>
<td>37%</td>
<td>19%</td>
<td>36%</td>
<td>34%</td>
<td>46%</td>
<td>26%</td>
<td>23%</td>
<td>41%</td>
<td>44%</td>
</tr>
<tr>
<td><strong>FY 2017-18</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>$3,295</td>
<td>$1,882</td>
<td>$3,068</td>
<td>$3,615</td>
<td>$2,437</td>
<td>$2,888</td>
<td>$2,119</td>
<td>$2,797</td>
<td>$1,262</td>
</tr>
<tr>
<td>State</td>
<td>$8,891</td>
<td>$5,654</td>
<td>$6,824</td>
<td>$8,445</td>
<td>$6,185</td>
<td>$7,489</td>
<td>$6,847</td>
<td>$7,354</td>
<td>$6,083</td>
</tr>
<tr>
<td>Local</td>
<td>$5,428</td>
<td>$1,873</td>
<td>$5,097</td>
<td>$5,576</td>
<td>$6,987</td>
<td>$3,336</td>
<td>$2,603</td>
<td>$6,184</td>
<td>$5,869</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$17,613</td>
<td>$9,409</td>
<td>$14,989</td>
<td>$17,635</td>
<td>$15,609</td>
<td>$13,713</td>
<td>$11,569</td>
<td>$16,335</td>
<td>$13,214</td>
</tr>
<tr>
<td>% of Total from Local</td>
<td>31%</td>
<td>20%</td>
<td>34%</td>
<td>32%</td>
<td>45%</td>
<td>24%</td>
<td>22%</td>
<td>38%</td>
<td>44%</td>
</tr>
</tbody>
</table>

| %Change in State | 17%  | 11%  | 19%  | 27%  | 21%  | 16%  | 20%  | 26%  | 15% |
| %Change in Local  | -10%  | 13%  | 14%  | 5%  | 13%  | 12%  | 14%  | 4%  | 14% |
| %Change in Total  | 7%  | 11%  | 20%  | 14%  | 16%  | 19%  | 16%  | 13%  | 14% |

*Note.* Data retrieved from S.C. Revenue and Fiscal Affairs Office. *Per Proviso 1.3 the 2017-18 estimates are as 9/6/17 and are subject to revision. **In 2012, Dillon School District 1 and Dillon 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3.
Considering the percentage of local dollars contribution to per-pupil revenue, only one district, Jasper with 46% and 45% respectively, exceeded the state average of 44%. In addition, Allendale, with a percent change of -10%, was the only district that experienced a decrease in local dollars contributed to per-pupil revenue. Comparing the year of the ruling to the current school year, Table 15 shows the percent change in state per-pupil revenue is higher than the 15% state average in all districts except Dillon 2 at 11% change in state per-pupil spending. Figure 18 illustrates the range of state revenue that contributed to per-pupil spending across the Abbeville trial districts.

Figure 18. Per-Pupil State Revenue. Data retrieved from S.C. Revenue and Fiscal Affairs Office. *Per Proviso 1.3 2017-18 are estimates as of 9/6/17 and are subject to revision.
As indicated in Figure 18, Allendale experienced the highest amount of state per-pupil revenue during the year of the *Abbeville* ruling and the 2017-18 school year. Whereas, Dillon 2 experienced the lowest amount of state per-pupil revenue during the year of the *Abbeville* ruling and the 2017-18 school year. Figure 18 also indicates that all eight districts, except Dillon 2, is estimated to be receiving more than the state average during 2017-18. Thus, Dillon 2 is the only district that was below the state average during both 2013-14 and 2017-14, with Jasper being the only other during the year of the ruling.

**Various Levels of Per-Pupil Spending Yielded Various Levels of Academic Outcomes**

The evidence presented thus far indicates that the twenty-one years of litigation and an increase in funding has improved academic performance in all, except one, of the *Abbeville* trial districts (see Tables 15 and 16). However, comparing the data in Table 15 and Table 16, the evidence in Table 16 illustrates that even with an increase in funding, some of the districts in 2014 were still underperforming, with ratings of Below Average and At Risk. In addition, Table 16 shows that various levels of per-pupil expenditures have produced a wide range of improvements in academic performance.

For instance, Florence 4 per-pupil expenditure remained in the top half of district spending and its academic performance remained stagnant at a rating of Below Average. Conversely, Dillion 2 per-pupil expenditure remained the lowest among all eight districts, but its academic performance improved from a rating of Unsatisfactory to Average.
Table 15

*PPE vs Outcomes Comparison for Abbeville Trial Evidence*

<table>
<thead>
<tr>
<th>Trial Evidence 2002-2003</th>
<th>PPE</th>
<th>District Academic Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allendale</td>
<td>$10,946</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Marion 7*</td>
<td>$9,213</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Florence 4</td>
<td>$8,964</td>
<td>Below Avg</td>
</tr>
<tr>
<td>Lee</td>
<td>$8,650</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Hampton 2</td>
<td>$8,437</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Orangeburg 3*</td>
<td>$8,298</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Jasper</td>
<td>$8,058</td>
<td>Unsatisfactory</td>
</tr>
<tr>
<td>Dillon 2*</td>
<td>$6,255</td>
<td>Below Avg</td>
</tr>
</tbody>
</table>

*Note.* Data is arranged from highest to lowest spending districts. If District Performance is Excellent – substantially exceeds the standards for progress toward the 2020 SC Performance Vision; Good –exceeds the standards for progress toward the 2020 SC Performance Vision; Average meets the standards; Below Average – is in jeopardy of not meeting the standards for progress toward the 2020 SC Performance Vision; At Risk – fails to meet the standards for progress toward the 2020 SC Performance Vision; and Unsatisfactory – Equivalent to At Risk rating. *In 2012, Dillon School District 1 and Dillon 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3. Data Retrieved from South Carolina Department of Education and *Abbeville* 2005 trial court order.*
Table 16

_PPE vs Outcomes Comparison for Abbeville Pre-Ruling Data_

<table>
<thead>
<tr>
<th>Pre-Ruling Data 2013-2014</th>
<th>PPE</th>
<th>District Academic Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allendale</td>
<td>$14,400</td>
<td>Below Avg</td>
</tr>
<tr>
<td>Hampton 2</td>
<td>$14,388</td>
<td>Below Avg</td>
</tr>
<tr>
<td>Orangeburg 3*</td>
<td>$11,319</td>
<td>Average</td>
</tr>
<tr>
<td>Jasper</td>
<td>$11,221</td>
<td>At Risk</td>
</tr>
<tr>
<td>Florence 4</td>
<td>$9,773</td>
<td>Below Avg</td>
</tr>
<tr>
<td>Lee</td>
<td>$9,740</td>
<td>Below Avg</td>
</tr>
<tr>
<td>Marion 7*</td>
<td>$9,737</td>
<td>Average</td>
</tr>
<tr>
<td>Dillon 2*</td>
<td>$7,963</td>
<td>Average</td>
</tr>
</tbody>
</table>

Note. Data is arranged from highest to lowest spending districts. If District Performance is Excellent – substantially exceeds the standards for progress toward the 2020 SC Performance Vision; Good – exceeds the standards for progress toward the 2020 SC Performance Vision; Average meets the standards; Below Average – is in jeopardy of not meeting the standards for progress toward the 2020 SC Performance Vision; At Risk – fails to meet the standards for progress toward the 2020 SC Performance Vision; and Unsatisfactory – Equivalent to At Risk rating. *In 2012, Dillion School District 1 and Dillion 2 consolidated to become Dillon 4. In 2014, Marion School District 1, Marion 2, and consolidated Marion 7 all consolidated to become one school district. Prior to the 2003 trial, Orangeburg School District 3 and 7 consolidated into Orangeburg 3. Data Retrieved from South Carolina Department of Education.

Although the eight plaintiff districts for the Abbeville case all experienced an increase in funding from the 2003 trial to the 2014 Supreme Court ruling, only the three consolidated districts, Orangeburg 3, Marion 7, and Dillon 2, increased their overall district performance to a rating of Average. Marion 7 experienced the least increase in funding, in addition to having the second lowest PPE in 2014, yet showed the greatest
gains in academic performance by improving its academic performance from Unsatisfactory to Average.

In addition, Dillon 2 spent the least per-pupil in the 2003 trial data and in 2014, yet experienced the highest student achievement, among the trial districts, during both periods of case activity. Interestingly, by 2014, Dillon 2 was spending a staggering $6,437 less than the highest spending district, Allendale, yet academically out performing Allendale.

As illustrated in Table 16, PPE fails to be a reliable indicator of student achievement in the Abbeville trial districts. The two districts with the highest level of pupil spending, Allendale and Hampton 2, are still academically underperforming with ratings Below Average. However, the two districts with the lowest level of pupil spending, Marion 7 and Dillon 2, exhibit the highest performance rating among the eight districts. Also, worth noting from Table 14 in the previous section, Hampton 2 and Jasper experienced an increase greater than the State’s average per-pupil revenue percent change, however both districts are still performing at mediocre levels.

Concluding the presentation of the findings and evidence that was extracted to support the study’s four research questions, what follows is the final chapter of this study. Chapter 4 consists of a review of the study, along with a discussion of conclusions logically deduced and synthesized from the findings and analyses in Chapter 2 and Chapter 3. In addition, the study concludes with suggested implications for policy, practice, and future research.
CHAPTER 4

CONCLUSIONS AND IMPLICATIONS

Situated at the intersection of law, finance, and politics, the purpose of this study was to examine the historical legal landscape of school funding litigation in South Carolina. Grounded in the *Abbeville v. South Carolina* adjudication and the economist’s education production function model, this study illuminated the relationship between school funding litigation and student achievement. In addition, the study addressed the idea that the law and judicial decisions are often a product of the politics of the state, judges, and other factors. The following research questions guided this study:

1. What is the relevant legal history of school funding litigation in South Carolina?
2. What factors beyond law and logic were involved in school funding cases in South Carolina?
3. What was the legislative response to the litigation decisions?
4. How effective has school funding litigation been in improving funding and student outcomes?

This chapter includes an overview of the study, conclusions drawn from the findings presented in Chapter 3, policy and practice implications of this study, and suggestions for future research. The chapter concludes with the author’s closing thought.

**Overview of Study**

Spanning 70 years, from 1947 to 2017, citizens and school districts in South Carolina pursued remedies through litigation to address the educational inequities
spawned by segregation and the state’s education finance system. Starting in 1947 with a petition seeking equal access to schools via school buses, leading to *Pearson v. Clarendon County* being filed in 1948 and ending in 2017 with the South Carolina Supreme Court terminating its jurisdiction over the 21-year *Abbeville v. South Carolina* case, South Carolina has an extensive history of school funding litigation.

Thus, situated at the intersection of law, finance, and politics, the purpose of this study was to examine the historical legal landscape of school funding litigation in South Carolina. Grounded in the *Abbeville v. South Carolina* adjudication and the economist’s education production function model, this study illuminated the relationship between school funding litigation and student achievement. In addition, the study addressed the idea that the law and judicial decisions are often a product of the politics of the state, judges, and other factors.

Given the complexity of our educational system and the continuous school funding lawsuits, there are gaps in the literature that make it difficult to ascertain any firm conclusions about whether or not additional money matters regarding student achievement, including the adequacy of that money. In addition, the role of the court and the effectivity of judicial intervention on enacted legislation and student achievement continues to be debated.

After an extensive history of school funding litigation in South Carolina, the amount of money spent on students in the plaintiff trial districts demonstrates a clear disconnect between funding and outcomes, enacted legislation and increase in funding has not improve student outcomes, and the State of South Carolina has failed to show how much it cost to provide the constitutionally mandated educational opportunity.
Subsequently, there will continue to be the ongoing debate nationally and in South Carolina regarding the notion of school funding being a political or judicial issue, coupled with whether or not additional money matters for student outcomes.

**Significance of the Study**

Although the amount of scholarly and legal work related to school funding litigation is extensive, the history of school funding litigation in South Carolina, specifically the *Abbeville* case, has received minimum examination, thus requires greater scrutiny. There remains considerable debate over the effect of school funding litigation and additional school funding on both effective policy and student achievement (Baker, 2016; Hanushek, 2006; Hanushek, 2014, 2016; Hedges et al., 2016; Jackson et al., 2014, 2016).

Some scholars argue that after decades of court cases on school funding, little effort has been made to assess the effect of court involvement on student outcome nor on the ability of courts to make or influence effective policy. Fitting, given the recent adjudication of *Abbeville*, seeking knowledge regarding school funding litigation rulings and their influence is significant because the information will hopefully contribute to theories, laws, and policies that can be used to formulate solutions and interventions to improve litigation strategies, school funding equity and adequacy, resource allocation efficiency, student educational opportunities and student outcomes.

**Organization of the Study**

Chapter 1 introduced the central question of education finance and the debate over the effect of funding on student achievement, along with the need to study the legal history of school funding litigation in South Carolina. Although this chapter provided a
brief discussion of the background of the problem and the significance of the study, Chapter 2 provided detailed academic and legal literature review that shored up the need for conducting this study.

In Chapter 2, the literature review was a narrative that provided the in-depth legal and contextual background for the study. The literature review summarized and assessed existing research and legal documents in an effort to provide the context for the inquiry addressed in this study. The history of school funding litigation was addressed, followed by a review of the Abbeville case. Next, the politics of education as it relates to the Abbeville case was discussed. Then, a legal analysis of the rulings from regional (SC, NC, GA) school funding litigation cases was provided. Finally, Chapter 2 concluded with a review of the current literature addressing the question of whether there exists a correlation between money and student achievement.

Chapter 3 consisted of evidence extracted and analyzed to support the findings that emerged from the data sources used for this study. Chapter 3 provided the evidence extracted from legal and scholarly data sources to address the present-day influence of school funding litigation in South Carolina on the issues discussed in Chapter 1 and 2. Through the presentation of findings that aligned with each research question, the study’s four research questions were addressed in Chapter 3. Finally, Chapter 4, concludes the study with major conclusions, implications for policy and practice, and suggestions for further research.

Methodology

This study was a historical legal analysis that utilized legal research methods to address the four research question. I reviewed both primary and secondary legal
resources including the *Abbeville v. South Carolina* opinions, dissents, and orders in addition to other relevant cases, legal documents and publications. Specifically, the data sources used for this study included, but were not limited to, the South Carolina Constitution, previous South Carolina court cases addressing school funding, state legislation related to preK-12 public education, data from school districts, legal and academic articles, in addition to reports submitted by the South Carolina General Assembly.

This study started with gathering relevant evidence/data; extracting key information from the evidences/data; organizing this information into a logical order in the form of findings presented in Chapter 3; and finally, in Chapter 4, deriving conclusions logically deduced from the findings in Chapter 3.

**Conclusions**

As a result of the findings in Chapter 3, what follows are several conclusions to this study. Although the conclusions are thoroughly supported, further inquiry and discussion is merited.

**School Funding Litigation Made Education a Priority on Legislative Agenda**

Because policy is typically not objective or nonpartisan, several factors affect the agenda setting process, including the visibility of the issue, the type of agenda setting, and a favorable political window. After the filing of the *Briggs* lawsuit, the incoming Governor made equalizing schools and educational opportunities his top priority; proposing education legislation during his inaugural address (see Table 6).

After 10 years of the *Abbeville* plaintiff districts trying to make the issue of inadequate school funding a priority on the South Carolina Supreme Court’s agenda, the
Court finally decided to become involve in not only addressing the claim, but also in suggesting policy solutions to consider. The SC Supreme Court recommended that the General Assembly look at what other states have done to address their educational clause violations. In response to the Court’s ruling, the South Carolina legislature enacted several policies under what they refer to as the “Abbeville bills” (see Table 6-7). Thus, one could argue that up until the 2014 Abbeville ruling, the General Assembly viewed the inputs and outputs of the educational system as a condition as opposed to a problem. It is believed that conditions become defined as a problem only after people come to believe that something should be done about it (Cooper, Randall, & Fusarelli, 2004).

Based on the Governor’s reaction to Briggs and the legislators’ response to Abbeville it can be concluded that the school funding lawsuits that made it to trial in South Carolina played a significant part in making education a priority on the General Assembly’s agenda and holding both the state and districts accountable for the allocation of their resources. However, as noted by Kirst and Wirt (2009):

A court mandate does not bring total or quick acceptance, does not provide sufficient resources for the resourceless, and does not teach us how to resolve conflict or to live with ambiguity. However, courts can create a new policy agenda that others in the political system can implement...The result is a dialog among courts, politicians, and education advocates… (pp. 327)

This was the case in South Carolina, with the creation of new policy agendas addressing the issues argued in Briggs and Abbeville, resulting in dialog among Justices, legislators, and education advocates. Consequently, all of the school funding cases that made it to trial in South Carolina resulted in laws and policies being enacted.
South Carolina’s Governance Structure Creates a Possible Principal-Agent Issue

Based on the finding that factors beyond the law and logic were involved in adjudicating school funding cases in South Carolina, it could be argued that the South Carolina Supreme Court’s governance relationship with the legislative branch creates a political and judicial issue. Considering that the principal – agent relationship can be viewed as the principal authorizing the agent to work under his control and/or on his behalf, it can be reasoned that the governance structure in South Carolina establishes a possible principal-agent issue.

The principal-agent problem exists when conflicts arise between the state government and the citizens of South Carolina. Because “the judiciary in only one subsystem of the political system” (p. 311), and is also appointed by the General Assembly, the SC Supreme Court must maintain some kind of balance with other state governance entities in order to reduce conflict among them (Kirst & Wirt, 2009).

Thus, the General Assembly reliance on the Supreme Court to protect the State and its constitution creates the potential for a serious principal-agent challenge. Because the state government appoints the Justices to operate in that role, the South Carolina Supreme Court is essentially the state. However, the SC supreme court lack the authority to monitor and dictate the legislature educational policy actions.

Remembering, it is the state, looking at the Abbeville II ruling, there is definitely an issue in governance when considering the role of the SC Supreme Court insisting on the General Assembly to take action and adhere to the Court’s order. Since the South Carolina Supreme Court cannot dictate the State’s actions, if the state legislative branch
does not appropriately adhere to the orders of the Court, then the General Assembly has both the motivation and the ability to act, potentially without any consequence, against the interest of the citizens or just to act in the State’s interest. Thus, creating a potential principal-agent problem.

**There is an inherent relationship between race and school funding litigation in South Carolina**

Aligned with Dayton and Dupre’s (2004) case that “the *Brown* desegregation legacy and the *Rodriguez* funding legacy are, of course, inextricably linked” (p. 2407), race has played a significant role in school funding litigation in South Carolina (see Figures 11-12). The findings in Chapter 3 illustrate how school funding cases in South Carolina explicitly and implicitly took race into account during both litigation and adjudication. Although the role of race was explicitly taken into account in *Briggs*, that was not the circumstance for *Abbeville*. While race was at the forefront of the *Briggs* case, it remained silently in the backdrop of the *Abbeville* case.

Kiracofe (2004) contends that there exists a natural relationship between desegregation and school funding litigation because they “both share the same basic goal of improving educational opportunities for poor and minority students” (p.3). The claims argued in *Briggs* were grounded in racial inequality. Whereas, even while the *Abbeville* plaintiff districts consisted mostly of Black students, the plaintiffs were denied the opportunity to include a racial component in their lawsuit claim (see Figure 11-12).

Interestingly, Morgan (2001) argues that “traditional school finance cases, which do not explicitly take race into account, are unlikely to cure the racial disparities (p. 165)” that exist throughout school districts. Given the South Carolina Supreme Court’s 2017
decision to end jurisdiction over the *Abbeville* case, Morgan’s argument may prove to be true in South Carolina.

**The Appointment of a New Justice Illuminates Legal Realism in South Carolina**

In Supreme Court Justice Oliver Wendell Holmes, Jr. 1897 essay, “the Path of the Law”, he contends that judges do not simply deduct legal conclusions with straightforward legal reasoning and logic. Justice Holmes suggests that judicial decisions are influenced by ideas of socialism, public policy, and other personal values. In the 1930 book, “Law and the Modern Mind,” Judge Jerome Frank advanced this idea that is still taught in law schools today. This idea is known as legal realism. According to Bravin (2009) of the Wall Street Journal, Judge Frank argued that the law was less a science than people supposed and in reality, it was just a reflection of the personal characteristics of those applying it. Given that South Carolina is one of two states whose legislature elects state high court judges; Virginia being the other, this governance structure created a space for legal realism to emerge in South Carolina (see Figure 10).

Between the 2014 *Abbeville* 3-2 decision in favor of the plaintiff districts and the 2017 3-2 decision to terminate jurisdiction, a new Justice was appointed to South Carolina’s high court. In 2016, the new Justice was elected to fill the vacancy left by the Chief Justice who authored the 2014 *Abbeville* opinion. This is noteworthy because during the legislature questioning of the judgeship candidates, the chairman of the Senate Judiciary Committee questioned the candidates about the *Abbeville* decision.

One question specifically, the chairman asked the now newly appointed Justice, if he think the high court could require the Legislature to enforce some order on public policy. The new justice responded that it is “highly unlikely that the judicial branch of
government would ever issue a writ (order) against the legislative branch of government” (Monk, 2016). Accordingly, as stated by Dayton (2017), legal realism theory suggests that the law and judicial decisions are more of a product of the politics of judges and other random factors.

Dayton (2017) contends that who sits as judge “may have a greater influence on the outcome of a dispute than precedent, the abstract application of legal principles, and deductive logic” (p. 75). It could be argued that this is indeed what happened between the 2014 *Abbeville* 3-2 ruling and the 2017 South Carolina Supreme Court’s 3-2 decision to terminate jurisdiction.

**The Cost to Provide the Opportunity to Receive a “Minimally Adequate” Education is Unknown**

According to Lefgren (2014), the cost of education is the minimum amount of money school districts are required to spend to meet educational goals. The *Abbeville* trial districts would probably agree with Lefgren (2014) and argue that theoretically, adequate funding would be the amount of money needed to ensure that all the students in districts not only have the opportunity to acquire a “minimally adequate” education but also that the students actually receive a “minimally adequate” education. Even so, the findings show that various levels of per-pupil spending yielded various levels of academic outcomes (see Table 16). Thus, indicating that PPE fails to be a reliable indicator of student achievement in the *Abbeville* trial districts.

For instance, the two districts with the highest level of pupil spending, Allendale and Hampton 2, are still academically underperforming with ratings Below Average. Whereas, the two districts with the lowest level of pupil spending, Marion 7 and Dillon 2,
exhibit the highest performance rating among the eight districts (see Table 16). Specifically, the findings show that by 2014, Dillon 2 was spending a staggering $6,437 less than the highest spending district, Allendale, yet academically out performing Allendale. Also, worth noting, between the 2003 trial and 2014 ruling, Hampton 2 and Jasper experienced an increase greater than the State’s per-pupil expenditures percent change, however both districts are still performing at mediocre levels (see Tables 13 and 16).

Given the findings and just considering the trial districts, the cost to improve student outcomes and receive access to a “minimally adequate” educational opportunity appears to be elusive. Accordingly, Lefgren (2014) offers an alternative definition for determining the cost of an adequate education as “the minimum amount of money required to achieve a particular set of educational objectives for a given population of students” (p. 174). Nonetheless, the 2014 Abbeville opinion acknowledged that the South Carolina’s “education system fails to provide school districts with the resources necessary to meet the minimally-adequate standard” and the current cost and funding of the “educational package in South Carolina is based on a convergence of outmoded and outdated policy considerations that fail the students of the Plaintiff Districts” (p. 36).

Interestingly, the Abbeville 2014 opinion also argued that the State of South Carolina failed to show how much it cost to provide the constitutional mandated educational opportunity and without this information it is near impossible for the State to meet their constitutional obligation. So, what is the cost to provide the minimum educational opportunity? Given that Florence 4 per-pupil expenditure remained in the top half of district spending and its academic performance remained stagnant at a rating of
Below Average, while Dillion 2 per-pupil expenditure remained the lowest among all eight trial districts, but its academic performance improved from a rating of Unsatisfactory to Average (see Table 15-16), the cost is yet to be determined?

Notwithstanding, merely defining the cost of education seems to create a dilemma in education finance, thus instituting an accepted method for estimating an adequate level of funding education has been challenging nationally and appears it will also be a challenge for South Carolina.

**How the Money is Spent May Matter More Than the Amount of Money**

The findings of this study show that there is a disconnect between spending and student outcomes in the Abbeville trial districts. Gaps and inconsistencies in the literature makes it difficult to determine any firm conclusions about whether or not additional money matters regarding student achievement and how that money matters on the school level. However, it appears that neither school funding litigation nor an increase in funding has improved the achievement of the students and access to educational opportunities in all of the Abbeville trial districts (see Tables 15-16 and Figures 15-17). Is this due to inadequate school level funding, inefficient allocation of resources on the school level, and/or both? Perhaps the answer depends on who you ask.

Nonetheless, given the growing consensus that while money alone may not improve student achievement, a combination of adequate funding coupled with school level allocation efficiency may be the remedy to produce better student outcomes. Interestingly, around the time that the Abbeville plaintiff districts were preparing to file their initial lawsuit, Murnane (1991) argued “it is simply indefensible to use the results of quantitative studies of the relationship between school resources and student achievement
as a basis for concluding that additional funds cannot help public school districts” (p. 457). In addition, Roza and Hill (2006) questioned how anyone can determine what is adequate if nobody knows how money is currently being spent. Nonetheless, resources and academic performance were key to making that determination in the *Abbeville* trial.

Even when considering a comparison to national trends, it is imperative to note that two different national trends continue to be claimed in the literature and in the courts. Baker (2016) reported on average, aggregate measures of per-pupil spending are positively associate with improved and/or higher student outcomes. However, Hanushek (2014) testified that research over the years as have shown that there is no consistent improvement in student achievement with a court ordered increase or voluntarily increase in funding. In short, this trend shows that achievement is unlikely to improve by just providing more resources.

Contrary to both Baker (2016) and Hanushek (2014), Hedges et al. (2016) reported that the statistical models used in studies “to examine the relationship between school inputs and student achievement are not consistent across studies and do not support causal inferences” (p. 163), thus arguing that no inference regarding a national trend should be acknowledged. Consequently, for South Carolina and the *Abbeville* trial districts, perhaps it may be more beneficial to consider whether it is possible that school level spending, if properly allocated or allocated differently, could play a significant role in improving students’ educational outcomes.
Beyond Administrative Cost, District Consolidation May be a Reasonable Remedy to Consider

Neither the Plaintiff Districts nor the State of South Carolina addressed school district size during the *Abbeville* case. But as indicated in the findings, five of the eight trial districts are in a county that consists of multiple school districts. In recognition of this omission, the majority in the 2014 *Abbeville* ruling argued that “the effect of school district size on the provision of a minimally adequate education must be examined” (p. 26). In addition, the majority reasoned that instead of the plaintiff districts exploring the option of consolidation, “the Plaintiff Districts have opted for a course of self-preservation, placing all blame of the blighted state of education in their districts at the feet of the Defendants” (p. 27).

The dissenting minority agreed with majority and commended it for being willing to confront the issue of school district size. Even so, the consideration of consolidation as a possible remedy to address educational equity and adequacy concerns did not start with the *Abbeville* case. It was the *Briggs* case that lead to consolidation being used to provide Black and rural students educational opportunities equal to the opportunities afforded to White students and students in non-rural areas of South Carolina.

According to the finding in Chapter 3, from 1951-1954, 824 inferior schools in rural areas were eliminated through consolidation, allowing equal educational opportunities for all students and a great increase in the number of Black students transported in buses to school. Nonetheless, like the efforts initiated by *Briggs*, consolidation has shown to provide benefits for student in the *Abbeville* trial districts as well. As indicated in the findings, the *Abbeville* trial districts experienced three incidents
of consolidation, with a fourth district consolidation plan approved during the General Assembly’s 2018 winter session. During the timespan of the *Abbeville* case, the findings show that the districts that experienced consolidation, experienced better improvement in student outcomes compared to the trial districts that were not consolidated.

Specifically, the three consolidated districts, Dillon 2, Marion 7, and Orangeburg 3 all achieved the highest rating, among the trial districts during the year of the 2014 ruling (see Table 11). In addition, only the consolidated districts experienced an increase in their state math and reading assessment passage rate in 2014, Marion 7 and Dillon 2 respectively (see Figure 15). Considering, the performance of high school students on all end of course exams during the three years after the 2014 ruling, the only districts that consistently experienced more than half of their students passing were the consolidated districts of Dillon 2, Marion 7, and Orangeburg 3 (see Table 12).

Thus, according to the findings, although the eight trial districts for the *Abbeville* case all experienced an increase in funding from the 2003 trial to the 2014 Supreme Court ruling, only the three consolidated districts increased their overall district performance to a rating of Average. Noteworthy, Marion 7 experienced the least increase in funding, in addition to having the second lowest PPE in 2014, yet showed the greatest gains in academic performance by improving its academic performance from Unsatisfactory to Average (see Tables 13, 15-16). Whereas, Dillon 2 spent the least per-pupil in the 2003 trial data and in 2014, yet experienced the highest student achievement, among the trial districts, during both periods of case activity (see Table 15-16).

Based on these findings, district consolidation may be a step in the right direction for the *Abbeville* trial districts. Beyond the already known administrative cost savings,
district consolidation could be a plausible remedy to address the State’s constitutional violation. However, it is going to take the willingness and cooperation of local and state leaders to explore the options and benefits of consolidating districts. Thus, it is imperative to acknowledge that while conducting this study, the General Assembly’s during its 2018 winter session, passed legislation to consolidate the remaining three school districts in Orangeburg County into one countywide school district.

**School Funding Litigation In South Carolina May Not End with Abbeville**

From Pre- *Rodriguez* thru Wave 3 of school funding litigation, South Carolina has an extensive history of school funding cases. However, with scholars proposing an emerging 4\(^{th}\) wave, coupled with the adjudication of *Abbeville* without any specific remedy, it is reasonable to believe that South Carolina may find itself named in yet another school funding lawsuit. Whether it’s the emerging wave of race based claims as argued by Morgan (2001), Weishart (2016), and Hinojosa (2016) and experienced in New Mexico and North Carolina, a focus on individual rights to an adequate education has suggested by Bauries (2014), or the yet to be explored claims on the federal level (Black, 2017; Gillespie, 2010), *Abbeville*’s 21-year existence may have laid the foundation for a wave four litigation strategy.

Although, in 2014, the South Carolina Supreme Court found the state to be in violation of its educational clause, they did not find the state’s school finance system to be unconstitutional, they did not provide a remedy for the State to address its violation, and then without providing a reasoned explanation beyond the separation of powers principle, in November 2017 the Court ended their oversight of legislative efforts to remedy the violation. Thus, it remains to be seen if and how the South Carolina General
Assembly will remedy their constitutional violation and more importantly, how the
*Abbeville* plaintiff districts will respond to the remedy or lack of.

**Implications**

Given the findings and overall conclusions of this study, there seems to exist
limitations on using policy and law to reform educational opportunities and outcomes for
some of the least advantages students in South Carolina. For the *Abbeville* trial districts, it
appears that after seven decades, four school funding lawsuits, and enacted legislation,
school funding litigation has not improved the achievement of the students in these
districts. In addition, both the majority and minority opinion in the 2014 *Abbeville* ruling
agreed that increasing funding alone will not automatically remedy the problems
addressed in the case.

Because the emerging debate is not that more money does not matter, but how the
money is allocated may matter more, policy, practice, and future research should align
with this emerging discussion. Perhaps combined remedies on both the state and local
levels could address the inequitable and adequacy issues from a holistic approach.

**Policy.** Although the SC Supreme Court did not provide a definition and/or
framework to determine an adequate level of school funding at the state level, the Court
did provide a framework to determine an adequate level of education that the state is to
provide. Because determining the amount of money that a state needs to provide districts
to provide an adequate education is challenging in both strategy and execution, the
General Assembly should consider a comprehensive approach to determine the
appropriate level of funding for the *Abbeville* trial districts.
Other states experiencing school funding litigation and education finance reform frequently uses three different approaches to determine the cost of an adequate education. Both state and local legislation should consider the professional judgement, successful district, and/or cost function approach as an attempt to define the cost of an adequate education. The professional judgement approach uses experienced educators to determine what specific programs and resources would be required for a district (Chambers & Levin, 2014). The successful district approach identifies similar comparison districts that are meeting state standards and examines the spending of those districts (Augenblick, 2014), whereas the cost function approach statistically estimates the relationship between expenditures and achievement, while holding other factors constant (Lefgren, 2014).

**Practice.** Because some of the Abbeville trial districts are located within rural small counties with multiple school districts, each district has its own superintendent and recurring administrative costs. Giving the findings and overall conclusions of this study, the effect of school district size on administrative redundancy and student outcomes should be considered moving forward.

Although there are surely other factors that prevent the opportunity to provide a minimally adequate education and access to educational opportunities, pooling resources across multi-district counties may prove to be beneficial. Consolidating services and human resources (i.e. textbook purchases, AP teachers, software licenses, professional development, etc…) is an approach that can be implemented prior to state or local pressure to consolidate districts.

**Future Research.** Only time will tell if the 2014 Abbeville ruling will have a long-term influence on school funding, student achievement, and effective policy for the
Abbeville plaintiff districts. This study, along with the Abbeville trial data, was limited in scope when considering funding and student outcome data. This study focused primarily on the Abbeville trial districts when examining the connection between funding and student outcomes. In order to fully assess the effect of court involvement on school funding and student outcomes in South Carolina, future studies should include the other 28 Abbeville plaintiff districts.

Additionally, making a future study regarding district level resource allocation of the consolidated Abbeville plaintiff districts will be significant to the existing body of knowledge. Given the improved student performance in the districts that experienced consolidation, coupled with the various amounts of funding levels used within these consolidated districts, what remains to be unpacked is the ways in which per-pupil expenditures were and are being directed and administered. This study should include a comparative methodological approach by also examining the allocation patterns of nonconsolidated Abbeville plaintiff districts.

Finally, the effectiveness of the legislation enacted in response to the Abbeville case merits further inquiry. Research into the impact of the 2014 ruling will have, not just on the Abbeville plaintiff districts, but on public education in South Carolina as a whole will be valuable. This study would examine the impact that the “Abbeville bills”, in addition to the funding appropriations, have on educational opportunity and student outcomes in the Abbeville plaintiff districts. In addition, the study would examine changes in the fundamental way South Carolina funds and legislates education.
Author’s Closing Thought

The school funding lawsuits examined in this study illustrates why 46 years after Serrano the efficacy of litigation coupled with the role of courts, remains open to debate and examination. One could confidently argue that since Pearson (1948), Briggs (1952), Richland County (1988), and Abbeville (2014) not enough has changed in rural school districts within South Carolina. The inequity and inadequacy of school finance and educational opportunity will continue to be a relevant and controversial political topic in South Carolina and throughout the United States.

Given the complexity of our educational system, coupled with the many different approaches used to fund our schools, there are gaps in the literature that make it difficult to come to any firm conclusions about how much money matters regarding student outcomes. Prior and emerging literature attempts to address this dispute (Adams, 2010; Baker, 2016; Hedges et al., 2016; Hanushek, 1997, 2016; Hanushek & Lindseth, 2008; Hedges et al., 2016; Jackson et al., 2014, 2016; Koski, 2011; Levin, 1989).

A decade ago, scholars like Hanushek and Lindseth (2008) argued that simply asking for more dollars for schools will not create the systemic changes needed to help student achievement and that money does matter as long as it is used and allocated efficiently among resources. Hanushek even testified for the defendants in North Carolina’s Leandro case. Hanushek contended that “increased education inputs have had little impact on student achievement” (Almeida, 2004, p. 536). More recent, Jackson et al. (2014) concluded that “after Coleman (1966), many have questioned whether increased school spending can really help improve the educational and lifetime outcomes of children from disadvantaged backgrounds. Our findings show that it can.” (p. 44). In
addition, several courts have held that money is a significant factor in providing educational opportunities, but that exact equality in per pupil expenditures is not constitutionally required, nor is there a basis to determine that amount (Dayton, 2001; Thro, 1994; Weishart, 2016).

Based on this study’s examination of school funding court cases in South Carolina, there will continue to be the ongoing political debate regarding whether or not additional money matters, couple with the notion of school funding being a political or judicial issue. Notwithstanding, the notion of legislating educational outcomes must still be addressed.

Brown and Cooper (2011), reiterates the fact that politics of funding equity has been focused initially in the courts, “thus the courts have both forced and empowered governors and legislative leaders to provide financial equity polices that provide greater financial equity in states” (p. 155). Albeit, the role of the court in educational reform will continue to be a contentious manner. In addition, Thro (2016) asserts that “almost half a century after the first cases and almost three decades after the rise of the adequacy theory, school finance litigation remains both incoherent and incomprehensible” (p. 556). Is school funding a political or judicial issue – or both?

While little progress has been made through the South Carolina courts or political systems, state and district leaders must remain accountable to give the progeny of Briggs and Abbeville a fair opportunity to succeed. It has been argued that “although school finance litigation may be long and difficult, it can be an ideal opportunity for defining the state’s commitment to education and setting the state on a planned, coordinated path designed to provide all children with the education they need to compete in the [21st]
century” (Westbrook, 1995, p. 2124). Nonetheless, from 1947 to 2017, the legal and political battle to provide equal and/or adequate educational opportunity for rural school districts in South Carolina continues.

Given the history of school funding litigation in South Carolina, one can assert that perhaps litigation is not the most effective way to bring about educational change for the plaintiffs of Briggs and Abbeville plaintiff districts, that are rural, low-wealth, predominately non-White school districts. Nonetheless, while we continue to litigate school funding cases, students are still expected to be educated. Thus, whether bearing in mind the past or present, it is everyone’s responsibility to provide the students in the Abbeville plaintiff districts with a quality education.

The General Assembly should be held accountable for providing adequate, at minimum fair, funding and districts/schools need to be held accountable for how they allocate the funds. When the students from these plaintiff districts graduate, employers and higher education institutions will not care about how much funding the district they graduated from received or did not receive. Employers and educational institutions will want to know if the graduates have the skills and knowledge needed to be productive workers and/or successful students. So, regardless of the opinions and claims presented by Coleman et al. (1966), Hanushek (1997, 2006, 2014), Abbeville (2005/2014), Jackson et al. (2014, 2016), Baker (2016), and Hedges et al. (2016), we should be willing to agree that providing all students, regardless of their demographics, access to a quality education and educational opportunities is what matters most.
REFERENCES


Briggs v. Elliott, 342 U.S. 350 (1952)


Commonwealth v. Dedham, 16 Mass. 141, 146 (1819)


Edgewood Independent School District v. Kirby, 777 S.W. 2nd 391 (Texas,1991)


Leandro v. NC, 488 S.E.2d 249 (1997)


[https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/3257/picus.pdf?sequence](https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/3257/picus.pdf?sequence)


Serrano v. Priest, 5 Cal.3d 584 (1971)

Aug. 24, 2015)

South Carolina Association of School Administrators (SCASA). (2016). 2016 Legislative
platform and position statements. Retrieved from
http://www.scasa.org//Files/2016%20SCASA%20Legislative%20Platform%20-
%20Final.pdf

S.C. Const. art. XI, § 3.

Retrieved from http://scsba.org/education-funding/

in determines the fish you catch: exploring strategies for qualitative data

The Associated Press. (2015, October). Timeline of South Carolina’s education funding
http://www.washingtontimes.com/news/2015/oct/18/timeline-of-south-carolinas-
education-funding-laws/
The Leadership Conference on Civil and Human Rights. (2016). *Briggs v. Elliott (South Carolina)*. Retrieved from
http://www.civilrights.org/education/brown/briggs.html


Appendix A

*Briggs v. Elliott* Petition, 11 November 1949

This is a legal document that Clarendon County parents signed in 1949 for their children enrolled in segregated African American schools. This document was not filed in court because it was rewritten to call for the desegregation of the schools.

**STATE OF SOUTH CAROLINA**

**PETITION**

**COUNTY OF CLARENDON**


Your petitioners, Harry, Eliza, Harry Jr., Thomas Lee, Katherine Briggs, and Thomas Gamble; [Here the petition lists the rest of the names of the parents and their students], children of public school age, eligible for elementary and high school education in the public schools of School District #22, Clarendon County, South Carolina, their parents, guardians and next friends respectfully represent:

1. That they are citizens of the United States and the State of South Carolina and reside in School District #22, in Clarendon County and State of South Carolina.

2. That the individual petitioners are Negro children of public school age who reside in said county and school district and now attend the public schools in School District #22, in Clarendon County, South Carolina, and their parents and guardians.

3. That the public school system in School District 322, Clarendon County, South Carolina, is maintained on a separate, segregated basis, with white children attending the Summerton High School and the Summerton Elementary School, and Negro children forced to attend the Scott's Branch High School, the Liberty Hill Elementary School or Rambay Elementary School solely because of their race and color.

4. That the Scott’s Branch High School is a combination of an elementary and high school, and the Liberty Hill and Rambay Elementary Schools are elementary schools solely.

5. That the facilities, physical condition, sanitation and protection from the elements in the Scott’s Branch High School, the Liberty Hill Elementary School and Rambay Elementary School, the only three schools to which Negro pupils are permitted to attend, are inadequate and unhealthy, the buildings and schools are old and overcrowded and in a dilapidated condition; the facilities, physical condition, sanitation and protection from the
elements in the Summerton High in the [sic] Summerton Elementary Schools in school district number twenty-two are modern, safe, sanitary, well equipped, lighted and healthy and the buildings and schools are new, modern, uncrowded and maintained in first class condition.

6. That the said schools attended by Negro pupils have an insufficient number of teachers and insufficient class room space, whereas the white schools have an adequate complement of teachers and adequate class room space for the students.

7. That the said Scott’s Branch High School is wholly deficient and totally lacking in adequate facilities for teaching courses in General Science, Physics, and Chemistry, Industrial Arts and Trades, and has no adequate library and no adequate accommodations for the comfort and convenience of the students.

8. That there is in said elementary and high schools maintained for Negroes no appropriate and necessary central heating system, running water or adequate lights.

9. That the Summerton High School and Summerton Elementary School, maintained for the sole use, comfort and convenience of the white children of said district and county, are modern and accredited schools with central heating, running water, adequate electric lights, library and up to date equipment.

10. That Scott’s Branch High School is without services of a janitor or janitors, while at the same time janitorial services are provided for the high school maintained for white children.

11. That Negro children of public school age are not provided any bus transportation to carry them to and from school while sufficient bus transportation is provided white children traveling to and from schools which are maintained for them.

12. That said schools for Negroes are in an extremely dilapidated condition, without heat of any kind other than old stoves in each room, that said children must provide their own fuel for said stoves in order to have heat in the rooms, and that they are deprived of equal educational advantages with respect to those available to white children of public school age of the same district and county.

13. That the Negro children of public school age in School District #22 and in Clarendon County are being discriminated against solely because of their race and color in violation of their rights to equal protection of the laws provided by the 14th amendment to the Constitution of the United States.

14. That without the immediate and active intervention of this Board of Trustees and County Board of Education, the Negro children of public school age of aforesaid district and county will continue to be deprived of their constitutional rights to equal protection of the laws and to freedom from discrimination because of race or color in the educational facilities and advantages which the said District #22 and Clarendon County
are under a duty to afford and make available to children of school age within their jurisdiction.

WHEREFORE, Your petitioners request that: (1) the Board of Trustees of School District Number twenty-two, the County Board of Education of Clarendon County and the Superintendent of School District #22 immediately cease discriminating against Negro children of public school age in said district and county and immediately make available to your petitioners and all other Negro children of public school age similarly situated educational advantages and facilities equal in all respects to that which is being provided for whites; (2) That they be permitted to appear before the Board of Trustees of District #22 and before the County Board of Education of Clarendon, by their attorneys, to present their complaint; (3) Immediate action on this request.

Dated 11 November 1949

[Signatures of petitioners and attorneys follow]

National Park Service (2017)
Appendix B

School Equalization Building Program

National Park Service (2017)
Appendix C

County map of some of the Abbeville Plaintiffs along the I-95 “Corridor of Shame”