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The School Choice advocate

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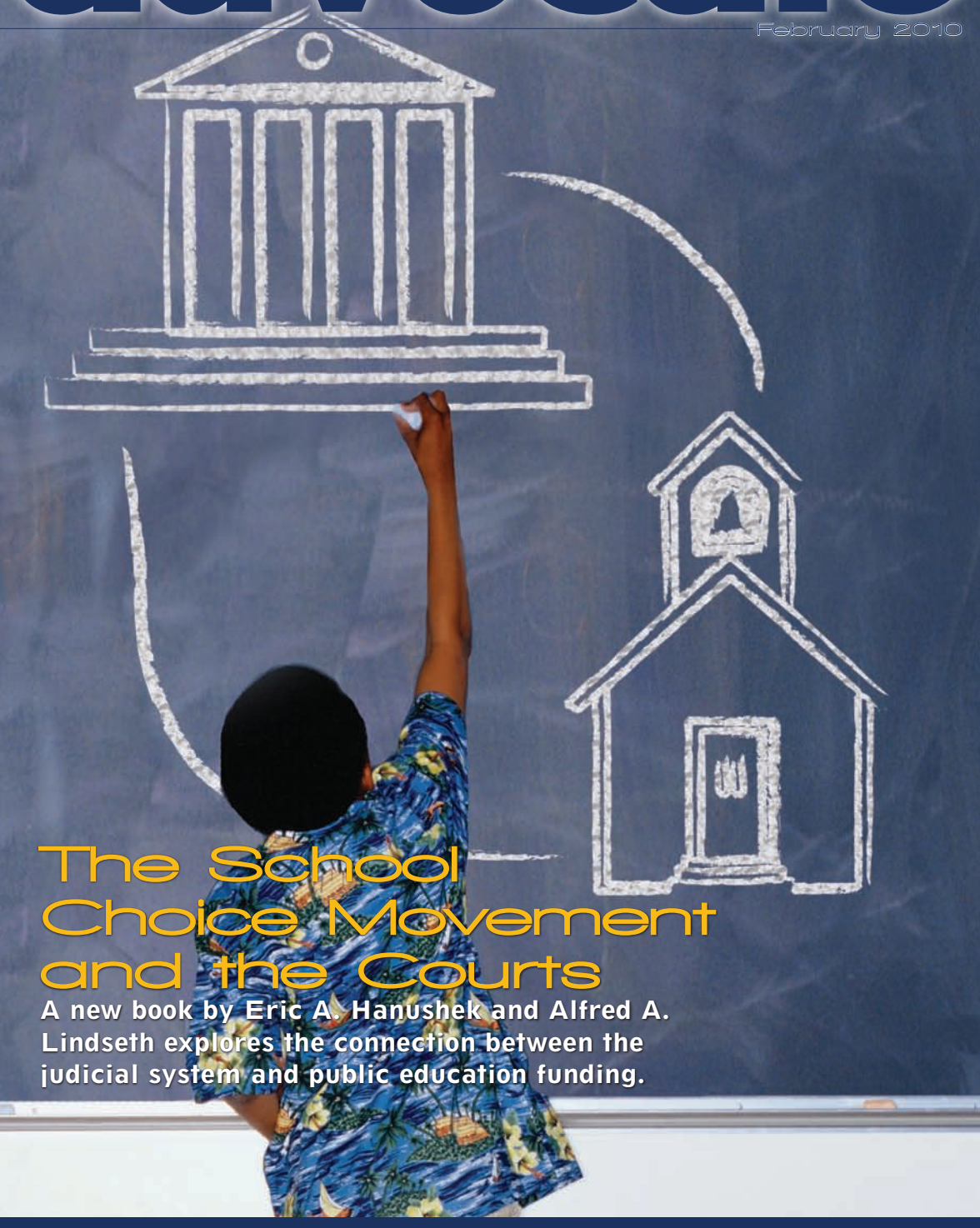

The School Choice Movement and the Courts

A new book by Eric A. Hanushek and Alfred A. Lindseth explores the connection between the judicial system and public education funding.

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AMBASSADOR PROGRAM IN OHIO

A new program by School Choice Ohio helps connect parents with information.

AN ADVOCATE MOVES ON

Dan Gaby, education activist and reform advocate, passes away at the age of 75.

The Choice Movement & THE COURTS

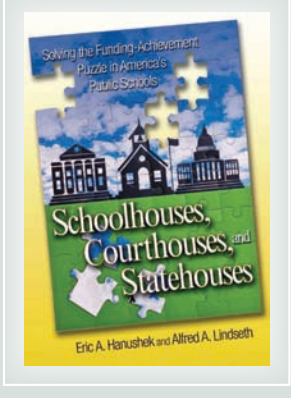
BY ERIC A. HANUSHEK AND ALFRED A. LINDSETH

A popular conception is that we have systematically shortchanged our children by failing to provide adequate schools. This view ignores the fact that government at all levels has poured hundreds of billions of dollars into the public education system, quadrupling per pupil spending since 1960. Even with such increases and the plethora of personnel, facilities and programs made possible by them, student achievement has languished. Current achievement levels are not much different than they were forty years ago (see figure 1).

Even in the face of this dismal record, politicians, parents and educators have been reluctant to change the framework through which education is delivered, especially when offering expanded choices to children outside traditional public schools.

The courts have also been an important ally of the forces resisting change. Lawsuits that directly attack choice programs, such as those brought under the Blaine amendment, have received considerable attention. Yet court involvement in school finance litigation presents even greater obstacles. These lawsuits, which have been brought in all but five states, do not directly challenge choice programs, but their adverse impacts have been just as devastating.

Historically, state legislatures made education finance decisions. Beginning in the late 1960s, that began to change. Thirty-six states were first faced with a round of "equity" cases that sought equality of funding across districts. In the late 1980s, these cases morphed into "adequacy" cases that employed vaguely worded state constitutional provisions to bring the courts directly into policy and appropriations decisions. Courts moved from dictating not only how education spending should be allocated, but also the amount of such spending.



From 1990 through 2005, plaintiffs were successful in over a dozen states in adequacy cases, resulting in dramatically higher appropriations. The height of these court actions came in 2005 when a New York trial judge ordered the state legislature to increase annual funding for the New York City schools by $5.63 billion, a 40 percent increase, although the appellate courts later reduced the required yearly increase to $1.9 billion.

The arguments almost always boil down to the amount of the funding increase, not whether other reforms might be more successful. It is impractical for lawyers defending state policies to advocate remedies, especially ones that have not been vetted though the legislative process. And third-party petitions to intervene in the court proceedings and present choice options are almost always denied. The playing field is left to the plaintiffs, with the only real issue being how much more money should be ordered. Choice options are not even on the courts' radar screens. Nontraditional reform measures are then relegated to the back burner by legislatures consumed with finding money to satisfy the courts' orders.

These judicial funding remedies have not been any more successful at improving achievement than the legislatively approved spending increases of the past. In our book, Schoolhouses, Courthouses, and Statehouses: Solving the Achievement-Funding Puzzle in America's Public Schools, we examined the four states – Wyoming, Kentucky, New Jersey and Massachusetts – that have had the longest running and most expensive court-ordered adequacy remedies. We asked a simple question: Are these states performing significantly better on the NAEP tests, relative to other states, compared to before the additional funding commenced? In three of the four states, the answer was no. Only in Massachusetts, where the legislature also enacted a broad range of reforms including new accountability measures

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and more local autonomy, did the students improve their relative standing.

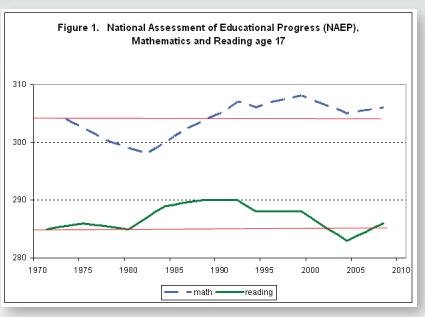
Wyoming is a good albeit disappointing example. In 1995, the courts ordered the state to provide the "best" education, one both "visionary and unsurpassed", regardless of cost. Flush with tax revenues from mineral resources, the legislature responded over the next decade by dramatically increasing school spending. The spending graph (figure 2) shows that Wyoming has become one of the biggest spenders in the country. However, none of this enormous largesse has seemed to make any difference with achievement—achievement levels have gotten worse.

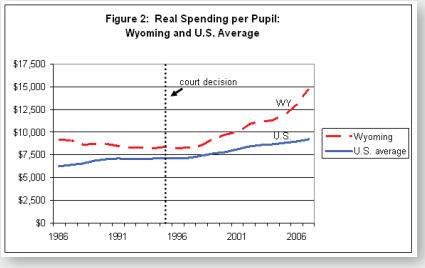
Almost 90 percent of the state's students are white. As shown in figure 3, the test scores of white students declined compared to the national average in both reading and math. While Wyoming fourth graders started at the national average in 1992 in math, they were four points behind it by 2009. Hispanics constitute the state's largest minority in both math and reading, but they also lost considerable ground (figure 4).

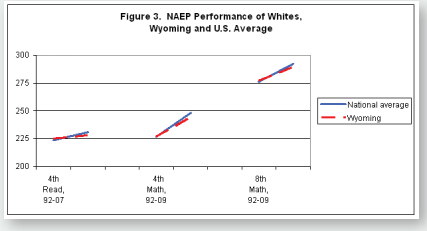
Wyoming's poor performance can be clearly seen in comparison to neighboring states Montana, South Dakota and North Dakota. These states are very similar, being largely rural with almost identical student populations. The big difference is that Wyoming spends 40 to 50 percent more per pupil. Yet on virtually every measure of academic performance, Wyoming falls far behind its neighbors.

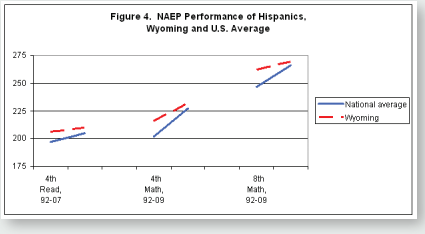
The good news is that the era of court intervention appears to be over. While a number of suits remain in the courts, there is a newfound reluctance to follow the failed precedent of prior courts. Since 2005, state courts have issued almost twenty significant decisions in adequacy cases, almost all favorable to the state defendants. In an important federal case, the U.S. Supreme Court also cited the relative failure of judicial funding remedies in reversing a judicial funding mandate (Horne v. Flores). State legislatures have been freed of court orders that made it difficult for them to consider other types of reform.

The confluence of the Obama administration's support of innovative solutions including charter schools, mounting evidence of the current system's failures, and the need to look beyond funding solutions in light of the financial crisis makes the time ripe for pushing for more fundamental changes. Choice programs are an important part of this new dynamic, both as a means of providing a timely and meaningful education to those children trapped in failing schools and, perhaps most importantly, of challenging our schools to do a better job. True reform that is reflected in improved student achievement may be more possible today than at any time during the past four decades. We need to ensure that the opportunity is not lost. ■









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