

State Constitutions and Systemic Gaps in Music Education Access

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INTRODUCTION

Nestled into a large, grassy lot on the northeast side of Pasadena, California, Marshall Fundamental Secondary School is a stone's throw from Colorado Boulevard. One day a year, the stretch of road is transformed into the New Year's Day floral spectacular, the Tournament of Roses Parade.¹ Among the floats and horseback riders, bands from across the country march the path, showcasing some of the country's strongest young musicians.² For the school music programs that participate, an average of more than \$7,000 is spent per pupil.³

In the shadow of Colorado Boulevard, Marshall Fundamental has never participated in its hometown parade. Moreover, the school perennially lacks access to the community and school district coffers that adequately fund student music experiences. This is in stark contrast with the thousands of dollars that exist in more affluent systems given the United States' landscape of unequal education funding.⁴ Instead, Marshall's annual allocated budget hovers around \$300 for a program of roughly 150 students, or \$2 per student, leading to unrepaired, unplayable instruments,

1. See TOURNAMENT OF ROSES, <https://tournamentofroses.com> [<https://perma.cc/K87W-52YK>] (last visited Mar. 27, 2024).

2. JOHN HANNIGAN, RISE OF THE SPECTACULAR: AMERICA IN THE 1950S, at 71–72 (2022).

3. Kevin Lincoln, *A Year in the High School Marching Band Costs More than You Would Think*, BUS. INSIDER (Sept. 27, 2011, 3:23 PM), <https://www.businessinsider.com/cost-year-high-school-marching-band-2011-9> [<https://perma.cc/RW7S-YVY6>] (citing Yvette Romero, *The Real Cost of High School Marching Band*, BLOOMBERG (Sept. 19, 2011), <https://web.archive.org/web/20110924093824/http://www.bloomberg.com/money-gallery/2011-09-19/the-real-cost-of-high-school-marching-band.html>) (“[O]ne year of membership [in high school marching band participating in the Tournament of Roses Parade]—including camps, instruments, clothing, and a host of other needs—comes out to a hefty \$7,110.77.”) (emphasis omitted). Program costs are also often shared by booster organizations, which are common fixtures of school music programs in the United States, supplementing school music budgets. See Kenneth Elpus & Adam Grisé, *Music Booster Groups: Alleviating or Exacerbating Funding Inequality in American Public School Music Education?*, 67 J. RSCH. MUSIC EDUC. 6, 7 (2019). However, booster organizations likely maintain the inequitable status quo between school music programs due to the “strong association” between a ZIP code’s median household income and the revenue raised by a music booster group. *Id.* at 19.

4. See *infra* Part I.B. For a broader discussion of education funding inequity within the United States, see generally THE CENTURY FOUND., CLOSING AMERICA'S EDUCATION FUNDING GAPS (2020), <https://tcf.org/content/report/closing-americas-education-funding/> [<https://perma.cc/W59J-KZHT>].

dilapidated facilities, and a host of hard choices.⁵ While a quality music education does not require performances at elevated spectacles like the one in Pasadena, students deserve access to baseline resources for engaging musical experiences.

Instead, music education is increasingly reserved for the wealthiest of families and communities. At Marshall Fundamental, nearly seventy-five percent of students qualified for free or reduced-price lunch during the 2022–2023 academic year.⁶ Compare this to some of the well-funded school music programs participating in the Tournament of Roses Parade during the same period: at Catalina Foothills High School in Tucson, Arizona, six percent of students were eligible for free or reduced-price lunch;⁷ at Rosemount Senior High School in Rosemount, Minnesota, nine percent were eligible;⁸ and at Rockford High School in Rockford,

5. The \$300.00 amount was taken from the 2017–2018 academic year when the author served as Marshall’s Director of Bands. In addition to the funds provided by the school, Marshall’s band program maintained a booster organization which assisted in fundraising. However, as discussed in *supra* note 3, booster revenue was unable to close the resource gap between the resources of the Marshall band and more affluent programs.

6. See *Marshall Fundamental*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&DistrictID=0629940&ID=062994004679 [<https://perma.cc/WRA5-87U4>] (last visited Mar. 27, 2024). The National School Lunch Program (NSLP) is a federal initiative that subsidizes school meals for low-income families. Eligibility for free meals extends to children in households below 130 percent of the poverty line or those receiving Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) benefits. Meanwhile, reduced-price meals are available to children in households between 130 and 185 percent of the poverty line. *The National School Lunch Program (NSLP)*, FEEDING AM., <https://www.feedingamerica.org/take-action/advocate/federal-hunger-relief-programs/national-school-lunch-program#:~:text=Low%2Dincome%20children%20are%20eligible,qualify%20for%20reduced%2Dprice%20meals> [<https://perma.cc/93C6-6HWL>] (last visited Mar. 27, 2024). While slightly overinclusive of the federal poverty line, free or reduced-price lunch is frequently used as a proxy measure for students living in poverty. Tom Snyder & Lauren Musu-Gillette, *Free or Reduced Price Lunch: A Proxy for Poverty*, NCEB BLOG (Apr. 16, 2015), <https://nces.ed.gov/blogs/nces/post/free-or-reduced-price-lunch-a-proxy-for-poverty> [<https://perma.cc/Z7GM-UHGY>].

7. See *Catalina Foothills High School*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&InstName=Catalina+Foothills+High+School+&SchoolType=1&SchoolType=2&SchoolType=3&SchoolType=4&SpecificSchTypes=all&IncGrade=-1&LoGrade=-1&HiGrade=-1&ID=040176000011 [<https://perma.cc/NH5C-HZFY>] (last visited Mar. 27, 2024).

8. *Rosemount Senior High*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&InstName=Rosemount+Senior+High+School+&SchoolType=1&SchoolType=2&SchoolType=3&SchoolType=4&SpecificSchTypes=all&IncGrade=-1&LoGrade=-1&HiGrade=-1&ID=273239001379 [<https://perma.cc/H9VX-S2P5>] (last visited Mar. 27, 2024).

Michigan, eleven percent were eligible.⁹ Unsurprisingly, schools with the highest levels of poverty, like Marshall Fundamental, see the lowest levels of investment in their music education programs.¹⁰

The disparity of music education access further deepens along racial lines. Marshall Fundamental, for example, primarily serves students of color.¹¹ The schools with generous investments in music education, however, like those that participate in the Tournament of Roses Parade—Catalina Foothills High School, Rosemount Senior High School, and Rockford High School—are majority white.¹² Taken together, the disparities paint a discouraging picture of the music education landscape in the United States: quality musical experiences are often reserved for affluent white students and shuttered from their poorest peers—often students of color.

It may appear odd to focus on music education given the other pressing societal ills that impact those in poverty. After all, a music education does not provide shelter or food. It neither expands access to healthcare nor mitigates the harms of an unjust criminal legal system. Yet, music colors the human experience, and its deprivation robs students of the opportunity to seek respite and rekindle their soul.¹³ Music's absence shallows life's emotional

9. *Rockford High School*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/ipeds/data/ipedssearch/school_detail.asp?Search=1&InstName=Rockford+High+School&SchoolType=1&SchoolType=2&SchoolType=3&SchoolType=4&SpecificSchlType=s=all&IncGrade=-1&LoGrade=-1&HiGrade=-1&ID=263003006588 [https://perma.cc/U3E4-NDHH] (last visited Mar. 27, 2024).

10. See R. B. MORRISON ET AL., NATIONAL ARTS EDUCATION STATUS REPORT 2019 (2022), https://artsedata.org/national_report_2019/ [https://perma.cc/PG6V-JNJ8] (Schools with the highest proportion of students eligible for free or reduced lunch are over twice as likely to provide no access to music coursework than those with the lowest proportion); see also *infra* Part I.B.

11. See *Marshall Fundamental*, *supra* note 6 (During the 2022–2023 school year, eighty percent of the Marshall student body were students of color, predominantly Hispanic.).

12. See *Catalina Foothills High School*, *supra* note 7 (During the 2022–2023 school year, fifty-four percent of the Catalina Foothills student body was white.); See *Rosemount Senior High*, *supra* note 8 (During the 2022–2023 school year, seventy-one percent of the Rosemount Senior student body was white.); See *Rockford High School*, *supra* note 9 (During the 2022–2023 school year, eighty-eight percent of the Rockford student body was white.).

13. See MAXINE GREENE, VARIATIONS ON A BLUE GUITAR (2001) [hereinafter BLUE GUITAR]; MAXINE GREENE, RELEASING THE IMAGINATION: ESSAYS ON EDUCATION, THE ARTS, AND SOCIAL CHANGE (1995) [hereinafter RELEASING THE IMAGINATION]; see also MICHAEL L. MARK, A CONCISE HISTORY OF AMERICAN MUSIC EDUCATION 139 (2008) (quoting AM. ASS'N OF SCH. ADM'RS, OFFICIAL REPORT FOR THE YEAR 1959, at 248–49) (“It is important that pupils, as a part of general education, learn to appreciate, to understand, to create, and

depth and connection.¹⁴ Why, then, is a music education the domain of only the well-off, and a privilege poor students are made to forgo? After all, if music education were a true luxury, school systems would likely deviate in their offerings.¹⁵ Yet, almost all students in schools with the lowest levels of poverty have access to music. If music coursework were not an integral component of students' education, why do rich districts universally offer it?¹⁶

This Comment surveys the legal landscape surrounding education inequality—with a particular focus on the unequal access to a music education—and provides a pathway towards connecting all students to a quality music experience in schools. Part I details the benefits of a music education and its current inequitable delivery across the United States. Part II discusses the state education clauses guiding the administration of education within states and reviews select examples of case law construing those provisions with particular attention to music education. Finally, Part III evaluates the pathways to music education's equitable expansion.

to criticize with discrimination those products of the mind, the voice, the hand, and the body which give dignity to the person and exalt the spirit of man.”)

14. See BLUE GUITAR, *supra* note 13; RELEASING THE IMAGINATION, *supra* note 13.

15. For example, not every wealthy district offers dance, but music access is nearly universal. MORRISON ET AL., *supra* note 10.

16. Abbott v. Burke, 119 N.J. 287, 363–64 (1990).

I. MUSIC EDUCATION'S ADVANTAGES AND ACCESS

A. WHY IT MATTERS: THE BENEFITS OF A MUSIC EDUCATION

Politicians and educators have long touted the benefits of a music education,¹⁷ with researchers backing their claims.¹⁸ In 1837, the Boston School Committee drew upon scholarship to conclude that a music education developed a “man’s whole nature”—intellectually, morally, and physically—and thus recommended the inclusion of music instruction in Boston Public Schools.¹⁹ Today, similar conversations abound.²⁰ What has emerged from those discussions is a scholarly consensus: music education promotes intellectual, social, emotional, and personal development for children,²¹ and particularly for those living in poverty.²²

Contemporary scholarship links the study of music to cognitive growth. Exposure to music improves both brain function and structure, positively influencing auditory processing, intelligence, motor skills, and speech and language development.²³ Similarly,

17. See, e.g., Press Release, Senator Cory Booker, Booker, Velázquez Introduce Bicameral Legislation to Support Music Education for More Students (Feb. 9, 2023), <https://www.booker.senate.gov/news/press/booker-velazquez-introduce-bicameral-legislation-to-support-music-education-for-more-students> [https://perma.cc/R433-XA3U] (recognizing “the positive benefits music and arts have on children”); Carla Kalogeridis, *Dr. Miguel Cardona: “We are Underestimating the Power of Music and the Arts”*, NAT’L ASS’N FOR MUSIC EDUC. (July 28, 2021), <https://nafme.org/blog/dr-miguel-cardona-we-are-underestimating-the-power-of-music-and-the-arts/> [https://perma.cc/3H78-NMMS]. Perhaps the most striking quote from an American politician comes from the thirty-eighth President of the United States Gerald Ford: “Music education opens doors that help children pass from school into the world around them—a world of work, culture, intellectual activity, and human involvement. *The future of our nation depends on providing our children with a complete education that includes music.*” Alex Linkei & Rebecca Gross, *Notable Quotable: Presidents Day Edition*, NAT’L ENDOWMENT FOR THE ARTS (Feb. 2, 2015) (emphasis added), <https://www.arts.gov/stories/blog/2015/notable-quotable-presidents-day-edition> [https://perma.cc/8UTM-YHTC].

18. See MARK, *supra* note 13.

19. *Id.* at 45–46. The committee’s report would ultimately lead to the inclusion of music in the public school curriculum one year later. *Id.* at 45–48.

20. See, e.g., *Why Music is Important for Child Development*, SAVE THE MUSIC FOUND., <https://www.savethemusic.org/why-music/> [https://perma.cc/9CLB-HLAS] (last visited Mar. 30, 2024).

21. See José Salvador Blasco-Magraner et al., *Effects of the Educational Use of Music on 3- to 12-Year-Old Children’s Emotional Development: A Systematic Review*, INT’L J. ENV’T. RSCH AND PUB. HEALTH, Apr. 2021, at 3668.

22. See *infra* Part I.A.

23. William J. Dawson, *Benefits of Music Training are Widespread and Lifelong: A Bibliographic Review of Their Non-Musical Effects*, 29 MED. PROBS OF PERFORMING ARTISTS 57 (2014).

music education participation positively correlates with greater reading and arithmetic proficiency in children.²⁴ And additionally, children's scientific achievement may profit from musical instruction.²⁵ Given these academic advantages, students in high-quality school music programs tend to score higher on standardized tests compared to students in schools with deficient music education programs, regardless of the socioeconomic level of the school or system's student population.²⁶

Further, for students dealing with poverty and its impacts, the advantages of a music education may be particularly salient. Several factors associated with poverty negatively affect a student's academic performance, including hunger,²⁷ homelessness,²⁸ and home environments.²⁹ Each of these issues, separately and collectively, often lead to underachievement in subjects like language and math.³⁰ Music programming may be one potential tool to counteract these negative effects. In Los Angeles, researchers studying the impact of music instruction on low-income students concluded that music staved off the inhibited development of reading ability often observed in low-income children.³¹ Children living in poor households who engaged in continuous music instruction throughout the year attained and retained their age-normed reading ability.³² Conversely, the

24. Martin F. Gardiner et al., *Learning Improved by Arts Training*, 381 NATURE 284 (1996).

25. See MARK, *supra* note 13, at 139–40.

26. Christopher M. Johnson & Jenny E. Memmott, *Examination of Relationships Between Participation in School Music Programs of Differing Quality and Standardized Test Results*, 54 J. RSCH. MUSIC EDUC. 293 (2006). Johnson and Memmott do not claim that music experiences directly caused the increase in test scores. *Id.* at 303. Instead, they advance three hypotheses: (1) schools hiring excellent music educators may hire excellent educators generally; (2) excellent music programs attract academically inclined students; and (3) the organizational skills and learning strategies present in high-quality music programs naturally aid students in other subjects. *Id.* Nevertheless, a statistically significant relationship does emerge. *Id.* at 304.

27. *Mental Health Effects of Poverty, Hunger, and Homelessness on Children and Teens*, AM. PSYCH. ASS'N, <https://www.apa.org/topics/socioeconomic-status/poverty-hunger-homelessness-children> [https://perma.cc/Q2AU-GBJC] (last visited Mar. 28, 2024).

28. *Id.*

29. Adam C. Payne, Grover J. Whitehurst, & Andrea L. Angell, *The Role of Home Literacy Environment in the Development of Language Ability in Preschool Children from Low-Income Families*, 9 EARLY CHILDHOOD RSCH. Q. 427 (1994).

30. Jessica Slater et al., *Longitudinal Effects of Group Music Instruction on Literacy Skills in Low-Income Children*, 9 PLOS ONE, at e113383, e113383 (2014); Francis A. Pearman, II, *The Effect of Neighborhood Poverty on Math Achievement: Evidence from a Value-Added Design*, 51 EDUC. & URB. SOC'Y 289 (2019).

31. Slater et al., *supra* note 30.

32. *Id.*

reading level of children who did not receive the same music education experience saw a deterioration consistent with the expectations of the low-income population.³³

Music education similarly impacts the math achievement of low-income students. In Long Beach, California, the Long Beach Unified School District partnered with the Harmony Project to deliver four hours of music lessons per week to five of the city's high-poverty elementary schools.³⁴ After one year of implementation, participating students showed a significant improvement in math scores compared to their non-musical peers.³⁵ Such positive academic outcomes showcased in Los Angeles and Long Beach suggest that music education could play a role in closing the socioeconomic gap for students living in poverty.

Outside of academic utility, music education further supports students' social and emotional development. The maturation of skills such as understanding and managing emotions, decision-making, and navigating conflict improves life outcomes.³⁶ Students facing poverty, however, are more likely to experience challenges to their social and emotional growth than their affluent peers.³⁷ Despite the hurdle, music education can play a significant role in progressing students' social and emotional competencies.³⁸ This may be credited to the essence of musical activity: "collective participation."³⁹ Through the cooperation and coordination of students joined in music-making, the music classroom facilitates a space within the school to practice engagement with others.⁴⁰ Simultaneously, students practice the ability to evaluate one's own

33. *Id.*

34. Journal of Youth Development, *After-School Music Program Leads to Improved Academic Performance in Low-Income Communities, Study Finds*, UCLA FIELDING SCH. OF PUB. HEALTH (June 22, 2022), <https://ph.ucla.edu/news-events/news/after-school-music-program-leads-improved-academic-performance-low-income#:~:text=Students%20who%20participated%20in%20an,scores%20after%20two%20years%20in> [https://perma.cc/TW2D-8YPJ].

35. Hannah M. Holbrook, *Music-Based Mentoring and Academic Improvement in High-Poverty Elementary Schools*, J. YOUTH DEV., Mar. 2022, at 33. Students also experienced increases in reading and writing scores. *Id.*

36. See Jeanne Brooks-Gunn & Greg J. Duncan, *The Effects of Poverty on Children*, THE FUTURE CHILD., Summer-Autumn 1997, at 55, 62.

37. *Id.*

38. See Blasco-Magraner et al., *supra* note 21, at 3668 ("The link between music and emotion has contributed to the value of music as a discipline that can be implemented in formal education to develop students' emotional competence.").

39. *Id.*

40. *Id.*

emotions in response to performance, while also constructively relating to the feelings of others around the room.⁴¹ The inherent structures of music-making and music education are naturally appropriate for social and emotional development for all students, even when barriers may exist outside of the music classroom.⁴²

Another byproduct of music education is the community that it fosters though a collaborative classroom. Music classrooms help students form bonds with both teachers and peers, cultivating the supportive networks that are vital to student success.⁴³ This is imperative for students faced with the challenges of poverty,⁴⁴ where the high school dropout rate for children living in the lowest quartile of family income are the highest.⁴⁵ Music classes, though, can connect students to school communities.⁴⁶ In a post-pandemic landscape, where links between student and school relationships are greatly tested, the need for connectedness increases.⁴⁷ Music education ties those binds—a point recognized by Dr. Miguel Cardona, United States Secretary of Education.⁴⁸ “It’s important to note that music and the arts are the anchor to so many students engaging in school.”⁴⁹

The advantages of a music education, however, are not equally available to all students. The children with the most to gain are often the individuals denied access altogether.

41. *Id.*

42. *See id.*

43. *See* Chesley Talissé, *Building a Sense of Community with Music*, EDUTOPIA (June 20, 2018), <https://www.edutopia.org/article/building-sense-community-music/> [<https://perma.cc/E9UB-WPKX>]; William Parrett & Kathleen Budge, *How Can High-Poverty Schools Connect with Students?*, EDUTOPIA (Apr. 20, 2016), <https://www.edutopia.org/blog/high-poverty-schools-connect-with-students-william-parrett-kathleen-budge> [<https://perma.cc/Z9YA-TM8F>].

44. *See* Parrett & Budge, *supra* note 43.

45. THE NAT’L CTR. FOR EDUC. STAT., TRENDS IN HIGH SCHOOL DROPOUT AND COMPLETION RATES IN THE UNITED STATES: 2018, at 60 (2018).

46. *See* Sarah D. Sparks, *How a School District Used Music Teaching to Keep Students Connected*, EDUC. WEEK (Jan. 25, 2023), <https://www.edweek.org/leadership/how-a-school-district-used-music-teaching-to-keep-students-connected/2023/01> [<https://perma.cc/E87G-ZU76>].

47. *School Connectedness Helps Students Thrive*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/healthyyouth/protective/school_connectedness.htm [<https://perma.cc/LH3B-AQZN>] (last visited Mar. 28, 2024).

48. *See* Kalogeridis, *supra* note 17.

49. *Id.*

B. THE LANDSCAPE OF UNEQUAL MUSIC EDUCATION ACCESS IN AMERICA

On August 28, 1838, in Boston, Massachusetts, music was approved for the first time in American history as a formal subject of study in public schools.⁵⁰ Today, music education in the United States has expanded significantly, with nearly ninety-two percent of students having access to some form of music education programming at school.⁵¹ While the high percentage of access appears to be a testament to American success, the number masks the inequality of access drawn along economic and racial lines.

Currently, about eight percent of children in the United States, or 3,600,000, are left entirely without access to a music education—an occurrence that becomes more likely as a school’s population of students eligible for free or reduced-price lunch increases.⁵² Students attending schools with the highest proportion of low-income families are three times more likely to forgo a music education when compared to those attending schools composed primarily of students not eligible for free or reduced-price lunch.⁵³ Further, music education’s absence overlaps with schools enrolling a majority of students of color. Presently, less than five percent of students who attend a majority-white school forgo a music education within their school day.⁵⁴ By contrast, over twelve percent of students attending majority Hispanic schools lack access to music education, while over thirteen percent of students in majority Black schools and more than forty-two percent in majority Indigenous schools face the same issue.⁵⁵ When considering that schools lacking music education access are predominantly those who serve higher proportions of low-income students and students of color, the lines of disparity and access are noticeably defined by economic and racial class.

Even when a music education is provided for students, the quality varies greatly by school and its proportion of low-income students. From the elementary to secondary level, schools with

50. MARK, *supra* note 13, at 48.

51. MORRISON ET AL., *supra* note 10.

52. *Id.*; see also U.S. DEP’T EDUC., ARTS EDUCATION IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS: 1999–2000 AND 2009–10, at 14–26 (2012), <https://nces.ed.gov/pubs2012/2012014rev.pdf> [<https://perma.cc/4FQV-5PFH>].

53. MORRISON ET AL., *supra* note 10.

54. *Id.*

55. *Id.*

the highest concentration of impoverished students are less likely to have a dedicated space for music instruction and access to appropriate equipment.⁵⁶ For our youngest learners specifically, elementary students are more likely to have access to a music education for only a portion of the school year if they attend a school with a higher rate of free or reduced-price lunch eligibility.⁵⁷ And even if they do have sustained access, elementary students in higher poverty schools are less likely to be taught by a teacher with music expertise or credentials.⁵⁸ Particular access issues also arise for older students. Secondary schools with the highest concentrations of poverty are less likely to offer robust music coursework than their peers.⁵⁹

Such varied discrepancies in implementation across grade levels can impact the quality of music education offered to students. Without access to a full-time instructor, for example, students could find it difficult to form a connection with their teacher, given the potential for lack of accessibility outside of class.⁶⁰ Or without a dedicated classroom, schools may substitute an unsuitable learning environment like the curtained-off cafeteria at lunchtime or divided gymnasium shared with the physical education class, giving rise to a host of possible disruptions. Without quality engagement, music education access can lose meaning. In light of these qualitative differences, the number of students without access to a meaningful or high-quality music education arguably extends beyond the original 3,600,000 number discussed above.

56. U.S. DEP'T EDUC., *supra* note 52, at 15, 22.

57. *Id.* at 15–17.

58. *Id.*

59. *Id.* at 22.

60. Proximity is a requisite for developing authentic connections between teachers and students. Andrew Fultz, *Building Authentic Relationships with Students*, EDUTOPIA (Oct. 6, 2023), <https://www.edutopia.org/article/building-strong-relationships-with-students/> [<https://perma.cc/B53Z-M3Q8>]; see also Elizabeth Heubeck, *Part-Time Teaching Gigs Help Keep Experienced Educators. But the Approach is Rare*, EDUC. WEEK (Dec. 29, 2022), <https://www.edweek.org/leadership/part-time-teaching-gigs-help-keep-experienced-educators-but-the-approach-is-rare/2022/12> [<https://perma.cc/S93R-QGXX>] (discussing a part-time teacher who described himself as having “fewer connections with students and faculty,” and missing “contact time with students.”).

II. MUSIC EDUCATION & THE LAW

A. AFTER *RODRIGUEZ*: STATE CONSTITUTIONS AND QUALITY PHRASES

Peruse the United States Constitution and you will find no mention of education across its seven articles and twenty-seven amendments, and certainly no discussion of music education. The American reality is that the Constitution imparts no federal education obligation, as endorsed in the seminal 1973 decision, *San Antonio Independent School District v. Rodriguez*.⁶¹ Initially brought by school parents, the case challenged the funding disparities present in Texas' school finance system under the Fourteenth Amendment to the United States Constitution.⁶² The state funded public schools through a combination of federal, state, and local funds, with ninety percent of the funding coming from state and local sources.⁶³ Under the regime, property tax-poor school districts in Texas received significantly less funding than the more property tax-rich districts, given their inability to yield the same revenue at equal tax rates.⁶⁴ Ultimately, the Supreme Court held that the Constitution offered no protections to the inequitable funding scheme, finding neither a fundamental right to education nor any discrimination on the basis of wealth.⁶⁵

Instead, the administration of education is entrusted to the states, which are left to define the parameters of that right under their own distinct constitutional provisions.⁶⁶ The constitutions in all fifty states contain an education clause that furnishes some form of educational scheme, each varying in language and emphasis.⁶⁷

61. *San Antonio Indep. Sch. Dist. V. Rodriguez*, 411 U.S. 1 (1973).

62. Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson, *Introduction: The Enduring Legacy of San Antonio Independent School District v. Rodriguez*, in *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EDUCATIONAL OPPORTUNITY* 1, 3 (Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson eds., 2015).

63. TEX. ASS'N OF SCH. BDS., *TEXAS SCHOOL FINANCE SYSTEM OVERVIEW* 1 (2022). The funding system challenged in *Rodriguez* remains the same today. *Id.* at 4.

64. *Rodriguez*, 411 U.S. 11–15; Ogletree, Jr. & Jenkins Robinson, *supra* note 62, at 4.

65. *Rodriguez*, 411 U.S.; *see also* Ogletree, Jr. & Jenkins Robinson, *supra* note 62, at 5.

66. Karen DeMoss, *Who's Accountable to the Constitution? Thirty Years of Judicial Politics in State Education Finance Litigation*, 78 *PEABODY J. EDUC.* 44, 46 (2003); Robert M. Jensen, *Advancing Education Through Education Clauses of State Constitutions*, 1997 *BYU EDUC. & L.J.* 1, 3 (1997).

67. *See* Jensen, *supra* note 66, at 3–8.

Many state education clauses include a prescriptive degree that the administration of education must meet—a quality standard that determines whether a state’s implementation of education is successful. It is these phrases that have proved the most useful in determining the educational rights of students.⁶⁸ The expressions range from broad qualitative obligations placed upon the state to distributive standards. For example, the Virginia Constitution requires the State’s General Assembly to ensure its system of education is “high-quality.”⁶⁹ Meanwhile, Wisconsin’s constitution calls for the education arrangement to be “as nearly uniform as practicable.”⁷⁰ The former, more qualitative directives appear in the majority of state constitutions,⁷¹ including language such as “thorough and efficient,”⁷² “suitable,”⁷³ “efficient,”⁷⁴ and “complete and uniform.”⁷⁵

What results from the range of fifty state educational clauses is a patchwork of education regimes in the United States, where school responsibilities and funding levels can vary by state line.⁷⁶ The more powerful phrases of quality a state constitution contains, the greater the legal opportunity for advancing educational rights within the state.⁷⁷

In light of the relevant constitutional provisions, it might come as no surprise that nearly all New Hampshire schools offer at least one music course, with a dedicated music space, taught by a full-time teacher,⁷⁸ while Hawaii schools lag behind,⁷⁹ for example:

[New Hampshire:] Knowledge and learning, generally diffused through a community, being essential to the preservation of a free

68. See Jensen, *supra* note 66, at 4.

69. VA. CONST. art. VIII, § 1.

70. WIS. CONST. art. X, § 3.

71. Jensen, *supra* note 66, at 4.

72. See, e.g., PA CONST. art. III, § 14.

73. See, e.g., ME. CONST. art. VIII, § 1.

74. See, e.g., TEX. CONST. art. VII, § 1.

75. See, e.g., WYO. CONST. art. 7, § 1.

76. See DANIELLE FARRIE & DAVID G. SCIARRA, MAKING THE GRADE: HOW FAIR IS SCHOOL FUNDING IN YOUR STATE? (2021), <https://files.eric.ed.gov/fulltext/ED619401.pdf> [<https://perma.cc/AD49-RLNR>].

77. See Jensen, *supra* note 66, at 4 (“[T]hose states with the strongest ‘quality phrases’ have offered some of the leading cases in the advancement of education.”).

78. N.H. DEP’T OF EDUC., MEASURING UP: NEW HAMPSHIRE ARTS EDUCATION DATA PROJECT REPORT 6, 13 (2011), https://www.nh.gov/nharts/programs/services/pdf/2010_measuringup_fullreport.pdf [<https://perma.cc/6ZF3-NUFC>].

79. *Why Make Music a Right?*, HAW. YOUTH SYMPHONY (Aug. 16, 2022), <https://hiyouthsymphony.org/why-make-music-a-right/> [<https://perma.cc/FV2W-4RJC>].

government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators . . . to encourage private and public institutions, rewards, and immunities for the promotion of . . . arts . . . to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people . . .⁸⁰

[Hawaii:] The State shall provide for the establishment, support and control of a statewide system of public schools . . . including physical facilities therefor.⁸¹

While the number of words on a page do not directly correlate with the extent of the protections offered, New Hampshire's education clause speaks with a comprehensive precision and detail greater than the average constitutional mandate, guiding both the state legislature and courts towards a higher standard for education.⁸² Seeking to improve the quality of education for low-income school systems, litigators have relied on clauses such as New Hampshire's to clarify state education obligations and drive improvement.⁸³ These cases have the potential to positively expand music education access for students.⁸⁴ The results, however, have been mixed.

B. CLARIFYING EDUCATION CLAUSES AND THE PURSUIT OF MUSIC EDUCATION ACCESS

In the late 1970s, plaintiffs and state courts began to take note of the qualitative phrases offered by state constitutions,⁸⁵ shifting their focus from U.S Constitutional theories of equity stymied by

80. N.H. CONST. pt. 2d, art. 83.

81. HAW. CONST. art. X, § 1.

82. See *Claremont Sch. Dist. v. Governor*, 142 N.H. 462 (1997).

83. *Id.*; see also Lauren Nicole Gillespie, Note, *The Fourth Wave of Educational Finance Litigation: Pursuing a Federal Right to an Adequate Education*, 95 CORNELL L. REV. 989, 1002 (2010).

84. See Part II.B.

85. See, e.g., *Gould v. Orr*, 244 Neb. 163, 168–69 (1993) (“Appellants’ petition clearly claims there is disparity in funding among school districts, but does not specifically allege any assertion that such disparity in funding is inadequate and results in inadequate schooling.”).

the United States Supreme Court decision in *Rodriguez*.⁸⁶ The litigation strategy produced a number of decisions across the country interpreting the various quality provisions, eventually all arriving at different state standards for what constitutes an “adequate education.”⁸⁷ For impact litigants, it was a reform effort aimed at the courts in the hope that they would deliver a “high-minimum quality education for all.”⁸⁸ Rather than focus on questions of equity, lawyers were interested in inequity only so far as it demonstrated inadequacy.⁸⁹ The pivot in litigation strategy represented a shift from concerns over total equity between school systems to wanting to achieve a baseline guarantee of educational offering. To do so, state courts needed to evaluate what elements of education were necessary to achieve the learning levels mandated by their respective state constitutions. After undertaking this evaluation, some courts acknowledged music education as fundamental to the development of children.⁹⁰

In 1979, the West Virginia Supreme Court laid the groundwork for future education adequacy claims in *Pauley v. Kelly*.⁹¹ Moreover, it broadly interpreted its education clause to place music education among the integral offerings contemplated by the state’s constitution. The plaintiffs, the parents of five children attending public school in one of West Virginia’s more economically depressed counties,⁹² alleged that the state’s education funding system violated the West Virginia Constitution.⁹³ They argued that the lack of funding, curricular offerings, and school personnel resulting from West Virginia’s school financing scheme and county’s property-poor tax base led to inequalities in educational quality and outcomes, thus denying students the “thorough and efficient” education required by the state’s constitution.⁹⁴ The court agreed.⁹⁵

86. Paul A. Minorini & Stephen D. Sugarman, *Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm*, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 175, 183 (Helen F. Ladd et al. eds., 1999).

87. *See id.* at 188.

88. *Id.*

89. *See Id.*

90. *See infra* Part II.B.

91. 162 W. Va. 672 (1979); *see also id.* at 194.

92. RALPH D. TRIPLETT & BOONE TRIPLETT, *IMAGES OF AMERICA: LINCOLN COUNTY* 8 (2013).

93. *Pauley*, 162 W. Va. at 673; *see also* Margaret D. Smith & Perry A. Zirkel, *Pauley v. Kelly: School Finances and Facilities in West Virginia*, 13 J. EDUC. FIN. 264, 264 (1988).

94. *Pauley*, 162 W. Va. at 673–74.

95. *See id.*

The West Virginia Constitution mandates that “[t]he legislature shall provide, by general law, for a *thorough and efficient* system of free schools.”⁹⁶ Interpreted by the court, “a thorough and efficient system of schools . . . develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically.”⁹⁷ Within the definition, the *Pauley* court expanded the phrase: a “[l]egally recognized element[] in [the] definition [is the] development in every child to his or her capacity of . . . interests in all creative arts, *such as music*.”⁹⁸

Following the decision, on remand to the lower court, the trial judge embraced the higher court’s positive treatment of music education. Among his 244-page opinion containing recommended school condition improvements to the West Virginia legislature, he proposed facilities for general and instrumental music instruction in elementary schools, and at least two rooms available for individual practice.⁹⁹

The *Pauley* decision represents a high-water mark in the expansion of music education access. While the West Virginia court did not enshrine the right to a music education within its constitution, it expressly held that a “thorough and efficient” education entailed its access.¹⁰⁰ Other state courts, however, have not yet reached as far as the West Virginia Supreme Court in *Pauley*.

A decade after *Pauley*, the Supreme Court of Kentucky was tasked with a similar question in *Rose v. Council for Better Education*: did the administration of education within the state meet its constitutional mandate?¹⁰¹ Twenty-two schoolchildren, five school districts, two school boards, and one non-profit of Kentucky joined together to bring the claim, alleging that the state’s school financing scheme, which resulted in “inadequacies, inequities and inequalities throughout the state,” was unconstitutional.¹⁰² Under the Kentucky Constitution, “[t]he

96. W. VA. CONST. art. XII, § 1 (emphasis added).

97. *Pauley*, 162 W. Va. at 705.

98. *Id.* at 705–06 (emphasis added).

99. Smith & Zirkel, *supra* note 93, at 267 (citing *Pauley v. Bailey*, No. 7–1268, at 21, 25–26, 56 (Kanawha Cnty. Cir. Ct., W. Va., May 11, 1982)).

100. *Pauley*, 162 W. Va. at 705–06.

101. *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 189 (Ky. 1989).

102. *Id.* at 190.

General Assembly shall, by appropriate legislation, provide for an *efficient* system of common schools throughout the State.”¹⁰³ Reviewing the state’s limited spending on education relative to neighboring states, and the poor educational outcomes of its students, the court found Kentucky’s system of education inefficient, and thus constitutionally insufficient.¹⁰⁴ While the court did not order specific remedies to the legislature as the trial judge did in *Pauley*, deferring instead to the legislative process, it did provide a set of capacities and minimum characteristics that together comprised an “efficient” system of schools for the legislature’s reference.¹⁰⁵ Among the seven capacities determined by the court, it acknowledged that “an efficient system of education must have as its goal to provide each and every child with at least the . . . sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage.”¹⁰⁶

Unlike in *Pauley*,¹⁰⁷ music is not explicitly addressed, but only implied by the court in *Rose*.¹⁰⁸ Instead, the subject is cast under the catch-all term, “the arts.”¹⁰⁹ Moreover, access to the arts in *Rose* is narrowed and qualified. Constitutionally sufficient artistic experiences are linked to an appreciation of cultural and historical heritage—only one area of music education’s benefits.¹¹⁰ Consider a five-week module on American music history discussing topics such as the origins of jazz in the field songs of the South or the development of the American compositional voice. This musical experience likely meets the constitutional standard outlined in

103. KY. CONST. § 183 (emphasis added).

104. *Rose*, 790 S.W.2d at 211–213; see also Steve Smith, *Education Adequacy Litigation: History, Trends, and Research*, 27 U. ARK. LITTLE ROCK L. REV. 107, 113 (2004).

105. *Rose*, 790 S.W.2d at 212.

106. *Id.*

107. See *supra* Part II.B’s discussion of *Pauley v. Kelly*, 162 W. Va. 672 (1979).

108. When evaluating inter-district discrepancies within Kentucky giving rise to the inefficient conclusion, the court acknowledged the “substantial difference in the curricula offered in the poorer district [which] contrasts with that of the richer districts, particularly in the areas of foreign language, science, mathematics, *music* and art.” *Rose*, 790 S.W.2d at 197 (emphasis added).

109. While the implicit language likely makes little difference in practice, the use of “the arts” over an explicit delineation of music requires the court to engage in an extra layer of interpretative work. Additionally, standalone mentions of music beyond “the arts” legitimizes the subject and creates clearer advocacy pathways. See Morning Edition, *School Arts Advocates Cheer New Education Measure*, NPR, at 00:44 (Dec. 16, 2015) (<https://www.npr.org/2015/12/16/459936069/arts-education-advocates-cheer-new-education-measure> [<https://perma.cc/3ANR-GTNQ>]) (discussing the importance of “music” as a distinct listing in the Every Student Succeeds Act’s definition of a well-rounded education).

110. See BLUE GUITAR, *supra* note 13; RELEASING THE IMAGINATION, *supra* note 13.

Rose, but it is unclear whether it is constitutionally sufficient under the decision in *Pauley*.¹¹¹ The standard of music education access under *Rose* indeed offers more to low-income children than what they may have received otherwise,¹¹² but still below what affluent communities habitually offer to their students.¹¹³

Not all state courts, however, have placed music education access within the ambits of their constitutions. Many have remained hesitant to define educational adequacy and disturb the separation of powers that lie between the judiciary and legislature. In 1996, a collection of school districts and students of Illinois brought an action claiming that the state's education financing scheme violated the Illinois Constitution due to the funding disparities it allegedly created between school systems.¹¹⁴ Similar to Kentucky, the Illinois Constitution requires the state "provide for an efficient system of high quality public educational institutions and services."¹¹⁵ But the Illinois court punted, concluding that questions of educational adequacy were solely reserved for the legislature to decide.¹¹⁶ Similar assessments were reached by state courts in Florida¹¹⁷ and Rhode Island,¹¹⁸ leaving the interpretative work to state representatives. Uncomfortable with the idea of judicial intrusion into setting educational standards, the courts of Illinois, Florida, and Rhode Island refrained from prescribing the "high-minimum" standard desired by adequacy plaintiffs, leaving no presumption of music education access for students within the states.¹¹⁹

111. See *supra* Part II.B. This point raises an engaging contradiction. *Pauley* arguably contemplates a greater depth of connection between students and the subject of music than *Rose*. However, it may be that fewer musical experiences actually meet the threshold set forth by the *Pauley* court. Thus, when viewed in terms of application rather than requirement, *Pauley* produces the narrower result while requiring the broader experience.

112. *Rose*, 790 S.W.2d at 197.

113. See MORRISON ET AL., *supra* note 10; see also *supra* INTRODUCTION.

114. Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178, 1180–83 (Ill. 1996).

115. ILL. CONST. art. X, § 1.

116. *Edgar*, 672 N.E.2d at 1189.

117. See Coal for Adequacy & Fairness in Sch. Funding v. Chiles, 680 So. 2d 400, 408 (Fla. 1996).

118. City of Pawtucket v. Sundlun, 662 A.2d 40 (R.I. 1995).

119. See *Edgar*, 672 N.E.2d; *Chiles*, 680 So. 2d; *Sundlun*, 662 A.2d.

III. EXPANDING MUSIC EDUCATION ACCESS

A. MUSIC EDUCATION LITIGATION

Presently, no litigant has challenged a state for the right to a music education under state constitutional provisions. This is likely due in part to the same concerns expressed by the state courts in Illinois, Florida, and Rhode Island. Questions of educational substance inherently run up against separation of powers concerns. “What constitutes an appropriate education or even an ‘equal, adequate, and meaningful’ one, ‘is not likely to be divined for all time even by the scholars who now so earnestly debate the issues.’”¹²⁰ Thus, courts believe the legislature is the proper forum to evaluate such questions.¹²¹ For this reason alone, the likelihood of a court granting a music education right is unlikely, or more truthfully, nonexistent.

It is also not clear that successful litigation efforts in educational adequacy actions have created meaningful changes in music education access. Today, various schools in West Virginia rely on private grants to fully operate their programs,¹²² and low-income students of Kentucky have been left to perform on unplayable, rundown instruments.¹²³ Further, the pursuit of litigation risks the establishment of precedent antithetical to the strategy’s interest, especially given state courts’ shift from adequacy receptivity.¹²⁴

Nonetheless, plaintiffs have raised several creative claims attempting to expand educational offerings for low-income

120. *Sundlun*, 662 A.2d at 58 (quoting *San Antonio Indep. Sch. Dist. V. Rodriguez*, 411 U.S. 1, 43 (1973)).

121. *See, e.g., id.* (“[W]e believe the proper forum for this deliberation is the General Assembly, not the courtroom.”).

122. *See, e.g.,* Mike Lawson, *In the Trenches: Saving Music Education in West Virginia*, SCH. BAND & ORCHESTRA (Apr. 7, 2015), <https://sbomagazine.com/in-the-trenches-saving-music-education-in-west-virginia/#:~:text=Building%20on%20a%20program%20that,are%20working%20in%20every%20public> [<https://perma.cc/FZG4-C35Q>].

123. *See, e.g.,* Valarie Honeycutt Spears, *Fayette County Music Students Using Dilapidated Instruments. One Dates to Titanic Sinking*, LEXINGTON HERALD LEADER (Mar. 17, 2023), <https://www.kentucky.com/article273261150.html> [<https://perma.cc/4EE7-5XAC>].

124. *See* Julia A. Simon-Kerr & Robynn K. Sturm, *Justiciability and the Role of Courts in Adequacy Litigation: Preserving the Constitutional Right to Education*, 6 STAN. J. CIV. RTS & CIV. LIBERTIES 83 (2010).

students. Among them are *Gary B. v. Snyder*¹²⁵ and *A.C. v. McKee*.¹²⁶ In *Gary B.*, students of the Detroit Public Schools filed an action against Michigan officials, arguing that the U.S. Constitution provided a fundamental right to literacy.¹²⁷ Because the state tolerated massive underfunding for their schools, the plaintiffs alleged that the state had denied their claimed right to literacy.¹²⁸ Similarly, in *A.C.* Rhode Island students argued that the U.S. Constitution guaranteed a right to a civics education.¹²⁹ The class of students claimed an education in civics is necessary to effectively participate in a democracy.¹³⁰

Students in *Gary B.* and *A.C.* were both met by sympathetic judges, but ultimately directed to unsatisfactory legal conclusions in regards to rights recognition, albeit to different degrees. In *Gary B.*, the plaintiffs settled prior to the circuit court rehearing the case, vacating the prior judgment.¹³¹ As such, the literacy right remains unaddressed by legal precedent and open for continued advocacy.¹³² The decision in *A.C.*, however, was met with an immediate denial of the asserted right.¹³³

A successful litigation strategy, however, may not only be the one that results in favorable judgments from the court. Instead, it could be the one that raises public awareness and creates political pressure towards non-judicial remedies. The cases *Gary B.* and *A.C.* both resulted in an influx of funds and state attention following their conclusion.¹³⁴ For students of Detroit, the Michigan legislature appropriated \$94.4 million towards increased reading instruction and support in the Detroit Public Schools Community

125. 329 F. Supp. 3d 344 (E.D. Mich. 2018) (pursuing the right to literacy).

126. 23 F.4th 37 (1st Cir. 2022) (pursuing the right to a civics education).

127. *Snyder*, 329 F. Supp. 3d.

128. *Id.*

129. *A.C.*, 23 F.4th.

130. *Id.*

131. Alyssa Evans, *The Other Branch: Outcomes of Gary B. v. Snyder*, EDNOTE (July 15, 2020), <https://www.ecs.org/the-other-branch-outcomes-of-gary-b-v-snyder/> [<https://perma.cc/2P4M-4S77>].

132. *Id.*

133. *A.C. v. Raimondo*, 494 F. Supp. 3d 170 (D.R.I. 2020).

134. Ethan Bakuli, *Detroit's \$94 Million 'Right to Read' Lawsuit Settlement is Finally Coming Through for DPSCD*, CHALKBEAT DETROIT (July 7, 2023), <https://www.chalkbeat.org/detroit/2023/7/7/23787399/detroit-public-schools-right-to-read-settlement-whitmer-emergency-management/> [<https://perma.cc/H7VQ-ENBN>]; *Rhode Island Lawsuit, Filed by the Center for Educational Equity at TC, Ends with Agreement to Improve Civic Education*, TEACHERS COLL. COLUM. U. (June 2022), <https://www.tc.columbia.edu/articles/2022/june/> [<https://perma.cc/6PS3-453G>].

District.¹³⁵ And in Rhode Island, notoriety from *A.C.* prompted the Rhode Island Department of Education to establish a civic education task force to review its offerings.¹³⁶ While the plaintiffs in *Gary B.* and *A.C.* departed from their lawsuits without the vindication of a new right, they still managed to deliver a substantial remedy for low-income students. A similar music education litigation strategy in other states could be seen as equally fruitful.

As mentioned earlier, though, a litigation strategy runs the near-certain, countervailing risk of codifying the dismissal of a Constitutional right to a music education in its entirety. Despite the potential publicity windfall that could follow, such a pursuit of music education expansion is likely inadvisable. Instead, the policy realm remains the most viable venue alternative to close the inequality present in music education access.

B. BALLOT MEASURE INITIATIVES

The electorate retains power to initiate legislation in twenty-six states¹³⁷ and act where the branches grow substantively unproductive.¹³⁸ Thus, music education advocacy can more effectively take the form of a ballot measure initiative. This was the case in California when the state passed Proposition 28 in November 2022.¹³⁹ The measure earmarked much-needed funds for school music programs within the state¹⁴⁰ and passed with

135. Bakuli, *supra* note 134.

136. Catherine Gewertz, *Students Deepen Access to Civics Education in Hard-Fought Legal Battle*, EDUC. WEEK (June 15, 2022), <https://www.edweek.org/teaching-learning/students-deepen-access-to-civics-education-in-hard-fought-legal-battle/2022/06> [https://perma.cc/XWJ4-PYLP].

137. *Ballot Measure*, BALLOTPEDIA, https://ballotpedia.org/Ballot_measure [https://perma.cc/Y2XY-R6HJ] (last visited Mar. 30, 2024).

138. See, e.g., Karen Tumulty, *How State Legislatures Went Off the Rails*, WASH. POST (Apr. 24, 2023), <https://www.washingtonpost.com/opinions/2023/04/24/supermajorities-state-legislatures-undemocratic/> [https://perma.cc/T673-UTPE].

139. *Proposition 28—Arts and Music in Schools Funding*, CAL. DEPT EDUC., <https://www.cde.ca.gov/eo/in/prop28artsandmusicedfunding.asp> [https://perma.cc/9K7C-7735] (last visited Mar. 30, 2024).

140. See Karen D'Souza, *Proposition 28 a Windfall for Arts Education, but Implementation Poses Challenges*, EDSOURCE (June 26, 2023), <https://edsource.org/2023/prop-28-a-windfall-for-arts-education-but-implementation-poses-challenges/692858> [https://perma.cc/29B8-UGM9].

sixty-four percent of the vote.¹⁴¹ Such a victory signaled the electorate's favorable view of music education's importance, and laid the blueprint for potential success in other jurisdictions. This is especially promising because ballot measure approval rates have positively trended upward since the year 2000.¹⁴²

Ballot measures also raise potential issues, though, which must be avoided. In California, Proposition 28 requires most of the funds to be spent on staff.¹⁴³ First, such inflexibility may actually increase the inequities present in music education, where many low-income students still require the basic resources to be successful, such as instruments.¹⁴⁴ There is less use for additional staff when students do not have the basic tools to engage in instruction. Meanwhile, affluent programs already stocked with the necessary equipment can use staff funds to further increase individualized attention. Instead, ballot measures should grant more flexibility to programs to best fit the needs of each distinct program. Secondly, ballot measure funds cannot be a substitute for money already budgeted to programs locally. Such an arrangement would negate any benefits accompanying the ballot measure. Instead, ballot measure funds should be in addition to the already appropriated funds that exist within school systems. Dollars cleared for music education programming through ballot measures should increase funding, not replace it.

Ultimately, the electoral success of Proposition 28 highlights the increased role the electorate can play in music education advocacy. If ballot measures are delivered with consideration of the potential pitfalls, they have the potential to be an effective tool in increasing music education access and quality.

CONCLUSION

The proliferation of music education in schools throughout the United States is an apparent success.¹⁴⁵ However, its application

141. SHIRLEY N. WEBER, CAL. SEC. OF STATE, STATEMENT OF VOTE 14 (2022), <https://elections.cdn.sos.ca.gov/sov/2022-general/sov/complete.pdf> [<https://perma.cc/28Q5-YCJ8>].

142. *Initiative Frequency and Success Throughout the Decades*, BALLOTPEDIA, https://ballotpedia.org/Initiative_frequency_and_success_throughout_the_decades [<https://perma.cc/5WLP-YP6S>] (last visited Mar. 30, 2024).

143. *Proposition 28—Arts and Music in Schools Funding*, *supra* note 139.

144. *See* Spears, *supra* note 123.

145. *See* Part I.B.

is not evenly spread across the country. Students living in poverty are most often those who are left unable to enjoy its advantages. Further, the disparities increase along racial lines. The reality is that low-income students of color are more likely to forgo a music education than their affluent, white peers.

As demonstrated in cases leading into the twenty-first century, state courts can play a role in bridging the socio-economic divide of music education access. Where state courts chose to define the minimum quality of education prescribed by their state constitutions, music experiences were acknowledged. A modern, successful advocacy strategy, however, will likely deviate from litigation in favor of ballot measure proposals to secure a music education for all students given the inherent risk of establishing harmful legal precedent. Through the patchwork of state ballot measures, the American electorate can promote meaningful music education experiences for all students—not only the wealthy, white children.