



February 21, 2024

Via Federal Express

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Re: Demand for Equitable Funding of California School Modernization Projects

Dear Governor Newsom and Honorable State Officials:

We write on behalf of California public school students, their families, and the grassroots organizations described below (“Complainants”), who have been adversely affected by California’s discriminatory and unconstitutional system of public school facility funding.

The State’s system of funding school facilities constitutes wealth-based discrimination and a denial of basic equality in educational opportunity in violation of the Equal Protection Clause of the California Constitution. Specifically, California’s current use of voter-approved bonds to fund facility modernization projects ensures that the quality of a child’s education is correlated to the wealth of his or her school

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district. Under the State’s system, lower-wealth school districts are necessarily unable to access as much funding for facility modernization as higher-wealth school districts. With limited access to modernization funds, students in lower-wealth districts are educated in outdated, unsuitable and, in some cases, unsafe facilities. The result is a discriminatory system in which students in lower-wealth districts receive an education inferior to that of their peers in higher-wealth districts. The State’s system of funding school facilities thus constitutes wealth-based discrimination and a district-based denial of basic equality in educational opportunity in violation of the Equal Protection Clause of the California Constitution.

Complainants demand that the California state leaders reconsider and revamp the State’s present system of bond funding for public school facility modernization during this legislative term and implement a revised nondiscriminatory funding structure, consistent with the reforms outlined below, before any new State construction bond is put before the voters. If the State fails to correct these ongoing violations of California schoolchildren’s constitutional rights, we are prepared to pursue legal measures, including an action to enforce the rights described herein.

The following impacted citizens and organizations, and their affected student and family constituents, bring forth their concerns here in the hopes of resolving them with you expeditiously and justly:

- **Building Healthy Communities – Monterey County (“BHC”)**, a regional power-building organization in Monterey County that builds solidarity between BIPOC communities of color across the region through education equity, community economic development, and civic engagement. BHC organizes and develops leadership among families and students in under-resourced communities that lack the bonding capacity of their wealthy neighbors, including Alisal Union School District, Greenfield Union School District, Salinas City Elementary School District, Salinas Union High School District, Santa Rita Union Elementary School District, and Soledad Unified School District, as well as the Monterey Peninsula. BHC has fought for more equitable educational opportunities, including equitable school funding, mental health services for students, interpretation and translation services, culturally relevant curriculum, and ending the school to prison pipeline.
- **Inland Congregations United for Change (“ICUC”)**, a faith-based, grassroots, and 501(c)(3) non-profit community organization that comprises 64 member interfaith congregations representing more than 60,000 families. For decades, ICUC has been organizing families and students in San Bernardino City Unified School District to provide a voice to high-need families and students in public education and to advance education equity for students of color. ICUC works with students from every comprehensive high school in San Bernardino and organizes parents from ten different schools across the district. ICUC has fought for more equitable educational opportunities, including mental health services for

students, meaningful engagement for parents, and equitable funding for high-need students of color.

- **True North Organizing Network (“True North”)**, an organization that supports families, elders, youth, and individuals of diverse faith traditions, races, cultures, and economic capacities and works to address injustice across Tribal Lands, Del Norte and Humboldt Counties, and the broader North Coast region. True North focuses on water and the environment, immigrant rights, police accountability, mental health and housing, economic justice, and equitable and adequate public education opportunities, which includes the community school model. Not only are the school districts in this region rural and lower-wealth, but many include large amounts of state, federal, and tribal land that are not taxable, which significantly impedes the ability of these communities to raise capital funding for school facilities.
- **Gary Hardie, Jr.**, a lifelong resident of Lynwood, California and an alumni of Lynwood High School. As a former Lynwood student, current parent, current resident, current school board member, and social justice activist, Mr. Hardie has experienced firsthand the impact of policies that intentionally under-resourced, low-income Black and Brown communities, preventing them from accessing the quality educational facilities that they need and deserve.

I. The California Constitution Prohibits Wealth-Based Discrimination and District-Based Denials of Basic Educational Equality

The California Constitution’s Equal Protection Clause prohibits California from discriminating on the basis of wealth in any way that would deprive students across the State of a “basically equivalent” quality of education.¹ In the landmark *Serrano* cases litigated by Public Advocates in the 1970s, the California Supreme Court held that wealth can constitute a suspect class under the California Constitution’s Equal Protection Clause.² Thus, in California, a policy that discriminates on the basis of wealth—especially a policy that affects a fundamental right, like education—will generally be deemed unconstitutional.³ This is true even if the State has not intended to discriminate.⁴

The *Serrano* holdings struck down California laws tying school funding to a district’s property taxes, which are a direct reflection of a district’s wealth. The *Serrano* Court found that “as a practical matter districts with small tax bases simply [could not] levy taxes at a rate sufficient to produce the revenue

¹ CAL. CONST. art. I, § 7, art. IV, § 16(a); *Butt v. State of California*, 842 P.2d 1240, 1251 (Cal. 1992).

² See *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976); *Serrano v. Priest*, 569 P.2d 1303 (Cal. 1977).

³ *Serrano*, 487 P.2d at 1250.

⁴ *Collins v. Thurmond*, 41 Cal. App. 5th 879, 896–97 (2016).

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that more affluent districts reap with minimal tax efforts.”⁵ In other words, lower-wealth districts with smaller tax bases were systematically disadvantaged by the State’s education funding scheme that relied heavily on local property taxes. According to the *Serrano* Court, the funding scheme constituted impermissible wealth-based discrimination.⁶ The Court rejected California’s attempt to justify its behavior on the basis of the importance of local control over school funding because “fiscal freewill [was] a cruel illusion for the poor school districts” that were constrained in their attempts to raise money by the financial circumstances of their residents.⁷

California’s current system of school facility modernization funding is no better than that which the California Supreme Court rejected in *Serrano*. The State’s requirement that local districts fund 40% of modernization costs by authorizing general obligation bonds systematically disadvantages lower-wealth districts. As part of this scheme, not only does the State make it harder for lower-wealth districts to raise their portion but, in providing the same 60% state match to all comers, the state awards substantially more modernization funds per pupil to higher-wealth districts whose local matches are much larger.⁸ As a result, in California, lower-income students, English learners, and Black and Latine students received significantly less state funding for facilities than their higher-income, non-English learner, and white counterparts and are more likely to attend schools with inferior facilities which, in turn, adversely affects their “health, thinking, and performance.”⁹ The system therefore “makes the quality of a child’s education depend upon the resources of his school district and ultimately upon the pocketbook of his parents”—the very result the California Supreme Court found impermissible in *Serrano*.¹⁰

In *Butt v. State of California*, the California Supreme Court held that the California Constitution establishes education as a “uniquely fundamental concern of the state,” and “prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts.”¹¹ An education system in which schools in certain districts—here, lower-wealth districts—fall “fundamentally below prevailing statewide standards” violates the Equal Protection Clause of the California Constitution where those disparities have a “real and appreciable” impact on students’ fundamental right to education.¹² Because lower-wealth districts’ access to modernization

⁵ *Serrano*, 487 P.2d at 1250.

⁶ *Id.* at 1252–53.

⁷ *Id.* at 1260.

⁸ See Mary Filardo, Jeffrey M. Vincent & Kevin J. Sullivan, *How Crumbling School Facilities Perpetuate Equality*, KAPPAN (Apr. 29, 2019), <https://kappanonline.org/how-crumbling-school-facilities-perpetuate-inequality-filardo-vincent-sullivan/>.

⁹ *Id.*; see also JULIAN LAFORTUNE & NIU GAO, *EQUITABLE STATE FUNDING FOR SCHOOL FACILITIES*, PUBLIC POLICY INSTITUTE OF CALIFORNIA 7–9, 21; see also Barbara Biasi, Julien Lafortune & David Schönholzer, *What Works and For Whom? Effectiveness and Efficiency of School Capital Investments Across the U.S.* 8, n. 9 (Jan. 2024).

¹⁰ *Serrano*, 487 P.2d at 1263.

¹¹ *Butt*, 842 P.2d at 1249, 1251.

¹² *Id.* at 1251–52; see also *Shaw v. Los Angeles Unified Sch. Dist.*, 95 Cal. App. 5th 740, 766 (2023); *Collins*, 41 Cal. App. 5th at 896, 900.

funding falls below that of higher-wealth districts,¹³ California’s system of bond funding for facility modernization denies students in lower-wealth districts the fundamental, constitutionally-guaranteed right to educational equality. Lower-wealth districts are simply unable to maintain all of their facilities at the level enjoyed by most students in the State.¹⁴ As a result, students in lower-wealth districts attend schools with rotting building interiors, dilapidated roofing,¹⁵ and even pervasive, toxic black mold.¹⁶ Such deficiencies in facility modernization have a “real and appreciable impact on . . . affected students’ fundamental California right to basic educational equality,”¹⁷ as guaranteed by the State’s constitution.¹⁸

II. California’s Use of Voter-Approved General Obligation Bonds to Fund Public School Facility Modernization Results in Wealth-Based Inequalities Across School Districts

A. A School District’s Ability to Access Funds Depends on Its Wealth

California’s School Facility Program (“SFP”) allocates limited State funding to public schools for facility modernization. Under California law, “modernization” constitutes any “modification” of a permanent school structure that is at least twenty-five years old, or a portable classroom that is at least twenty years old, for the purpose of enhancing the structure’s “ability to achieve educational purposes.”¹⁹ Districts use modernization funding to improve the physical condition of their school facilities, such as by improving lighting and electrical systems, repairing plumbing, securing roofing, and updating

¹³ LAFORTUNE & GAO, *EQUITABLE STATE FUNDING FOR SCHOOL FACILITIES*, *supra* note 9, at 3.

¹⁴ For example, according to a 2020 PPIC report, 38% of students go to schools that do not meet the minimum facility standard and districts with higher-per-student capital expenditures and assessed values generally had better conditions. NIU GAO & JULIEN LAFORTUNE, *IMPROVING K-12 SCHOOL FACILITIES IN CALIFORNIA*, PUBLIC POLICY INSTITUTE OF CALIFORNIA 3 (Aug. 2020).

¹⁵ PBK ARCHITECTS, INC., *FIVE YEAR FACILITY MASTER PLAN 2022 DEL NORTE UNIFIED SCHOOL DISTRICT 4-7, 4-10, 4-15, 4-18, 4-23, 4-26, 4-45, 4-48, 4-61, 4-64, 4-69, 4-72, 4-80, 4-85, 4-88, 4-93, 4-96, 4-101, 4-104, 4-109, 4-112* (2022).

¹⁶ Shareen Strauss, *Black Mold Infestation Leads to Future New Campus at Weed Elementary School*, MT. SHASTA AREA NEWSPAPERS (July 3, 2021), <https://www.mtshastanews.com/story/news/2021/07/02/black-mold-infestation-leads-future-new-campus-weed-elementary-school/7847292002/>.

¹⁷ *Butt*, 842 P.2d at 1252, 1253.

¹⁸ California’s system of school facility modernization also violates other provisions of the California Constitution including the Education Clause and the Privileges and Immunities Clause. As to the Education Clause, Article IX, sections 1 and 5 of the California Constitution guarantee a “system of common schools by which a free school shall be kept up and supported.” CAL. CONST., art. IX, §§ 1, 5. Lower-wealth districts’ inability to access sufficient modernization funding—and the resulting statewide variations in school facility conditions—undermines the constitutional guarantee of a “common school” system that operates uniformly with “both a unity of purpose and entirety of operation.” *Coulter v. Pool*, 187 Cal. 181, 192 (1921); *Kennedy v. Miller*, 97 Cal. 429, 432 (1897) (a system of common schools “means one system, which shall be applicable to all common schools within the state”); *cf. Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994) (applying similar rationale to Arizona’s requirement of a “general and uniform” school system to strike down state school facility funding program that discriminated based on local wealth).

¹⁹ Michael S. Tilden, *School Facilities Program: California Needs Additional Funding and a More Equitable Approach to Modernizing its School Facilities*, CAL. STATE AUDITOR’S OFF. 4 (Jan. 27, 2022), <https://www.auditor.ca.gov/reports/2021-115/index.html>.

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technology.²⁰ To obtain modernization funding, school districts must submit an application to the Office of Public School Construction (“Office”). Upon review, the Office transfers the application to the State Allocation Board, which deems a district eligible or ineligible. Both the Office and the State Allocation Board review and approve modernization applications on a first-come, first-served basis.²¹

The SFP generally will fund up to 60% of the cost of a school modernization project.²² However, before individual school districts can access any of these state funds, they must “match” the state funding by covering 40% of the project’s predicted cost.²³ The state funds are generated from general obligation bonds which must be approved by voters statewide. General obligation bonds are full faith and credit bonds “pledged by the state’s general fund” rather than through property tax revenue.²⁴ On the other hand, district funds are generated from local, voter-approved general obligation bonds, payable through local property taxes and developer fees.²⁵

Voters in higher-wealth districts are more likely than voters in lower-wealth districts—many of whom are struggling to make ends meet—to vote in favor of the bonds necessary to meet a school district’s 40% match requirement.²⁶ Higher-wealth districts also benefit from SFP’s first-come, first-served funding system, because they have the resources to apply for grants more quickly than lower-wealth districts²⁷ and can independently finance their school projects and be reimbursed by the State when the State lacks bond authority.²⁸ In other words, wealthier districts that can raise more money from their own communities are able to compound that advantage and get more money from the State. Indeed, in 2021, the Acting California State Auditor, Michael S. Tilden, acknowledged that the SFP’s approach “disadvantages school districts that are unable to advance their projects with their own local funds while waiting for state funding.”²⁹ In 2022, the Public Policy Institute of California confirmed that state funding

²⁰ *Id.*

²¹ *Id.* at 5–7.

²² Modernization Additional Grant for Side Development Necessary for 50 Years or Older Permanent Buildings, CAL. CODE REGS. tit. 2 § 1859.78.7; *see also* LAFORTUNE & GAO, *EQUITABLE STATE FUNDING FOR SCHOOL FACILITIES*, *supra* note 9, at 4.

²³ *School Facility Program Handbook*, OFF. OF PUB. SCH. CONSTR. 1 (Jan. 2019).

²⁴ *An Overview of Local Government General Obligation Bonds Issuance Trends 1985–2005*, CAL. DEBT & INV. ADVISORY COMM’N 1 (Apr. 2008), <https://www.treasurer.ca.gov/cdiac/publications/trends.pdf>.

²⁵ *Id.*

²⁶ LAFORTUNE & GAO, *EQUITABLE STATE FUNDING FOR SCHOOL FACILITIES*, *supra* note 9, at 21.

²⁷ *Id.* at 7.

²⁸ Tilden, *School Facilities Program: California Needs Additional Funding and a More Equitable Approach to Modernizing its School Facilities*, *supra* note 19, at 14–18.

²⁹ *Id.* at iii.

“disproportionately benefited more affluent students and districts.”³⁰ As a result, lower-wealth districts have received nearly 60% less in SFP modernization funding than higher-wealth districts since 1998.³¹

Because lower-wealth districts receive only sparse modernization funding, facility issues pile up and go unaddressed. When lower-wealth districts *do* obtain the votes necessary to pass a bond, the money must go to the most essential and basic modernization projects related to health and safety. As will be discussed herein, projects such as repairing roofs, replacing bathrooms and plumbing systems, and updating wiring systems to comply with electrical codes predominate.³² The need to fund those kinds of projects reduces the amount of money left for projects that could directly improve the quality of students’ academic and extracurricular education, such as equipping schools with performance spaces,³³ improving laboratory facilities and gymnasiums, and creating the space for wellness centers, family resource centers, and expanded learning opportunities. All told, “modernization funding is highly correlated with district wealth.”³⁴

The State appears to acknowledge that its modernization funding system is inherently inequitable. Its current answer to the inequality is to provide “hardship funding.” Hardship funding is theoretically available where lower-wealth districts are unable to match the State’s funds for modernization projects. But the criteria for accessing hardship funding are onerous. A district must show at least one of the following: (1) that it has a current outstanding indebtedness of at least 60% of its total bonding capacity; (2) that its bonding capacity threshold is lower than \$5 million; (3) that within the last two years it held a bond election for at least the maximum amount allowed under Proposition 39; (4) that the County Superintendent has performed a complete financial review; or (5) that it has made “other reasonable efforts.”³⁵ The difficulty of meeting these criteria is apparent. In 2021, only 7% of program funding came from hardship funding in districts with demonstrated financial need.³⁶ As a result, the State’s “hardship funding” solution has been entirely ineffective in solving the hardship problem. It has not even made a dent for these disadvantaged schools.

B. The Inability to Access Funds Leads to Outdated and Unsafe School Facilities

³⁰ JEFFREY VINCENT, INEQUITY IN FUNDING FOR MODERNIZATION OF CALIFORNIA’S K-12 PUBLIC SCHOOL FACILITY CAPITAL NEEDS slide 6 (2023).

³¹ LAFORTUNE & GAO, EQUITABLE STATE FUNDING FOR SCHOOL FACILITIES, *supra* note 9, at 10.

³² *Lynwood Unified Sch. Dist., Cal., Bond Issue, Measure N*, BALLOTPEDIA (Nov. 2016), [https://ballotpedia.org/Lynwood_Unified_School_District,_California,_Bond_Issue,_Measure_N_\(November_2016\)](https://ballotpedia.org/Lynwood_Unified_School_District,_California,_Bond_Issue,_Measure_N_(November_2016)).

³³ Howard Blume, *State to Pay \$250 Million to Rebuild Defective Lynwood High School*, L.A. TIMES (July 9, 2022), <https://www.latimes.com/california/story/2022-07-09/state-to-pay-250-million-to-rebuild-defective-lynwood-high-school>.

³⁴ LAFORTUNE & GAO, EQUITABLE STATE FUNDING FOR SCHOOL FACILITIES, *supra* note 9, at 10.

³⁵ *School Facility Program Handbook*, *supra* note 23, at 64–65.

³⁶ Carolyn Jones, *Many Rural California Communities are Desperate for School Construction Money. Will a New Bond Measure Offer Enough Help?*, CAL MATTERS (Nov. 27, 2023), <https://calmatters.org/education/2023/11/school-construction-2/>.

Lower-wealth districts’ inability to meet the State’s requirements for matching funds and/or hardship funding results in stark inequities. Research shows that districts with lower capital spending and smaller tax bases report higher levels of facility deficiencies.³⁷ The lived experiences of public school students and educators from lower-wealth districts demonstrate the desperate need for a more equitable solution. The State has a constitutional obligation to intervene to address these wealth-based, interdistrict disparities in facility funding and conditions that impact educational conditions and outcomes for students.

1. Del Norte Unified School District

Del Norte Unified School District (“Del Norte”) is responsible for the education of 3,500 students across eight elementary schools, one middle school, and two high schools in Del Norte County, California.³⁸ Del Norte is a rural, countywide school district with a unique population that is 67% socioeconomically disadvantaged, 47% white, 25% Latine, 14.5% Native American, and 3.8% Asian.³⁹ And within the last 20 years, the district has approved one bond measure for \$24.9 million, all of which has been expended.⁴⁰ Although the school board is contemplating a local bond measure for the 2024 ballot, such a measure—even if it passed—would only scratch the surface of the need for facility modernization due to Del Norte’s extremely low bonding capacity per student.⁴¹

In 2021, after Del Norte expended its local bond funds, a team of engineers and architects from PBK Architects, Inc. evaluated Del Norte facilities and identified conditions in *every school* that required critical repair within the next one to three years.⁴² The engineers concluded that all eleven schools needed their electrical systems repaired, and ten of the eleven schools required hazardous material abatement.⁴³ They also found facilities with rotting building interiors; facilities in violation of the Americans with

³⁷ LAFORTUNE & GAO, IMPROVING K-12 SCHOOL FACILITIES IN CALIFORNIA, *supra* note 14, at 3.

³⁸ See *District Performance Overview: Del Norte County Unified*, CAL. SCH. DASHBOARD, <https://www.caschooldashboard.org/reports/0861820000000/2023> (last visited Feb. 20, 2024).

³⁹ *Id.*

⁴⁰ PBK ARCHITECTS, INC., FIVE YEAR FACILITY MASTER PLAN 2022 DEL NORTE UNIFIED SCHOOL DISTRICT, *supra* note 15, at 2-8.

⁴¹ Nearly 80 percent of the land in Del Norte is publicly or tribally held, which means the tax base for local bonds to fund school facility projects is minimal. See *Del Norte County – Economic and Demographic Profile*, CTR. FOR ECON. DEV., CAL. STATE UNIV., CHICO 9 (2012), <https://www.crescentcity.org/media/Community-Development/Maps%20and%20Plans/2012%20Economic%20and%20Demographic%20%20Profile.pdf>. As a result, Del Norte has a low bonding capacity, which means that it can only generate a maximum of \$12,027 per student. That is only a fraction of the average bonding capacity per student for California’s unified school districts (\$35,332 per student in 2022). See *For Equity’s Sake: Fix the School Facility Program*, UC BERKELEY CTR. FOR CITIES + SCHOOLS (Nov. 7, 2023), <https://storymaps.arcgis.com/stories/373d94b4a1e947bbbbebdb6a4b0d93fd>; see also JEFFREY M. VINCENT, SEMHAR GEBREKRISTOS, & LILY NEINSTEDT, GAUGING GOOD STEWARDSHIP – IS CALIFORNIA ADEQUATELY AND EQUITABLY INVESTING IN ITS PUBLIC SCHOOL FACILITIES? 2 (2022).

⁴² See PBK ARCHITECTS, INC., FIVE YEAR FACILITY MASTER PLAN, *supra* note 15, at 3-9, 3-10.

⁴³ *Id.* at 4-7, 4-10, 4-15, 4-18, 4-23, 4-26, 4-45, 4-48, 4-61, 4-64, 4-69, 4-72, 4-80, 4-85, 4-88, 4-93, 4-96, 4-101, 4-104, 4-109, 4-112.

Disabilities Act; and casework, roofing, athletic facilities, play equipment, and portables that required significant repair or replacement.⁴⁴ The estimated cost to fix these deficiencies totals approximately \$73 million.⁴⁵ Thus, to match the State’s contribution, the district would have to raise approximately \$30 million to fix basic structural deficiencies and meet minimum legal requirements. This is a significant burden for a community where one out of every five households is in poverty.⁴⁶ As a result, more than two years after the assessment, these urgent health and safety problems have yet to be remedied.

Moreover, even if the district were able to raise the necessary matching funds for the highest priority items, it still would not have enough funding to address another \$33.7 million in important modernization needs that should be completed by 2027,⁴⁷ nor would it have enough funding to replace any of its 75 portables and trailers (which was not even contemplated by the facility assessment).⁴⁸ Del Norte also lacks the funding to offer the performing arts centers and laboratory facilities that wealthier districts can afford⁴⁹ or address the landscaping and other beautification projects that are crucial to giving students and families pride in their schools. As one Del Norte educator stated, “facilities have a deep psychological impact on the people in them. Our facilities send the message that the staff, students and families are not worth investing in, and their education is not important.”⁵⁰

2. Lynwood Unified School District

Located in Los Angeles County, Lynwood Unified School District (“Lynwood”) is responsible for the education of nearly 12,000 students across twelve elementary schools, two middle schools, and three high schools in Lynwood, California.⁵¹ The population of Lynwood students is 99% Black or Latine, 94% socioeconomically disadvantaged, and more than a quarter English Learners.⁵² Lynwood is a community that has been intentionally under-resourced due to the impact of redlining, white flight, and the construction of the Century Freeway that went through the heart of the city and left life-threatening

⁴⁴ *See id.*

⁴⁵ *Id.* at 3-9.

⁴⁶ *See Education Demographic and Geographic Estimates*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/Programs/Edge/ACSDashboard/0610770> (last visited Feb. 20, 2024).

⁴⁷ *See PBK ARCHITECTS, INC., FIVE YEAR FACILITY MASTER PLAN*, *supra* note 15, at 3-9, 3-10.

⁴⁸ *Id.* at 4-3, 4-11, 4-19, 4-41, 4-57, 4-65, 4-73, 4-81, 4-89, 4-97, 4-105. The facility assessment only contemplates repairs to the portables, many of which are more than 30 years old and not built for the inclement weather in Del Norte. The only exception to this is Redwood Elementary, where it was noted that major improvement or repair was needed. *See id.* at 4-93.

⁴⁹ School Facilities Survey completed by Terrin Musbach, Climate Coach, Del Norte Unified School District (Feb. 1, 2024) (on file with Public Advocates).

⁵⁰ *Id.*

⁵¹ *See Superintendent’s Message*, LYNWOOD UNIFIED SCH. DIST., <https://www.mylusd.org/apps/pages/superintendent-message> (last visited Feb. 6, 2024).

⁵² *See District Performance Overview: Lynwood Unified*, CAL. SCH. DASHBOARD, <https://www.caschooldashboard.org/reports/1964774000000/2023> (last visited Feb. 15, 2024).

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pollution, low property values, and widespread disinvestment in its wake.⁵³ As a result, Lynwood has extremely low bonding capacity per student (\$6,641).⁵⁴ Although Lynwood voters approved approximately \$160 million in bond funding for schools over the last 22 years,⁵⁵ the district had to tax its already struggling community *above* the statutory limit⁵⁶—and it was not sufficient to meet its basic facility needs.

In 2020, catastrophe struck Lynwood High School when a sizable portion of the school’s ceiling collapsed, bringing eight tons of concrete down with it.⁵⁷ Thankfully, no students were hurt.⁵⁸ While this near-tragedy finally spurred the State to take action and provide emergency funding,⁵⁹ Lynwood should never have been put in this situation in the first place. The dilapidated state of its facilities was the direct, foreseeable consequence of a funding system that neglects districts like Lynwood. Moreover, the emergency budget appropriation to address the Lynwood High School catastrophe did not fully fund all the impacts of the incident, nor did it address the hundreds of millions of dollars required to modernize Lynwood’s facilities across the district, some of which were built in the 1920s.⁶⁰ Despite progress on many fronts, the district continues to receive regular complaints about facilities⁶¹ and to this day, the school’s highest priority projects include “roofing repairs and re-sealing” on all campuses.⁶² This modernization measure, spurred by the impact of climate change and increased rain and flooding in Southern California, is related to basic safety and maintenance rather than to the kinds of enhancements that can improve students’ daily lives and ensure education on par with other school districts.

Unlike higher-wealth districts, some Lynwood schools lack fully-functional kitchens and must rely mostly on pre-packaged meals.⁶³ Many schools in the district lack an auditorium,⁶⁴ which inhibits student

⁵³ See, e.g., Jack Leonard, *A City Divided*, L.A. TIMES (Jan. 29, 1999), <https://www.latimes.com/archives/la-xpm-1999-jan-29-me-2910-story.html>; Vickie Vértiz, *The Right to Live: Southeast Los Angeles Life in Three Moments*, PBS SOCAL (Sept. 20, 2017), <https://www.pbssocal.org/the-right-to-live-southeast-los-angeles-life-in-three-moments>.

⁵⁴ See *For Equity’s Sake: Fix the School Facility Program*, *supra* note 41.

⁵⁵ See *Home: About Measure K & Measure N*, LYNWOOD UNIFIED SCH. DIST., https://www.mylusd.org/apps/pages/index.jsp?uREC_ID=366555&type=d&pREC_ID=817896 (last visited Feb. 6, 2024).

⁵⁶ The district has a statutory debt limit factor of 4.5%, which means that its statutory debt limit is \$199,586,413. Email from Gudiel Crosthwaite, Lynwood Unified School District Superintendent to Nicole Ochi, Deputy Managing Attorney at Public Advocates (Jan. 29, 2024, 5:07 PST) (on file with author). The district’s outstanding debt is about \$140,243,227. *Id.* Had the district’s financial advisor not obtained a waiver to raise the legal debt limit factor from 2.5% to 4.5%, *id.*, Lynwood would have been well past the \$110,881,340.50 statutory debt limit that the 2.5% debt limit factor provided.

⁵⁷ Blume, *State to Pay \$250 Million to Rebuild Defective Lynwood High School*, *supra* note 33.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Zoom Interview with Gary Hardie Jr., School Board Member, Lynwood Unified School District (Feb. 12, 2024).

⁶¹ *Id.*

⁶² *Measure K&N: District Campuses Benefit from Continuous Facility Improvements*, LYNWOOD UNIFIED SCH. DIST. (Apr. 3, 2023), <https://www.mylusd.org/apps/news/article/1747086>.

⁶³ Zoom Interview with Gudiel Crosthwaite, Superintendent, Lynwood Unified School District (Jan. 24, 2024).

⁶⁴ Blume, *State to Pay \$250 Million to Rebuild*, *supra* note 33.

participation in arts, music, and drama, among other things. And most elementary and middle schools in the district lack the quality and amount of laboratory equipment found in wealthier school districts.⁶⁵ These deficiencies deprive students of the opportunity to take part in the social, cultural, technical, and activity-centric components of a full education. In fact, administrators report that Lynwood graduates who attend institutions of higher learning discover that their wealthier peers are generally more prepared, especially in the use of technology.⁶⁶ Only \$12 million remains from Lynwood’s local bond measures,⁶⁷ which is not sufficient to meet its highest priority modernization projects, much less provide the facilities needed to put its schools on par with wealthier districts.

3. Santa Rita Union School District

Santa Rita Union Elementary School District (“Santa Rita”) is responsible for the education of more than 3200 students across four elementary schools and two middle schools in Salinas, California.⁶⁸ Located in Monterey County, Santa Rita serves a student population that is primarily socioeconomically disadvantaged (75%) and nearly half of the students are English Learners (45%).⁶⁹ Unlike its wealthy neighbor Carmel, which can generate nearly \$190,000 per student for school facility projects, Santa Rita can only generate \$7,740 per student.⁷⁰ As a result, Santa Rita cannot access the funding it needs to provide minimally adequate facilities to its students, much less facilities equal to that of its wealthier neighbors and to those enjoyed by most students in California.

According to Santa Rita’s 2022 Facilities Needs Assessment and Master Plan, the “[s]ignificant work needed at all of the campuses was not possible in the last bond [in 2006]” and “[t]he needs to upgrade the campus District wide surpasses the ability of the community to fully fund all the needs...based on the bonding capacity of the community.”⁷¹ The needs assessment estimated that \$293 million is needed to address basic modernization projects across the six schools, such as replacing electrical systems that are between 40 to 60 years old, creating more entry and exit points for schools that have more than doubled in enrollment since their initial construction, and replacing “portable villages,” some of which are more than 40 years old and have rotting floors because they are sitting on soil.⁷² However, Santa Rita could only raise \$24.9 million in its 2022 local bond measure, and only a portion of that is eligible for the state

⁶⁵ Zoom Interview with Gudiel Crosthwaite, *supra* note 63.

⁶⁶ *Id.*

⁶⁷ Email from Gudiel Crosthwaite to Nicole Ochi, *supra* note 56.

⁶⁸ See *District Performance Overview: Santa Rita Union Elementary School District*, CAL. SCH. DASHBOARD, <https://www.caschooldashboard.org/reports/27661910000000/2023> (last visited Feb. 19, 2024).

⁶⁹ *Id.*

⁷⁰ See *For Equity’s Sake: Fix the School Facility Program*, *supra* note 41.

⁷¹ See SUGIMURA FINNEY ARCHITECTS, INC., SANTA RITA UNION SCHOOL DISTRICT FACILITIES NEEDS ASSESSMENT & MASTER PLAN, Executive Summary 4–5 (Apr. 2022).

⁷² See *id.* at 16; Zoom Interview with Melissa Alderman, Superintendent, Santa Rita Union School District (Feb. 5, 2024).

modernization program.⁷³ Including the state match, Santa Rita’s total budget is only \$38 million, leaving \$255 million in basic modernization needs unfunded.⁷⁴

Although Santa Rita is in the financial hardship program, the additional support that the program provides is not nearly enough.⁷⁵ Even with the financial hardship assistance, Santa Rita had to make hard choices and scale down to a \$76.1 million budget (and may not even be able to complete these projects), which means it cannot afford crucial modernization upgrades to its alarm systems or to replace most of its portables—not to mention beautification or enhancement projects.⁷⁶ None of the four elementary schools in the district can build additional transitional kindergarten facilities even though the state’s expanded eligibility will increase enrollment.⁷⁷ Special education students are also particularly impacted by the lack of space, which means that some cannot attend their home schools (and are separated from their siblings) and others are receiving services in closets.⁷⁸

Moreover, the district has had to limit student and family support services. For example, space limitations have forced Santa Rita to turn down mental health providers, decline to extend after-school programs that serve Mixteco indigenous students, cancel adult ESL classes, and decline partnerships (such as those offered by Complainant BHC-Monterey).⁷⁹ Crucial programs that should be available at every school site, such as family resource centers and alternative to suspension programs, are only available at sites that currently have space.⁸⁰

4. San Bernardino City Unified School District

San Bernardino City Unified School District (“San Bernardino”) is the eighth largest school district in California and is responsible for the education of nearly 46,000 students across 73 schools.⁸¹ Nearly 90% of San Bernardino’s students are socioeconomically disadvantaged and more than 23% are English

⁷³ See *Join the Citizens’ Bond Oversight Committee*, SANTA RITA UNION SCH. DIST., <https://www.santaritaschools.org/apps/news/article/1787912> (last visited Feb. 20, 2024); Email from Melissa Alderman, Santa Rita Union School District Superintendent to Nicole Ochi, Deputy Managing Attorney at Public Advocates (Feb. 16, 2024, 8:46 AM PST) (on file with author).

⁷⁴ Email from Melissa Alderman to Nicole Ochi, *supra* note 73.

⁷⁵ Zoom Interview with Melissa Alderman, Superintendent, Santa Rita Union Elementary School District (Feb. 5, 2024).

⁷⁶ *Id.*; see also SANTA RITA PHASE SUMMARY WITH MODULAR SCOPE PERCENTAGES (*rev’d* Nov. 6, 2023).

⁷⁷ Email from Melissa Alderman, *supra* note 73.

⁷⁸ Interview with Melissa Alderman, *supra* note 75.

⁷⁹ Zoom Interview with Summer Prather-Smith, Director of Parent and Family Engagement, Santa Rita Union School District (Feb. 5, 2024).

⁸⁰ *Id.*

⁸¹ See *District Performance Overview: San Bernardino City Unified School District*, CAL. SCH. DASHBOARD, <https://www.caschooldashboard.org/reports/36678760000000/2023> (last visited Feb. 19, 2024); *Home – San Bernardino City Unified School District*, <https://www.sbcusd.com/> (last visited Feb. 20, 2024).

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learners.⁸² Some of the schools in San Bernardino date back to the 1800s⁸³ and many of them need significant modernization. Although San Bernardino approved two local bonds in the past 20 years that provided \$390 million in local capital funding⁸⁴ and opened the door to approximately \$666 million in state support,⁸⁵ that funding is coming to an end⁸⁶ and significant modernization needs remain. Even if San Bernardino could pass another local bond, the maximum that it could generate per student is \$8,155, which places it in the lowest quintile in California.⁸⁷

The State has a constitutional obligation to do more to support districts like San Bernardino that have enormous facility needs and limited funds to address them. If the State provided more equitable school facility funding, the students at Cajon High School who report leaking roofs, badly ventilated restrooms, and poor heating would have those concerns addressed.⁸⁸ The students at San Gorgonio High School who report leaking roofs and outdated classrooms and gymnasiums⁸⁹ would find their classrooms and gymnasium on a modernization project list, which is not the reality today.⁹⁰ The students at Arroyo Valley High School who are suffering the impacts of climate change under the scorching sun⁹¹ would have a shade structure already.⁹² And the students and families across the district that have been advocating for more than a decade for wellness centers and parent centers on every campus would have them. According to ICUC organizers, the lack of capital funding has consistently impeded the construction of these vital spaces on school campuses.⁹³

⁸² *District Performance Overview: San Bernardino City Unified School District*, *supra* note 81.

⁸³ *K-12 Construction Dates, San Bernardino City Unified School District* (Apr. 2023) <https://resources.finalsite.net/images/v1682108067/sbcusdcom/actlyb9zcolmy1lxxmys/K-12ConstructionDates.pdf>.

⁸⁴ SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT CITIZENS' OVERSIGHT COMMITTEE, ANNUAL REPORT, MEASURE T AND N BONDS, MARCH 2022– FEBRUARY 2023 4 (May 2023), https://sbcusdfacilities.com/wp-content/uploads/2023/07/Annual-Report-2022-2023_Website.pdf.

⁸⁵ SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT FACILITIES MANAGEMENT DEPARTMENT, FISCAL YEAR 2022–2023 MID-YEAR REPORT 7 (Mar. 2023), https://sbcusdfacilities.com/wp-content/uploads/2024/01/SBCUSD_2022-23_Mid-Year_Report_v5.pdf.

⁸⁶ *Meeting Minutes: Regular Meeting of the Measure T & N Bond Citizens' Oversight Committee*, SAN BERNARDINO CITY UNIFIED SCH. DIST. (Jan. 11, 2023), <https://sbcusdfacilities.com/wp-content/uploads/2023/07/Meeting-Minutes-1.11.23.pdf>.

⁸⁷ *See For Equity's Sake: Fix the School Facility Program*, *supra* note 41.

⁸⁸ *See School Facilities Surveys Completed by Students at Cajon High School* (Feb. 2024) (on file with Public Advocates).

⁸⁹ *See School Facilities Survey completed by Student at San Gorgonio High School* (Feb. 2024) (on file with Public Advocates).

⁹⁰ There is no record of any related San Gorgonio High School modernization project in current or future projects. *See Facilities Planning and Development*, SAN BERNARDINO CITY UNIFIED SCH. DIST. <https://sbcusdfacilities.com/projects/> (last visited Feb. 20, 2024).

⁹¹ *See School Facilities Survey Completed by Student at Arroyo Valley High School* (Feb. 2024) (on file with Public Advocates).

⁹² A shade structure for Arroyo Valley High School is in the design phase, but it is not clear when it will be completed. *See 22-23 MID-YEAR REPORT*, *supra* note 85, at 6.

⁹³ *See Letter to San Bernardino City Unified School District from ICUC organizers, youth fellows, Public Advocates, and ACLU of Southern California* 1 (July 14, 2022) (on file with Public Advocates).

5. Weed Union Elementary School District

Weed Elementary School (“Weed Elementary”) serves over 300 kindergarten to eighth grade students in Weed Union Elementary School District, in Weed, California.⁹⁴ Weed is a rural town of approximately 3,000 people in Siskiyou County in Northern California.⁹⁵ Seventy-eight percent of students at Weed Elementary are socioeconomically disadvantaged, and nearly ten percent are English learners.⁹⁶ In October 2020, engineers discovered black mold throughout Weed Elementary.⁹⁷ Black mold—to which the students, faculty and staff had been continuously exposed—is associated with acute poisoning, immune deficiencies, and cancer.⁹⁸ The mold developed from ongoing roof leaks.⁹⁹ If that were not bad enough, the engineers also found asbestos and lead paint and determined that many buildings were not seismically sound.¹⁰⁰ Because the cost to address these severe health and safety risks by modernizing the building would have exceeded 50% of the property’s value, nearly every building on the school’s campus was torn down.¹⁰¹ In doing so, the district discovered diesel-contaminated soil underneath the school—yet another hazardous and costly deficiency.¹⁰²

According to the latest estimates, Weed Elementary needs about \$45 million to rebuild.¹⁰³ Weed could only raise \$3.5 million,¹⁰⁴ and the State approved only \$27.7 million in funding (including financial hardship), leaving \$13.8 million in rebuilding costs unfunded.¹⁰⁵ Rural communities like Weed face high construction costs overall due to increased costs associated with transporting supplies and labor to a

⁹⁴ See *District Performance Overview: Weed Union Elementary*, CAL. SCH. DASHBOARD, <https://www.caschooldashboard.org/reports/47704820000000/2023> (last visited Feb. 15, 2024).

⁹⁵ *Weed, CA*, DATA USA, <https://datausa.io/profile/geo/weed-ca> (last visited Feb. 6, 2024).

⁹⁶ *District Performance Overview: Weed Union Elementary*, *supra* note 94.

⁹⁷ Strauss, *Black Mold Infestation Leads to Future New Campus at Weed Elementary School*, *supra* note 16.

⁹⁸ Skye Kinkade, *Weed Elementary Building Closed After Discovery of Dangerous Black Mold*, MT. SHASTA HERALD (Oct. 23, 2020), <https://www.mtshastanews.com/story/news/2020/10/23/weed-elementary-building-closed-after-discovery-dangerous-black-mold/6007396002/>.

⁹⁹ *Id.*

¹⁰⁰ Strauss, *Black Mold Infestation Leads to Future New Campus at Weed Elementary School*, *supra* note 16.

¹⁰¹ *Id.*

¹⁰² Skip Descant, *Weed Elementary Transitions to Distance Learning While Contaminated Soil is Removed*, MT. SHASTA NEWS (Apr. 18, 2023), <https://www.mtshastanews.com/story/news/2023/04/18/weed-elementary-temporarily-switched-to-remote-learning/70127420007/>.

¹⁰³ *2023–24 Local Control and Accountability Plan for Weed Union Elementary School District*, WEED UNION ELEMENTARY SCH. DIST. (2024), <https://www.weedelementaryschool.com/lcap/>.

¹⁰⁴ Zoom Interview with Jon Ray, Superintendent and Principal, Weed Union Elementary School District (Jan. 31, 2024). Weed funded its local contribution through a Certificate of Participation (COP), which is essentially a mortgage backed by district property. A COP is repaid using operating funds, which diminishes the resources for core teaching and student support needs.

Id.

¹⁰⁵ *Id.*

remote location.¹⁰⁶ Districts in financial hardship are also subject to rigid and punitive rules that do not exist in the main modernization program, such as applying any expenses exceeding projections against future financial hardship contributions.¹⁰⁷ As a result, hardship districts are incentivized to save costs by building lower quality facilities or, in some cases, when the hardship funding runs out and there is no local funding available to cover overages, buildings remain unfinished.¹⁰⁸ To help offset costs and stay within the limited budget afforded by the State’s hardship program, the district’s Superintendent, Jon Ray, has been serving—without additional pay—as the general contractor on the project.¹⁰⁹ But the situation is untenable—the time Superintendent Ray spends serving as a contractor takes away from his critical day-to-day duties as district superintendent, and the school community is entitled to a professional rebuilding of its facilities.

Weed Elementary students’ multi-year displacement from a permanent school campus is disruptive to their learning. Students must learn in portable classrooms, in the midst of a demolition and construction site, while the construction of their new school facility is ongoing.¹¹⁰ These portables are designed for milder climates than Weed experiences, and are thus ill-suited for Weed’s cold temperatures, snow, and frequent rain. For example, the portables’ flat roofs¹¹¹ cause snow to accumulate in the winter. According to Superintendent Ray, the temporary campus poses a “logistical nightmare” for school staff because, for example, the school’s youngest students must walk 300 yards outdoors simply to get to the newly-rebuilt cafeteria.¹¹² What has happened at Weed Elementary is a reflection of the serious consequences of inadequate funding that can lead to facility neglect and disrepair. And the reconstruction effort illustrates the fundamental flaws in the State’s hardship program.

C. Deficient School Facilities Harm Students

Systematic inequalities in public school facility funding are critical because a school facility’s condition has a direct effect on the quality of education that its students receive. As researchers at the

¹⁰⁶ HUD’s *Commitment to Rural Housing Supply*, OUR WAY HOME: BLOG (Nov. 22, 2022), https://www.hud.gov/ourwayhome/blog/blog_11_22_22#:~:text=Often%2C%20small%20towns%20lack%20capacity,often%20higher%20in%20rural%20areas.

¹⁰⁷ *School Facility Program Handbook*, *supra* note 23, at 81.

¹⁰⁸ Zoom Interview with Jon Ray, *Superintendent, Weed Union Elementary School District* (Jan. 18, 2024).

¹⁰⁹ *Id.* This is not the first time that Superintendent Ray has been forced to serve as a general contractor to save costs on a school facility project. When he was superintendent of Klamath-Trinity Joint Unified, a rural district in Humboldt County that encompasses multiple tribal lands and serves primarily Native American students, he also served as a general contractor for multiple years when the State’s hardship program failed to provide sufficient funding to address the “deplorable” conditions in that district, which included lead paint, asbestos, black mold, lack of air conditioning, no windows, and doors that did not work. In that case, despite financial and facility hardship funding, the money ran out before the district could finish all the construction and some buildings remain unfinished today. *Id.*

¹¹⁰ Strauss, *Black Mold Infestation Leads to Future New Campus*, *supra* note 16.

¹¹¹ *Id.*

¹¹² Zoom Interview with Jon Ray (Jan. 31, 2024), *supra* note 104.

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Harvard School of Public Health concluded, “the evidence is unambiguous—the school building influences student health, thinking, and performance.”¹¹³ Exposure to “mold, poor ventilation, uncomfortable temperatures [and] inadequate lighting” are hazardous to student and teacher health and contribute to absenteeism and reduced cognitive abilities.¹¹⁴ Adequate lighting specifically boosts classroom morale, reduces off-task behavior, and improves test scores.¹¹⁵

The aesthetic quality of a school building is also highly relevant. School buildings that appear well-maintained and orderly encourage attendance, resulting in higher test scores.¹¹⁶ In particular, school facility conditions impact student and teacher attendance, teacher retention and recruitment, student and teacher health, and the quality of the curriculum.¹¹⁷ Studies in Chicago and Washington, D.C. in the early 2000s found that teachers were more likely to report plans to leave their school, or even to leave the profession of teaching entirely, when their schools were in poor condition.¹¹⁸ Put simply, students “perform better in newer or recently renovated buildings than they do in older buildings.”¹¹⁹

As Superintendent Ray of Weed Elementary explained, California must provide its children with adequate school facilities “in order to give them a chance.”¹²⁰ But as it presently stands, “poorer communities simply cannot compete with more affluent communities” in obtaining funding for facilities.

The school districts described above are just examples, as many other school facilities in lower-wealth districts across California are deficient in similar and additional respects. Because a school

¹¹³ Filardo, Vincent & Sullivan, *How Crumbling School Facilities Perpetuate Equality*, *supra* note 8.

¹¹⁴ *Id.*

¹¹⁵ *The Importance of School Facilities in Improving Student Outcomes*, PENN STATE CTR. FOR EVALUATION AND EDUC. POL’Y ANALYSIS, <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/> (last visited Feb. 6, 2024).

¹¹⁶ *5 Ways Your School Facility Impacts Student Achievement*, TASB (Nov. 30, 2022), <https://www.tasb.org/news-insights/school-facilities-impact-student-achievement>.

¹¹⁷ ERIC J. BRUNNER & JEFFREY M. VINCENT, FINANCING SCHOOL FACILITIES IN CALIFORNIA: A TEN-YEAR PERSPECTIVE 51 n. 68 (2018). Access to technology both within school facilities and at students’ homes is also correlated with improved academic outcomes. NIU GAO & PATRICK MURPHY, UPGRADING TECHNOLOGY INFRASTRUCTURE IN CALIFORNIA’S SCHOOLS 1 (2016). Evidence suggests that California students’ access to technology varies with their wealth. For example, in a 2002 study, researchers found that in schools with the highest percentages of students eligible for state welfare services, 40% of teachers reported “only fair or poor technology availability.” Jeannie Oakes & Marisa Saunders, *Access to Textbooks, Instructional Materials, Equipment, and Technology: Inadequacy and Inequality in California’s Public Schools*, Expert Report in *Williams v. California*, 40 (2002). By contrast, in schools with the lowest percentages of students eligible for state welfare, 18% of teachers reported “only poor or fair technology availability.” *Id.* The findings were similar with respect to computer access. *Id.* Making matters worse, access to technology in schools is particularly critical for the low-income students for whom it is elusive, because it is those students who may have either less consistent or non-existent access to internet at home. GAO & MURPHY, UPGRADING TECHNOLOGY INFRASTRUCTURE IN CALIFORNIA’S SCHOOLS at 3, 7.

¹¹⁸ Filardo, Vincent & Sullivan, *How Crumbling School Facilities Perpetuate Equality*, *supra* note 8.

¹¹⁹ *5 Ways Your School Facility Impacts Student Achievement*, *supra* note 116.

¹²⁰ Zoom Interview with Superintendent Jon Ray (Jan. 31, 2024), *supra* note 104.

facility’s condition affects the quality of its students’ education, students in lower-wealth districts receive an education that is inferior in many respects to those in higher-wealth districts. Thus, the State’s present system of school facility funding discriminates on the basis of wealth and denies California students in lower-wealth districts basic educational equality, in violation of the California Constitution’s Equal Protection Clause.

III. A More Equitable System of School Facility Funding Is Required

As the California Supreme Court instructed in *Butt*, the State has an affirmative obligation to intervene when students are being denied basic educational equality.¹²¹ The State has not only failed to intervene to prevent violations of students’ constitutional rights, but it has also purposefully constructed and perpetuated those violations. Therefore, we request that the California State Legislature revamp the State’s present system of bond funding for public school facility modernization during this legislative term and implement a revised nondiscriminatory funding scheme. By promising all comers a 60% match of whatever they bring to the table with the knowledge that wealthier districts will be bringing proportionally larger plates, the State has created a system perfectly designed to dole out larger portions of the State pie to higher-wealth districts.¹²² By excluding, except for a few hardship cases, the amount of local bonding capacity from the formula for distributing State bond dollars, the State has crafted a system largely designed to remain ignorant of the total local and state capital funds available to districts. That this system has produced inevitable inequitable results to the detriment of lower-wealth districts has been well-documented, including in studies commissioned by the State and by the State Auditor.

A more equitable system of school facility funding is required by our constitution. It must meet the following principles.

A. The State Should Employ a Sliding Scale of State Support Inversely Proportional to Local Wealth

In addressing the remedy, it is important to acknowledge that school districts are not local entities but “agencies of the state for the local operation of the state school system.”¹²³ Thus, while districts hold property in their name, “California law still treats such property as state property rather than local government property: ‘The beneficial ownership of property of the public schools is in the state.’”¹²⁴ As

¹²¹ See *Butt*, 842 P.2d at 1251.

¹²² Thus, for example, a low-wealth unified district of 1,000 students with a bonding capacity of \$10,000 per pupil can, at most, generate \$10,000,000 in local bond revenue and receive, at most, a \$15,000,000 state match, for a total of \$25,000,000 in modernization funds. A high-wealth district of the same size with a bonding capacity of \$80,000 per pupil can raise a much larger local share—\$80,000,000, and therefore, generate a much greater state match—\$120,000,000, for an exponentially greater amount of total funds—\$200,000,000.

¹²³ *Hall v. City of Taft*, 47 Cal.2d 177, 181 (1956).

¹²⁴ *Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 254 (9th Cir. 1992) (citing *Hall*, 47 Cal. 2d at 181).

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concerns the funding of annual district operations through a mix of state Prop 98 dollars and local property taxes, “[t]he state has assumed the burden of funding public schools, and property tax revenue allocated to the public school [district allocation formula] is state money collected for a state purpose.”¹²⁵ Similarly, the State authorizes (and caps) the ability of its local school district agents to raise local bond funds for its schools’ capital needs and relies on that local capacity as a key component of meeting the State’s overall constitutional obligation to keep up and support a system of common schools that delivers basic equality of educational opportunity.¹²⁶ With this legal framework in mind, it is not only fair and appropriate but constitutionally compelled that the State incorporate local bonding capacity into how it doles out State bond funds.¹²⁷

To achieve fundamental fairness and promote equality of educational opportunity, the State is required to construct a facility modernization distribution scheme in conformity with the equity principles of *Serrano v. Priest*. A revised facility funding framework for *capital* spending (i.e., spending related to facility construction and modernization) should take a sliding scale approach akin to the Local Control Funding Formula (“LCFF”) allocation scheme by which the State already funds most school *operational* spending (related to day-to-day operations expenses).¹²⁸ One can draw a direct line from the California Supreme Court’s decision in *Serrano*, where state aid and equalization amounts failed to offset the large disparities in overall funding resulting from disparities in local property tax wealth,¹²⁹ through the prior “revenue limit” system,¹³⁰ to LCFF’s 2013 update. Under the current LCFF system, the amount of State aid is inversely proportional to the amount of local property taxes generated in a district. The greater amount of dollars per pupil that local property taxes generate for a district, the fewer state LCFF dollars per pupil are allocated to the district to achieve a statewide uniform per pupil funding level.¹³¹

Similarly, a sliding scale approach for public school facility funding should account for local bonding capacity to ensure that every district has an equal opportunity to achieve, at a minimum, a fair and reasonable amount of overall bond revenue per pupil to keep its facilities in good repair. In other words, the State’s constitutional obligations require it to structure its capital system in a way that accounts

¹²⁵ *Belanger*, 963 F.2d at 252.

¹²⁶ Jeff Vincent, *School Facility Funding is the Most Inequitable Aspect of California Education Finance* (Feb. 1, 2021), <https://citiesandschools.berkeley.edu/blog/school-facility-funding-is-the-most-inequitable-aspect-of-california-education-finance-why-do-the-two-new-school-bond-bills-barely-tackle-it/>.

¹²⁷ While the focus of this letter is on the gross inequities that have surfaced in the SFP modernization program over the last 26 years, the logic can be equally applied to the new construction program. Is it fair for a low-wealth district to have to raise the same level of local funding to house the same level of growth as a higher capacity high-wealth district? The pending bond bills make a slight nod toward addressing this question in the new construction program but only provides minimal weight to low-wealth status and only slightly increases the proposed state share for the poorest districts to 55% from 50%.

¹²⁸ JULIEN LAFORTUNE, UNDERSTANDING THE EFFECTS OF SCHOOL FUNDING 6–9 (2022); JULIEN LAFORTUNE, JOSEPH HERRERA & NIU GAO, EXAMINING THE REACH OF TARGETED SCHOOL FUNDING 6 (2023).

¹²⁹ *Serrano*, 487 P.2d at 1245–48.

¹³⁰ *Belanger*, 963 F.2d at 251–52.

¹³¹ See *For Equity’s Sake: Fix the School Facility Program*, *supra* note 41.

for local wealth as it supports all districts in maintaining facilities over time according to the good repair standards of the *Williams* settlement and the standard of LCFF’s priority one.¹³² Instead of making wealthy districts wealthier—as the current scheme does—State modernization dollars, like LCFF dollars, should be spent fairly, including in districts that lack sufficient local resources.¹³³

B. The State Should Adjust the Financial and Facility Hardship Program to Account for Exceptional, Non-routine Needs, and Remove Burdensome Access Provisions

The main SFP program so poorly serves the needs of lower-wealth, small, and rural districts that these districts are often forced to seek access to state bond funds through the financial hardship program. The revised sliding scale discussed above would obviate the need for many of these districts to seek funding through the “hardship” program, giving them a more equal chance to address their modernization needs effectively by way of the primary matching program. Given that the hardship program is known for being “complicated, time-consuming, and . . . overly burdensome,”¹³⁴ revisions to the program are desirable. For those districts that would still have exceptional needs, the hardship program must be substantially overhauled to ensure that participation is not substantially more onerous, time-consuming, and costly than accessing modernization funds through the main program.

C. The State Should Address and Monitor Current Built-in Advantages Accorded to Wealthier Districts with the First-Come, First-Served Rules

The State Auditor and others have documented the built-in advantages that higher-wealth districts and larger-staffed districts have in accessing modernization funds through a system that has largely relied on a first-come, first-served distribution scheme.¹³⁵ Indeed, of the many districts that have never received funding through the SFP program, two-thirds are smaller, rural districts.¹³⁶ This existing advantage should be erased through revisions to the SFP application and prioritization program, including by prioritizing distributions based on need (see below). Pending legislation A.B. 247 and S.B. 28 begin to take some steps in this regard. The State should also provide greater technical assistance during and before the application process to help districts that may lack the fiscal and organizational resources of larger and

¹³² CAL. EDUC. CODE §§ 52060(d)(1), 17002(d). Further information about the *Williams* settlement can be found at *The Williams Case – An Explanation*, CAL. DEPT. OF EDUC., <https://www.cde.ca.gov/eo/ce/wc/wmslawsuit.asp> (last reviewed Feb. 9, 2023).

¹³³ The proposed “equity” innovations in the two bond bills pending in the legislature, A.B. 247 and S.B. 28, are wholly inadequate to address the core district-based wealth disparities operating in the modernization program. Only a few points are proposed to offset wealth disparities and more significantly, *all districts would continue to receive the same 60% match*. At most, low-wealth district matches would be raised to 63% or 65%. Such a system will continue to deliver for high-wealth districts both a greater total amount of state modernization dollars and a much greater amount of total local and state bond funds for modernization.

¹³⁴ See Jones, *Many Rural California Communities are Desperate for School Construction Money*, *supra* note 36.

¹³⁵ See *supra* at II(A).

¹³⁶ LAFORTUNE & GAO, *supra* note 9, at 22.

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wealthier districts. Finally, the State should monitor the distribution of state bond funds in quarterly tranches to ensure lower-wealth districts are not disadvantaged in real time and establish mechanisms to correct for discrepancies.

D. The State Should Survey and Track Local Need and Prioritize Projects Based on Need

Twenty years after the *Williams* settlement, it remains a travesty that the nation's largest public school system does not have an adequate system to routinely track and monitor the conditions of its facilities. Doing so would better ensure maintenance of minimum good repair standards and allow districts to address upcoming new construction and modernization needs. The State should establish a statewide database of school facilities, with periodic conditions assessments. Comprehensive data collection on school facility age is a minimally necessary place to start and could help the state predict future eligibility and need for SFP modernization funds.¹³⁷ The provisions in pending legislation that would require five-year facility assessment plans as part of any application for SFP funds furthers this objective, but the State needs such information on all facilities in California, not just those applying for SFP funds.¹³⁸ Greater county office of education and/or CDE technical assistance may well be needed to support smaller districts with facility assessments.

IV. Conclusion

Thank you for your attention to this critical constitutional issue on which hinges the educational achievement and outcomes of thousands of California students. We are happy to meet with you to discuss the contents of this letter. Please know that if these ongoing constitutional violations are not addressed during the 2024 legislative term, we are prepared to pursue legal measures, including by bringing an action against the State of California and the addressees above on behalf of California public school students for

¹³⁷ Tilden, *School Facilities Program*, *supra* note 19, at 14.

¹³⁸ S.B. 28, Sec. 11: 17070.54, Regular Sess. (Cal. 2023-24).



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violations of the California Constitution. While we would prefer to work cooperatively with you to address the glaring needs of the districts and students of California, we reserve all rights and remedies.

Sincerely,

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Senator Steve Glazer

Hon. Mike McGuire, Senate President Pro Tempore

Hon. Al Muratsuchi, Chair, Assembly Committee on Education and Members

Hon. Josh Newman, Chair, Senate Committee on Education and Members

Hon. Robert Rivas, Speaker of the Assembly

Hon. Scott Wiener, Chair, Senate Budget Committee and Members