of education and the institutional resources to enforce their decisions.

The most significant ruling, noticed nationwide, came in November, 2006, in *CFE v. State of New York (III)*, a lawsuit of 13 years’ duration. New York’s court of appeals, the state’s highest court, decided 4 to 2 that $1.93 billion in additional annual spending was sufficient to provide an adequate education for New York City public school students. Only in the world of adequacy litigation could this be a disappointment to the plaintiffs, but the Campaign for Fiscal Equity (CFE) was hoping for much more. Even though New York’s constitution says nothing about adequacy, in 2003 the appeals court had accepted CFE’s claim that the state was not providing an adequate education for New York City students and ordered it to rectify this manufactured constitutional wrong.

That ruling set off a series of rival “costing out” studies, which purported to determine how much money it takes to educate a child adequately. Relying on figures from consultants hired by the plaintiffs, lower courts endorsed a range of $4.7 to $5.63 billion in additional funds. New York’s then attorney general, Eliot Spitzer, asserted in his brief for the defendant that $1.93 billion was sufficient, a figure derived from a consultant’s study done for the state government. A Democrat, Spitzer promised in his 2006 campaign for governor to spend more on schools than he endorsed in the brief, but the four-person Republican majority of the court, all of whom were appointed by outgoing governor George Pataki, a persistent opponent of the CFE, was under no obligation to take notice of what Spitzer said as a candidate.

The high court agreed with Spitzer in his role as the state’s chief attorney. Approving a number in a legal brief allowed retreat from the political thicket and mathematical quagmire created by *CFE v. New York*. “Deferece to the legislature,” the court stated, “is especially necessary where it is the State’s budget plan that is being questioned.”

“Deference to the legislature is especially necessary where it is the State’s budget plan that is being questioned.”

similarly, in November, 2005, the Texas Supreme Court beat a retreat in *Neeley v. West Orange-Cove*. Texas had been plagued with decades of legal and political battles over school funding. The legislature and governor repeatedly failed to satisfy judicial commands. In 2005, hundreds of school districts asked the court to rule that both the system of funding education and the amount were unconstitutional. The court determined that the funding system rested on an unconstitutional state property tax. However, it refused to find that the level of spending, a statewide average of $10,000 per pupil, was inadequate. The court said that it could ensure that “constitutional standards are met,” but not prescribe “how the standards should be met,” adding, “more money does not guarantee better schools or more educated students.”

What appears to be a trend began with the Massachusetts Supreme Judicial Court’s decision in *Hancock v. Driscoll* in February, 2005. In 1993, the court had ruled that the state system of education was unconstitutionally inadequate. The legislature passed a reform package that increased spending and strengthened testing and accountability measures. Nineteen low-wealth, poorly performing districts returned to the court in 1999 with a claim that the education system was still inadequate. The court, which has earned a reputation for policy boldness, nonetheless ruled that a finding of inadequacy would require “policy choices that are properly the Legislature’s domain.”

While these decisions do not spell the end of adequacy lawsuits, they suggest that judges may be growing weary of being asked to resolve the intractable problems afflicting the states’ poorest-performing school districts.

Josh Dunn is professor at the University of Colorado–Colorado Springs. Martha Derthick is professor emeritus at the University of Virginia.